

William & Lonsdale – Lives in The Law

Episode 79 Peter Gordon

Voiceover: [00:00:09] This is William and Lonsdale, a podcast about the legal ecosystem and the fascinating people who make it tick. Today, your host, Michael Green, speaks with Peter Gordon, senior partner at Gordon Legal and one of Australia's most prominent class action lawyers. Peter's worldview was profoundly shaped by growing up in Melbourne's West. It informed both his politics and his approach to the law, particularly his belief that the law could and should be used to protect ordinary people from the wrongdoings of powerful institutions. It also forged a deep and lifelong passion for the Footscray Football Club, where he would, of course, go on to serve as president twice. As we'll hear today, even before he was admitted to practice, Peter was taking on large companies that he believed were doing the wrong thing, and he hasn't stopped doing so since. Over the decades, Peter has been involved in many landmark cases, including the first successful mesothelioma litigation in Australia, representing medically HIB patients, acting for women injured by defective breast implants and survivors of thalidomide. Due to the high profile and impactful nature of many of the cases Peter takes on, the media is never far from his door. And this was certainly the case when he and the team at Gordon Legal started a class action against the Morrison government for the Robodebt scheme.

Peter Gordon: [00:01:32] When we first foreshadowed that we were issuing it, remember coming under this, not for the first time in my life, severe attack from the then minister, Stuart Robert, who said, They've got no plaintiff, they've got no court, they've got no cause of action. In a big press conference, I found myself on the 07:30 report that night with Lee Sayles saying to me, I've just got three questions for you. What court? Federal court. What cause of action? Unjust enrichment. When's it gonna come to trial? Sometime in the next twelve months. Peter Gordon, thank you. And that's what we did.

Michael Green: [00:02:28] Our guest this morning in lives in the law is Peter Gordon. Peter is the principal of Gordon Legal. More importantly, he was president of the Footscray Football Club when they won their second premiership, maybe his greatest life achievement, but we better get back to the start. Peter's raising his eyebrows looking at me about that. Peter, you're a Melbourne boy, born and bred, Western

Suburbs. So just tell us a bit about your background, your mum and dad, your upbringing, school, etcetera.

Peter Gordon: [00:02:53] I was born in West Footscray, and I went to school in Braybrook. There was a big difference between West Footscray and Braybrook. It was a tougher neighborhood, and it was a pretty rough school. We went to the local Catholic primary school, and we went to church at Christ at King Braybrook every Sunday. My parents were too shy to mix with the rest of the people, so we used to come in a couple of minutes late and sit in the back pews, but they were very good Catholics and DLP supporters until the election of the Whitlam government in 1972, and then like a lot of lapsed Labour supporters, they reconverted to the Labour Party by 1975, and so did my sister Karen and I, and yeah, that's my background.

Michael Green: [00:03:31] And what about school? One of the things that comes through in our discussions about lies in the law is the role that mentors play and the influence people have, and there was one particular teacher who was a great influence upon you.

Peter Gordon: [00:03:44] I've often thought about him his name was Rowan McIndoe. I'm sure a lot of your loyal listeners would remember him, he went on to become a magistrate, and he was from Scotch College, we're in Braybrook. The differences in culture and politics and everything between the two environments couldn't be more stark. I thought of him as obviously a grown up. Came there when I was in year nine or former three as we called it back then, I thought of him as old, but he was 23. I mean, was a youngster by today's standard, he took a decision, having qualified in law, to go out to one of the poorest neighbourhoods in Melbourne and teach legal studies, and for both my oldest friend Rob Starry and I, who Rob and I went to the same school, St John's College, he was a year ahead of me Rowan was a profound influence. Like no one in my family had ever been to university or my aspirations at that stage were to be a public servant at the Tottenham Raff base like my dad was. But for me and for Rob, Rowan was an enormous influence in terms of stretching our horizons and telling us what we could do. I mean, I remember my parents going on to a parent teacher at night and him saying to them, you know, your kid can actually do things that he doesn't currently imagine are within his bandwidth, and he should. So yeah, I'm forever grateful to him, I know Robbie is too.

Michael Green: [00:05:02] And so because of the influence of Rowan McIndoe and others, I guess, and your mum and dad particularly, you get a good year 12, and you then go into university. Melbourne Uni? Straight law?

Peter Gordon: [00:05:15] I started doing law arts, and I kept that up for a couple of years until I started volunteering at what was then the Newport Legal Referral Service with Rob, and at that point I kind of found my calling. I started giving legal advice to working class people who couldn't afford a lawyer, and I really just discovered that that's what I wanted to do, so I dropped the arts component off it so I could finish earlier. And after a while, Rob and I both started whinging about how the trendy kids out from the other side of town used to talk very engagedly about the Fitzroy Legal Service and the Springvale Legal Service, but the West had no legal service at all. It had a legal referral service where all you were allowed to do was say, that's a problem, you should probably see a lawyer about that. So after a while we just abandoned that and started giving legal advice, good, bad or indifferent. There were a couple of lawyers who were a little bit more progressive than others and who helped us with that. Tony Hanbury, I remember, stands out as one of those. Some of the more conservative of them were enormously offended by it, and may even have complained to the Law Institute about it, but we got good at it, and it was a pretty good grounding. We actually used that as a base to start initiating environmental claims against some of the big chemical companies that were out there, so we became pretty active after a while, and the Western Suburbs to this day still thrive as community legal service.

