

**Peter Hathorn**

**LRC Oral History Project**

**28th August 2008**

- Int This is an interview with Peter Hathorn and it's... Yes, it's the 28th of August (2008). Peter on behalf of SALS Foundation we really want to thank you for agreeing to participate in the LRC History Oral History Project. I wondered whether we could start the interview if you could talk about your early childhood memories, growing up in South Africa under apartheid and where you think your sense of social justice and injustice developed?
- PH Ok. I grew up just outside Durban, and I came from a family which is described as an old Natal family, that would have been in a colonial context of focusing on white families, and I came out of a family, on my father's side anyway, of a string of lawyers. My father was...had been an attorney, my grandfather had been an attorney, my great grandfather had been a judge, and his father had been registrar of the High Court in Maritzburg, or some such position, so I came out of a fairly protected and sort of quite comfortable colonial background. And in terms of sense of justice and sense of awareness of the inequalities in South Africa, I don't...I can't ascribe it to my family background to any great extent, although my family values were basically, were sound values and were respectful for human dignity. Those sorts of things I grew up with, but there was no...there was...reflecting on it, there was remarkably little awareness of the conditions which people were living in around us. we were in this little...comfortable little bubble existence. So...so that...ja.
- Int Do you think that your particular interest in the kind of work that you subsequently did emerged from perhaps experiences at school or reading matter, or maybe discourse with colleagues, peers?
- PH You know, it's difficult to pin it down. I sort of became quite...largely through a combination, I suppose, of family influences, but that's limited, and also I was a big reader as a child, I think that might have also taken me. But I went to an elite school outside Pietermaritzburg and I was a sort of more...I was probably the most liberal member of my class, just I sort of gravitated in that direction, I think maybe just because through reading and I had a more open-minded view of the world than...these largely a lot of boys. It was an all boys boarding school, it's not a particularly enlightened...
- Int Is it Michaelhouse?
- PH It was Hilton, which was the sort of companion school to Michaelhouse, to an extent. And a lot of those boys coming out are very conservative, rural farming backgrounds, so to have been the sort of liberal wing of that wasn't saying very much but...
- Int A lot of the lawyers I've interviewed actually came out of Michaelhouse or Hilton, , particularly Michaelhouse. Charles Nupen, and I think Fink Haysom, and I was just wondering whether at the time that you were there, that you had association with people who would have then gone on to NUSAS and LRC at all?

PH Ja, I grew up next...well, not quite next door, but Fink Haysom was a couple of houses down the road from us where we lived in this comfortable suburb outside of Durban. And we were quite proud of Fink (Haysom), as the sort of left wing radical at NUSAS at UCT at the time that I was a schoolboy. But I can't claim that he was a close influence. We knew the Haysoms from down the road and...so...ja...sorry I'm being quite long winded, but my route into law, I came out of this, on my father's side anyway...my mother's father was a journalist, he was editor of the newspaper, the morning paper in Durban. But my sort of dominant family background the law was the obvious thing for me to do when I left school. And by the time I left school I'd decided that, at the time that I was growing up there was conscription of white men and I decided that I wasn't going to go into the army, and my assumption was when I left school that I would leave the country and I'd go and study and then leave the country. So for that reason I didn't do the natural thing, which sort of my interest and aptitude sort of suggested that I study law. I didn't, I did an economics degree. Assuming that I would do...because a South African legal qualification is not really helpful if you want to practise as a lawyer overseas, so I thought I would do a sort of more general degree at UCT where I studied.

Int So you went immediately into UCT after school?

PH After school...

Int What period would that have been?

PH That was '79 to '82, was when I studied.

Int Ok. And were at all involved in student politics...?

PH Not initially, I followed it in quite an interested fashion but then the sort of crunch issue for me became the question of going to the army and I decided in the time that I was at UCT that one of my closest friends' brother...who's...it wouldn't be someone you know, but he was head boy of Hilton in my first year that I was there, his name was Charles Yates. He came out of an Anglican background, I had no real church involvement at that stage of my life anyway. And he went to prison rather than going into the army, and that had a big impact on me, and by the time that I left...to cut a long story short, by the time I left UCT in '82, I'd decided I was going to go to prison and not go into exile, which had been my assumption when I...so I went to prison the year after that and I was sentenced to two years in prison and eventually on review that was reduced to twelve months.

Int Gosh! That's quite a decision to take as a young person.

PH No, it...they were hard times, so looking back on it, people were faced with strong choices that...you could have gone into the army as a white boy, you could have gone

into exile, you could have gone to prison, you could have sort of tried to live an underground sort of existence in the country, so...

Int And what did your family think of this....you came from a family of lawyers, and I'm wondering in terms of rule of law and the whole idea of being imprisoned, etc?

