

*The following account was written in December 2006 for the Guardian series 'My Story' but not published.*

## **Peter Hain and Me**

**Francis Bennion**

In the story of Peter Hain and me, he needs no introduction. I am an octogenarian barrister and author who was once a parliamentary draftsman. Our paths crossed in 1971 when I brought a private prosecution against him for criminal conspiracy. He was tried at the Old Bailey and convicted. He lost his appeal, but has since prospered. He is now in the Cabinet.

I begin the story on 24 July 1964, when John Harris, an anti-apartheid campaigner and close friend of the Hain family, planted a fatal bomb at Johannesburg train station. He confessed and was hanged for murder. A little girl named Glynis Burleigh was injured in the blast. Her grandmother, born in Wales, was killed. Later, Glynis wrote to tell me the details. She said that while browsing the net she chanced to land on my website and liked the style. Of Hain she said: 'It has often struck me as ironical that someone who has such close links to terrorism should have a standing in the present government'.

I have space only to give a fragment of what Glynis wrote about the bomb that crippled her and killed her beloved grandmother.

'I leapt up at the loudest noise one could imagine, along with a massive flash and then fire - fire everywhere. I saw window panes flying and falling. My first thought was 'electric' what else could it be? The flames were suddenly everywhere - beneath me, above me, and all around me. I thought with a sadness, that all the loonies were right 'the world will end in fire'. I screamed for my mother as any child does, then, convinced that this was a general state of affairs, I yelled for God to save me. I felt myself sinking, almost disappearing . . . spiralling down, my body and my clothes aflame . . .'

Hain wrote about the incident in his book *Sing the Beloved Country*. He stresses that he and his family condemned what their dear friend John Harris had done. Nevertheless, as a schoolboy of fifteen, the grief-stricken Hain was moved to read the address at Harris's funeral – an incident for which he became notorious. In 1966 the Hain family, banned in South Africa, removed themselves to England.

As part of his campaigning against apartheid, which he continued in England, Hain organised direct action protests against sports tours by South African teams. To quote him:

'I understood the psychological importance of sport to white South Africans and their *desperate* need to be in international sport, and I was just fed up with the refusal of the sports authorities to take a moral position and realized the only way we could do that is stop the matches, and of course they were uniquely vulnerable.'

As a lawyer who believes in law I have a visceral objection to direct action protests. Though claimed to be peaceful, they always cause violence. They are always unlawful. At the behest of private individuals, they physically stop citizens doing what the law says they may do. We pride ourselves on the rule of law. Direct action is its opposite.

When plans were announced for the South African cricketers to tour England in 1970 Hain mounted a campaign he called Stop the '70 Tour. That word 'stop' says it all, and it angered me. I thought of Churchill's 'up with this I will not put', and resolved to act. I set up a body called Freedom Under Law (FUL). Among its other targets were the hunt saboteurs, whose

unlawful activities I also detested. It published a journal which was called *Ostrich*. This was in protest at those who buried their heads in the sand over the growing dangers of the technique of direct action, which was later used in unlawful support of many political causes.

Looking back, I can see that I was in some sort of mid-life crisis at that time. From 1953 to 1965 I had been a barrister employed in the Westminster parliamentary counsel office, where government bills are drafted. They say it takes ten years to make a legislative draftsman. After twelve years I had still not been promoted to the full rank of parliamentary counsel. Evidently the head of the office, the late Sir Noël Hutton, did not think much of my abilities, though we were on good terms. I decided to leave, and took a job as chief executive of a leading professional body. It did not work out, so after three years I resigned from that too. Currently I was a freelance draftsman on contract to the Jamaica government. You might say I was on edge, and unsettled. There were also domestic factors I won't go into . . .

What Hain described as the opening shot in the campaign that eventually stopped the 1970 Cricket Tour was fired against a private touring party led by Wilf Isaacs. When his team played my alma mater Oxford University in July 1969 there was serious trouble. Two days before the match, Isaacs received a telephone call from MCC Secretary Billy Griffiths to say that a trench 45 yards long had been dug across the historic Parks Ground at Oxford - a desecration which would appall any cricket lover. The pitch was repaired sufficiently to enable the match to begin, but it was seriously disrupted by large numbers of demonstrators - at one point they interrupted play for about three quarters of an hour. Demonstrators ran on to the pitch and grabbed stumps. Others blew whistles or shouted 'No ball'. Mirrors were used to reflect light into the eyes of players. Isaacs recalled that people had shouted 'Fascist scum' at him - a strange taunt to make to an ex-fighter pilot in the War against Hitler.