Michael Green: [00:06:41] It's all very well to say you take on big industrial companies about the environmental vandalism, but you're only kids in a legal service. And they've got the resources of millions of dollars behind them. How did you go?

Peter Gordon: [00:06:54] The odd thing about that situation was no one was representing those people. I moved in year 11 from West Footscray to Altona, just across the swamp from PRA, which is one of the biggest refineries, I used to watch as the sun went down the plumes of toxic smoke that they'd started emitting after the EPA officers had gone home, and there was no redress for those people, no one was going to lawyers, no one could afford lawyers, but there was a system of being able to go to what is the equivalent of VCAT, and you could take a swing and you didn't need to be a lawyer to do it, and there were no costs. So it was kind of a go for free. So I started

turning up when companies like Mobile, Australian Petrochemical, Herxd were having their license renewals, and I found myself appearing against the likes of people I later understood to be eminent members of the Melbourne bar, like Jack Barnard, and appearing against them. And in the first few of those experiences, I got monstered and lost, but I always remember after about five or six of them, I turned up for one, which was against Monsanto and won, and it was against Jack. I walked out of court, strolling down back to Spencer Street Station thinking, I just beat a QC. Looking at it, missed a lot of uni, but the grounding in that was kind of second to none. Mean, education, life education you got, and as I say, it was kind of cheap and easy because it was without consequence. The people of Altona who were being exposed and Sunshine who were being exposed to methyl isocyanate and all that sort of thought, it's not as if they could have got better representation but didn't. It was me or nothing, so everyone benefited, think, except Monsanto, and Jack Barnard got paid, no doubt.

Michael Green: [00:08:38] No doubt it is. And on reading some of the background information, Peter, all this time, as students, unqualified, you're working together with lifelong friends in Rob Starry and Paul Grant, who are at uni with you, and then go on to have their own careers in the law.

Peter Gordon: [00:08:55] Yeah, well, Rob and I were the only two guys, we thought, from the Western Suburbs to go to Melbourne Uni at all, and so we had that natural bond of not only being from the same school, but every other kid in the law library seemed to be from Scotch or from Melbourne Grammar or whatever, so we kind of had that going for us, and there was a while there where we eschewed what we saw as the you know, conservative establishment of Melbourne Law School and when most of our work at Western suburbs legal service, then we started up the Sunshine Legal Service, then we tried to start up a attendance union. Yeah, we activist young lawyers. Paul Grant was, I think, a couple of years older than us, had been to Monash, but was good mates with Paul, and then the three of us sort of came together around that western suburbs legal service. I remember one particular case that we did, and it was at night. It was over the Smorgan family's ambition to build what they called a mini steel mill. It was mini in the sense that it only occupied about eight square miles, and it was on at night. One thing I remember about it is that the Smorgan family was represented by Barker Harty, and the article clerk who was head down, not daring to look at us during the entire thing, was John Faine.

Michael Green: [00:10:11] The ABC radio guy.

Peter Gordon: [00:10:12] Yes, who was very big in the legal service movement, but was briefed to appear for this giant, we thought multinational, and defend their environmental record, and he assiduously failed to make eye contact with us during the three or four nights of the hearing, which we won, by the way. They withdrew their application to build it in Tottenham and sent it out to Altona, where I think it still runs, but yeah, we had great times, and of course, John and I went on to run a radio segment ourselves for about eight years.

Michael Green: [00:10:40] But he still avoids eye contact, maybe you bring up this question of

Peter Gordon: [00:10:43] Yeah, if you ever get him on this podcast, he won't call his representation of the Smorgans one of his career highlights, I don't think.

Michael Green: [00:10:50] So you finish your degree with a lot of working on the side with the legal services, you've got to get articles. Now, said yourself, you're a boy from the Western Suburbs, you've got no contacts whatsoever within the law, except maybe people who don't like it because you've been fighting them at the then equivalent of VCAT. How did you get articles?

Peter Gordon: [00:11:06] You know what, think that you naturally back at times have changed a lot, but I think Rob and I both had a bit of an inferiority complex. I started approaching it thinking that no Victorian firm would ever give me a job. I actually got a copy of the Tasmanian Yellow Pages and wrote a few because I thought it might be a better chance to get a job with a Tasmanian law firm. Then back in those days, pre internet, I moved on to the Victorian Yellow Pages and I had to handwrite my applications and I had my standard form doing. There's one day in Ultime where I sat down at breakfast and I went through the phone book and I wrote out in alphabetical order the same handwritten application for a job, and I reckon I would've gone ten, twelve, thirteen hours, collapsed at about 10:00, went to bed, and I think I'd got down to about Q or R or somewhere in the phone book. My dad, who'd been looking at me with a little bit of sympathy through the whole day after I'd gone to bed, takes out my standard form handwritten letter and does S, T, U, and V, and of course in S was the law firm Slater and Gordon, and it's about the only firm, I think, that gave me an

interview, and ironically, I only got that interview because my dad wrote the application after I'd gone to bed, so I got a lot to be grateful to my mom and dad for, but I got that to be particularly grateful to my dad for his kindness into him.

