

Tom Holzinger
Serowe, Botswana
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Dear Kenneth Birch,

I thank you for your letter of 30 March. It has been very helpful to my thinking. I have gone back to *The Birch Family* and studied it again with fresh eyes.

In my previous letter I said I thought that someone close to the Birch household was the likely father of Bessie Head. You refuted that thesis in part by ruling out any of the domestic servants: "Our black staff were few and of longstanding ... Are you trying to revive the stable boy legend?" My answer is, absolutely the contrary. As I should have made clear, I think the father was most likely from a well-established family, and a person known to your sister for some time.

Before I suggest a place to look, let me quote what I wrote to you on March 10:

However, let us try to put ourselves in the shoes of the ill Toby. Here is your sister, allowed out of the hospital after two lengthy admissions, secretly daydreaming of a romantic affair after years of celibacy — but with whom? She is 42 years old. It will have to be a secret from her domineering mother. No family friend can be involved. She is shepherded whenever she goes outside ... Someone younger than herself ... will be ideal; i.e. less likely to refuse or to be suspected. Probably she works the whole thing out in her dreamworld before she surprises even herself and initiates the drama as a part of some deeply felt self-liberation ... I am directly suggesting that such a man — African or Coloured, and likely short in stature — was well enough known to Toby that she was able to overcome her fears and push hard for an illegal liaison.

Now the logical place to look for the man is in the *law offices of W.A. Morison Abel*. My theory is supported by (a) Toby's familiarity and comfort in those offices, and her known visit near the time of conception, and (b) the self-protective actions of solicitor Abel from 1937 onwards.

Access to Abel's office

Let us consider point (a), using your account in *The Birch Family*. She became familiar with Abel's office around 1913 and remained so until just before she moved away from the Joburg area.

- ... at a time when few girls worked in offices, her father obtained employment for her with his solicitors, Messrs Fearnhead and Abel.
- By 1916 this partnership was dissolved.
- When the Emery divorce (1927-1929) was proceeding Toby engaged W.A.M. Abel to handle the affair, i.e. her old boss.
- Unbeknown to her mother, in 1936 Abel prepared a will for Toby which she signed.

That will was prepared in Abel's offices in October 1936. Bessie Head was born on 6 July 1937, approximately nine months later. Of the will it has been written:

- It is possible that some dramatic turn of events in her life — a love affair or a rape — could have occasioned it.

And it is a matter of record that:

- She left all she possessed to her son Ronald.
- She added that she wished to be buried in the family plot at Brixton in Johannesburg and was under no circumstances to be cremated.

To summarize the first point, Toby had longstanding access to Abel's office and that's where she felt comfortable in going for legal assistance. Her last visit there coincided with the most likely time of her conception.

Actions of W.A. Morison Abel

The second point is the stronger one, for here we find that Abel engaged in a distinct pattern of unusual behaviour concerning this employee/client. The following statements are all taken from *The Birch Family*:

- ... in 1936 Abel prepared a will for Toby which she signed. Did Toby act under her own volition? How and why was this will placed with another firm of solicitors, Sims and Ziegler, who held the document until it was disclosed? This firm had no connection with the Birch family.
- This invalid will remained concealed until the last week of September 1943 when it was shown to Mrs Birch, some 14 days after her daughter's death.
- After an enquiry, W.A.M. Abel, in a letter of 26 November 1943 to the Master, confessed that he was quite unaware and therefore shocked to learn that B.A. Emery (Toby) was in any way not normal!
- Nonetheless my mother was tolerant and allowed Abel to play a legal part in the winding up of my sister's small estate which included provision for Bessie, *and other matters not mentioned in official estate, or other public documents.* [emphasis added]
- ... at a time when more financial assistance for Bessie's education would have been welcome, it was unfortunately this non-family solicitor, Abel, who was approached in March 1952, by the Child Welfare Society, Pietermaritzburg, for family connections.
- Abel replied to such enquiries stating "he had lost contact with these clients." This was his standard legal jargon, once again repeated, like a cracked gramophone record.
- The attitude taken by W.A.M. Abel was one of those disappointing episodes in life, for he must have known very well over very many years about Toby, how to contact Mrs Birch, members of her family or our family solicitor, W. Fearnhead.