PH It was...it was a...let's start, my sister who was with me as a student at UCT, she had gone through a very similar political process of being conscientised as a student to what I went through, so the two of us were like this little clique within the family. I come from a family of five children, my father had died when I was eleven or twelve, so he wasn't around. The rest were quite aghast, that it was a very odd thing to do, to go off to prison. And to complicate matters, my mother remarried at the time, just before I went to prison, and my step-father was the honorary colonel of the Natal Mounted Rifles, which was in Durban. And, you know, he was a...in many ways, I can admire him, he was a soldier with a proud record and served in the Second World War with distinction, and he just couldn't see...for him it was country right or wrong, and he couldn't understand that I would say I've got high regard for him for what he did in the Second World War but this isn't the same war. And he just...I don't think he wanted to try and get his mind around it, it was just complicated. Anyway, so my mother was in a very conflicted situation and she was...she felt divided loyalty between her new husband and between me, and the rest of my family they struggled but they would have come to terms with it eventually.

Int And your sister was quite supportive of you?

PH Ja, she was very supportive, and that made it a lot easier.

Int So by 1983 you'd already spent one year in prison?

PH Ja, 1983 to 1984 I was...I sort of started off in detention barracks in Pretoria Central, but most of my time was in Pollsmoor Prison. And that was the formative time where I decided that I wanted to do law, that it was an experience of knowing that I probably had some rights and being messed around by the prison authorities, but I was then completely helpless, and I just wanted to make sure that that would never happen to me again, that if I was in such a vulnerable position again, I wanted to be able to assert my own rights and then also wanted to use that knowledge to help other people. And that was where my desire to become a lawyer really was formulated.

Int How did you spend your time in prison? Did you have access to reading material, what did you do?

PH It's complicated because I was in three different prisons, but Pollsmoor where I was most of the time I was...I had study rights through UNISA which is a correspondence university of Western Pretoria, so I was doing some BA courses and...I was doing English and Philosophy and maths, I think it was, those were the three subjects that I

was doing. And...so I would study that at night and I was in a single cell which meant that I could study quite comfortably, I would even have two hours on my own in the cell at night where I could study. And during the day I was pushing wheelbarrows, which was...

Int So there was some labour involved then?

PH Hmm.

Int And at that stage, 1983 was really the birth of the UDF and I'm wondering what your sense was of what was happening in the outside world?

PH Um...I was very aware of the formation of the UDF, that happened in the time that I was in prison and my sister and a lot of my friends were...you know, if I hadn't been in prison I would have been involved in that. But they were all part of that process and went to the launch and all of that stuff. And the anti-conscription organisation, the End Conscription Campaign, was also formed at the same time which, in terms of my political involvement was as significant as the launch of the UDF, in terms of the broader political importance obviously not at the same level, but ja, those were two crucial political developments in that time, between going into prison and coming out again.

Int So then after prison, what was the trajectory that you took?

PH Then I continued studying, I went and...I registered at UCT for...to try, because I'd missed, when I came...I came out in March, so I couldn't register for a law course, I went to UCT and tried to do an African History Honours Degree and didn't realise that by the end of the year that it would cost me another year, so I went back to UNISA the following year, the beginning of eighty...came out in March '84, the beginning of '85 I registered for UNISA. I studied...I did four years at UNISA to get the LLB and then by that stage we were in Grahamstown and I started Articles, I think, the following year after that...no, it was actually towards the end of the LLB.

Int And then Articles, where did you do that?

PH It was with a one man band firm of attorneys in Grahamstown...my principal was Noor Dullabh and the firm was Dullabh and Co. So it was quite an interesting experience from that perspective. He was an Indian attorney practising in Grahamstown and one of two black...no, three actually...but there were two black law firms in Grahamstown at that stage, both of them were sole practitioners. There was Lex Mpati, who's now just...you might have interviewed him...?

Int Yes.

PH ...he was with one of the...it was a predominantly white firm although Lex (Mpati) was a partner within that firm in Grahamstown at the time. And it was...I had quite a rich experience as an Article Clerk in that firm, I had...in terms of the responsibility that I was given it was probably more than I would have had in many other firms.

Int Sure. Was it predominantly commercial or were there other types of cases?

PH No, it was, at that stage, the practice was largely MVA, motor vehicle accident claims. A lot of criminal work in the lower courts and the Grahamstown District Court. Which was a very good experience for me, given that subsequently I would become a litigation specialist. And then there was...

*(Interruption –interview resumes) ...*

and the other area which was the most important in terms of my development of the law is there were a whole lot of necklace murders in the Eastern Cape at that time, and that was the main focus of the political work at that point for us to defend people who were facing murder charges. And through my course of two years Articles I must have been involved in two or three of those murder trials, which those memories still sit with me today. It was...in retrospect...I would have felt far more ambivalent about the nature of the work that we were doing at the time, it was for the cause and we defended them to the hilt like, I suppose, we had to.