Michael Green: [00:12:22] And so you get your articles at Slaters. Did you enjoy them?

Peter Gordon: [00:12:25] Oh, had a great time. Yeah. It was a fantastic time. The guy who'd been article clerk before me was Bernard Murphy, who went on to be, of course, an esteemed federal court judge, just retired, I think, and he kind of took me under his wing a little bit. Sliders was a bit of a haven in that day for people of the radical left, which I considered myself to be. It had long roots in the Communist Party, and yeah, we both did great work, but we also had great fun. We did a radio show on 3CR on Wednesday nights called People Against the Law, with the likes of Lenny Hartnett on it and Mick Dodson, and it was meant to be exposing the political unfairness of the system, but Lenny's principal aim was to make everybody laugh so hard that the thing was ruined.

Michael Green: [00:13:13] And this is during your articles?

Peter Gordon: [00:13:15] Yeah, was Wednesday night. We'd started the Prince Patrick Hotel in Fitzroy, then we'd go down to 3CR, then we'd tape this show. So they were great times, we were doing, we thought, great work. We were acting for unions. I didn't know the difference between Slaters and Clayton Newts by the time I finished my law degree, but I understood very well the political complexion of Melbourne's legal society within a few months of being at Slaters and working with the good people there.

Michael Green: [00:13:40] And all this time you were doing injuries work, acting on behalf of plaintiffs in common law claims?

Peter Gordon: [00:13:46] In the first several years, for the first few months I was at the Melbourne office, and then after about nine months Maury Nightingale had been the article clerk before Bernard had to go down to the Moyle office to fill a vacancy there, and so I got transferred to the Carlton office, which was just behind Trades Hall, where I got to work with the great Mike Higgins, who was the real driving force of sliders at that time, and a lot of us really learned the finer arts of law, strategy, how to be a really good

common lawyer from him. He was incredibly passionate about the way that he went about his work and inspired, I think, a whole generation of young lawyers.

Michael Green: [00:14:26] And so after that's how your career starts and progresses, then you go to Slater's and you suggest they open an office out in Footscray.

Peter Gordon: [00:14:34] My ambition with Rob when we did the Western Suburbs Legal Service was that we'd get our articles and then we'd essentially go back and run some kind of poverty law practice in Footscray. That was what we saw as our mission in life, but by several years later, I was so enrolled in the Slaters culture and the political and social value of the work that we were doing that I first of all convinced Rob that he should join and convinced Slaters that they should employ him, and then I persuaded Mike that it was a good idea to open an office in Footscray's big industrial area, a place where we wanted to work, good idea for Slaters to do it. He was very much in favour of it, but there was a spectrum of people at Slaters and there was one particular partner who didn't like spending money and thought, if they're going to do this, I know a bloke who runs an ampoule station there and he's got a spare garage that can sit up there, so the Slater's Footscray office was nearly the back garage in an Ampoule service station in Footscray, but we ended up setting up in a little office in Footscray, and Paul Grant joined us shortly afterwards, and within months I was seeing 15 new clients a week, like three new clients a day.

Michael Green: [00:15:45] And these were people off the street? Yeah, they're not union contacts?

Peter Gordon: [00:15:48] Yeah, well, it's fair to say that the whole plaintiff law culture and labor law culture was kind of different back then, and really the Western Suburbs had no labor worker, plaintiff oriented firm that was keen to be activist and look after workers' rights there at all. And so when we came, and we had connections in the welfare community because of our legal service work, my cousin Les Twentyman was a social worker there, and so we were connected with all of the people who saw people who were injured and were in need of help, and then it just took off with great enthusiasm and rapidity. And around about that time, another of Slater's partners, Jonathan Rothfield, hired this kind of time and motion CEO, his name was Jeff Shaw, who became very important at Slater and Gordon, and he came out and just sat in the

office for a week and went back and said to the partners at the time, This is the biggest growth opportunity the firm's got. The Western Suburbs? Well, the Footscrow Office and the Western Suburbs, and you look at all of these law firms now, the sort of Morris Blackburn, Slater and Gordon Shine, they've now got networks of officers that go out to Nunn awarding Cranbourne regional centres where the people are. An initiative that was in the early days of that was the model of the Footscray office at Slater and Gordon.

Michael Green: [00:17:07] And so what age are you at this time, Peter?

Peter Gordon: [00:17:09] Gee, I guess I would have been 28.

