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Remember the Mamdouh Habib Affair?

ABC Radio National-PM Reports on Guantanamo Bay compensation

David Mark reported this story on Tuesday, November 16, 2010 18:14:00

MARK COLVIN: Several British media organisations including the BBC and the broadsheet newspapers are reporting that the UK Government is preparing to make a payout to around a dozen former Guantanamo Bay detainees

http://www.abc.net.au/pm/content/2010/s3068079.htm

The British nationals took civil action against their government, accusing it of being complicit in their unlawful imprisonment and torture while in captivity. The papers and the BBC are reporting that in the next few hours the British government will announce millions of dollars in out-of-court settlements to the men. They say it's aimed at preventing the release of sensitive security information

http://www.abc.net.au/pm/content/2010/s3068079.htm.

The Sydney man Mamdouh Habib is suing the Australian Government in the Federal Court in a case that has some similarities to those in Britain - http://www.abc.net.au/pm/content/2010/s3068079.htm . The lawyer for former Guantanamo Bay detainee Mamdouh Habib says his client will be buoyed by the decision. **David Mark reports.**

DAVID MARK: Details of the compensation payout are sketchy but a spokesman for the British prime minister David Cameron has confirmed a statement will be made later today.

The former detainees - most of them British nationals - say the British government was complicit in their imprisonment at Guantanamo Bay. Around half a dozen say they were tortured before they arrived at Guantanamo.

The British security agencies MI5 and MI6 had tried to suppress evidence relating to their detention. But the former detainees successfully appealed against that decision earlier this year.

In July the British High Court ordered the release of some of the 500,000documents relating to the case. It now seems the British government is set to pay millions of pounds in compensation to its nationals. It was that or face the embarrassment of the sensitive security documents getting aired in court – http://www.abc.net.au/pm/content/2010/s3068079.htm.

The out-of-court settlement has heartened Clive Evatt, the counsel for the former Australian Guantanamo Bay detainee Mamdouh Habib. Mr Habib is suing the Australian Government, arguing it was complicit in his detention and alleged torture.

CLIVE EVATT: Well it's exactly the same sort of case. He was arrested by the Pakistani police in Pakistan in about September, when was it, 01. And on the same bus were two German nationals. All of them were of Arabic or Egyptian origin.

The German government, when the two German nationals were arrested and taken into custody just put a bit of pressure on the Pakistani government and they were released. But Mr Habib was kept by the Pakistani police, tortured. The Australian government did nothing for him.

He was then sent to Egypt with the knowledge of the Australian government. And Egypt is notorious for mistreatment and even torture of prisoners. And a lot of the other prisoners in Guantanamo Bay also went to Egypt.

Now, then ultimately Habib goes to Guantanamo Bay where he's mistreated and tortured. Our government did nothing to help him – http://www.abc.net.au/pm/content/2010/s3068079.htm .

DAVID MARK: What is the state of your client's case at present - http://www.abc.net.au/pm/content/2010/s3068079.htm ?

CLIVE EVATT: It's virtually ready to go. There's more discovery of documents by the Government. Nothing like the 500,000 documents that the British government were asked to discover. But the Government nonetheless has to discover a lot of documents, many of which are redacted, come from ASIO or the secret intelligence organisation.

But leaving that aside the case is ready. And as I understand it, it's to be heard in June and July next year.

DAVID MARK: Does the British case act as a precedent?

CLIVE EVATT: No because they're both the same. Neither of them, they're not a precedent to each other. They're both similar cases.

DAVID MARK: The fact that it appears that there will be a payout to the British detainees, does that have any relevance at all to your client and his case?

CLIVE EVATT: Obviously it must have some relevance. If the British government is prepared to pay out a certain amount of money to their citizens who have exactly the same identical case as Mr Habib then I suppose one could point to that in assessing damages in Mr Habib's case.

It must be good for him psychologically to know that prisoners in a similar position to him but from another country, Britain, have settled for what appears to be a substantial sum of money. So it would have a good psychological effect on him.

MARK COLVIN: Clive Evatt, the solicitor for the former Australian Guantanamo Bay detainee Mamdouh Habib with David Mark. A spokesman for the Attorney-General's department told PM that he hadn't heard about the details of the British case.

http://www.abc.net.au/pm/content/2010/s3068079.htm

Habib wins first defamation case

By: Raul Bassi, *Sydney,* Wednesday, February 22, 2006 - 11:00

After deliberating for less than a day on February 14, a jury found that Mamdouh Habib, who was incarcerated without charge for three years at the US naval base in Guantanamo Bay, was defamed by an article published by the Sydney *Daily Telegraph.* A NSW Supreme Court judge will now determine whether Habib is entitled to compensation.

Habib's barrister, Clive Evatt QC, argued that four articles — printed in the *Daily Telegraph* and the *Weekend Australian* in 2002 and 2005 — damaged his client's reputation by suggesting he was a terrorist, a liar, a fundraiser for terrorist organisations and a follower of al Qaeda leader Osama bin Laden. Habib told *Green Left Weekly* that he was pleased to be able to prove that he is not a terrorist. He is also suing Sydney radio station 2UE's John Laws for defamation. That case will be heard in May.

Habib also told *GLW* he hoped his defamation actions would help his case against the Australian government, still to be heard, in which he is suing Canberra for not protecting him when he was arrested and tortured in Pakistan, Egypt and Guantanamo Bay. From *Green Left Weekly,* February 22, 2006.http://www.greenleft.org.au/node/34587

Habib wins damages from newspaper

Updated March 16, 2010 12:44:00

Photo: The court has ruled that Mamdouh Habib should get damages from the Daily Telegraph.

An appeal court has ruled that former Guantanamo Bay detainee Mamdouh Habib was defamed by a Sydney newspaper.

Mr Habib sued the Daily Telegraph over a story about his treatment by authorities after his arrest in Pakistan in 2001.

He argued he was defamed because the story implied he knowingly made false claims about how he was treated.

In 2008 the New South Wales Supreme Court ruled in the paper's favour, finding that he did make the false claims and the story was substantially true.

The court has overturned that decision and ruled Mr Habib is entitled to damages.

Last month the Federal Court left the way open for Mr Habib to sue the Australian Government for compensation over the way he was treated in detention.

Mamdouh Habib awarded $5k in defamation case

Court reporter Jamelle Wells, Updated August 19, 2010 14:54:00

Former terror suspect Mamdouh Habib has been awarded $5,000 in a defamation case against a Sydneynewspaper.

Mamdouh Habib, a former Guantanamo Bay inmate who was also given permission to sue the Federal Government for his treatment in the jail, won a defamation case against the Daily Telegraph on appeal.

The New South Wales Court of Appeal reversed an earlier ruling which found in favour of the Sydney paper in 2008.

The case centres around a story that cast doubt on claims he made about torture when he was detained.

In the New South Wales Supreme Court, Justice Peter McClellan has awarded Mamdouh Habib $5000, saying

although he established he was defamed, he is not persuaded that Mamdouh Habib's reputation is significantly damaged.

PHOTO: The Judge said he was not persuaded Mr Habib's reputation had been significantly damaged

The Judge said "with respect to the damage to his reputation, in my judgement it is relevant that he falsely denied supporting Sheikh Omar Abdul Rahman.

"That amounts to a finding that the plaintiff was prepared to tell an untruth to the Australian public in relation to his support for a terrorist and very significantly diminishes his reputation.

"For that reason, although the plaintiff succeeded in establishing that the published article defamed him, when it said that he made multiple false claims I am not persuaded that his reputation was thereby significantly damaged."

Mr Habib, who was in court with family members, refused to comment on the amount the judge awarded him.

Costs have yet to be determined.

http://www.abc.net.au/news/2010-08-19/mamdouh-habib-awarded-5k-in-defamation-case/950304

Gillard says Habib deal in taxpayers' interests

Updated January 08, 2011 17:33:00

Mamdouh Habib says he was drugged, sexually assaulted and beaten at Guantanamo. http://www.abc.net.au/news/2008-03-07/former-australian-terrorism-suspect-mamdouh-habib/1898458

Prime Minister Julia Gillard says the Federal Government has acted in the best interests of taxpayers by negotiating a settlement with former Gauntanamo Bay detainee Mamdouh Habib.

The Government has paid Mr Habib an undisclosed sum to be absolved of legal liability in the torture case.

Mr Habib was suing the Government for being being complicit in his torture as a detainee in Guantanamo, saying it was indirectly responsible for his harsh treatment.

Ms Gillard says the Government reached a settlement to avoid further litigation. "I think Australians understand this is a matter of long standing," she said.

"It did not start under the currentGovernment - it started a number of years ago - but it was in the interests of taxpayers to settle it and that has been done."

Mr Habib was detained by the United States as a suspected terrorist for three-and-a-half years in the fallout from the September 11 terrorist attacks.

He says he was drugged, sexually assaulted and beaten at Guantanamo.

Mr Habib alleges the Australian Government was aware of his harsh treatment and therefore was indirectly responsible.

The settlement comes after Mr Habib was cleared by the Federal Court to sue the Government for aiding and abetting his torture by agents in Pakistan, Egypt, Afghanistan and Guantanamo Bay.

It brings to an end to a six-year-long compensation case.

http://www.abc.net.au/news/2011-01-08/gillard-says-habib-deal-in-taxpayers-interests/1898452

Governement pays Mamdouh Habib in settlement case

11 JANUARY 2011 @ 06:00AM BY VANESSA WATSON

AN undisclosed sum of money has been paid to former Guantanamo Bay detainee Mamdouh Habib after he signed a confidential settlement in exchange for dropping his torture case against the Australian Government.

Mr Habib, of Greenacre, said he could not reveal the details of the December 17 settlement but had been asked to make thedeal after showing his evidence to government officials.

"I had very strong evidence against the government. I was really in the process of releasing the evidence I have through the media," he said. "I signed this agreement because I try to let my family relax and leave the trouble away.

"It's not the dollars, it's the dignity. I have nothing to hide. I've been a victim of the corruption of the government from the (John) Howard (government) until now," Mr Habib said.

The compensation case commenced in 2005 soon after Mr Habib was released from the US military prison in Cuba without charge. The case was due in court on January 22.

Mr Habib exclusively told The Express that a government figure during former Prime Minister John Howard's reign, who had claimed that Mr Habib was never going to get an apology and that he did not deserve any money, was the same person who signed the agreement.

When asked if his settlement compared to the $1 million reportedly received as compensation by the falsely accused terror suspect, Mohamed Haneef, Mr Habib said he could not make comparisons.

Prime Minister Julia Gillard told the ABC the decision was in taxpayers' best interests. "It did not start under the current government, it started a number of years ago."

But former foreign minister Alexander Downer labelled the Gillard government as too "weak" to put up a fight against Mr Habib's compensation claim. "That's what they are, they have no spine, they don't want to get in to an argument with anyone because the focus groups say they shouldn't," Mr Downer told The Australian.

http://express.whereilive.com.au/news/story/govt-weak-says-downer/

Australian Government Settles Habib Claim arising out of Rendition and Torture and Orders Inquiry

Author: Ben Batros & Philippa Webb , Tuesday, January 18,2011

It was reported late last week that the Australian government has settled a claim brought against it by one of its citizens, Mahmoud Habib, arising out of his detention, rendition and torture by US and other foreign authorities

The government will not disclose how much it paid Mr. Habib. Over a three-and-a-half year period, Mr. Habib had been detained by Pakistani authorities, then transferred by the US to Egypt, to a military base in Afghanistan, and finally on to Guantanamo Bay where he was detained until his release (without charge) in January 2005. Mr Habib alleges that he suffered a range of mistreatments amounting to torture and inhumane treatment – http://www.ejiltalk.org/australian-government-settles-habib-claim-arising-out-of-rendition-and-torture-and-orders-inquiry/.