Int I was also wondering, Peter...you had decided to do law while you were doing your undergraduate degree and mostly when you were in prison, and I'm wondering whether the sense of doing law was more a logical progression of the fact that you come from a family of lawyers or was it more a sense of the fact that you could actually use law as an instrument of social change? What do you think was the real impetus for wanting to become a lawyer?

PH It was the experience in prison and...ja...I'm a prison product really as **inaudible**, to have gone back and requalified when I'd qualified as an economist already was...ja, I wanted to use law for...it wasn't purely a social political objective, it was also, it was very much also a sense of personal vulnerability and wanting to address that. But it was both to an extent.

Int So after your Articles, what happened?

PH Then I did Articles and then worked for three years at the Grahamstown LRC and then came to the Bar in Cape Town.

Int Ok. Those three years, so those would have been the early 1990s?

PH From...I finished...ja, I think it would have been '90 to...the beginning of 1990 to the end of 1992.

Int And that's a very, very interesting time in the country's history, and I'm just wondering whether you could talk a bit about that, particularly of the LRC, as a microcosm within the greater transformation?

PH Ja, if I can start with the Grahamstown LRC, it was a tiny office at that stage...well, it's probably bigger than it is now, but it was...the Director of the office at that stage was Jeremy Pickering, who's now...

Int ...A judge?

PH You might well be interviewing Jeremy (Pickering) in Grahamstown, he's now a High Court Judge. And the other attorney there was Gerald Bloem who is now...I think Gerald (Bloem) is practising either in Bisho or in Grahamstown or possibly both, I'm not sure. But there were two...Gerald (Bloem) and I were both very inexperienced and starting out in our legal careers, and Jeremy (Pickering) was a very experienced advocate. And it was a fantastic environment for a young lawyers to be learning at; Jeremy (Pickering) was incredibly generous and gave a huge amount of support to both Gerald (Bloem) and myself and I regard Jeremy (Pickering) as my mentor to a large extent in my development as a lawyer. And then we had the support staff...we had a paralegal and...we were probably an office of about eight people, so I just remember it as being a very harmonious and nurturing environment to practise law. The Eastern Cape at that stage, we had come out of the eighties, Mandela was released about the same time that I would have started at LRC. I'm hoping that I'm getting my years right...

Int That's quite all right... I think that's right.

PH Ja, but he was released the beginning of '90, I think I started at the LRC at that same stage, so ja, the harsh suppression of the eighties was easing. There was still...it was still a very tense time and the time between 1990 and 1994 and the country seemed to be balancing on a knife edge, one wasn't quite sure which way it would go. But the conflicts that were taking place in the country and the Third Force activities that were taking place, mainly in Gauteng, and then there was KwaZulu-Natal, the Inkatha/ANC conflicts or the UDF conflicts there. So the Eastern Cape was...the real tumult in the Eastern Cape happened...

Int ...earlier?

PH ...a bit earlier than that.

Int What were the predominant issues in the Eastern Cape, because I know subsequently it's become the social welfare, the pensions, etc, and I'm wondering at the time that you were there, what the issues were?

PH The main issues that we were dealing with were police violence against people, and I think that the majority of the cases that I would have been dealing with at that stage...and it might have been that these were just the more sort of run of the mill routine cases, I don't know, if you ask Jeremy (Pickering) he might have a very different perspective on it...were of police assaults, or shootings and litigating those, claiming damages in the courts. There was also, there was a case of someone who was tortured and I got the...it was actually done, the case which was handled by my predecessor in the office which I just took...came in on the tail end of...so one was tortured and he had electric shocks and they'd taken him to a doctor who'd drawn blood and from his blood samples you could tell that...I can't remember the technical details of it, but there was some disturbance of his normal, that you could detect that he clearly had been subject to electric shocks. And on the basis of that there was an interdict fought against the police in Graaff Reinet or Cradock, one of those municipalities, and we were faced with the task of enforcing that interdict. So that would have been the focus of it. There was also the Bisho Massacre at that stage which...I can't remember which year that was...but we were also involved in representing some people who...I don't know if you can remember it, but the...I think it was related to Operation Vula, and Ronnie Kasrils, and some of the SACP sympathetic UDF structures, deciding that the Ciskei was ripe for insurrection, and they led a march, I think Kasrils led it, on Bisho and...I can't remember, there was...it was...I can't remember the name of the person who was running the Ciskei at that stage but there was some tinpot dictator there who wanted the troops to shoot at...Oupa Gqozo, I think his name was. I'd actually met him once or twice. And so there was a lot of people were shot and I think we represented a few of the people who were injured in the shootings, I can't recall how many people.

