



*Wits Law Clinic 50th celebration*

*Wednesday, 29 October 2023 at 18h00*

*New Commerce Law and Management Building*

[Senior DVC Ruksana Osman, Carol Crosley, Imraan Valodia, Jason Cohen]

It really is an honour and a pleasure for me to be asked to speak this evening. I have many reasons to celebrate both Wits and the Law Clinic. One of them is that the only time in my life that I have ever been sacked from a job was at the Wits Law Clinic.

This is how it happened.

The head of the law clinic in the late 1980s and early 1990s was Mrs Anne Harris, who was also prominent in public life as the spouse of Chief Rabbi Cyril Harris. Mrs Harris was a strongly principled and strict, rigorous member of staff.

She asked me during that time to assume the task of external examiner for the Wits Law Clinic. This as an important task since Practical Legal Studies, the academic course that sprang from the Law Clinic, became compulsory for all final-year law students at Wits in 1989.

I performed this task to the best of my ability. It was a demanding job requiring me to go through the papers of all the students on any borderline (pass/fail, first/second, and so on). I did this partly on my own and partly under the strict eye of Mrs Harris.

However, my impression that I'd managed reasonably well was clearly mistaken.

The next year, when I anticipated performing the same duties, Mrs Harris informed me bluntly that she had found a different external examiner. In short, I'd been sacked.

When I asked her about this, she said she needed someone who was less busy. This, I fear, was a tactful way of indicating that I may not have devoted sufficient time to the task.

So, duly chastened and somewhat humbled, I lost my job at the Wits Law Clinic.

To me, this indicated the seriousness of purpose with which the Law Clinic staff took all their duties. And indeed the Law Clinic has been a pivotal part of the Wits Law School in a number of ways – including in pioneering the concept of law clinic studies as part of the LLB curriculum – but also, more deeply, in embedding a fragile but vital tradition of law and legal services within the law school.

The Clinic started as a small advice office in which students helped out as volunteers.

Today, it is one of the biggest and most successful Law Clinics in South Africa, providing support in family law, criminal law, delict, labour and other aspects of the law.

The theory behind university-based law clinics is that they provide a theoretical framework for lawyers' work. By engaging with genuinely needful clients in often desperate need of advice, students gain many lawyering skills. These include interviewing clients, creating a file, keeping up correspondence, offering practical advice to clients and learning how to conduct themselves professionally and ethically.

In addition, students learn the practical arts of negotiation, research, managing a legal practice and even bringing cases to courts.

In this way, university law clinics may help diminish the gulf between a legal profession often preoccupied with turnover and profit and those who most deserve and need the services that too often are denied to them.

In all of this, the Wits Law Clinic has been a proud and vigorous force for good in our legal landscape. I therefore pay honour to Mr Zilla Graff; Prof Willem De Klerk; Prof Shaheda

Mahomed; Prof Peter Jordi; Prof Philippa Kruger and Mr Daven Dass (as also to Mr Steve Tuson).

It is worth reflecting on the setting in which the Clinic was founded.

The Law Clinic was founded in 1973 by Mrs Felicia Kentridge. That was 13 years after the Sharpeville Massacre – and 10 years after the arrest and eventual imprisonment for life of Nelson Mandela and the other Rivonia trialists.

The law was at a low ebb.

The shadow created by the 12-year tenure of the apartheid-supporting Chief Justice LC Steyn still cast a profound chill over legal practice and the hope for greater justice under law in South Africa. In addition, the Prime Minister, Balthazar John Vorster, had been the jackbooted Justice Minister who forced through legislation that perpetrated deeply damaging assaults on the rule of law.

So the founding of the Law Clinic in 1973 occurred in highly charged context.

In January 1973, a series of mass labour withdrawals and strikes by workers in Durban began. These were the first major strikes since the 1950s – and the first for many decades by black African workers.

They were the first sign of resistance since the apartheid government crushed all internal opposition to it after Sharpeville.

The Durban strikes were the progenitor of the 1976 Soweto uprising, which itself was the progenitor of the formation of the UDF in 1983, and the mass uprisings in the Vaal townships and elsewhere from 1984.

These events, together with the international banking boycott and other geo-political developments, gave rise to the collapse of the apartheid government. (Question: did anyone hear me even mention the external ‘liberation’ movements?)

But there was a further important consequence of the Durban strikes. Under apartheid, it was not only illegal, but a criminal offence, for Black workers to form or join a union. The Durban strikes not only spawned other forms of resistance; they also forced the apartheid government to radically reform South Africa’s labour dispensation and laws.

From 1979, unions for Black workers became lawful; an industrial court was established; the ANC-aligned Congress of South African Trade Unions (COSATU) decided after much debate to enter the new dispensation – and this had dramatic consequences. COSATU and its affiliates used the courts, including the High Courts and Labour Courts, to secure massive improvements in working conditions for millions of workers.