Instead of suing the foreign agents directly responsible for the alleged abuses or pursuing a criminal prosecution, Mr. Habib brought a civil action against the Australian government for the acts of Australian officials who he claims knew of and aided in his mistreatment. On 25 February 2010, the Full Court of the Australian Federal Court ruled that Mr. Habib's claim could proceed, as it was not barred by the act of state doctrine (see our previous post and article on the case and that ruling - http://www.ejiltalk.org/habib-v-commonwealth-of-australia-a-twist-on-actions-against-state-officials-for-torture/ - http://jicj.oxfordjournals.org/content/8/4/1153.abstract.

The Australian's government's settlement of the case follows the British government's decision to settle similar cases brought by 16 British citizens or residents claiming that MI5 and MI6 had colluded with the CIA in their rendition and detention at Guantanamo Bay (links here, here and here). It's tempting in a case like this to assume that the case was settled because the government recognised that the allegations were true, and because it did not want damaging facts to be proven in Court regarding the conduct of its officials. And that may well be the case – before the ink was dry on the settlement deal, the Australian Prime Minister requested the Inspector-General of Intelligence and Security to open an inquiry into the Habib case (link) in the light of witness statements that Australian authorities knew of Mr. Habib's rendition to Egypt and were even present during interrogations there. This new evidence apparently precipitated the settlement deal - http://www.theaustralian.com.au/news/features/mamdouh-habibs-story-is-backed-by-evidence/story-e6frg6z6-1225987997174.

The settlement of the case and launching of an inquiry, on the one hand, might seem diametrically opposed to the Australian government's previous fierce opposition to this case. But while the reported new evidence may account for some of this change, it must also be remembered that the Australian government's original application to dismiss the case was on the basis of the act of state doctrine, which was directed at shielding *foreign* agents and governments from judicial scrutiny by Australian courts. It submitted that the act of state doctrine applied because Mr Habib's claim depended on a determination of the illegality of the acts of agents of foreign states in a foreign territory. The Federal Court rejected this argument. In doing so, they drew a distinction between that doctrine and the principle of state immunity. The Court accepted that state immunity would prevent a claim against either the US or its officials for torture in Australian courts (though potentially controversial, this point was conceded by Mr Habib's lawyers). However, in rejecting the application of the act of state doctrine to prevent an Australian court from judging the legality of the conduct of Australian officials (albeit acts which merely assisted the primary conduct of foreign officials), the Court saw itself as preserving a functional distribution of jurisdiction: Australian courts may proceed with claims against Australian officials while US, Egyptian or Pakistani courts may consider any claims against their respective officials and governments.

Holding foreign governments accountable in their own courts is exactly what Mr Habib says that he intends to do. According to the reports, Mr. Habib has stated that he "will take this money and use it to sue the Egyptian and United States governments." Such litigation will not be barred by state immunity, but will still face significant challenges. In Egypt, emergency laws in place for almost 30 years were extended again in 2010, and provide for arrest without charge, indefinite detention and special security courts (link). And in the United States, both the government and the courts have refused to provide accountability or redress to victims of rendition and torture (link). A recent study by the ICTJ (link) has found that civil claims for compensation by non-US citizens are often stymied by procedural obstacles. A number of cases have been dismissed without reaching the merits because courts have been persuaded by government assertions that state secrets, classified evidence, evaluations of foreign policy, or national security concerns are implicated.

The slight prospect of success in either Egypt or the US makes it even more significant that Mr. Habib has had some success in Australia. **In Habib v. Cth (2010),**

the Australian Federal Court recognised the importance of government accountability for its agents in its own courts. And now the inquiry into whether Australian agencies were complicit in his 2001 CIA rendition to Egypt has the potential to make that government accountability a reality.

Ben Batros is Legal Officer at the Open Society Justice Initiative and a former Senior Legal Officer, International Crime Branch, Australian Attorney-General's Department. Philippa Webb is Visiting Assistant Professor at Leiden University and former Special Assistant to President of the International Court of Justice.

http://www.ejiltalk.org/australian-government-settles-habib-claim-arising-out-of-rendition-and-torture-and-orders-inquiry/

Maybe it's Habib who should apologise for outlandish claims

GERARD HENDERSON **March 27, 2012**

Mamdouh Habib, 2: Australian government, zip. That's a fair interpretation of the media's assessment of the findings of Vivienne Thom, Inspector-General of Intelligence and Security (IGIS), in relation to the actions of Australian government agencies concerning Habib's arrest and detention overseas from 2001 to 2005.

However, this is a substantial misreading of the unclassified version of the IGIS report, which completely discredits the case Habib and his supporters have run against the government for close to a decade.

The taxpayer-funded ABC was the most egregious offender. Shortly after the Prime Minister, Julia Gillard, released Dr Thom's report on Friday, ABC News focused not on Habib but on his wife Maha Habib, reporting that "the Australian government is refusing to apologise to the wife of a Guantanamo Bay inmate, even though an inquiry has found Australian authorities failed to keep his family informed about his welfare".

Later that evening, *PM* presenter, Mark Colvin, declared Thom had given the intelligence agencies "a series of black marks over the case of the former terror suspect Mamdouh Habib". Reporter Alexandra Kirk ran a similar line before interviewing Habib's legal adviser, Stephen Hopper. It was much the same on *Lateline*, where presenter Emma Alberici introduced the story by declaring that "the overseas arrest and detention of Australian citizen Mamdouh Habib was handled poorly by all the local agencies involved". Reporter John Stewart ran a similar line before interviewing Habib himself.

And now for some facts. Habib is a dual Australian-Egyptian who was detained in Pakistan in October 2001, since there was credible information that he may have had prior knowledge of the September 11 attacks. The evidence indicates Habib was transferred to Egypt in November 2001. In April 2002 he was moved to Bagram, the US base in Afghanistan, before being flown to Guantanamo Bay. He was released back to Australia in January 2005. By early 2002, ASIO had formed the view that Habib was not involved in the planning of future attacks.

Not long after his return, Habib commenced legal proceedings against the Commonwealth. In July 2010 the Federal Court made orders for the discovery of documents. In December 2010 the case was settled and a confidential deed of settlement signed. It is understood Habib received a payment as part of the settlement.

Dr Thom commenced the IGIS inquiry, following a request from Gillard, just after the settlement was reached. In her findings, Thom recommended that "Australian government agencies should prepare an apology to Mrs Maha Habib" for failing to properly inform her about Habib's circumstances. The Gillard government accepted all the report's six recommendations - except this one. As the Prime Minister said, "we are satisfied that Australian agencies and officials performed their duties faithfully in the difficult and unprecedented environment in the aftermath of the September 11 terrorist attacks".

Sure, in Thom's report, there are some criticisms of the Australian Security and Intelligence Organisation (then headed by Dennis Richardson), the Department of Foreign Affairs and Trade and the Australian Federal Police. However, the critical findings with respect to these agencies essentially turn on the process during the time in which Habib was under the control of Pakistan, Egyptian and American authorities. Her principal complaint is that "Mr Habib's best interests should have been the subject of more attention and action by Australian government agencies" when he was arrested and detained overseas.

What is significant about this report is that Thom completely demolishes the specific case made by Habib against Australian officials in his 2008 book *My Story - The Tale of a Terrorist Who Wasn't* (Scribe) and elsewhere.

In particular, Thom rejected Habib's widely publicised claims that Australian officials (i) mistreated or threatened him when he was detained in Pakistan, (ii) were involved in his rendition to Egypt and (iii) were present during his interrogation in Egypt. In particular, Thom rejected Habib's claim that ASIO officers named "Stewart" or "Stuart" or "David" saw him when he was in Egypt. She did not reach any conclusion as to why Habib made those allegations but raised the possibility that "given the very difficult circumstances of his detention" he "was confused and his recollection of events is unclear".

Thom also found that Australian officials, including Richardson, "gave a strong and consistent message" that Australia would not agree to Habib being sent from Pakistan to Egypt. She also found that Habib was "not forthcoming in his communication" with Australian officials while in Guantanamo Bay. Moreover, she reported that Habib said he would provide documents to her for her inquiry but failed to do so.

The big story of the IGIS report was that Habib's claims about mistreatment by Australian authorities had been dismissed by Thom. But this finding was buried in the news reports - especially on the ABC.

Gerard Henderson is executive director of The Sydney Institute.

http://m.smh.com.au/opinion/politics/maybe-its-habib-who-should-apologise-for-outlandish-claims-20120326-1vulp.html

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The dilemma faced by legally unrepresented individuals in court

The above comment by Dr Gerard Henderson is conceptually mere puffery with which Henderson wishes further to ingratiate himself into Australia's Jewish community. His blind support for the phoney war on terrorism is pathetic because an uncritical accaeptance of the 9:11 narrative still effectively deflects from the basic physical fact that 9:11 was an insider job and where Israelis played a significant part in staging it.

Henderson remains silent about the fact that Habib was renditioned with Australian government knowledge, and that is an injustice.

For over a decade Fredrick Töben has been in the Federal Court of Australia representing himself against charges brought under the Racial Discrimination Act because Jew Jeremy Jones suffered hurt feelings when Töben expressed his views on matters Holocaust. Töben hasn't been renditioned but he certainly has had his fair share of legal persecution – all because there are no Australian legal minds that were prepared to defend him at the matters-of-fact stage in the legal process that began in 1996.

Töben now has about eight court orders against him and last year he escaped bankruptcy by paying Jones all up $75,000 in court costs and related expenses.

Now Jones is asking for another court-cost sum of $175,000, and if Töben doesn't pay up Jones will again initiate the bankruptcy action.

That's a wake-up call, a reminder for enquiring minds to get out their copy of Shakespeare's *The Merchant of Venice* where Shylock wants his pound of flesh! … and also perhaps a reminder to recall what Shakespeare wrote elsewhere:

"Never a borrower nor lender be because it blunts the edge of husbandry", i.e. Arbeit macht frei!

Dr Fredrick Töben at the Bar Table, Federal Court of Australia, Sydney

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… here's hope for those who value free expression as a basic universal human right …

Labor muzzling press to hide failings: Tony Abbott

BY: MATTHEW FRANKLIN, *The Australian*, August 06, 2012 12:00AM

TONY Abbott says Labor is yielding to an "authoritarian streak" to muzzle free speech through media regulation because it is unwilling to admit critical media coverage is the result of its own poor performance, not bias or malpractice.

In a speech today, the Opposition Leader will warn that if the government proceeds with the creation of an appointed watchdog over the media, the body will become a "a political correctness enforcement agency" that would suppress inconvenient truths and hound journalists.

And he will renew previous vows to repeal Section 18C of the Racial Discrimination Act, which exposes people to prosecution if they cause offence to a person or a group of people on the grounds of race or ethnicity.

Communications Minister Stephen Conroy is considering the findings of a report by former Federal Court judge Ray Finkelstein that proposes the establishment of a news media council backed by federal law to oversee print, online, radio and television news coverage.

Senator Conroy is also considering the recommendations of the government's Convergence Review for a public interest test for media proprietors.