At Hain's instigation, this pattern was repeated at many matches in Britain involving white South African players. As well as cricket, other sports such as rugby and tennis were also involved. Cricket was especially vulnerable, being of its nature unable to offer any real defence against this kind of misbehaviour. Public anger grew. I tried to stir the authorities into action, but they were supine. With FUL I decided to launch a private prosecution against Hain, but found difficulty in acquiring evidence that would stand up in court. A press photographer named Gordon Winter contacted me offering photographic evidence. It still was not enough. Later Winter provided a 60-page witness statement.

Then Hain himself added the finishing touch by publishing his book *Don't Play With Apartheid*. Later Owen Stable QC, leading counsel for my private prosecution, was to hold the book up at the Old Bailey telling the jury 'This might have been called How I Did It!'. The judge was the late Judge Gillis, notorious for being on the side of the accused. Graffiti in the Old Bailey cells said 'Gillis is good for you!'.

Judge Gillis gave Hain all the rope he needed. His defence was cleverly handled. After taking advantage of all that an expert silk and his squad could do for him, Hain sacked the defence team in mid-trial and then exploited all the indulgence given to a litigant in person. As Geoffrey Robertson QC said: 'The other advantage of Peter defending himself was that he wouldn't have to go into the witness box and be cross-examined.'

Gordon Winter was meant to be our star witness, but there was something we didn't know: he was a BOSS agent acting under instructions (the acronym BOSS stands for the South African Bureau of State Security, or secret police). Here is what Winter says in his book *Inside BOSS* about how he wrecked my case at the Old Bailey:

'Finally the big moment came when I was due to stand in the witness box at the High Court and give evidence as a witness for the prosecution, proving that Peter Hain had conspired to disrupt South African sports tours in Britain etc. So what did BOSS do at the last minute? They told me to switch sides and give evidence in favour of Peter Hain and *not* against him!'

This Winter obediently did, but we still got a verdict on one of the four counts. On the other three the jury disagreed. In a public prosecution there would have been a retrial, but I could not face that so Hain won a technical acquittal on those counts. He was fined £200. When he appealed against the conviction in 1973 three judges of the Court of Appeal dismissed his appeal with costs. The court said his conviction was 'fully justified'. Lord Justice Roskill said Mr Hain had not elected to give evidence, adding 'He gave no explanation of his part over the incidents with which he was charged'.

On 11 December 2005 I appeared with Hain in a BBC Radio 4 broadcast presented by Clive Anderson (<http://www.francisbennion.com/2005/066.htm>). Hain said:

'I am proud I took part in those events. Perhaps one of the most significant things I did in my political career, in stopping those sports tours because, as Nelson Mandela told me when he got out of prison, they were decisive blows against apartheid.'

Asked what he thought of my prosecution Hain said:

'I saw that as an attempt in effect to take me out of political action and anti-apartheid activity, which it did to a large extent. I mean, these things are exhausting.'

So I achieved something. Other words by Hain give cause for disquiet.

*Clive Anderson:* So, what does a staid member of the Cabinet these days think of English cricket tours to Zimbabwe, which the government seems unwilling, or unable, to prevent.

*Peter Hain:* I do not think these tours should happen. I don't think the English cricket team should have gone to Zimbabwe. Mugabe is an oppressive tyrant and if I were thirty years younger, and not playing the role that I am now, I would probably be organizing similar direct action protests to the one that I did all those years ago.

*Clive Anderson:* And in hindsight, how does he regard Francis Bennion who strove to put him behind bars.

*Peter Hain:* I just look back at it and I think he was absolutely wrong. I think that when you look back at what happened, and the miracle of South Africa's transformation, he was on the wrong side of the argument, and without being arrogant about it, I was on the right side of the argument and history has been the judge of that.

The words that ended the broadcast, after Clive Anderson asked what I now thought of my prosecution of Hain, were:

*Francis Bennion:* It seemed right to me at the time. Now it seems an act of folly, but I can't say I regret it because I still think it was right. I still have very strong views about the rule of law and direct action.

*Clive Anderson:* Maybe you helped Peter Hain's career because it put his name on the map. Do you think you may have assisted his career?

*Francis Bennion:* I wouldn't like to leave this interesting conversation having that thought in my mind.

After the Hain trial certain events happened. I was invited to become a member of the MCC, which I did and still am. The Jamaica Government abruptly terminated my contract. The Parliamentary Counsel Office asked me to return, and at last promoted me to the rank of full counsel. My wife divorced me.

Of course I do not suggest that any of these events was a direct consequence of my prosecution of Mr Hain. It was not necessarily a case of *post hoc ergo propter hoc*.