Michael Green: [00:17:11] And so you're not a partner, you're just an employee or you're an associate or something like that?

Peter Gordon: [00:17:15] No, became a partner at Slater and Gordon in October 1989, the very same week that I became president of the Footscrow Football Club.

Michael Green: [00:17:25] And so at this stage, you're just an employee solicitor?

Peter Gordon: [00:17:28] Yes. Yep.

Michael Green: [00:17:29] But you open up a very viable office for, and as you say, it opens them up to the whole of the Western Suburbs of Melbourne, which is a rapidly growing area.

Peter Gordon: [00:17:38] Yeah, I quite quickly, myself and Bernard became, Mike was always the best common lawyer, but also the top fee earner at Slater's, but by about 1984, 'eighty five, Bernard and I had started to match him in relation to that, including, I will say, by sometimes charging fees, which outraged him.

Michael Green: [00:18:00] So he had a social conscience and he thought you were charging too much.

Peter Gordon: [00:18:04] Well, there was one incident that stands out for me. I ran the first successful mesothelioma case. Mesothelioma is the disease caused by asbestos,

and those claims had never been brought at common law before because lawyers traditionally thought that people would die too quickly to get them on. And I saw a guy with mesothelioma and went and talked to Mike about it, he said that he said, You just won't be able to get it on in time, so what we tend to do is wait and then bring the widow's client. And I said to him, Well, do you mind if I just have a go? How are you going to do it? I said, I want him to go to the court and see if they'll abridge the time for interlocutory processes.

Michael Green: [00:18:43] Can I just get some dates here, Peter? Are we talking maybe mid to late '80s at this stage?

Peter Gordon: [00:18:47] No, I first saw this guy, Mr Pilmer, Harold Pilmer, 1984, and I think his claim got on about six months later in 1985, which was kind of a record at the time. You get on much quicker these days,

Michael Green: [00:18:59] But At that time, were there no win, no fee cases? Was that common at the time?

Peter Gordon: [00:19:05] Well, the term no win, no fee got kind of commercialised and marketed by Slater and Gordon in about 1993, but the practice of acting on a no win, no fee basis had been adopted by Labour firms for decades.

Michael Green: [00:19:18] Yeah, okay, so Mr Pilmer, if he didn't win, he didn't have to pay.

Peter Gordon: [00:19:21] That's right.

Michael Green: [00:19:22] And so why were able to get it on quicker than was normal at the time?

Peter Gordon: [00:19:26] Well, didn't know that I could, but I thought, what's the harm in having a gut? And so there was a great thoracic surgeon who went on to be a barrister, her name is Ann Shanahan, deceased recently, fantastic thoracic surgeon. I spoke to her and said, I just want to report for you that this guy's not going live very long, and so she provided it. I put it on an affidavit and I went along to the listing master at the Supreme Court, was Vingorn, and the other side, who it turns out used the

lawyers who had been retained for years by James Hardy, who were waiting for these claims to start, as it turned out, they turned up to oppose it, and Vin said, Well, I hear what you've to say, but I think in fairness this guy should be given a fair trial. So he adambated or he circumscribed the times for interlocutory processes, but it's fair to say that Mr Pilmer also outlived his life expectancy. If he'd conformed to the averages, he probably would have died before fore trial, but he lived a little longer, and because of Master Gorn's preparedness to abridge the rules, we got it on in CHIME. David Ashley ran it. It went for about six or seven days, and it was the first successful mesothelioma common law verdict in Australia. I had committed myself to it, working on it day and night. He got 2 and \$10,000 I charged him solicited client costs of \$20,000 seven days after the verdict, I was feeling pretty happy with myself, by the way, Mike Higgins walks in and says, I've had a look at this case. Yes, did you want to compliment me on it? No, I just want to understand why you're charging him \$20,000 in solicited client costs. We never charge that. Well, nah, but have a look at what we've done, and we've done this and we've done that, and he says, yeah, I'm not happy. I said, All right, well, you want me to reduce it, I'll talk to my partners about it. That was the last I heard of it. All of the other partners were quite happy.

Michael Green: [00:21:13] And Mr. Pilmer was happy.

Peter Gordon: [00:21:15] And Mr. Pilmer was happy, and it was kind of breaking the mold a little bit, but when you come across new fields of work, you've kind of got to throw yourself into it in a different way, and it's worth it to the client, and it's a fair transaction. I never felt bad about that.