In a flat rejection of new media regulation, Mr Abbott will use his speech to the Institute of Public Affairs in Sydney to question the government's motives, accusing it of resorting to regulation proposals rather than respond to fair media coverage of its shortcomings. He lists its broken promise not to create a carbon tax, the high cost of the National Broadband Network, its failure to deal with border security and its poor administration of the rollout of its economic stimulus programs.

"Instead of ruefully conceding that criticism under these circumstances is only a fair cop likely to spur better performance, the current government's response has been thinly veiled intimidation of critics masquerading as proposals for better regulation," says a copy Mr Abbott's speech notes published in The Australian today.

"Instead of mounting a better argument, this government's inclination is to disqualify its critics."

Mr Abbott will criticise Julia Gillard for claiming last year that News Limited, which publishes The Australian, had "questions to answer" because of the involvement of News International, its British sister company, in a phone-hacking scandal.

"It seems obvious that her real concern was not Fleet Street-style illegality but News Limited's coverage of her government and its various broken promises, new taxes and botched programs," he will argue, dismissing Mr Finkelstein's proposed News Media Council as "an attempt to warn off News Limited".

"Any new watchdog could become a political correctness enforcement agency destined to suppress inconvenient truths and to hound from the media people whose opinions might rattle that average Q&A audience," he will say, referring to the ABC political talk program.

"Australia does not need more regulation of the mainstream media but we do need a new debate about freedom of speech because it will help to reveal the true nature of the current government.

"A hung parliament hasn't made the government more responsive. Instead, the constant struggle to survive has brought out its authoritarian streak."

Mr Abbott will also reject the Prime Minister's invitation to media proprietors to propose beefed-up self-regulation arrangements. He says any government that demands changed behaviour from the media in such circumstances is in fact attempting to lower standards. He will also say freedom of speech is vital because it makes it harder to cover up corruption or maladministration.

He will note that despite China's success in lifting millions of people out of poverty, it should liberalise its polity and suggest that if India, a democracy, was to overtake China as an emerging economic superpower, it would simply prove again that freedom, prosperity and strength reinforce each other.

Turning to the Racial Discrimination Act, Mr Abbott will also renew his promise to repeal Section 18C, under which News Limited columnist Andrew Bolt was prosecuted last year for a column he wrote on the basis that it offended some indigenous people.

While agreeing that humiliating or intimidating others on racial grounds is deplorable, he will argue that it is impossible to retain "a hurt-feelings test" as well as freedom of expression.

"If free speech is to mean anything, it's others' right to say what you don't like, not just what you do. It's the freedom to write badly and rudely. It's the freedom to be obnoxious and objectionable."

But he will say a Coalition government would maintain a prohibition on inciting hatred or intimidation of racial groups "akin to the ancient common-law prohibition in inciting hatred or fear".

http://www.theaustralian.com.au/nationalaffairs/labor-muzzling-press-to-hide-failings-tony-abbott/story-fn59niix-1226443472461

[The Töben case, which acted as a precedent case for the Bolt decision made by Justice Mordecai Bromberg is never mentioned in the media – ed. AI]

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RECOMMENDED COVERAGE

Government must foster free speech

http://www.theaustralian.com.au/national-affairs/opinion/the-job-of-government-is-to-foster-free-speech-not-to-suppress-it/story-e6frgd0x-1226443377179

Tony Abbott on media

http://resources.news.com.au/files/2012/08/06/1226443/820701-aus-na-file-abbott-speech.pdf

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From the Archive: Adelaide Institute *Newsletter* - *November 2000 No 119*

The world's leading Revisionist and professor of electrical engineering at Chicago's Northwestern University offers a timeless piece of analysis on the Töben case. The article also appeared in Töben's book: *WHERE TRUTH IS NO DEFENCE,I WANT TO BREAK FREE*. 2001, Peace Books, ISBN 0958546614.

Professor Arthur Butz: The Greatest Dirty Open Secret

In the trials and tribulations of Fredrick Töben one can observe in operation the greatest dirty open secret of our day. In explaining that remark here, I will do my best to be objective, despite the fact that because of the conditions I am to discuss several of my friends have been imprisoned or fined for doing the sorts of things I also do.

In October 1997 I received a request from Töben, director of the Adelaide Institute and a Holocaust revisionist, to be a defense witness for him in his hearings before the Australian Human Rights and Equal Opportunity Commission (HREOC). The role would have involved writing a letter for him and perhaps testifying by telephone from my home near Chicago.

I resisted this request, pleading a shortage of time and the fact that he had told me, earlier that year in Chicago, that the Australian "Human Rights" legislation has no teeth and that he did not have to pay any attention to such proceedings against him. Both pleas were true but I had another strong reason for my reticence, which was too complicated to state in these

rapid-fire e-mail messages, but which can be explained here in due course.

In any case I relented after a few passionate e-mails from Töben. I wrote a two page letter, intended to be submitted to the HREOC hearings. The letter, dated 5 November, declared:

Alas I must say that you are arguably guilty of some of the charges. I looked over Jeremy Jones' stuff and I infer that the "Racial Discrimination Act" proscribes what might "offend, insult, humiliate or intimidate another person or group of people." Well, revisionism certainly does the first three! It does not however "intimidate"; at least, I have never noticed such a case. . . . Heated controversy is a price of open debate, the foundation of a rational society.

Jeremy Jones was the representative of the Jewish organization that had brought charges against Töben. I commented on Jones' letter by declaring Töben guilty. Some defense witness!

Far from acting betrayed by me, Töben submitted the letter to the HREOC. I believe that he was starting to see my real reason for reluctance to get involved as a defense witness. Such matters as I had expertise in were irrelevant to the proceedings, which related not to historical truth, but to offending, insulting, etc.. For the most part I could not understand the notion of culpability as used in the proceedings, but to the extent that I could understand, Töben was guilty. I am at least as guilty, as are many of my revisionist friends. The situation was structured such that nothing I could have said would have helped attain a favorable verdict, as became clear to Töben shortly later.

On 7 December Töben ended his participation in the hearings, complaining that he was unable to defend the position of the Adelaide Institute because the HREOC was not interested in historical truth. The breaking point seems to have come when the Commission rejected the witness statement of Dr. Robert Faurisson as "irrelevant".[1] In a hearing conducted by telephone on 27 November, the Commission had told Töben that for the most part the witness statements he had submitted had to be disqualified either because (1) they "make comments about the desirability, validity, constitutionality or sensibleness of this law" under which the hearings were being held or (2) they comment on "the substance" of the historical problem, i.e. "the truth of the Holocaust, the extent of the Holocaust, its existence" which "is not of much significance" for the hearings.[2]

Of course these two questions are, to our common sense (or as Töben puts it our sense of "natural justice"), the only relevant questions. There is almost nothing left to be said if these two questions are excluded. I felt vindicated, because even the accused had decided to submit no defense. I could not be accused of failing him. Faurisson had written one of his usual masterfully incisive analyses of the historical problems, formulated for the layman, and his statement was rejected. The implicit effect of what I wrote was to question the law itself, but I declared Töben guilty so my statement was accepted. We may make the basic observation that it was impossible to determine what Töben was being charged with, apart from saying things that annoyed some people. The commission was not interested in the intentions behind Töben's public declarations, or in their actual effect.

This observation raises the general question of the legal formulations under which Holocaust revisionists are persecuted in various countries. For purposes of such a discussion, we can take two: the "Human Rights Act" (such an Orwellian term!) in Canada and the 1990 Fabius-Gayssot law in France. These two legislations do contrast sharply, but in practice they operate similarly, as I now explain.

In the Canadian case, the code excludes the relevance of three considerations:

1. The truth of the offending statements.
2. The intent behind the expression of the statements, e.g. whether they were intended to cause people to hate Jews.
3. The actual effect of the statements, e.g. whether they caused people to hate Jews, whatever the intent of the author.

We simple minded people will scratch our heads and wonder what is left to try. It is this: whether the statements "exposed" somebody to hatred or contempt.

It is impossible for me to clarify that standard because, to the extent I understand it, reference is being made to a condition into which all of us are born. Somebody may start hating us, and often does. Holocaust revisionists are hated more than most, but exposure to hatred is basically part of the human condition. One can be argued to be innocent of such an offense only in that sense, that is, that the condition referred to is a condition we are all in, independently of what statements are made by anybody. If that plea is unacceptable, then of course we are all guilty. Anybody may be hated in the future for all sorts of reasons. Witness human history.

By contrast, the French Fabius-Gayssot law is very clear. It proscribes contesting the truth of any finding in the "Crimes Against Humanity" section of the 1946 judgment in the main Nuremberg trial. It candidly expresses, without any tergiversation, what all legal moves against revisionists are trying to do: freeze received history in the state of the end of war hysteria of 1945-1946. This sort of law contrasts with the typical "human rights" legislation, since here there is no doubt what offense an accused is being charged with.

The Australian statute resembles the Canadian, and the formulation of the French law is approximated in Germany, with its "denial of established fact" clause. These are two starkly contrasting formulations and

Töben may be unique in having been prosecuted under both, for as this book relates at length, in April 1999 he was jailed in Germany while travelling there.

That the two formulations have something important in common is suggested by what finally happened when Töben's trial came up in Germany in November 1999. Again, he decided to remain silent and offer no defense, and his lawyer did likewise. I commented on my web site:[3]

If I must conjecture the specific grounds for Töben's silence during the trial, I would guess that his protest is based on the impossibility of arguing the truth of any of the claims he has made, for which he is being prosecuted. I suppose in the court's eyes there is a certain amount of logic in that situation which, as so often happens, makes legal sense but not common sense. If e.g. there were a law outlawing the denial that Germany is on the planet Mars, and if I deny that Germany is on the planet Mars and am prosecuted for the claim, then the question of whether Germany is on the planet Mars is irrelevant to the question of whether I broke the law. Truth is no defense. In those circumstances I would adopt the strategy Töben adopted, silence, which for me would make both legal sense and common sense.

Thus the two contrasting formulations confront the accused revisionist with the same practical situation: the impossibility of seeking to justify the offending statements in relation to the accusations. Before a "Human Rights" tribunal, a Holocaust revisionist confronts unintelligible accusations. Under the French or German laws, the Holocaust revisionist is accused of being a Holocaust revisionist. If I had been a defense witness for Töben in Germany, I could not have helped him and indeed he could not think of anything to help himself. There was nothing for him to say, and nothing a defense witness could have effectively said in his support. Such court victories as revisionist defendants have won have been based on legal and constitutional technicalities.

Since western society has, for many years, made freedom of expression one of its highest values, the reactions of the civil liberties groups to this offensive and scandalous situation are of great interest.

Their reactions are equally offensive and even more scandalous. The leading (in terms of general prestige) international civil rights group is Amnesty International, headquartered in London. Amnesty has a designation, "prisoner of conscience", which it describes thus:[4]

"Prisoners of conscience" is the original term given by the founders of Amnesty International to people who are imprisoned, detained or otherwise physically restricted anywhere because of their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence.

The concept of a prisoner of conscience transcends class, creed, colour or geography and reflects the basic principle on which Amnesty International was founded: that all people have the right to express their convictions and the obligation to extend that freedom to others.

The imprisonment of individuals because of their beliefs or origins is a violation of fundamental human rights; rights which are not privileges "bestowed" on individuals by states and which, therefore, cannot be withdrawn for political convenience.

Amnesty International seeks the immediate and unconditional release of all prisoners of conscience.