Int And the outcome of that?

PH I actually...I don't think they were settled...I don't think the claims were finalised before the time that I left the office, and I can't recall what the outcome was. I can just remember that it was probably in the last year that I was there, that I think Gerald Bloem, who had spent a lot of time travelling to and from King Williams Town, Bisho, to get instructions about that.

Int Ok. In terms of...Arthur Chaskalson was really not in the office that much as a National Director, although he was National Director during the period that you were at the LRC, and I think Geoff Budlender took over much of the running as well. I wondered what the relationship was between the Grahamstown office and the National Office and the other offices, in terms of the AGMs and what were some of the tensions, dilemmas, challenges, particularly during that period?

PH Jeremy (Pickering) was the one who was going off to the Exco meetings, and so it would have been mediated through Jeremy (Pickering). He would come back with stories of the fights that were taking place in Cape Town office or the Jo'burg office, and you know, it just seemed so strange to us, we were such a straightforward office and the hierarchy of the office with Jeremy as Director and Gerald and I as the attorneys and then the support staff as well, you know, Jeremy was just in terms of experience and personal authority was just so far ahead of the rest of us, it was just

so...it just fitted so naturally that we were remarkably, I can't remember...you know, there was one issue to do with a paralegal who...I think my last function as an LRC employee was to prosecute the paralegal for irregularities and internal disciplinary inquiry. But that's the only real sort of source of discord that I can think of in terms of the Grahamstown office. And I think that, you're asking about the role of the National Office and the Grahamstown LRC's relationship with that, that...again it was a fairly...I think Jeremy (Pickering) had a very good relationship with Geoff (Budlender) and had a huge regard for Arthur (Chaskalson). Sorry, one thing I should mention about the work that we did at the time is that we also we fed into the...there was, Arthur (Chaskalson) argued and Jeremy (Pickering) was part of that team, the right to legal representation case...I can't remember the name of that case because it's now pre-Constitutional law and no-one takes it seriously. But that was a major case that was argued, that would have been, I think, also in '92 probably. So Jeremy (Pickering) had worked with Arthur (Chaskalson), had very high regard for him, and even though he was absent for much of that time and involved in constitutional negotiations he was playing a role, although not a very active hands-on role. In terms of the AGMs I can...you know, again there was a lot of...politicking is the wrong word, it was a lot of agitating about working conditions. We, in the Grahamstown office we thought that we were quite fortunate in terms of working conditions because things like salaries and that sort of thing were actually set in relation to Jo'burg, so my seniority as an attorney, I was actually getting a very good salary by Grahamstown standards, whereas people in Jo'burg and Cape Town were probably having to take a salary...make a sacrifice to work at LRC. So those issues which other offices, they were burning issues for them, they were non-issues for us. The fights about who would become director and that happened...that came subsequently to Grahamstown but that was after I'd left so I can't really speak much about that.

Int Fair enough. I'm wondering also, did you experience the tension that maybe the other offices obviously had, which was the person coming in off the street, and the need to actually have these high impact cases, and later what they had was focus areas and specialisations. At the time that you were there what was the main way of dealing with that? Was there a tension?

PH We were focused very much on dealing with people coming off the street. The Bisho Massacre was the one high impact case that we were involved in at the time. The legal representation case was another...

Int ....

PH ...I spent a lot of time driving around to advice offices and there was a real network of advice offices, I think to a large extent that has crumbled in the times...

Int ...Post '94?

PH Ja, I think funding became difficult post '94 and then by the turn of the century it became...I'm not sure how many survived. But at that stage there was a substantial



network and right throughout the Eastern Cape we drove long distances and saw lots of people in advice offices.

Int I'm also wondering in terms of the areas that really interested you...in terms of public interest law at the LRC, what would those have been? Is there something that you particularly felt that you wanted to...for example the Cape Town office has land as a huge area, housing is a huge area. At the time that you were there, was there anything in particular that really grabbed you about public interest law, an area that you thought, ok this is something that I could work on more fully?

PH The area that I'm probably most interested in is administrative law, and there was little, not that much scope for administrative law in terms of the sort of cases that we were seeing. And a large part of my practice now is land and housing issues. And through the advice offices we were dealing with housing issues, and sort of land issues to a lesser extent, but...there were...in Thornhill, which is a resettlement camp, that was an important part of my practice was representing that community in the early stages of negotiations for...to get access to land. But...and also in Hogsback. You know, there were quite a few communities that we were representing...or I was involved in with representing. I got less of a clear memory as to the office as a whole, as to how much work they were doing on land issues.