Michael Green: [00:21:31] So with the multitude, you could tell me thousands, I guess, of mesothelioma cases that were in the background somewhere, did you issue on all of those, or did other firms issue on them, or did they approach you to settle? So what happened was,

Peter Gordon: [00:21:49] The times were so different, like, the lawyers didn't advertise, but that case made the paper, not in any big way, but it was the first asbestos cancer verdict in Australia. People heard about it, the medical fraternity heard about it, and it was still at a time like almost every personal injury firm these days market themselves as experts in asbestos, but in 1985 no one wanted those cases. So I'd been named, I

think, in the Herald or the Sun as having run this case, and so people started coming to me, and I realised Harold Pilmer turned out not to be the greatest case in the world. These days you'd struggle to win it, I think the exposure wasn't great, but in very short order I got the first case against the SEC from Newport Power Station, and down at Yulorn and Morwell, I got the first product liability case against James Hardy, I got the first case against an occupier, had about 12 of these cases and with each one, I got a little bit better at it, I knew a bit more about it and so did I had David Ashley, who obviously went on to the Court of Appeal, great legal career, who was a great foil for me, because I was a very passionate lawyer and he was actually quite smart, so it was kind of a good combination. It's also, I should say, the beginnings of my longest friendship in the law, which was with Jack Rush, who became junior counsel in those cases, and who's probably made a really unique contribution to asbestos victims over a very long period with some of the biggest cases, and we went on to do the Witnam cases, which I'm sure we'll talk about.

Peter Gordon: [00:23:18] But after I'd done about a dozen of them and they'd got a bit of notoriety, I got a call from a man in Western Australia whose name is Robert Verjakovich, and he ran the Western Australian Asbestos Diseases Society, and he said, I've been reading about the cases that you've been doing. I'm sitting in a room with six or seven people who've got mesothelioma. I said, Are you kidding? I mean, that's a rare disease. He says, No, no, they're here now, and in our organisation we have hundreds of people who've either the widows of people who've died from it, and they all come from the Witnoo Blue asbestos mine up in the Pilbara that was run by CSR, and CSR has refused to accept responsibility for any of them. I said, Well, that's horrifying. He said, So I want to know whether you'd be prepared to open an office in Western Australia and run these cases. And so I went and talked to my boss then, who was Jonathan Rothfield, and to Bernard Murphy, who was, you know, we were sort of partners in crime in leading the initiatives around Slaters at the time, and we went over there. They had a local lawyer who again has been my friend ever since, John Gordon, and we decided to open an office in Western Australia. We had about six weeks before a particular piece of legislation which preserved the common law rights of those people expired to issue three fifty writs.

Michael Green: [00:24:40] Really, in six weeks?

Peter Gordon: [00:24:41] Yep, yep.

Michael Green: [00:24:43] Hard to take the instructions.

Peter Gordon: [00:24:44] It was hard, it was hard, it was long, Bernard was there, I was there, John was working with us, I think we took over a young woman called Sue Tate, and day and night we got instructions and we issued three fifty writs. There was one case which had been started. There had been a case which had gone ahead and failed several years earlier for a woman who worked in the office at Whitnum, her name was Joan Jewston. There was a case that they were trying to work up that they had legal aid for, for a guy called Wally Simpson. He had asbestosis. We took that case over. David Ashley and Jack Rush went over to appear in the case. I was over there for a lot of the time. It went for fifty five days, and the judge downed him in what I will go to my grave saying was a disgraceful decision. There are maybe 12 to 15 different signs and symptoms of asbestosis, and asbestosis is not cancer, it's a hardening of the lung caused by asbestos, and there are various ways you can test for it. You can show it up on an x-ray, the difference between how much oxygen you breathe in and expel on a pulmonary function test, there are any number of tests which prove that he had fifteen out of the 16, and this judge explained away every single one of them as being due either to being overweight or smoking in the past or various other things, and in that way he avoided any commentary or any judgment about the negligence, Dickensian conditions of this mine at Wittenoom. So after fifty five days, we had lost \$2,000,000 we had lost the

Michael Green: [00:26:10] 2,000,000 in the cost to Slaters.

Peter Gordon: [00:26:13] Yeah, travel, accommodation, councillor's fees, expert fees. We'd actually hired two planes to fly up to Wittenoom to get evidence in relation to the mine. It was locked, so we broke in. I've got evidence of people who went on the imminent judges hurdling the fence and trespassing into the colonial mine at Wittenham until we realised that there was so much blue asbestos in the air we had to get out. So we invested a lot of the firm's resources, and Jonathan Rothfels in particular, an unsung hero of this whole story, and lost in this outrageous decision, and it was a really depressing environment at that time at Slater's. We had some other cases coming up, but we were in real financial trouble and legal trouble in the cases. I was in my

Footscray office a few weeks after that when a man called Claus Rabinault walked into my office and he ran a furniture store in Perran called Rabinault Furniture Store. He'd come to Australia in 1960, arrived at Fremantle, saw the Witnam advertising, flew up there and worked for six months, and it used to be that if you worked there for six months, you're doing your flight back. And as soon as he did his flight back, he left and came straight to Melbourne. Worked there, really interesting guy, an inventor, but also ran that furniture shop, and he was diagnosed ironically by Anne Shanahan with mesothelioma, and she sent him to me. And so shortly after we've lost this case, it's put the whole firm at risk, I see this guy and I realize that all of a sudden we have an opportunity to avoid the judges of whatever political complexion one might infer from that decision in Simpson, but instead be in front of a Melbourne jury.