Early in Töben's German incarceration John Bennett, the Melbourne civil liberties lawyer, wrote to Amnesty to request them to formally adopt Töben as a "prisoner of conscience" which, in ordinary meaning, is what he was. In a long letter Amnesty declined, declaring that in 1995 the organisation decided at a meeting of its International Council - the highest decision making body of Amnesty International - that it would exclude from prisoner of conscience status not only people who have used or advocated violence, but also people who are imprisoned "for having advocated national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.". The decision codified Amnesty International's intention to exclude from prisoner of conscience status those who advocate the denial of the Holocaust and it confirmed what had in fact had been the de facto interpretation of the prisoner of conscience definition contained in Article 1 of Amnesty International's Statute.

That seems to say that "those who advocate the denial of the Holocaust" are viewed by Amnesty as thereby advocating "national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence." That is rubbish, an obvious logical non sequitur, empirically contradicted by easy observation; I have never seen such advocacy in the Adelaide Institute newsletter. It is such obvious rubbish that it must be called a lie. Töben is not in the class of an Elie Wiesel, who has incited hatred of Germans, or of Zionists who have incited discrimination and violence against Arabs.

Amnesty has declined to support freedom of expression for Holocaust revisionists for political reasons. It is, therefore, not worthy of respect. The organization's hypocrisy is highlighted by the case of Nelson Mandela, who during his sabotage trial in South Africa in 1964, admitted that he believed in violence to achieve his political objectives and for that purpose had been a leader of a campaign of sabotage. Mandela was a hot subject of debate at Amnesty's meeting in September 1964 because, while the overwhelming sentiment was to continue to support him, one of the rules pertaining to the prisoner of conscience category was that those who used or advocated violence were not eligible. Thus the meeting decided against adopting Mandela thus, but it also voted for supporting him anyway.[5] A mere

label was withheld, not the support. Töben needed the support more than the label.

Thus we see in the Töben case hypocrisy at high levels of contemporary public life, but I opened by promising "the greatest dirty open secret of our day", and I have yet to explain.

Like the study of taboos, the study of hypocritical exceptions to agreed norms is highly instructive on the real, as opposed to declared, values of a society. That free expression of ideas must be a fundamental value of the sort of society we purport to be has virtual unanimous support, at least in the abstract. True, the ideal of free expression must be qualified in various ways, for example by national security laws and restrictions against distribution of pornography in some circumstances. However it is hard to make even a bad case for censorship of the history of the remote past unless that history impacts in some way on the present; in such event bad cases can be and are made.

The past and the present are linked, in the case of Holocaust revisionism, by Zionism. Many Israeli leaders agree that the Holocaust is "what this country's all about."[6] That statement is more true than the speaker intended, because apart from Zionism's obvious contemporary exploitation of the Holocaust legend, there is the lesser known role that Zionism played in establishing, during the years 1942-1948, the legend that was to become its life blood, as I have discussed at length elsewhere. However even that is not the "greatest dirty open secret of our day".

It is widely imagined that the various national-socialist movements that flourished in Europe more than 50 years ago are dead, but that is not true. Yes, gone are not only Hitler's Nazis and Mussolini's Fascists, but also the British Union of Fascists, the Croatian Ustashe, the Hungarian Arrow Cross, the Romanian Iron Guard, the Parti Populaire Français, and all such national-socialist movements except Zionism, a movement born and nurtured in Europe during the heyday of nationalism and socialism, and which is quite vigorous today. Its völkisch principle, that of the "chosen people", is the oldest and best tested extant.

Despite occasional rhetoric by various governments and organizations like Amnesty International, for example against torture of prisoners, Israel and thus Zionism are essentially untouchable in international affairs. One cannot imagine, for example, Israel being treated harshly for defying UN resolutions, even with measures less severe than those used against Iraq during the past decade. Our institutions not only support Israel as a state, they also support Zionism in domestic policy by means tailored for each country. In Europe critical examination of Zionism's sustaining legend is outlawed. That is not the case in the USA, for constitutional reasons, but US institutions look kindly on this European repression nevertheless. There are occasional references in the US press to the European anti-revisionist laws, but I have never seen an editorial condemnation of them from these editors who so righteously scold China for its human rights violations.

A frightening episode occurred in 1993 and 1994, when FBI Director Louis Freeh held talks with the German Bundesamt für Verfassungsschutz (Federal Office for Protection of the Constitution), the euphemistically named agency that performs many of the functions once entrusted to the more honestly named Geheime Staatspolizei (Gestapo or Secret State Police). The talks sought to find ways the US could stop the flow, from the USA to Germany, of literature banned by German law but lawful in the USA.[7] The talks seem to have come to nothing but the point was clearly made that the USA approves of such German repression of civil liberties. The role of the USA in supporting Israel diplomatically, financially and militarily is well known. The USA is also the mainstay of the operation of the related Holocaust restitution racket.

Thus the institutions of some major Western countries, flouting established legal and ethical norms, are as intellectually repressive as anybody's Gestapo, in enforcing service to the only surviving European national-socialist movement, and the others are tacitly or even openly supportive of that repression. That is the greatest dirty open secret of our day.

Arthur R. Butz
Evanston, Illinois, USA
September 2000

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[1] Adelaide Institute newsletter, Jan. 1998, pp. 1,8.
[2] Adelaide Institute newsletter, Feb. 1998, p. 10.
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[4] Prisoners of Conscience, Amnesty International Publications, London , 1981, pp. 1-2.
[5] Egon Larsen, A Flame in Barbed Wire, Frederick Muller, London, 1978. Also W.W. Norton, NY, 1979.
[6] Efraim Zuroff, Israel director of the Simon Wiesenthal Center, quoted in the New York Times, 14 January 1995, p. 6.
[7] Chicago Tribune, 15 Dec. 1993, sec. 1, pp. 1,16; 19 Dec. 1993, sec. 1, p. 4; 27 June 1994, sec. 1, p. 4. Publicly the talk was about stopping "neo-Nazi" propaganda but that is a common camouflage or package term when Holocaust revisionism is a target that it would be inexpedient to identify.

A big hammer for such a little nut

By: Terry Lane, *The Sunday Age*, 14 October 2000

The human rights and equal opportunities commissioner has ordered an Adelaide man, Dr Fredrick Toben, to change the contents of his website, or else.

Dr Toben is sceptical about the use of gas chambers by Nazis for the mass extermination of Jews. He says that it didn't happen, or is grossly exaggerated. And if that is what he

sincerely believes, as offensive as some people may find it, how can he be forced to pretend that he doesn't believe it?

Are we to take it that the human rights commissioner is going to order every outspoken person who offends some group or other to desist and apologise? Will Philip Ruddock be forced to declare that Aborigines did invent the wheel? Or will Bill Hayden be compelled to retract his assertion that some Aboriginal children were better off separated from their parents?

Toben is saying on his website that he doesn't believe that the Nazis used gas chambers to murder Jews. He is making a claim of fact that can be proven or disproved by evidence. It does not need to be censored in advance of the argument.

However, we know all that. Some of us believe in the principle of free speech, even though it means that we must from time to time defend the rights of individuals whose speech is morally repulsive or even fantastic and mendacious. And some of us want to prohibit speech that offends or hurts, on pain of penalty for the persistent speaker.

As one who believes in the right of the citizen to be wrong and offensive, I am interested to know how the speech prohibitionists intend to stop the mouths of those they don't like. Can it be done in a free society? To what low level of thought control are we prepared to go?

In totalitarian nations where total control on ideas has been tried they have come up with novel mechanisms. In the old Soviet Union, you had to get a government licence to own a duplicating machine. But neither the Soviets nor the Chinese thought to impose proper controls on the fax, which led to things getting out of hand in the late 1980s.

Now we have the Internet, and Dr Toben's Adelaide Institute website appears to be located on an American server. The human rights commissioner will get short shrift if she appeals to the American administration to close down a website. They don't do that sort of thing in the USA because they believe that the good order of society is not threatened by a few people who choose to hold and disseminate improper opinions.

But suppose that the commissioner, Ms McEvoy, could persuade the Americans to revoke the first amendment to their constitution, she would not be able to leave it there. She would have to effect a total ban on Dr Toben speaking in public, or even having private conversations. He would have to be a banned person in the old South African sense of the term. His mail would have to be censored, his telephone cut off, his computer and fax confiscated and all his friends, who might republish his ideas, locked up in solitary. Anyone holding similar opinions would have to be banned. Has she thought this thing through?

Some zealots who believe in free speech might think that, in the service of their convictions, they should re-publish the Toben website, not because we agree with it but because of the principle at stake.

German-born Dr Toben may be trying to clear his people's name. If a Japanese-Australian were to publish a revisionist history of WWII in which the Japanese Imperial Army is a bunch of softies, totally committed to prison reform, would the human rights commissioner ban it because the RSL petitioned her to? I think not.

If Toben is telling the truth, nothing will stop it. If he is a malicious fantasist, then he will be ignored. We should test his assertions, not silence them.

From *Newsletter* No 70 April 1998

... Jeremy Jones pulls out the usual defamatory labels but Fredrick Töben gets a right-of-reply ...

German-hater Jeremy Jones fails to ambush and defame Fredrick Toben on Adelaide's ABC Radio 5AN, 30 March 1998

When Radio 5AN's morning presenter, Richard Margetson announced to his listeners that Jeremy Jones would appear on his program to talk about an Adelaide-based hate Internet website it was a call from an interstate supporter that alerted Toben to this happening. Toben's first call to the station at 8.20 am was fruitless, then his second call at 8.30 am had the producer of the program place Toben on hold ready to participate in the live discussion. Although Margetson claims to have researched the topic, he failed to contact Toben for the program thereby offending against the principle of natural justice. Had it not been for the interstate supporter's call, then Jeremy Jones would have been free to do what he loves best: persecuting Toben and the Adelaide Institute by talking about their work without giving them a right of reply. No wonder Jones never wanted a conciliation conference during the HREOC proceedings. He must know that any of his arguments about the gassing story can swiftly be demolished. Adelaide Institute's mind-liberating work continues to stand proud because it does not rest on a foundation of inaccuracies, exaggerations, deception and lies. As 'foreign minister' of Australia's Jewish community, Jones is well-connected to Israel's secret service, Mossad. Perhaps we can win them over to organise a public debate between Jones and Toben.

Richard Margetson: Adelaide has a new marketing authority which is promoting art and culture and heritage, life-style, wine, food - all those positive things that we know happen in Adelaide. But Adelaide has other people unofficially promoting the city in a very different way. It may surprise you to learn that in some cities Adelaide has a well established reputation as the home of racial bigotry, extremism, neo-Nazism and anti-Semitism. Joining me now is a former Adelaide resident now a Sydneysider, Jeremy Jones. Jeremy is the director of Community Affairs for the Australia, Israel and Jewish Affairs Council, and Jeremy a very good morning to you.

Jeremy Jones: Good morning Richard.

RM: Jeremy, am I exaggerating a little bit much when I say Adelaide does have a really strong reputation as the home of racial bigotry, neo-Nazism and that sort of thing?

JJ: It's an exaggeration in one and it's not in another. It's just we have to remember that when we think of foreign places we may think of only one little aspect and that's the one we're most recently heard, one that sticks in our memory. So, for instance, we may think of Oklahoma as the site of a terrorist bombing while of course Oklahoma city is a lot broader than that. You may think of India as a scene of a cricket test when obviously the culture is much more diverse. And the thing with Adelaide is over the years - first there were the trials of Nazi war criminals or alleged Nazi war criminals taking place in Adelaide. Then there was the situation of National Action's very public activities based in Adelaide. But much more recently in the international, the global scene of the Internet one name which constantly comes up on sites of people who are looking at the most offensive material aimed at Jewish people in particular around the world to a site which has Adelaide in its title, and for that reason people who haven't heard much of Adelaide who wouldn't know what a pleasant

place it is and live in or visit only, have the image of a place which is the base of someone who would spread what they argue is hate propaganda.