Int I'm also wondering, Peter, what prompted...you were earning a good salary, clearly enjoyed the work, there was no office dynamics as such and it was quite harmonious. What prompted your then having to leave?

PH To come to Cape Town?

Int Ja.

PH I'd always...it was between my wife and myself, she came from the Eastern Cape and she was very happy living in Grahamstown. Most of my family was in Cape Town by that stage, so I was...ja, for the last...I think we'd struck some sort of deal that...because I remember when I went...when I worked, was interviewed by Jeremy (Pickering) to work at LRC, I said, ultimately my intention is to...I want to go to Cape Town eventually, so if you're looking for someone forever then I'm not going to be your forever somebody. In fact, I think he just hope...he employed me on the hope that I'd change my mind, but it didn't. I'd always seen it as a limited period thing.

Int And also coming to the Bar, was that something that had always been part of what you wanted to do?

PH Not really. If I could have got a position at the Cape Town LRC then I would have taken it, but there was nothing available at the time. Although coming to the Bar I saw as a challenge as well. I was quite...William (Kerfoot) and Co sometimes tease me about well, I didn't want to come to the Cape Town LRC. They didn't try and get me

and if I'd really been desperate I would have probably pushed a bit harder. But it didn't seem...and another white male coming to the Cape Town LRC was probably...they needed other people.

Int And so your practice since then has been largely, would you say, housing? Or has it changed?

PH No...I've done quite...I was involved in the Richtersveld case and for probably four or five years that was the most substantial single part of my practice. So land and housing has always been a significant component of it. When I was...sorry, to go back to in time to Grahamstown, when I was in Grahamstown I was also involved in an organisation called the Grahamstown Rural Committee, which was part of a network of rural land activist organisations. There's an equivalent in Cape Town which has undergone a...their whole network has undergone a name change as well. So that was a pivotal area of political interest as well as a legal interest of mine. So that...the land work has, I suppose, come quite easily to me, although I don't regard myself as primarily as a land lawyer, but it's one aspect of practice that I've got some experience in but I wouldn't consider myself a specialist like someone like Henk or Kobus, they're proper land lawyers.

Int And since you've been at the Bar, have you been briefed by the LRC? Is that something that...?

PH Ja. It's worked quite well. I think that I've got the commercial component to my practice which is more lucrative and is less demanding in that there's less at stake. It's companies fighting about money, and probably about fifty percent of the work that I do, is that sort of work and then the other fifty is public interest work and a large...the majority of that for me comes from the LRC. Well, it's become...I probably do less LRC work now than I was doing five or ten years ago.

Int Why is that, do you think?

PH I think it's changing in sort of conscious decision by the LRC to change its briefing patterns, and I also, I feel that that's appropriate, that I also need to move on...

Int ...When you say, change briefing patterns, would that be racial in terms of...?

PH ...Ja, ja, I think the LRC has made a...the Cape Town LRC has made a conscious decision to try and brief black advocates, and you know, I also feel that I've...for my first ten years at the Bar, I got a very high proportion of the interesting work coming out of Cape Town LRC, when you're looking at colleagues at the Bar here, and you know, it's time for other people to have a chance to do that work as well.

Int Sure. In terms of the interesting cases, was there particularly any that you thought were extremely rewarding and really embodied what it meant to do public interest law?

PH The Richtersveld case was obviously...look back at that and for any lawyer to have been involved in a case like that, it's the sort of thing that only comes up once. Maybe someone like Geoff (Budlender) will have a few of those in his career, but for me I'm not going to get another case like that. Very unlikely that I will. But...we were discussing our favourite cases when we were up in Jo'burg last week, and my favourite case was actually not the Richtersveld, it was actually not an LRC case...no, it was an LRC case because it involved Prince Albert housing matter, and it was...I was actually instructed by an ex LRC attorney, Matthew Walton, I don't know if you've...

Int I've met him, yes.

PH And he...LRC actually eventually did come into it and Matthew (Walton) was jointly briefed with it, but it involved...it was a case from Prince Albert, which is a little dorp in the Karoo, where a crooked attorney, what they were doing is they were taking judgment debts against people who'd been allocated RDP houses for trivial amounts, you know, fifty rand, thirty rand. And then selling the houses in execution to satisfy these judgment debts. And then themselves bidding, the firm of attorneys, bidding at the sales in execution. And...as things stood at that stage there was nothing to prevent them doing that. And so, I was just so...Matthew (Walton) was outraged by this case, I was outraged by it, we ran it, we said that, if this doesn't offend the Constitution, we've got to find some basis to do it, so we just ran it on the hope that the...some court would just be sufficiently outraged to stop it. And we lost it here in Cape Town and we won it in the Constitutional Court. And ja, it was a case that was just almost invented out of...well, not invented out of nothing, there was a...an atrocity was being committed and...