Michael Green: [00:27:54] Of course, so you can ring the case here.

Peter Gordon: [00:27:56] Yeah, because he developed his injury here and he lived here and he was going to survive a foreign non convenience application if it were made. So we got that case on and I had just, at the time, Bernard had been running one of the big RSI cases, or RSI repetitive strain injury was a thing back then, We'd run a claim against the Commonwealth and been absolutely annihilated by one Richard Stanley, QC, who was the dean of the Melbourne bar, Silver Tail, and everyone at Slater's hated him, but I thought to myself, he might be the perfect guy to act for Klaus Rabinolt. And so I approached him to do the case, and he agreed to do it. And there are a couple of interesting stories about that. Mean, there's any number of them, but a couple of them stand out for me. One is that I went and saw him one night and said, I think the evidence here demonstrates conduct which is not just negligent but so reprehensible that we should seek punitive damages as well. Dick says, Well, we just don't do that. I mean, you don't do that unless really it's a case of intentional tort. And I said, Yeah, but have a look at this. I mean, they knew, they weren't telling people, the conditions were disgraceful, you couldn't see more than six feet in front of you. He says, Well, I just don't think it's going to be done. I said, Well, listen, I don't mean to invoke rules, and I know you might know them better than me, but I'm instructing you to do it. Those are the client's instructions. Anyway, he agreed to do it, and I know because I had lunch with him and we reminisced about it just a few weeks before he died a couple of years ago, and it was clearly one of the best decisions he and I ever made together because his beautifully modulated voice and his courtroom tone was perfect for it, and it had never

been done before in a negligence case. There's an old Paul Newman movie called The Verdict. I don't know if you've ever seen it, but it ended something like this. We ran that case for twenty eight days, and for the first time in front of a jury in a negligence case, there's four questions. Was there any negligence? If so, how much of the damages? Was there any conduct which went beyond negligence and went to punitive damages? If the answer is yes, how much? So picture the same. We just lost Simpson. We were \$2,000,000 down. This was kind of our last Hail Mary pass before what might have been the end of Slater and Gordon. It's been running for twenty seven, twenty eight days. All of the Melbourne legal professionals milling around the court. The jury goes out. They're out for about four or five hours, and then the associate or the tip staff comes back and says they've got a question, and everyone's absolutely beside themselves. The judge can't be found for about forty five minutes, but when he eventually comes back and the jury is convened, he says, I understand you've got a question, Mr. Foreman, and the Foreman says, We do, Your Honor. We've decided to fine for Mr. Rabinold on the question of negligence, and we've decided how much to pay him. We've also decided that CSR should be punished for its conduct and pay punitive damages, but we're unclear as to how we ought to assess how much impunitive damages we should pay. So within that one question, everybody knew the result and the entire trajectory of this incredibly dramatic case sort of turned on a dime. People were hugging each other, there was emotion in the courtroom, the CSR executives were turning a whiter shade of pale, Four Corners ran that night with a special on exactly how negligent CSR had been, and really, it was a case which turned the tide of occupational health and safety in Australia. I mean, I often think back, imagine if that case had failed.

Michael Green: [00:31:26] We'd be back in the times of the Industrial Revolution.

Peter Gordon: [00:31:29] Yeah.

Michael Green: [00:31:33] Peter, was it in this case where there were 30,000 documents discovered, of which six of those documents would win your case for you, but no one was showing you the six documents?

Peter Gordon: [00:31:46] I've told this story, I sometimes talk to my young lawyers about, you you can take a political us against them approach to these things, but some

of the more decent lawyers you ever meet are the lawyers who are for the defendants, and my opponent in that case was Philip Rau, who went on to be a very good friend of mine, and a more decent lawyer you would not find over the course of a lifetime, and after this case, he was good enough to come over and congratulate and shake Mr. Rabinaut's hand, which I thought was an enormous gesture in such a hard fought case. But he years later told me the story that they'd briefed Alan MacDonald, who was a CSR, who was one of the doyens of the Melbourne bar, and the night before the trial, all of the bigwigs from CSR had flown down to have a conference with Alan, and Philip tells the story of him sitting back in his very luxurious chambers, giving them all a scotch and saying, Look, we've been through the whole thing, and I don't think you've got much to worry about. We've buried Slater and Gordon with 30,000 plus documents and we've been through all of these documents, and of all of these documents, there are only six that put us at any risk whatsoever, and at that very moment, his secretary came in with a letter which I had signed off on an hour ago and delivered to Philip's firm and had gone straight up to the barrister, and it was a notice to produce six documents, and it was those six documents. Philip tells the story of Ellen slowly reading the document and then looking up at the CEO of CSR and saying, I think we're fucked.

Michael Green: [00:33:26] Peter, am I writing in my timeline here of thinking this is maybe mid to late '80s when this is taking place?

Peter Gordon: [00:33:32] Rabbitonite was 'eighty seven, 'eighty eight.

Michael Green: [00:33:33] Yeah, and so were class actions, did we have the procedure, the mechanics in Australia for class actions at that time?

