

## **Francis Bennion – the director of private prosecutions**

**by Derek Humphry**

Website: [www.francisbennion.com](http://www.francisbennion.com)

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For full version of abbreviations click 'Abbreviations' on FB's website.

Pressure for reform of the laws of conspiracy, public demonstrations and private prosecutions is mounting now that Francis Bennion has been awarded his costs out of public funds for his marathon prosecution of the anti-apartheid campaigner Peter Hain.

Next summer the Law Commission is due to make suggestions about altering the laws of conspiracy, particularly as they relate to public protest and demonstration. It is widely argued that the laws are suitable for dealing with criminals caught planning a crime but are not so appropriate for use against people involved in political, industrial or social protests. In these cases, it is argued, protesters who step outside the law should be prosecuted for specific offences rather than under a grab-bag conspiracy charge.

MPs on the Left will be raising in Parliament the issue of private prosecutions. The key questions are, should they be allowed at all and, if they are, should there not be extra safeguards on the use of public money. The ease with which Mr Bennion got his costs—he expects to recoup £30,000 of his £50,000 outlay—has offended many people.

After a 21-day trial, Hain was convicted by a majority verdict of 10-2 of conspiring to disrupt the Davis Cup tennis match at Bristol in 1969 by running on the court, and later throwing flour bags during play. He pleaded not guilty, and was fined £200. On three counts alleging conspiracy to disrupt South African rugby and cricket tours in Britain the jury failed to agree and the judge recorded "Not guilty" verdicts.

Hain's lawyers have said that they will take the case to the Court of Criminal Appeal and to the House of Lords if necessary because of the unfairness of the conspiracy laws.

THE ACHIEVEMENTS of Francis Alan Roscoe Bennion, lawyer, writer and property developer, take up an impressive three inches of *Who's Who*. Most of the entries testify to a brilliant career on orthodox lines and are curiously at odds with the events that have recently brought him so much publicity.

How did the brilliant constitutional lawyer, who some eight years ago was in line for a knighthood, come to be fighting a case that the legal establishment in the form of the Director of Public Prosecutions and the Attorney-General, had considered it was not in the public interest to pursue? It is far from the truth to suggest that Bennion was motivated by racism. True he has many friends among South Africa's ruling whites but he also once refused to dine with the country's Premier John Vorster.

One can understand the complexity of his motives better if one traces his career. Born in Liverpool 49 years ago, Bennion was educated at John Lyon School, Harrow, and Balliol College, Oxford. During the war he was an RAF pilot and in 1948 he became Gibbs Law Scholar at Oxford. After qualifying as a barrister he was a lecturer and tutor in law at St. Edmund Hall, Oxford, until 1953, when he joined the Officer of Parliamentary Counsel to the Treasury.

He was regarded as one of the most brilliant young members of the department in Parliament Square House, which is responsible for drafting legislation—translating a Government's policies into foolproof legal phraseology. As a Bill goes through Parliament, being cut and amended on its way, the drafting counsel work crippling hours under great strain. No branch of the legal profession is more exacting.

In 1956, when he was still only 33, Bennion was sent to Pakistan to help draft the country's new constitution. He was so successful that three years later he was loaned to Ghana in 1959 as legal adviser on converting the country into a republic.

Back in London in 1964 he became a deputy counsel: his achievements abroad and this promotion at 41 indicated that he was in line to be First Parliamentary Counsel to the Treasury, a post which carries a knighthood and elevation to Queen's Counsel.

But that year Labour returned to power and began pushing through a steady stream of Bills that kept the legal draughtsmen at full stretch. Bennion was now largely disenchanted by the old-fashioned methods and antique language in which he had to deal and, as a Conservative, had little stomach for the hectic workload. He wanted to develop his own, dynamic ideas so he resigned. 'I'm an individualist,' he tells you.

Since by then he had a reputation of being one of the best young constitutional lawyers in the world, he soon had a lucrative freelance practice operating from offices in Lincoln's Inn. His main business naturally was with the emerging black nations and the bedrock of his business was his £10,000-a-year-contract as taxation consultant to the Jamaican Government. (When the Opposition Party—now in power—heard in 1971 of his summonses against Hain it caused such a row that the Government cancelled the contract.)

One of Bennion's most brilliant ideas was to use computers to codify and store the myriads of statutes and provide references for clarification of obscure words and phrases. He founded the Statute Law Society and chaired its computer committee until he resigned earlier this year.

He was also general secretary of the Royal Institution of Chartered Surveyors for three years and became fascinated with the problems of professional ethics.

BY 1970 Bennion's impetuosity was beginning to surprise people. During the teachers' strike that year it became obvious that many youngsters' O-level exams would be disrupted so he formed the 'Save The '70 Exams' campaign. The idea came to him over Sunday lunch when his daughter complained she too was affected. By Monday morning he had announced the campaign publicly and within 10 days had office, staff and headed stationery ready.

By then the strike was settled but Bennion transformed the setup into the embryo of the Professional Association of Teachers (PAT), an alternative to the two recognised teachers' unions. PAT's



members pledge not to strike. Bennion was elected chairman, stating 'the association will aim to restore to teaching the former professionalism and status which it once enjoyed.' Today PAT claims some 4,000 members.