Int What makes that a favourite case of yours?

PH It was just that there was no obvious answer to it, you know, the Richtersveld case was a big case, but if you look at the Australian law and the Canadian law, and I remember I drew up an advice on evidence for the Richtersveld case, and you look at the comparative law you can work out a framework, this is how you're going to run the case and the Richtersveld case has a huge impact for that community. So in terms of its effect, it's probably much more significant than this other one. The Jafta case was just run on a sense of outrage and...and Geoffrey was...ja, no we...I can't remember, Matthew (Walton) was initially quite reluctant to get LRC involved. I wanted to get Geoff (Budlender) involved because obviously with his expertise on housing matters...

Int Was Matthew (Walton) already in private practice by then?

PH Ja. So he'd left the LRC and he was...I think what had happened was one of the LRC lawyers had gone up to Prince Albert and said that we can't...that I think that actually did...you know, there's nothing that we can do about this. Because what they're doing is perfectly...it might be offensive but it's perfectly legal. And when...Matthew (Walton) said that the community would be resistant to getting LRC back into the case because they'd already consulted with LRC. But I wanted Geoff (Budlender) on the case and Geoff (Budlender) came in and he actually helped put it in a framework and understood how...quite clearly how we would...what part of the law and relating to execution of the movable property we would attack, and how that related to the 26: right to housing.

Int I'm wondering whether there are any other cases where you've been briefed by the LRC that really you felt were very important?

PH I think that the...two land restitution matters, the Richtersveld matter and the Nuweneusig community where I was briefed by Kobus Pienaar and where a very good settlement was reached. Those obviously had big impact. And then two other housing matters, the one would be Rudolph which is a matter in Valhalla Park, which is quite close to Joe Slovo, which is a group of people who had occupied an open space with sort of quite overgrown...do you know about the...?

Int I've heard about Valhalla Park, but I'm not sure about this particular...

PH Ok. And what was significant about that case is that the City Council had brought an application for eviction, and again it was a matter in which Geoff had been involved. And Geoff...we were defending and we were going through, resisting on all the normal technical grounds that you resist eviction applications, and Geoff suggested well, what the problem with this case is that the City Council gets told by the Constitutional Court in the Grootboom case that they need to make provision for emergency housing for people in desperate need. And they haven't done that, these people are in desperate need, they've acted on that, they've occupied open land and now the City wants to evict them without anywhere to go. So we brought a counter application, and asked for an order declaring that the City's failure to provide for an...in its policy as the Constitution Court had told it to do and said you've got to make provisions in your policies for emergency housing. And so we brought a counter claim there and...and that was, we eventually, we succeeded. We won in the High Court and the City didn't appeal against that. And the other housing matter was a pyrrhic victory I suppose. It was a matter, in the early days of the Constitution, and it was a case of Vanessa Ross who was a disabled woman living in a council house out in the Wynberg area, that's in the southern suburbs, and the City again sought to evict her. And I was briefed by a private attorney but again we got LRC involved because there were no resources, so LRC got involved and George Bizos came into the case to argue it in the High Court, and we argued that the effect of Section 26(3) of the Constitution was to change the onus with regard to eviction proceedings, so that under the common law the pre-constitutional law, if you're the owner of a property, all you have to do...allege in a pleading was to say, I'm the owner of the property, you're in it, you don't have my consent to be there. And then you would...if you establish those allegations you'd be entitled to an eviction order. And we said that Section 26(3) of

the Constitution has actually changed that, and has changed the onus that if you're the owner of a property you've got to allege that it was just and equitable having regard to all relevant circumstances, and you've got to plead those relevant circumstances. And George came and argued it and we won it here, and we felt that that was a huge victory at the time, but as I said, it was a pyrrhic victory, but it was subsequently the Supreme Court of Appeal in another case overruled it and said, no, that the conclusion that was reached in that case was wrong. But the Constitutional Court has actually come to much the same conclusion as we argued in Ross and the Port Elizabeth Municipality case which is another case. So I feel that that was another step on the way to having those relevant circumstances incorporated into the mainstream of eviction applications.

Int And your most recent case is really the Joe Slovo case, and I wondered whether you could talk a bit about that and your involvement in it?

PH The first point I'd make is that it's not an apartheid era forced removal. That if we lose the case, and judging by the way the debate went in the Constitutional Court, it looks as though we're likely to lose it. I don't think the Constitutional Court will allow anyone to be rendered homeless about, it's not as if people are going to be moved out of Joe Slovo and no concern as to where they're going to be.

Int There will be alternative accommodation, but that's in Delft, am I right?