RM: In researching the story we've come across this world web site that we're talking about. It's called the Adelaide Institute. What do you know of that organisation?

JJ: Well, I have to be careful in the sense in what I say in that the Adelaide Institute is an Internet site maintained by an Adelaide resident with the assistance, I would guess, of a few people in Adelaide, his friends or colleagues, and that site in May 1996 - an advertisement appeared in *The Australian newspaper* inviting people to come and visit the site which was promising them new insights into world history, I guess would be a reasonable summary, and within three or four weeks the various Jewish bodies around Australia were receiving quite a number of phone calls and electronic mail communication from people who'd gone to that site and were deeply offended and insulted because what they had found on that site wasn't anything that could be regarded of legitimate research. It was nothing which was academic, nothing which was scientific but a great amount of what you could regard as very strong slurs against people who were Jewish and particularly against people who either suffered through the Nazi Holocaust or descended from people who suffered through it or died during the Nazi Holocaust.

RM: Seven-and-a half minutes to nine. 891, Adelaide's 5AN. We're speaking with Jeremy Jones, the director of the Community Affairs for the Australian, Israel and Jewish Affairs Council about a site called the Adelaide Institute and as such a surprise to us as to Jeremy no doubt is that Dr Fredrick Toben, who is the director of that institute, has just called in and we join him on the line this morning. Dr Toben, good morning to you.

Fredrick Toben: Good morning.

RM: Just first of all, I guess, we've just been hearing from Jeremy there about referring to your site as anti-Semitism, I guess in lots of ways, not legitimate, not academic, not scientific. What's your initial response to those types of claims?

FT: Well, Jeremy does nothing better than merely talk about me. He talks about me but he doesn't talk about the content I'm talking about and my challenge to him is, and I did this at the Writers' Week, I offered Norman Davies a thousand dollars to show me or draw me a homicidal gas chamber. Now this can't be done and instead he labels, libels me and says that I'm a Nazi or neo-Nazi or a racist or a hater and that is not good enough for me. This is defamatory because he will not come to grips with my challenge.

RM: Well, is the challenge such that you are denying the fact that a holocaust took place?

FT: Nobody denies the fact that millions of people died in terrible circumstances - Jews and Gentiles. What is being denied, not really denied, what I'm saying is - see, the problem goes back to this one little simple idea: the people who say that the Germans gassed millions of people in homicidal gas chambers, they're making an allegation against the Germans. They say that the Germans planned, constructed and used gas…

RM: And they would have to be said that there was a fair degree of historical evidence to show those things.

FT: Well, this is the problem. I came back from Auschwitz last year and I had a look at the alleged gas chamber and now it's been decommissioned. They say it was made to look like a gas chamber. This is in Krema I if anyone knows about this. Auschwitz is a complex of a number of different camps and…

RM: But we're talking about issues that without much, I mean, obviously where people can be mislead, but it's very hard to be mislead on the level that the world has been mislead on an issue of the Jewish Holocaust, surely?

FT: Nobody - you see when we use the word Holocaust we must define the term because nowadays anyone who suffered under the Nazis during the second world war can claim to be a Holocaust survivor if he's Jewish. Now that to me is using the concept Holocaust in the wrong way because…

RM: We'll just turn back to Jeremy Jones for the moment. Jeremy Jones, the director of the Community Affairs for Australian, Israel and Jewish Affairs Council. Jeremy, immediately you have to respond to those types of issues that the challenge has been thrown to you.

JJ: But this is hardly the forum for anybody to come to grips with some of the issues that have been raised.

RM: I guess so.

JJ: And what I want to say is that as I was saying before the telephone call was received, that in late 1995 the Australian federal government passed legislation called 'The Racial Hatred Act' and under that act any Australian has the opportunity to lodge a complaint against something which is a public act, reasonably likely in all the circumstances to offend, insult and humiliate or intimidate another person or a group of people, and is done because of the race, colour or national or ethnic origin of the person or of some or all of the people in the group. The point is that after that site was publicised, I have no idea how long it was in existence before it was publicised, the peak body of the Australian Jewish Community in discussion with all its constituents and affiliates decided to take the action of lodging the complaint with the Human Rights and Equal Opportunity Commission concerning the contents of that site. Now obviously this is a matter which has not yet come before public hearing. It has been a very lengthy process so far and there's been a great deal of correspondence exchanged. But the simple matter is the Jewish community representative organisations believe that this site falls into that category and that's why we have lodged a complaint. Now to talk about the particular issues or to try and have the sort of debates or discussions that Fredrick Toben's having at this point doesn't serve the purpose of understanding what the law is or what the complaint is at all.

RM: So a site such as the Adelaide Institute site, what is your response to it if it is classified, as you say, racial vilification, then should it be still in existence? This is where we get into the difficulty, I guess, of censorship of what's actually available to be read or seen.

JJ: Yea, it is a complex area and it's certainly not a black and white area and that's why in the Jewish community we don't go in very simply without giving it a great deal of thought before we would lodge a complaint under this particular act. But the simple matter is that if you have a right to free speech you also have a responsibility not to use that free speech in a way that it impinges on somebody else's rights to live their life free of vilification and intimidation. The part of the logic of having defamation law, having libel law, having laws about public comments which might endanger public safety is to say that free speech is a very important freedom but it's one of many and it's important that a society like ours works out the appropriate balance between those freedoms.

RM: OK, Jeremy Jones, we have to leave it there. Thank you very much for your time this morning and Dr Fredrick Toben we thank you also for your call this morning as well. 891 Adelaide's 5AN. It's thirteen minutes to nine.

When freedoms become blurred

Michael Barnard, *The Sunday Herald Sun*, 7 December 1997

A week tomorrow a commissioner of the Human Rights and Equal Opportunity Commission, sitting in Sydney, is due to begin hearing a case that cuts deep into the vexed issue of freedom of expression.

Broadly, the respondent - a former Victorian teacher now living in Adelaide - is accused of causing offence to the Australian Jewish community by publishing material questioning Nazi persecution of Jews during World War II.

There are, admittedly, other aspects to the complaint, brought under the Racial Discrimination Act, a section of which sweepingly enjoins against any behaviour "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people". But it is the revisionist issue, the challenging of central pillars of Holocaust history, that will symbolically hold centre stage.

For years, it has been obvious that digging into once commonly accepted versions of World War II history is something that simply will not go away in Western culture and that the attraction the cause holds for various oddballs with anti-Semitic or other undesirable baggage does not wipe out the legitimacy of serious research.

New evidence, new questions, cannot be avoided. The downward adjustment of death rolls at Auschwitz following access to Soviet records after the collapse of communism is a case in point.

Yet the seeming pressure not to disturb original facts and figures relating to Nazi persecution of Jews seems unrelenting. In the words of Doug Collins, long-time Canadian writer-commentator who has himself fallen foul of the system, "to criticise in any way the version favored by Jewish organisations is to arouse anger and calumny. 'Revisionists' are called neo-Nazis, racists and anti-Semites."

In some cases, revisionists might deserve all they receive. In others, it can be far more complex. There is a process familiar to many arenas: a controversial issue is raised or assertion made, a bitter response follows, the first party comes back with even greater personal abuse and so on until the true focus is lost in a sea of personal vitriol.

It is a context to test even the best of tribunals. Where is the defining line of misconduct to be drawn? The answer, doubtless, is wherever racial or vilification legislation, always awesome if not downright dangerous in scope, allows it to be drawn.

This notwithstanding, and irrespective of the outcome, the Sydney hearing offers the Equal Opportunity Commission an excellent opportunity to define publicly its views on intellectual freedom and historical revision - not just as it relates to the Holocaust but as a broad principle to embrace other signal events in history where questioning or denial might cause pain to specific sections of the community.

For instance, in Russia, A History, just published in Britain by Oxford University Press, a collection of international authors radically minimise the number of Soviet citizens killed under Stalin's purges and reduce the infamous mass-starving of Ukraine's anti-collective peasants to a mere accidental outcome of poor harvests.

I can not accept a word of it, any more than I can accept that, despite convincing and sometimes substantial changes to detail, there was anything other than a mass slaughter of Jews and other target groups under Hitler's Nazi machine.

The point, however, is what is to be expected if someone publishes details of the new Soviet "truth" in Australia, with gratuitous insults about Ukrainians? Do we then start a new cycle of complaints?

Then someone can have a new bash at the Brits over the fire-bombing of Dresden, replete with injudicious comments about Poms not washing even when the world's on fire; to be followed by insults to Australian Cambodians in a Pol Pot revisionist corner, and so on.

At the end of such a day, which is worse? Tolerating cranks that mature people should be able to laugh off (or, if individually defamed, take to the criminal courts)? Or perpetuating laws that appear capable not only of exacerbating social divisions they are intended to avert but which, through the very nature of the process, place pressure on the free flow of, or search for, information that might be deemed socially inflammatory?

One answer can be seen in some of the bizzare proceedings that have unfolded overseas, including adoption in Germany of a law under which, as Collins points out, "even scholarly, critical examination of the Holocaust is called denial and is therefore forbidden on pain of imprisonment."

Some of the items of "relief" sought by the complainant at the Sydney hearing might raise eyebrows.

One asks the Commission to order that any website on the Internet which is or might later be published by the respondent should permanently, repeat permanently, bear on its homepage not only an apology but a notation that the respondent had, in the past, been censured by the Equal Opportunity Commission - a sort of enduring penalty which, to some, might smack just a little of the Nazi yellow star treatment.

Another is a request that the Commission order the respondent, at his own expense, to undertake a course of counselling by a conciliation officer of the commission.

"Counselling" for deemed offenders is, of course, not new. But, oh dear, the symbolism. Roll over Winston Smith and bring on the rats. Or should that be, Roll over Beethoven and bring on Clockwork Orange?

Fredrick Töben comments:

Australia's Human Rights Commissioner Kath McEvoy Rejects Truth As a Defence

My experience with two HREOC hearings leads me to conclude that the procedures are immoral because truth and justice have no home therein. Surely this fact reflects badly upon those who administer this flawed legislation. What follows is portion of a transcript from the **27 November 1997** telephone hearing:

Commissioner Kathleen McEvoy: My concern in this enquiry is to make a determination as to whether the material of which the complainant is complaining is material, first whether it is unlawful under Section 18C, but that's in essentially Mr Jones' hands, but secondly, if it is, whether it comes within the exemption of 18D.