Peter Gordon: [00:33:41] No. The first class action legislation was in the Federal Court Act and was brought in in 1992, and the Victorian equivalent of it wasn't brought in until about 2000. So both the Wittenoom cases that I did, DELCON Shield cases that I was involved in with Peter Cashman, who worked for us for a while, which was a US based class action, and also the second big group action that I did, which was for sufferers of medically caught HIV, people who got HIV from the blood bank, were all done, they probably would have been done ten years later as class actions, but the mechanism wasn't there, so you would run test cases and then negotiate a result on the strength of the outcome of the first few cases.

Michael Green: [00:34:21] And so after your test cases, you'd go to the defendant or the defendant's lawyers and say, Okay, we can see which way this is going, all of us can, we've got 100 other plaintiffs with this cause of action, and therefore let's get talking about Or they'd say it to you. Well, they'd come Yeah. To

Peter Gordon: [00:34:38] In fact, when class actions first came in, I wasn't a particular fan of them, because when you're taking Wittenham as an example, the first case, as I told you, was a case for Joan Joosten, poorly chosen case, tragic case that she got mesothelioma and died, but if that was a class action, it meant that the whole class would have lost. You actually learn a lot from running the first case, and I thought that it's actually a weapon in the plaintiff's hands to be able to run it, learn from their mistakes, and bring it forward, and if you have to compress all of that into the class action trial, then you're losing a considerable strategic advantage. I still think that that's something that people should think about, but obviously the jurisdiction has evolved a lot since then.

Michael Green: [00:35:20] But could you make a decision now, we won't do a class action, we'll do an individual claim and then go back to the old system of trying to negotiate on behalf of our other

Peter Gordon: [00:35:30] And 50 I sometimes do do that. Because you

Michael Green: [00:35:33] Think it's more in the interest of your clients.

Peter Gordon: [00:35:35] Yeah. Years later, did a case for people who suffered from thalidomide birth defects, and I started a class action, decided halfway through it that it was the wrong lead plaintiff, and so I issued a second class action and move that one ahead of the first. You've got to be, as the great Gillian McLaughlin said during the COVID crisis, flexible and agile about the way you make those decisions.

Michael Green: [00:35:58] But if you did that in that case, where you started a second class action, what did the defendant's lawyer the defendants and their lawyers, didn't they scream?

Peter Gordon: [00:36:06] Yep, I did. Yep. And sometimes they scream successfully, and sometimes they scream unsuccessfully. Mean, it's a game of strategy and tactics like any other.

Michael Green: [00:36:15] Now you mentioned the Delkin Shield case, they were an American manufacturer of IUDs?

Peter Gordon: [00:36:21] Yeah, that's right, yep. And I read that

Michael Green: [00:36:24] You said the principal opponent was not the people who manufactured the Delkin Shield, or Delkin Shield, those people, but in fact the plaintiff lawyers, the American plaintiff lawyers.

Peter Gordon: [00:36:33] Yes, so we decided, Jonathan Rothfield's leadership in the mid-1980s, not just to open an office in Perth to do the Whittenham cases, but to actually expand into this field, and a guy called Peter Cashman was running the Public Interest Advocacy Centre in Sydney at that time, really smart guy, and he agreed to open the Sydney office of Slater and Gordon, and we took over about 3,000 claims for women who suffered IUD injuries, and they were part of what is called multi district litigation in, I think it was Richmond, Virginia. So that was the first American class action that I was involved in, and I realized that the manufacturer, A. H. Robbins, understood that they had a global problem and they'd have to spend a large amount of money on it, and they had a reserve, let's say it was \$3,000,000,000 or whatever. The American plaintiff lawyers, their mission was to make sure that as much of that \$3,000,000,000 went into their clients' pockets because they were all on contingency fee contracts in relation to that. So to the extent that half the world, and this was a scenario that replicated itself in breast implant litigation years later, where there was kind of like \$7,000,000,000 on the table, if you were a lawyer, as Peter and I were, from Australia, or our Canadian compatriots or colleagues or English, the main opposition was not so much Dow Corning or A.H. Robins, it was the American lawyers who said their claims would be worth nothing in Australia, or compared to the verdicts we'd get in New York, so you should give it all to us. And one of the biggest individual wins as an advocate I ever had was in a bankruptcy court in Bay City, Michigan, where the American plaintiff lawyers in the Dow Corning breast implant plant litigation, tried to do exactly that, and I went along to the court and said, This entire argument is based on a false premise.

They've got this view that because they can get a big verdict in New York or in Los Angeles or Miami, therefore you ought to do the maths and exclude everybody else, but I'm here to tell you, first of all, you can get a result in Sydney for the same kind of injuries, which is way better than you'd get in North or South Dakota or various other of the more rural jurisdictions there. Secondly, there are availabilities of damages and benefits in countries like Australia and Canada that are excluded from America altogether.