In the enquiry referred to above, both Alice Birch and Morison Abel justified their previous actions by claiming ignorance:

- "I have been entirely unaware of this will being in existence, please advise" -- Alice Birch
- [When the will was made, Toby Birch appeared] "perfectly normal and quite lucid" — Morison Abel

Had the enquiry found Toby's will to be valid, Ron Emery would have inherited the estate. He and his lawyer wished this to be the case. But Toby's will was declared invalid and the bulk of the Estate was assigned to Alice Birch. Mr Abel played a role in executing Mrs Birch's wishes, not his deceased client's, and that included "other matters not mentioned in official estate, or other public documents."

Clearly Mrs Birch and Abel had some strong common purpose here. And it persisted long after these "other matters" were settled. In 1952, by then likely in his seventies, Mr Abel denied knowing Toby's family or how to contact them. I would argue that under the circumstances this statement was *not* standard legal jargon at all, but rather a purposeful dissembling. I believe that the advocate's code of ethics should have led him to *assist* the search for his deceased client's daughter's relatives, not frustrate it.

Why, then, did Abel become the instigator of this "disappointing episode"? Why did he behave in such unseemly fashion? The most coherent explanation, and an obvious one, is that *he had an agreement with Alice Birch to do so* — to cover up the Toby Emery affair from beginning to end.

What might have been his motive? What was his own interest in becoming party to such an agreement? During the time after the news of the illegitimate child, but before Toby's death and his cooperation with Mrs Birch, advocate Abel took the highly unusual step of removing her will from his office and placing it with another law firm.

It is hard to see how this move could have been in Toby's interest. Far more likely it was in his own interest, to offer him and his firm a measure of "deniability" if necessary. What was there to deny? First, that he had drawn up a will for a legally incompetent purpose. But if this was a true reason, he could have and would have had the will annulled rather than hiding it away.

The second possible reason is that *he was protecting an employee or client who was the father of Toby's daughter*. In this scenario Alice Birch would have returned from Natal in late 1937 with the news of the coloured child and its father. She would have had a private word with Abel, frightening that good lawyer down to his bones. In his mind Toby instantly ceased to be a client and friendly ex-employee and became instead a potential source of civil and/or criminal prosecutions that could do his business great harm. Further, as long as Toby and Alice were alive, bearing the secret, they would be in a position to threaten him. What if they were to quarrel with each other and one of them to name his law office? In this scenario Mr Abel had reason to (a) strip his office of every record that Toby Emery had ever been there, and (b) make a pact with Alice Birch that together they would cover up the affair totally. The world was never, never to know.

The proposed scenario is not contradicted by their subsequent actions. Abel transferred Toby's will rather than asking for its annulment so as not to arouse Toby. Perhaps he kept the will a secret so as not to arouse Alice. Following Toby's death in 1943 things were simpler; he needed only to keep his and Alice's interests aligned. Because of "other matters not mentioned in official estate, or other public documents," Alice chose him to help with the dual job of winding up the Estate and keeping some of the facts out of the public eye. Tough-minded Alice knew that Abel would comply.

The Estate was wound up during 1944. Advocate Abel's name does not come up again until 1952, when he wrote a letter for the public record that he had "lost contact" with the Birch family. It was egregious dissembling, but it exactly served both his own interests and those of the cover-up that he maintained with Alice Birch.

The remarkable Alice Birch outlived him of course, and she may well have maintained her side of the pact until she died. Her motives are less easy to understand. From *The Birch Family*:

To the "non-permissive" Birch family in 1937, the news was a shock. It was thought that the father would have been white. When young Bessie was pronounced coloured by the first foster parents and rejected, the shock was even greater, and more bewildering. All the Birch family knew of their new relation, but over the years the juniors never had to deal with the problems, which to them became remote. Mrs Birch placed an embargo on idle family talk and gossip, and nobody could argue with her that illegitimacy and adoption were items to be kept confidential and anonymous.

From this booklet and other sources it seems clear that other Birches were not interested anyway, and if they had been, Alice would have stifled their curiosity.