So, essentially all of these witnesses must be able to demonstrate that the material is either said or done reasonably and in good faith in the course of any statement,

etc. for any genuine academic, artistic or scientific purpose or any other genuine purpose of public interest.
Now, much of the material which you have provided me with in the witness statements, Dr Toben, is concerned to comment on the wisdom or validity or reasonableness of this legislation. That is not a matter on which I will hear any evidence. That is not a matter on which I can make findings. It is not a matter on which I am empowered to deal. So that any of your witness statements that are dealing with that aspect of your case will not constitute evidence that will come before this enquiry. That is not a matter that is before me.
Fredrick Toben: How can you disconnect yourself from a consideration…
KM: Because I am not part of the legislature, Dr Toben. This commission cannot enquire into the validity of legislation. If you wish to pursue the issue of the invalidity of the legislation, then you must do so elsewhere. It's not something which this enquiry can deal with.
FT: Commissioner, I've had a little bit of experience in court cases…
KM: Well, you're not in a court case, Dr Toben.
FT: I realise that.
KM: This enquiry is not constituted by a court exercising federal jurisdiction and it is not able to entertain an argument which is challenging the validity of laws. It is able to entertain arguments relating to statutory instructions, but not validity.
FT: I think you're misunderstanding me. I'm not challenging the law as such but I think you are at liberty to make a comment, are you not?
KM: I wouldn't regard myself at liberty to make comments about the desirability, validity, constitutionality or sensibleness of this law at all. I don't regard that as my function. I think it would be very inappropriate for me to do so, that it's not the function of a commissioner such as this.
FT: That's fine, but what about the subject matter itself, that the witnesses have to say, surely?
KM: Well, what I'm saying to you, Dr Toben, that insofar as the subject matter of a large amount of the material that is contained in the witness statement is concerned, with that issue, the issue of the validity, the sensibleness, the desirability, the democratic nature whatever else, insofar as it is concerned with that issue relating to the law itself, that is not evidence which is able to be put before me. That then moves us to the next aspect of many of the statements of the witnesses that you provided and that is the sense in which many of those statements are concerned with information about the content and process and detail of events in Europe concerning Jewish people in the 30s and 40s.
FT: Sorry, I didn't hear that.
KM: Now the substance of that is not something that I think is before me.
FT: Say again. Can you repeat that - I didn't follow that.
KM: Much of your material, much of the content of the witness statements is concerned not, it seems to me, with the substance that is before me under Section 18D but rather with the content of what you want to say, you know, what you want to establish under 18D is academic debate, that is, the truth of the Holocaust, the extent of the Holocaust, its existence. Now, the substance of that…
FT: …if you say the truth of the Holocaust, what do you mean by the Holocaust. We would have to define…
KM: …no, no, that's precisely the point I'm making. That is not something that is before me, in my view.
FT: Sorry?
KM: Now I'm happy to hear submissions on that but in my view the substance of that academic debate, its truth, its direction, what it might reveal, etc. is not what Section 18D is concerned with in that substantial sense.
FT: I don't believe this. I don't believe what I'm hearing. You mean to say that, that you are bracketing out the truth of the alleged Holocaust?
KM: No, what I'm saying to you is that my function is to conduct an enquiry into a complaint which is made to the commission. That complaint can only be in terms of the legislative provisions under this act and in particular the legislative provisions in 18C and 18D, the particular ones we're concerned with and my only function and my only power is to make a determination as to whether the material which it's alleged that you have disseminated on the website comes within the unlawful acts that are set out under Section 18C and if I'm satisfied that that is the case, I then have to turn my mind of whether nevertheless those acts, those things done or said come within the exemptions of 18D. Now to a large extent I don't believe the substance of these materials is going to be of much relevance to 18D because as I understand it, your argument is that those acts form part of a genuine academic, artistic or scientific statement, publication, discussion, debate or purpose or some other genuine purpose. If that is the case, its substance, it seems to me, in that context, is not of much significance.
FT: Commissioner, I'm a slow learner. I didn't quite follow what you really said because, what, my impression is that we have been criticised. Jeremy Jones has called me a Holocaust denier. Now, if he does that, then surely I have the freedom to bring forth material that will initially define the term, and
KM: I think, I think what you will need to do is to demonstrate that you can establish a defence by turning to the exemptions of Section 18D, that it is in the context of 18D.
FT: But have I not…
KM: …that I'll receive the evidence.
FT: But I have already done that by presenting my witness statements, with the time-line and all these books.
KM: Well, that's a, well, your, your, your witness statement of course is something which will then be tested when the enquiry proceeds. You've provided the evidence that you're going to give and that is what the enquiry will consider along with the other evidence that it will hear. I mean, it doesn't establish your defence. I might not accept the evidence you're giving.
FT: But Mr Jones has made a substantial complaint…
KM: Yes.
FT: Three subjects: The Talmud, Stalin-Lenin and the Holocaust - the three points, the Bolsheviks and so on - those three points. Now surely you cannot then say that the truth of the Holocaust or the contents of what I'm saying about it, that you're going to bracket this out?
KM: Well, I'm not bracketing anything Dr Toben. What I'm suggesting is that my concerns have to be addressed to the legislative provisions and all I need to be satisfied about, in order to accept your defence, and of course Mr Jones will have something to say about this, all I need to be satisfied by in looking at Section 18D is that what is alleged to have been done has been done reasonably and in good faith and as part of a statement, publication, discussion or debate made or held for any genuine academic etc. purpose. Now the content of the debate seems to me is only going to be relevant in a very minimal way. It is the existence of the debate and that your dissemination of this material is done in connection with it,

which is what I have to make a decision about, and content in this sense is not of great substance.
FT: But, I think it's unbelievable. I must protest Commissioner because either I'm an extremely slow learner or I just, this is unexplainable. Last night, Commissioner, we had on TV in Australia for the first time Schindler's List, a film about the Holocaust, without commercials. Now, you mean to say that you are now going to look at this material that I submitted through my witness statements, and you're going to bracket out most of the stuff on the Holocaust?
KM: Oh, I'm sorry, I don't understand the relevance of television programs to this, frankly.
FT: You don't?
KM: No, I don't.
FT: If we're talking about academic, artistic, if we're talking about public interest.
KM: We're talking about it in relation to the material that you've put on the website and we're talking about it in relation to Mr Jones' complaint and both of those are only relevant under the legislation and in terms of this legislation.
FT: Commissioner, the complaint is substantial.
KM: Hmmhmm.
FT: And so is the defence.
KM: Certainly.
FT: So what's the problem?
KM: I'm not sure what the problem is at all. I'm simply trying to explain to you the basis on which I would now like to hear submissions about the witnesses whom you propose to call and give you some indications of the concerns I need to have in my mind when I make a determination as to whether and which witnesses are to be relevant.
FT: O.K. Perhaps we can, I'm slowly beginning to understand, using Professor Nolte's statement, maybe we can use that as an example to…
KM: Perhaps before turning to the specific statements I'll hear from Mr Rothman on this. Mr Rothman? Hello? Mr Rothman? Mr Rothman? Anne?
Anne: Yeah.
KM: Do you know if any problem has arisen there?
Anne: I wasn't aware that he's fallen out. If you hang on one second Commissioner I'll see if I can get him back.
[About 2 minutes later]
KM: Mr Rothman?
Rothman: That's right. I don't know where I left you off. I thought I was still talking to the conference caller.
KM: Well, what I was about to ask you to make some comments on Dr Toben's submissions, on this issue relating to what I regard a preliminary issue relating to Section 18D(b). I had been saying I thought to both of you but I think just to Dr Toben.
R: No, no, no, I heard all that you said up to that point.
KM: Oh, good, and then I, Dr Toben was then going to move on to talk about Dr, Mr, Professor Nolte's, the witness statement from Professor Nolte and I said I'd like to hear.
R: No, I heard all that.
KM: From your first, all right. Well, perhaps you'd like to talk to both of us then.
R: I, if it pleases, I heard all of that. When I started to make submissions that's when I must have been cut off. I won't make any comment about Telstra, but the, but they obviously have the good sense not to listen to me. What I was saying was, with respect, we agree with the initial proposition from the commission that the two issues that are before the tribunal, firstly whether the website falls within 18C, that's the initial complaint, whether it is offensive behaviour, I'm using it generally, offensive behaviour because of any race or ethnic origin and then whether the, Dr Toben falls within one of the exemptions in 18D. Now, on the face of it it seems that the only exemption that could possibly be said to be relied upon by Dr Toben in light of what he's put forward is that that's contained in paragraph B. I note that he said earlier he relied on artistic but leavbing aside submissions, it seems to me the only issue is whether there is a genuine academic, artistic or scientific purpose.
KM: Hmm.
R: What we say is, are there genuine purpose in the public interest has to be understood within those phrases in any event? But that's a matter for debate.
KM: Yes.
R: My point really is in extrapolation of what I understand the Commissioner is saying, that in that sense, much like the law of defamation, proof may be marginally relevant to whether or not something is genuine but of itself does not make for a defence and so to take a rather poor analogy, if, if, if a complaint was made against, for example, the Ku Klux Klan in Australia, if there's one, because they say blacks are inferior, they wouldn't have the forum in a matter before the Human Rights and Equal Opportunity Commission of arguing the fact that they aren't, that they are inferior.
KM: Yes.
R: The issue is only whether or not the statement is part of a genuine academic etc. purpose.
KM: Yes.
R: And we therefore, with respect, suggest, submit that a large account of the evidence that is put forward by Dr Toben is on that basis irrelevant, is either irrelevant because it addresses freedom of speech which is an issue that the legislature has dealt with and enacted the, the, the legislation, or it addresses the truth or otherwise of the existence of the Holocaust and we say that the mere fact that a thousand people say the Holocaust does not exist, does not make it a genuine academic, a statement made for a genuine academic purpose - I use academic to include all three of the issues.
KM: Yes, well, that's your answer to what Dr Toben is wishing to establish by his evidence and I mean you'll say that it doesn't establish, that it's a genuine academic debate.
R: My point, though, is that regardless of the submissions that we will make at the end of it, they're issues we'll deal with in the course of the proceedings, but we say it goes to the relevance of evidence that either firstly goes to the question of whether or not the law is a good law. That's not a matter that's before the tribunal.
KM: No.
R: And secondly, whether or not, included in that is the freedom of speech argument because that freedom of speech argument is actually resolved by the parliament in the making of 18D.
KM: Yes.
R: And also it goes to the question of material that go to the 'truth' of the Holocaust. The actual 'truth' of the Holocaust is irrelevant. What's relevant is whether there is a genuine academic debate from the point of view of 18D.
KM: Yes, sorry, did you have something else to say?
R: No, that's all.
FT: Can I comment on that?
KM: Yes, you can, Dr Toben.
FT: Firstly I think we're also relying on Section 18D(c) that's included in B, isn't it? I mean, where it says making or publishing a fair and accurate report and if that comment is the expression of a genuine belief held by the person making

the comment. I mean that's my defence as well. I mean that need not be stated - it's obvious.

KM: Well, do you want to say anything about that, Mr Rothman?

R: Well, I didn't understand that that was one of his defences, but I still say, with respect, the truth of what occurred does not go to whether a report is fair and accurate and…

FT: May I?

KM: Well, let Mr Rothman finish first.

R: My point is that 18C is governed in that sense in the same way and in the same sense as 18B, and that 18C in some respects, in fact in most respects, is almost a particular of 18B, that is that it's intended to be a, first of all it has to be a matter of public interest. Secondly, it has to be a fair and accurate report. It goes to whether the report is fair and accurate. Fair in that sense, and accurate in that sense has to be understood in the terms of 18D, that is the whole legislation, and we say the issues are still the same. The question really is whether there is a report which is fair and accurate not whether the report is, is, is true. In other words…

KM: Not whether the report is a report of something that's true.

R: Yes, that's right.

KM: Yeah.

FT: May I?

KM: Yes, Dr Toben.

FT: You know when I listen to this, with respect, Mr Rothman must surely have remembered from his time at the university studying law, that in the academic debate truth is a crux of any argument, and if he brackets this out, then we have nothing left but a hurt feeling.

KM: Oh, no, that's not, that's not, I think that's not quite the point that Dr…

FT: May I please continue?