Now how does this history link to Felicia Kentridge and the 1973 of the Wits Law Clinic? The link is this: the resistance movement to apartheid, and the labour movement, *used the law to secure victories against apartheid.*

The Law Clinic at Wits was part of this tradition.

What is more, it was a noble part of a not uniformly but preponderantly noble commitment by Wits to the anti-apartheid struggle.

Wits was one of only two or three historically white universities that took sustained stands of principle – sometimes but not always manifesting in practical stands – to oppose apartheid.

And in this the creation of the Wits Law Clinic was a significant moment.

The Law Clinic was designed to expand elementary justice to the marginalised, the dispossessed and the oppressed.

This was a radical idea. And in embodying that idea, the Wits law clinic reflected a longer history of public interest lawyering in South Africa.

That tradition received its most glamorous and high-profile embodiment in the law firm that Nelson Mandela and Oliver Tambo created in the city centre in late 1952.

The expressly articulated objective of Mandela and Tambo was to oppose racial subordination and to offer legal assistance to opponents of apartheid.

That tradition was carried forward by legal giants like Arthur Chaskalson and Sydney Kentridge. In addition, Mandela formed a close friendship with George Bizos, also a prominent lawyer.

Public interest lawyering in South Africa was thus organically linked to popular opposition to and uprisings against apartheid.

While the founding of the Wits Law Clinic in 1973 sprang from this tradition of public interest lawyering it, in turn, spawned the creation of the Centre for Applied Legal Studies (CALS) at Wits in 1978 by John Dugard, one of my main mentors.

Dugard, together with Kentridge and Chaskalson, created the Legal Resources Centre (LRC) in the next year.

Later organisations in the tradition of apartheid resistance included Lawyers for Human Rights (LHR), the Wits/CALS AIDS Law Project (ALP), founded in 1993, Section 27, SERI, and many other legal organisations. These left a profound mark on South Africa.

There is a deeper point to be made here.

For most of the millennia in which human societies have been regulated by law, legal systems have existed to sustain privilege and hierarchy, to protect the powerful and to subordinate the weak and the vulnerable.

This tradition apartheid law conspicuously embodied.

In opposition to this is a richer, deeper and more visionary, forward-looking conception of the law.

In this vision, law is an instrument to secure human dignity, especially for the poor, the marginalised, the dispossessed; to advance justice in the allocation of resources and opportunities; and to diminish inequities and inequalities that privilege the few and burden the majority.

These two conceptions of law are still contesting for supremacy in South Africa.

When the Constitution and the Bill of Rights came into effect on 27 April 1994, the second conception of the law – as an instrument of equity and justice and dignity and equality – received an enormous boost.

The Constitution and the Bill of Rights became a powerful big brother to this tradition.

The Law Clinic is not only a proud embodiment of that tradition – it has been a catalyst of it.

This evening is therefore a time for celebration and pride – but it is also a time for sober reflection. Our law is in a perilous state.

Our much-vaunted Constitution runs an acute risk of failure.

We have made substantial gains since the end of apartheid. These have included:

- a mass anti-retroviral treatment program – the largest in the world, with some 7 million people, including myself, who owe their lives to ARV treatment;
- in part-fulfilment of the right to access to housing, some 5 million bricks and mortar homes have been built; and
- a social grant system, riddled as it is by gross corruption and inefficiency, has proved a lifesaver to almost one third of our people.

The point is this. We are in a fight for the life of the Constitution. Scoundrelous, unprincipled and unethical lawyers, including Wits graduates, seek to subvert elementary principles of legal reasoning and legal process in order to protect bigger scoundrels even than they themselves.

These lawyers pose a threat to the rule of law because they are inflicting damage on the law in some ways greater even than the damage apartheid inflicted.

This is because they threaten belief in the Constitution itself, and the Bill of Rights at its heart. By cynically subverting the law to advance the interests of their clients they threaten the law itself.

These tactics, amidst the collapse of government function, the disintegration of state services, and the mass infiltration and takeover of government entities by criminal syndicates, threaten

all we have stood for and fought for since Mandela and Tambo founded their law firm in late 1952.

But those who stand for justice and human dignity and the fulfilment of the promises of the Bill of Rights also have powerful means at their disposal.

The Wits Law Clinic stands proudly amongst those resources.

The Wits Law Clinic, now half a century old, embodies the very best of grinding hard work, commitment to principle, veneration of the poor and the marginalised, and the aspiration to contribute to their lives, however modestly, by ensuring that they have access to legal services. Long may the Wits Law Clinic flourish and long may it continue to inspire us all.