On the other hand, Alice herself was a concerned and involved grandmother to Bessie the child, until at least the time of Toby's death. [*The Birch Family* extends this period of grandmaternal supervision to either 1950 or 1952, but this appears to be contradicted by the court hearing in December 1951 to decide if Bessie was a child in need of care from the state].

In the complex web of Alice's motives and behaviour, we see much that would be expected from a strong, confident, experienced woman. Four things, however, draw attention:

- Her successful effort to prevent all family talk about Toby's daughter and to prevent Toby's son Ronald from knowing his half-sister;
- Her successful effort to take over all matters related to Toby's estate and to place some of them beyond public scrutiny;
- Her successful effort to extinguish real and potential claims by Bessie's guardians for financial support, by means of a lump sum payment of £300 from Toby's estate;
- Her apparently abrupt switch from being a benevolent grandmother to one who wanted nothing more to do with her granddaughter.

Although I think any one of the above could be explained by her love of decisive action — *wenn schon denn schon* — the four together hint at more than a normal amount of family shame. Her unwillingness to share it, apparently with anyone (except in part, perhaps, with solicitor Abel), for 37 years until her death, testifies both to her strength of character and to the strength of the need for silence.

Although *The Birch Family* exhorts us not to speculate, in light of the foregoing, speculation seems profitable here. Let us suppose Toby had *not* told Alice the identity of Bessie's father. In this case Alice and everyone else would presume a (criminal or criminalised) liaison with an anonymous African man. There would be deep shame as well as anxiety about some future recurrence or disclosure. After Toby's death, however, the anxiety would disappear and the stigma would tend to wear off. One would have expected Alice to relax somewhat — after a few years to begin to talk fondly in family company about the old days with her wayward daughter. This of course did not happen.

And Mr Abel? One would have expected him to remain an advocate for his client Toby's interests. He would have kept her will in his office and argued for its validity after her death. Later he would have acted in the best interests of Toby's daughter and, when asked, would have informed Bessie's guardians how to contact her next of kin, i.e. her grandmother. Abel, however, did none of those things.

This line of reasoning, then, leads to the hypothesis that Toby disclosed the identity of the father to Alice and Alice to Abel. And more, that this knowledge was associated with shame and fear, indeed a great deal of shame and fear. Enough that Alice removed Toby and Bessie from Birch family discussions until the end of her life and enough that Abel's professional behaviour took several bizarre turns lasting for years, none of them in the interest of his client Toby or her daughter.

Such a chilling blast of fear and shame could result from knowing who the man was, the circumstances of the impregnation, or both. Because of Mr Abel's actions, I believe his fear stemmed from the fact that the man named by Toby was regularly in his office and well known to him. The strength of his actions suggest that he knew that Toby's disclosure was truthful, i.e. he had approached the man and had obtained corroboration from him. This confirmation he would of course have shared with Alice and then the two of them would have sat down to figure out how to deal with it. These two skilled and competent adults of middle age would then be joined in an unexpected and unwanted wedlock of conspiracy for the remainder of their natural lives.

Circumstantial evidence is quicksand and tentative conclusions drawn from it are worthless without direct evidence. In this case direct evidence may be available from the records of W.A. Morison's law practice. Where there, in the second half of 1936, any Coloured or African associates working in the office? Did any male relatives of such associate(s) regularly stop by? Did the office have any prominent Coloured or African clients, persons who needed to be shielded from accusation?

I believe the record of the circumstances is strong enough to warrant an attempt to look for real records. I shall propose it to enterprising young literary sleuths in the Johannesburg universities, that they track down the "non-family solicitor".

Finally, Kenneth, we come to Alice Birch herself and to Toby Birch ("the enigma, always a bit terrifying"). What records and letters that survive from their hand are all in your stewardship.

The points that I have made above — do any of them ring a bell or awaken a memory? Did Alice ever speak to or of Mr Abel? Did she give you a clear idea of what the "other matters not mentioned in official estate, or other public documents" were?

Would you be pleased if we obtained the several different permissions and republished *The Birch Family* on this website? I would very much like to do so, and I have already re-typed the entire text in preparation for that.

Well, sir, I am now up past my bedtime. I wish you a goodnight and rain before week's end. Please reply — even if only to dismiss me!

Yours truly,

Tom Holzinger
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