KM: Yes, certainly (heavy sigh).

FT: If you are talking about genuine academic, artistic or scientific purpose, and if you then bracket out the truth, then you are damaging, you are not only damaging, it's a total disregard of the legislation and of the concept, the concept 'academic'. 'Academic' falls by the wayside if you don't have truth sitting there. I mean that's what the battle is all about in academia.

KM: Well, I think perhaps what academic debate means might be something on which I might be hearing submissions from both you and Mr Rothman. But my own view, subject to anything else you might want to add to that, is as I expressed before, and that is what Section 18D requires for the exemption to be established, is to establish that the acts that by the time we get to Section 18D or by the time I get to it in resolving this matter in the enquiry, by the time I get to 18D I would have found that under 18C that acts occurred and that they came within it because if I find that they didn't occur, then we never get to 18D. That 18D then requires that those acts, nevertheless, have been done reasonably and in good faith and in the course of any statement etc. held for any genuine academic, etc. debate etc. That is, in my view the substance of that debate isn't of significance.

What I need to be convinced of to apply Section 18D in your favour is that there is such a genuine debate. Now, the content of that debate in that sense is not, I think, something that is before this commission, and I think it would of course be absurd if it were and I think that that's something you acknowledge in one of your items of correspondence with the commission, Dr Toben, when you said that who was qualified to make a decision as to the truth of these things. Well, in that sense I'm inclined to agree with the point you make, Dr Toben, and that of course is part of the issue of academic debate.

FT: Commissioner, if I may interrupt, the whole issue, the substantial complaint makes so many statements, makes so many assertions - in fact it labels me as a racist.

KM: Hmmhmm.

FT: That I am a Holocaust denier.

KM: Hmmhmm.

FT: That I'm a hater.

KM: Hmmhmm.

FT: Now, in order for me to effectively defend myself, surely you must accord me the right of analysing the concepts that we use.

KM: Well, the concepts that I can analyse and the only concepts that I'm empowered to analyse, Dr Toben, are the concepts that are contained within this legislation. The complaint must be circumscribed by this legislation and the response is circumscribed by this legislation and my powers are circumscribed by it, that is, I don't think it is within my power to make a determination that you are or are not a racist. What it's in my power to do is make a determination as to whether you have committed acts which are unlawful under Section 18C of the Act and further make a determination as to whether those acts are nevertheless exempt from Section 18C because they come within 18D.

FT: And then they make me a racist if it's against me? Of course…

KM: I'm sorry, that's an interpretation you're placing on it. My function is an enquiry whether there's a breach of this Act not whether a particular label should be put on anyone at all which I would think quite an inappropriate thing for a commission to do and I certainly would not do.

FT: But then you would have to dismiss the substantial complaint.

KM: Well, that's the matter for the enquiry. That's a matter on which I shall make my decision when I've read the evidence.

FT: OK.

KM: And it may be that I will dismiss the complaint.

FT: You see, Commissioner, I'm slowly understanding.

KM: Good, good, All right. I think it is extremely important, Dr Toben, that you do appreciate that I cannot go outside the legislative prescriptions here. My powers are extremely limited and it would be most improper for me to hear evidence which I determine to be not relevant to this material - that's not relevant to the legislative material that I have here and that is how the enquiry is going to be circumscribed …

My Comment: Is it any wonder that I refuse to attend a HREOC enquiry when I know that its procedures are immoral, are legally flawed? I wonder how anyone can work within such a mentally and emotionally corrupting framework. No wonder Jeremy Jones did not wish to have a conciliation conference, and Zita Antonios saw to it that he got what he wanted - persecution through prosecution. He wants to force his belief about the Holocaust upon me - without respecting my moral values which cry out for truthfulness in this alleged historical subject matter!

Update: Contrary to her earlier decision, Commissioner McEvoy vacated the 15-19 December 1997 hearing dates until further notice.

Olga Scully Progress Report: Federal Court Judge Wilcox has requested written submissions from both Mrs Olga Scully and Mr Jeremy Jones by 19 January 1998.

Fredrick Töben's Complaint Against Jeremy Jones Dismissed

A Letter to the Human Rights and Equal Opportunity Commission

Commissioner Zita Antonios
HREOC,
GPO Box 5218
Sydney 1042
25 August 1997

Dear Commissioner Antonios

Thank you for your letter of 11 August wherein you respond to some of the contents of my 26 May 1997 letter addressed to the commission.

I accept your apology for responding so late and appreciate you giving me your reasons why you referred Jeremy Jones' complaint about Adelaide Institute's website directly to a public hearing rather than through the normal channels of first initiating a conciliation conference.

With Sir Ronald Wilson's recent departure as president of the HREOC I suppose there is some soul-searching going on by those whose future at the commission does not look too secure. I say this in view of Sir Ronald 's much publicised love of being politically correct, as well as the Liberal government's intention to wind down the HREOC.

It is because of this latter fact that I have quickly submitted to you my complaint against Jeremy Jones, which I do formally below.

Complaint against Jeremy Jones

I wish to lodge a formal complaint against Jeremy Jones as an individual (private address unknown, c/- Executive Council of Australian Jewry, 2/146 Darlington Rd, Darlington – 2010) who has been one of Australia's leading anti-German campaigners for a long time.

His writings and public utterances on radio and television are causing a great deal of distress for Australians of German descent. Anyone who responds and opposes Jeremy Jones' vicious and outrageous statements is immediately branded by him as 'antisemite', 'hater', 'anti-Jewish', 'racist'.

Only last Sunday, 24 August 1997, 6.10pm on the ABC-Radio program, The Spirit of Things, Jeremy Jones threatened and intimidated individuals with his talk when he said on-air how he would like to deal with his critics: 'We must stop them from functioning'.

It appears to me that Jeremy Jones' actions constitute "a public act", which is "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people" and "is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group".

Kindly expedite this matter.

Sincerely

Fredrick Töben

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Dear Mr Töben

Re: Your complaint under the Racial Discrimination Act 1975(Cth)

Please find enclosed my decision on your request that I review the decision of the Delegate of the Racial Discrimination Commissioner (the "Delegate").

I realise that you will be disappointed with the decision but I assure you that I have given all your submissions careful consideration.

Your complaint stems from an interview Mr Jeremy Jones gave on 24 August 1997 on the ABC Radio program "The Spirit of Things". Mr Jones was discussing the need for religious vilification laws similar to the racial vilification laws under which you have lodged this complaint.

At one stage Mr Jones stated "Therefore the way you deal with them isn't by presenting a counter argument, what you have to do to your enemy whoever they may be is stop them from functioning at all." You have alleged this statement constitutes a "public act which is reasonably likely to offend, insult, humiliate or intimidate another person or group of people and is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group. That is, you have alleged Mr Jones' remark is in breach of Section 18C of the Racial Discrimination Act 1975 ("the Act").

I understand that you are very familiar with Mr Jones' views and that you are in disagreement with them. I have no doubt that you found Mr Jones' statement personally offensive. However, the purpose of Section 18C of the Act is to offer protection to groups of persons who have been specifically targeted for racial abuse. I have read the transcript of Mr Jones' interview carefully and I note that at no point does Mr Jones specifically mention any one person or particular racial group. Indeed, Mr Jones' use of the phrase "whoever they may be" clearly indicates he is talking generally.

I can understand, given your history of dissension with Mr Jones' views that you may have personally inferred Mr Jones' statement to be a specific reference to the German people. However, such an inference is not sufficient to ground a complaint of racial vilification. Given the above, I have decided to confirm the decision of the Delegate not to inquire further into your complaint because I consider your complaint of racial vilification is lacking in substance. Your file will now be closed.

Yours sincerely

Ronald Wilson,
Delegate of the President,
Dated: 5 January 1998.

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It appears that this letter is not on file anymore because after three years HREOC shreds documents – legally!
A search of the website - and an 18-page search that make up the website failed to locate the specific item. I assume it has been deleted.
http://www.abc.net.au/radionational/programs/spiritofthings/

www.lawyersweekly.com.au
Lawyers Weekly

Branson retires as head of Commission

13 February, 2012

The president of the Australian Human Rights Commission, Catherine Branson QC, has announced she will be stepping down from the position at the end of July 2012.

Branson took up the role in October 2008 and was expected to serve a five-year term. She said she wishes to spend more time with her family.

Federal Attorney-General Nicola Roxon thanked Branson for her service, saying she was a passionate advocate who fought for "the rights of all Australians, particularly those most vulnerable in our society". "President Branson has led the Commission's increased role in building greater understanding and respect for human rights in our community, a key plank of Australia's Human Rights Framework," she said.

In addition to her role as president, Branson has been the Human Rights Commissioner since July 2009.

"As a committed advocate for strengthening human rights in our region, President Branson has also been instrumental in cementing the Australian Human Rights Commission as a leading National Human Rights Institution in our region and beyond," said Roxon.

Former Federal Attorney-General Robert McClelland also thanked Branson for her service. "President Branson presided over a period of great collaboration between the Commission and the Government on the development of Australia's Human Rights Framework," he said. "I thank her for constructive input into a range of key reforms."

Branson began her career in private practice in the 1970s before landing a role in the public sector in 1976.

In 1978, Branson began working as a solicitor in the Office of the Crown Solicitor of South Australia. Working with Crown Solicitor Graham Prior QC, Branson's career blossomed and, in 1984, the Attorney-General of South Australia, Chris Sumner, appointed Branson – then only 35 years of age – to the dual positions of Crown Solicitor of South Australia and Secretary of the Attorney-General's Department.

Branson's later career would include an appointment as Queen's Counsel in 1992 and her ascension to the bench of the Federal Court in 1994.

Despite a career with many highlights, Branson felt privileged to work in the human rights field. "There is great joy in meeting people who, in some way or another, feel that their life is better because of the work of the Commission," she told Lawyers Weekly last year.

"These things give me enormous joy. We hear an awful lot of sad – if not desperate – stories, and mix with a lot of people who are vulnerable, who are marginalised, and who are not having their rights respected. So it's wonderful to have the joy of meeting someone on whose life we have had a positive impact."

http://www.lawyersweekly.com.au/news/branson-retires-as-head-of-commission

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Human Rights Commission president Catherine Branson to quit post early

BY: NICOLA BERKOVIC

***The Australian* February 10, 2012 1:43PM**

THE head of the nation's human rights watchdog has announced she will quit her post in July.

Australian Human Rights Commission president Catherine Branson's five-year term was due to expire in October next year.

A spokeswoman for Ms Branson said she had decided to step down 15 months early to spend more time with her family. Ms Branson commutes to Sydney from her home town of Adelaide. Her husband and elderly parents live in Adelaide. Ms Branson commenced her five-year term as President in October 2008.

Federal Attorney-General Nicola Roxon thanked Ms Branson for her service. President Branson has held the position of President with distinction, since October 2008 and Human Rights Commissioner since July 2009 and has advised the Government of her intention to step down at the end of July 2012 to enable her to spend more time with family.

"The Government thanks President Branson for her dedication and hard work in leading the Commission and her passionate advocacy for the rights of all Australians, particularly those most vulnerable in our society," Ms Roxon said.

"President Branson has led the Commission's increased role in building greater understanding and respect for human rights in our community, a key plank of Australia's Human Rights Framework. She said the government would release information about the process for recruiting a replacement for Ms Branson in due course.

Former Attorney-General Robert McClelland also thanked Ms Branson for her service. "President Branson presided over a period of great collaboration between the Commission and the Government on the development of Australia's Human Rights Framework," Mr McClelland said. "I thank her for constructive input into a range of key reforms.