PH Ja, and...it's...having made that qualification that it's a remarkable outcome if the Constitutional Court does evict that community, that there are going to be twenty thousand people, the majority of whom, if you read through the affidavits from the community members, who are living on the edge. They're really struggling to stay afloat, and...then there's going to great hardship if that community is relocated to Delft. And...the implications for Cape Town in the long term are...it's just horrendous. You're going to have this festering sore in Delft, which is not a good place as it is, but you're going to have a really bitter and disaffected community of close to twenty thousand people, because very few of them are going to be accommodated at Joe Slovo if the eviction is successful. Living in Delft and living in circumstances where a lot of those people are not really going to be able to make a living. They're going to be too far away from job opportunities and a long, long away from schools and other things. And then there's the question of how they're going to get there as well, because although it's difficult to argue this in court because then you're seen as threatening the court, but I think that's very unlikely that those evictions are going to take place without some form of confrontation, unless the eviction order is granted then obviously one would hope that the community does go quietly. But it's very unlikely, that there's likely to be bloodshed and violence and...anyway, I just...I was amazed at the response that we got.

Int From the Constitutional...?

PH From the court. And we had this defence on the basis of consent, that our argument was that if you're an unlawful occupier subject to eviction in terms of PIE, you've got

to be there without the consent of the owner. And this community has been there for sixteen years and the City Council, which is the owner of the land, has provided them with increasing array of services, they've connected most of the houses in the community....you've heard us argue this before so...

Int No, it's important for the record actually.

PH They've connected most of the houses in Joe Slovo to the electricity grid. They've built roads...well, not proper roads but basic roads and infrastructure and provided basic services. They've clearly consented. And Geoff said that if the court...he said beforehand, he was confident, I was also confident...he said that if we are going to lose this case the court is going to have to cheat to find a way around this defence, and I think they're going to cheat.

Int Really? What is your sense just generally about the resistance that you've met with at the Constitutional Court? Did that take you by surprise and what do you think the resistance is about?

PH Well, you know, we knew that the attacks on the judiciary from a number of prominent people within the ANC, we knew that that would count against us. The court would almost inevitably...we didn't know it would count against us, it just made the environment that we were going into unpredictable. We didn't know exactly how the court would respond. In retrospect I think it created an environment where the court is very reluctant to be seen to be obstructing this into Gateway housing project, which is the pilot for the National Government's new housing policy. And I think if we'd got there six months, eight months earlier, I think we might have had a very different environment to argue it. And the other aspect which also rendered it unpredictable was the fact that the judgment was from Hlophe, and given the conflict between Hlophe and the court as well, that we realised that they might want to be seen to not being...beating Hlophe at every opportunity and showing that they're prepared to support one of his judgments even, in the face of good arguments to the contrary. So we knew it was unpredictable, but I was still surprised, I know one or two of the members of the court from the time when they were...long ago, when they were still LRC trustees and things...

Int ...was surprising?

PH ...I thought that they would have stayed above that.

Int What's your sense....this brings me to the final aspects of the interview, what's your sense of how these kinds of crises, and attacks on the judiciary and the Constitutional Court, etc, how do these events...are they just once off historical contextual bound issues, or do you think they're going to have some impact for public interest law organisations like the LRC and those kinds of cases for the foreseeable future?

PH When you're talking about these events, are you talking about the attacks on the judiciary?

Int ...the judiciary, exactly.

PH Well, it makes it just very difficult to predict as to what happens from here. And for me, the attacks on the judiciary are...must be seen together with this John Hlophe debacle here, and if people...like (John) Hlophe has had a...in the Cape High Court, he's had a really destructive effect on...and I know he's not without his supporters, so I'm coming at this from a particular position but that's the only way that I can argue it, well, can represent it as the way that I see it. I think he's dishonest, I think he's on the take, and if someone like that gets into a position where they can run a court, it just...it makes it very difficult for the court to go about its business of dispensing justice without fear or favour. And if the people who are responsible for the attacks on the judiciary, the fact that they attack and criticise the judiciary quite robustly is almost less cause for concern for me than if they put people who are not going to be honest in the way that they conduct themselves as judges into senior positions in the judiciary. And if people like...this is defamatory, so I'm happy to defame John Hlophe...

Int Well, you can edit your interview...

PH But if he gets appointed to lead the Constitutional Court, then just judging by the effect that he's...what as the leader of the Cape Court, what he's been able...the destructive influence that he's had here, if that gets replicated in the Constitutional Court, then we're in for a seriously tough time in the next ten, fifteen years. So that aspect of, you know, the people making the attacks on the judiciary, if they start putting people into positions of power in the judiciary in the next few years, who are not...who they think are going to do what they want, then that concerns me. And looking at Hlophe's judgment in the Joe Slovo case, it wasn't an...I had the feeling before, well, when we were arguing the case that we weren't getting a fair hearing, that he had made up his mind beforehand, and reading his judgment, it's clear to me that this was a message that he was sending out to the senior people in government. it's basically that, I'm your man, I'm prepared to do your bidding. And the judgment is actually dishonest, he makes at least two findings...he makes one finding that...about the issue of red cards, which was just not based on the evidence, and I say it's dishonest, well, it's either very sloppy or else it's dishonest, and my inclination is to think that it's dishonest. And he makes another finding that if the eviction goes ahead, seventy percent of the community is able to return to Joe Slovo – either he didn't understand the case or else he made that up.