Round about this time Bennion was also trying to get into Parliament, as a Tory, but he failed to get any further than the short-list in two constituencies for the 1970 General Election. (He now says he has given up his parliamentary ambitions).

By this time another topic had also seized Bennion's imagination. The campaign launched by the Young Liberals (and subsequently taken up by many other church, political and social groups) to prevent the 1970 all-white South African cricket tour of Britain was building up and Bennion noticed that one name was cropping up in the Press time and again—Peter Hain.

In January, 1970, a short letter appeared in *The Daily Telegraph* from Sir Wintringham Stable, a retired judge. Complaining about the anti-Springbok campaign, he wrote: 'Activities of this kind are a criminal offence, namely a criminal conspiracy, and the participants should be dealt with accordingly. Why this has not been done is a mystery calling for explanation.'

Sir Wintringham was the judge in the only important conspiracy case with a non-criminal objective held this century. In that case a Communist called Bramley was convicted in 1946 for planning to put homeless families into empty flats. Since he was merely bound over, Bramley did not appeal, so the law was not tested in a higher court and lay virtually forgotten.

Three months later Bennion took out private summonses against Hain alleging conspiracy and retained ex-Judge Stable's son, Mr Owen Stable QC, as leading counsel. Magistrates refused his applications on the grounds of insufficient evidence.

In August, 1970, and again in June last year, Bennion asked the Director of Public Prosecutions to act against Hain but the DPP had already extensively investigated the campaign and the part of Hain and others in it, and had decided it was not in the public interest to act. The law officers of both the Labour and Conservative Governments decided there was no point in prosecuting long after the heat had gone out of the affair.

Bennion was bitter that the police offered him no help. He felt they had a 'blind spot' - on the use of conspiracy laws. In fact the police regularly use the laws against criminals caught before the act, but generally feel that to prosecute in cases involving political beliefs only creates martyrs.

Early last year, Hain—somewhat brashly, as he now admits— published a book describing the background to racist sport in Africa and explaining how the anti-Springbok campaign was run. Despite its clever title (*Don't Play With Apartheid*) and readability, the book sold slowly, again indicating a loss in public interest.

But Bennion saw the book as a 60,000 word confession of guilt. He re-launched his private prosecution and had Hain committed for trial at the Old Bailey.

At the same time he started yet another organisation, Freedom Under Law International (membership fee: £2.40). Item 17 of its memorandum of association says the organisation exists 'to institute, intervene in or otherwise participate in, assist or oppose legal proceedings in any part of the world.' With similar disregard for modesty, item 18 says it will 'promote legislation in any part of the world.'

He has spent £10,000 advertising the organisation and gathered 1,400 members. He is bitter that 'nobody important' has joined.

And so the case was pressed on to its conclusion. What were Bennion's motives? One clue is that he seems completely wedded to the belief that the law is the law and it must be observed to the letter. Another clue is obstinate refusal to give way once he has started on a course of action.

A close colleague says: 'He is imbued with the idea that the rule of law is in danger of disintegrating and he can't get it out of his system. At times he wanted to drop the whole Hain thing but the fervency of his belief and the very impetuosity of his nature would not allow him to. Once he's

started something he fights to the bitter end.' Another friend describes him as a man 'who gets a thing between his teeth and runs like mad with it.'

It is probably a measure of his political naivety that he should have pressed his views on the rule of law in a case whose racial implications—as everyone else could see—would almost certainly obscure whatever other aims he had.

As it was he found himself gaining support from the Right Wing (the National Front and the Monday Club, for instance) which he did not really want.

Bennion's attitude to race is in fact rather complicated. The Vorster incident illustrates one facet. Bennion was in Johannesburg gathering evidence for his case in November, 1971, (It was his second visit that year.) He found that his friends had arranged for him to dine with the South African Premier but Bennion, the former RAF pilot, had not forgotten that Vorster had been interned during the war for pro-Nazi leanings. Also, around the same time, Abdul Timol, an Indian, fell to his death from a tenth storey window of South Africa's secret police offices during an interrogation. Bennion was profoundly depressed. He cancelled the dinner and caught the next plane back.

But he says, 'I fought with some South Africans; during the war; since then I've been to their homes and parties. They're nice people. I don't see why they should be treated in the way Hain and his supporters did.' He does not talk about the inhumanity to the blacks of South Africa's apartheid system beyond saying that he declines to set up a branch of Freedom Under Law there because it is not a democracy.

The Bennion v. Hain affair, lasting more than two years, has been a strain on both parties, but 22-year-old Hain, has weathered it better. Bennion was in hospital four months with nervous strain this year, and left just before the opening of the Old Bailey case. He resigned from the chairmanship of the Statute Law Society's computer committee to reduce his workload and last, week said he had asked the DPP to take over the case in June 'mainly for health reasons.'

Nevertheless he is certainly not going to withdraw from the fray. When asked on Friday how he would react to future demonstrations against racialism in sport he said: 'If there are signs of anybody organising what I consider to be a criminal conspiracy in this kind of field, then I shall certainly draw it to the attention of the Director of Public Prosecutions, and if the Director seemed to be dragging his feet then we might take action ourselves.'

**Derek Humphry**