Prior to her role as Human Rights Commission president, Ms Branson was a Federal Court judge.

http://www.theaustralian.com.au/nationalaffairs/hum/story-fn59niix-1226267793717

Head of the Human Rights Commission criticises mandatory detention

Philippa McDonald reported this story on Thursday, July 19, 2012 18:15:00

MARK COLVIN: The departing head of the Australian Human Rights Commission, Catherine Branson has called on the Government to abandon mandatory detention.

She's also called on it to implement a better system for dealing with genuine refugees who are still in detention because they haven't been granted security clearances by ASIO.

Ms Branson called the practice of indefinite detention of those who fail security checks "inhumane".

She's told ABC 7PM News that for all the tough talk about asylum seekers, there's no evidence that Australia's approach is an effective one.

Catherine Branson spoke to Philippa McDonald.

CATHERINE BRANSON: As far as I'm aware our system is the strictest in the western world and there's no evidence that it works. It seems fairly clear and international experts tell us, mandatory detention is not deterring people from coming to Australia, it's not deterring people from travelling on dangerous boats to try and get to Australia.
PHILIPPA MCDONALD: What do you think of off-shore processing?
CATHERINE BRANSON: It's a difficult question. The right to life is a fundamental right. We don't want people taking dangerous journeys that puts their life at risk. This does suggest that we need to find a way to process those who need asylum much closer to the places from which they come.
But those who come to Australia we think the best way, perhaps the only way, for Australia to be sure that it meets its international obligations in respect of those people, is to process them here in Australia.
PHILIPPA MCDONALD: Security assessments are often a sticking point for many asylum seekers being released from mandatory detention. What do you think of the current system?
CATHERINE BRANSON: I am very troubled by the current system. We do know that it's possible to fail a security assessment without necessarily being a risk to the Australian community.
What we urge is that every person in this situation is individually assessed to see whether they would be a danger to the Australian community if they lived in it and even if they are, whether it's a danger that could be managed by placing conditions on their right to live in the community.
There's no realistic prospect of sending them to third countries and because they've been found to be refugees they can't go back to their own country.
PHILIPPA MCDONALD: You've had many complaints, and I'm wondering whether you can tell me how many, of people who have been, in your finding, arbitrarily detained in detention centres. How many of these complaints, often dating back to the Howard government, are before you and when you have recommended compensation to be paid, what has been the outcome?
CATHERINE BRANSON: I have seen a number of complaints that have come to me from people who've been held in immigration detention. Some of them have been quite old and they date right back to the very sad era when we held children in our high-security immigration centres.
I have made adverse findings in some of those cases and I have recommended the payment of compensation.
I have reason to think that significant amounts of compensation have been paid to people.
As for periods of time that people have been held, more recently blown out, increasing numbers of complaints have come here of arbitrary detention; 75 I think came in the last financial year.
It's not uncommon for me to make a finding or arbitrary detention. My findings of arbitrary detention in these cases in recent years have not generally been accepted by the Government.
PHILIPPA MCDONALD: Are you satisfied the Department is changing its ways?
CATHERINE BRANSON: I think the Department has made very significant steps in recent years to improve its culture, which was once very regrettable.
They are tasked with implementing a difficult policy and as far as I can see, doing what they can to ensure the humanity of our immigration detention, but there is a limit to what can be done to make human something that is at its heart inhumane.
MARK COLVIN: Catherine Branson, who is leaving the position of President of the Australian Human Rights Commission, speaking to Philippa McDonald.
http://www.abc.net.au/pm/content/2012/s3549362.htm

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Rights commissioner blasts refugee detention

Australian Broadcasting Corporation, Lateline, 19/07/2012, Reporter: Philippa McDonald

Outgoing Australian Human Rights Commission president Catherine Branson has made an impassioned appeal for the Government to abandon mandatory detention.

TONY JONES, PRESENTER: After four years at the helm of the Australian Human Rights Commission, Catherine Branson is leaving.
And she's made an impassioned appeal for the Government to abandon mandatory detention and to free asylum seekers who've not been granted security clearances by ASIO.
She's labelled the practice of indefinite detention of those who fail security checks as inhumane.
Philippa McDonald reports.
PHILIPPA MCDONALD, REPORTER: Catherine Branson is leaving the nation's top human rights job with a parting shot at the Government and its security agencies, especially when it comes to asylum seekers who fail ASIO security checks.
CATHERINE BRANSON, PRESIDENT, AUST. HUMAN RIGHTS COMMISSION: We do know that it's possible to fail a security assessment without necessarily being a risk to the Australian community.
What we urge is that every person in this situation is individually assessed to see whether they would be a danger to the Australian community if they lived in it, and even if they are, whether it's a danger that could be managed by placing conditions on their right to live in the community.
PHILIPPA MCDONALD: Ms Branson says ASIO is not obliged to give reasons so it's impossible to seek judicial review and it's unacceptable that up to 50 people are languishing indefinitely in the nation's detention centres.
CATHERINE BRANSON: There's no realistic prospect of sending them to third countries, and because they've been found to be refugees, they can't go back to their own countries. So we need to find something humane.
PHILIPPA MCDONALD: Ms Branson has branded Australia's immigration system as the strictest in the Western world.
CATHERINE BRANSON: And there's no evidence that it works. There's a real question whether we need to maintain it. It's expensive, it is damaging to people. I think we have to ask: why are we doing this?
PHILIPPA MCDONALD: But her final report card does give the Government a tick when it comes to its overall humanitarian program and increasingly moving asylum seekers out of detention. Right now there are almost 300 children in the nation's detention centres. Another 635 are living in the community.
CATHERINE BRANSON: We applaud this. If we are to have mandatory detention, then we need more people detained in the community. Many of these people, most of these people go onto to stay in Australia. Their capacity to be productive, healthy members of our society is undermined by their long detention.
PHILIPPA MCDONALD: Significant compensation has already been paid to some former detainees held for long periods, particularly under the Howard government.
CATHERINE BRANSON: As the periods of time that people have been held more recently have blown out, increasing numbers of complaints have come here of arbitrary detention. 75 I think came in the last financial year. It's not uncommon for me to make a finding of arbitrary detention.
It is important to understand that detention can be lawful, but nonetheless arbitrary because it can't be shown to be necessary in Australia's interests to maintain individuals in detention.
PHILIPPA MCDONALD: But for the most part Ms Branson says her findings have fallen on deaf ears. Philippa McDonald, Lateline.
http://www.abc.net.au/lateline/content/2012/s3549543.htm

'Syria was good then'

Contemporary History already repeating itself

Remember how Libya's President Gaddafi was once embraced as a friend by British and French politicians? Then friends fell out and regime change opccurred. Read the following and note how Syria was also once courted by western powers. Professor Arthur Butz draws our attention to the following case:

From: Butz Arthur R. zapdaddy.arthur@gmail.com

Sent: Sunday, 5 August 2012 1:33 AM - Subject: Syria was good then

Maher Arar – some facts from Wikipedia

Maher Arar (Arabic: ماهر عرار) (born 1970) is a telecommunications engineer with dual Syrian and Canadian citizenship who resides in Canada. Arar's story is frequently referred to as "extraordinary rendition" but the U.S. government insisted it was a case of deportation.[1][2][3][4][5]

Arar's rendition

On September 26, 2002, during a stopover in New York City en route from a family vacation in Tunisia to Montreal, Arar was detained by the United States Immigration and Naturalization Service (INS). The INS was acting upon information supplied by the RCMP.[30] When it became clear he was going to be deported, Arar requested he be deported to Canada; though he had not visited Syria since his move to Canada, he retained Syrian citizenship as Syria does not permit the renunciation of citizenship. Canadian (initially) and United States officials have labelled his transfer to Syria as a deportation, but critics have called the removal an example of rendition for torture by proxy, as the Syrian government is infamous for its torture of detainees. Despite the recent public rhetoric, at the time of Arar's deportation, Syria was working closely with the United States government in their "War on Terror". In November 2003, Cofer Black, then counterterrorism coordinator at the US State Department and former director of counterterrorism at the CIA, was quoted as saying "The Syrian government has provided some very useful assistance on al Qaeda in the past."[31] In September 2002, the George W. Bush administration opposed the enactment of the "Syria Accountability Act" citing effectiveness of current sanctions and the ongoing diplomacy in the region. In addition, the administration noted the cooperation and support by Syria in fighting al-Qaida as a reason for its opposition to the "Syria Accountability Act".[32]

US interrogation

US officials repeatedly questioned Arar about his connection to certain members of al-Qaeda. His interrogators also claimed that Arar was an associate of Abdullah Almalki, the Syrian-born Ottawa man whom they suspected of having links to al-Qaeda, and they therefore suspected Arar of being an al-Qaeda member himself. When Arar protested that he only had a casual relationship with Almalki, having once worked with Almalki's brother at an Ottawa high-tech firm, the officials produced a copy of Arar's 1997 rental lease which Almalki had co-signed. The fact that US officials had a Canadian document in their possession was later widely interpreted as evidence of the participation by Canadian authorities in Arar's detention.

Arar's requests for a lawyer were dismissed on the basis that he was not a US citizen, therefore he did not have the right to receive counsel. Despite his denials, he remained in US custody for two weeks and eventually was put on a small jet which first landed in Washington, D.C. and then in Amman, Jordan.

Arar's imprisonment in Syria

Once in Amman, Arar claims he was blindfolded, shackled and put in a van. "They made me bend my head down in the back seat," Mr. Arar recalled. "Then these men started beating me. Every time I tried to talk, they beat me."

Arar was transferred to a prison, where he claims he was beaten for several hours and forced to falsely confess that he had attended an Al Qaeda training camp in Afghanistan. "I was willing to do anything to stop the torture," he says.

Arar described his cell as a three-foot by six-foot "grave" with no light and plenty of rats. During the more than 10 months he was imprisoned and held in solitary confinement, he was beaten regularly with shredded cables.[33] Through the walls of his cell, Mr. Arar could hear the screams of other prisoners who were also being tortured. The Syrian government shared the results of its investigation with the United States.[7] Arar believes that his torturers were given a dossier of specific questions by United States interrogators, noting that he was asked identical questions both in the United States and in Syria.[34]

While he had been imprisoned, Arar's wife Monia Mazigh had been conducting an active campaign in Canada to secure his release. Upon his release in October 2003, Syria announced they could find no terrorist links.[35] Syrian official Imad Moustapha stated that "We tried to find anything. We couldn't". Syrian authorities also deny that they tortured Arar.

Arar's return to Canada

Arar was released on October 5, 2003, 374 days after his removal to Syria. He returned to Canada, reuniting with his wife and children.

The couple moved to Kamloops, in British Columbia, where his wife Monia accepted a job as professor at Thompson Rivers University.[36] The couple later moved back to Ottawa.

Back in Canada, Arar claimed that he had been tortured in Syria and sought to clear his name, embarking on legal challenges both in Canada and in the United States as well as a public education campaign.

Arar received a Ph.D. in electrical engineering from the University of Ottawa in 2010.[37]

As of December 2011, Arar and his family remained on the US No Fly List.[11] His US lawyers at the Center for Constitutional Rights are currently pursuing his case, *Arar v. Ashcroft*, which seeks compensatory damages on Arar's behalf and also a declaration that the actions of the US government were illegal and violated his constitutional, civil, and international human rights.

From:http://en.wikipedia.org/wiki/Maher_Arar