Int It's not possible, is it based on income alone, for them to return? To effectively occupy the houses...

PH ...well there are four and a half thousand people in Joe Slovo, sorry, there are four and a half thousand households there. The State is only planning to build one thousand eight hundred households, of that thirty percent of them have to go to non-

Joe Slovo residents backyard dwellers. So for Joe Slovo residents there one thousand...sort of two hundred one thousand four hundred households at best, and then that's excluding the broken promises where phase one, Joe Slovo residents didn't benefit, phase two they're not going to benefit, so it's just...I'm not sure how he thought he could get away with that. He must have known that his judgment would be subject to appeal. So for me his judgment was sending out a message, I'm prepared to do your bidding.

Int Do you think that these attacks on the judiciary are more a need for certain people to get onto the Bench, or do you think they're more a need of the ANC's greater political ambitions in terms of who they place in power? What's your sense of that?

PH Well, I know that what I'm more concerned about is, I think the long term implications of people who are appointed to senior positions on the judiciary is going to be more destructive for the rule of law than the effect that it might have on the Joe Slovo case, and obviously that is going to have a huge impact, if it creates a...if my perception is correct, it might be that I just underestimate the importance that the Constitutional Court judges would have attached to the government housing program. And I know someone like Albie Sachs, we knew from the start that it's a principled position that he has, that you don't likely interfere with a government program. That the TAC case he made an exception to that because the human cost of what government was doing in that case was just so horrendous. But to persuade Albie Sachs not to...that government is not going to be able to implement a program, if we'd argued Joe Slovo a year ago we'd have still had difficulty persuading him. So maybe I'm just misreading the court, but I suspect that some of the other members of the court were influenced by those attacks on...but that is less concerning to me than the long term implications of people getting appointed to senior positions who lack the integrity to run an impartial court.

Int I'm also wondering, not only have you worked for the LRC but you've also been working with LRC former staff members, Geoff (Budlender) in particular, and I'm wondering, from all the people you've worked with, who's probably in some ways shaped your development as an advocate, as a lawyer, member of the legal profession, the most?

PH Obviously I've learned an enormous amount from Geoff (Budlender) and in my recent work he's probably...he certainly taught me more than anyone else in the time since that I've been practising at the Bar, but I also think back to Jeremy Pickering who, you know, you study...I don't know, have you studied law?

Int No, I'm not a lawyer...

PH Ok. Well, you study law as a student, and I studied it through correspondence, had these UNISA study guides and all these rules and regulations, and...you try and make sense of them is quite bewildering, and Jeremy just, for me he demystified that, he said, well, basically the courts are here to do justice and you don't get bogged down in that little bit of minutiae of this rule of court or that rule of court, but you try and cut



to the heart of it and you dispense justice. Obviously there are times where you...there are cases where you can't always have an equitable outcome, but there are legal rules and those rules have to be followed. But you don't get bogged down by the rules, you try and rise above them.

Int I've asked you a range of questions, Peter, I'm wondering if there's something I've neglected to ask you which you feel ought to be included as part of your LRC Oral History interview?

PH No, well, I just feel that I've spent the last hour telling you about all of this stuff and I'm just sorry that I haven't heard more about you (laughs).

Int (laughs) That's quite alright...

PH I didn't even know whether you'd studied law...

Int That's quite alright. And I was wondering whether, if there's a particular memory, you could end the interview in a particular memory that you treasure as part of your LRC experience, either whilst you were working in Grahamstown or even when you've been briefed by the LRC, that you feel really sort of, in some ways, epitomises what it means to have worked in public interest law in South Africa?

PH I think I would just go back to my early years as a lawyer and just how fortunate I was to have that experience working in this very happy office in Grahamstown and to be surrounded in a situation where you go to AGMs and you'd be able to learn at the feet of absolute giants of the legal profession in South Africa, your Ismail Mohameds, your Arthur Chaskalsons, your Sydney Kentridges, and that for any lawyer is a huge privilege.

Int Sure. Thank you very much, Peter, for your time, and I really appreciate you taking this opportunity to be part of the LRC Oral History Project.

PH Well, I hope I've given you something that's of interest.

Int Yes. Thank you.

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