Peter Gordon: [00:39:02] For example, if we win the case, we get legal costs You don't get that at all. They come out of the damages. So you're only seeing one side of this debate, and you can't approve this, and at a given point, Dare Corning, who hadn't really seen me coming in relation to this, stand up to object, and I always remember the judge saying, You can object, Ms. Nielsen, but with this guy's accent, I'm happy to listen to him all day. So I got a bit of a run because of my broad Australian accent, but it was middle of winter, it was Michigan, it was about 07:00 at night, and he says, Before leaving the bench, I just want to say to the Dow Corning lawyers, I'm throwing out this plan of reorganization because of its unfairness to foreign claimants, and he left the bench, and they're there in complete disarray, and I'm there by myself, having won what I think was, to that point, the biggest legal victory of my life. There were only two star hotels in Bay City, Michigan, so I went back, there's no TV, there's not even a bar fridge, so I'm sitting there thinking to myself, I just won that. That was pretty bloody good.

Michael Green: [00:40:04] And very interesting, really, that the manufacturers, they conceded liability, and they had this pool of money to pay to plaintiffs.

Peter Gordon: [00:40:12] Well, I never so much formally conceded liability, and in breast implant litigation, the injuries fell into two distinct categories. There was one where they couldn't really argue causation because the silicon would cause hardening and contracture around the implant, so there was that kind of injury, but there was also an allegation that it caused a connective tissue disease or systemic disease like lupus and scleroderma, and they had the advantage in those days of being able to design their own epidemiology. They'd cook up their own medical studies to say there's no greater incidence of scleroderma in women who had faulty breast implants than anyone else, and they were pretty successful in relation to that because the plaintiffs couldn't exactly go and hire their equivalent hired guns and cook up their own epidemiology.

Epidemiology is one of the things that both Australian and American courts have consistently got wrong or misjudged, in my experience, over the last thirty, forty years.

Michael Green: [00:41:11] We might come back to that, Peter, but we'd better keep moving. In the early 1990s, you're running cases for HIV sufferers. I must say it surprised me a bit, I mean, were getting HIV from blood transfusions. Why wouldn't the Red Cross or the hospital, CSL, was it who it was?

Peter Gordon: [00:41:30] Csl.

Michael Green: [00:41:31] Csl, sorry. Why wouldn't they have known that there was HIV from the blood that they're giving people?

Peter Gordon: [00:41:37] So the period that we're talking about is the period I litigated the first case in 1990, but the period that we're talking about was 1980 to 1984, and AIDS first manifested itself as a problem in about 1980 and nobody knew exactly what it was. The best of the virologists suspected that it was a virus, that it was blood borne, and there were particular risk groups to it, but there was no you couldn't test the blood to see whether it was HIV contaminated until late nineteen eighty four when the whole game changed. The argument in the meantime was what precautions should have been taken by the Red Cross, by the blood supply, in circumstances where we think it's probably a virus and we think there are probably risk groups to it? And the clear answer to that became, at least by about 1982, 1983, that there were certain risk groups, no judgment intended, were at higher risk of carrying infectious diseases like HIV. People who were IV drug users, for example, who shared needles, people who got a lot of tattoos, and gay men with multiple partners, and there was a particular gay scene where HIV was a particular risk. This combined with a practice in some of the states in Australia at the time where if a person went to a doctor with a sexually transmitted infection, the doctor was actually under an obligation to report it to the health department.

Peter Gordon: [00:43:10] So in one sense, was a form of discrimination against gay men, that if they simply got a health check, all of a sudden Big Brother was finding out about their personal details. But a way in which they could get their health checked and get a blood test without that kind of intrusion was actually to give blood, and so there was a disproportionate number of gay men going to give blood for that reason. That

combination of circumstances combined to give Australia the highest per capita incidence of transfusion AIDS in the world in that period, and the clear answer to it was for a period of time to exclude gay men from the pool of people donating blood, and the people who ran the Red Cross knew it. There debate was within the Red Cross that that's what they ought to do, but there was an enormous civil rights, gay rights backlash against it, and so they modified the criterion from excluding gay men to excluding gay men with multiple partners, which they thought was a sensible compromise. It ultimately wasn't a sensible compromise because you could be a gay man and understand yourself to be a gay man who doesn't have a multiple partner because you're in one relationship, but you're only as safe in that sense as your partner was. And sadly, I remember speaking at an enormous fight in that litigation to actually get access to the donor who gave the blood, which was contaminated, which led to the plaintiff in the case contracting HIV from the transfusion. It was an enormous fight because the Red Cross went to any lengths to protect their privacy, understandably, but I eventually got one order to get his contact details, and I contacted him. I remember it being one of the more difficult conversations of my life, explaining to him why I was calling him and what evidence I needed from him, and what he explained to me was that he had thought that he was in a faithful relationship, but it turned out that he wasn't because his partner had infected him by living a different kind of lifestyle. So the negligence theory against the Red Cross was you should have stood up to the civil rights, and you should have said the health and the safety of the blood supply is more important than those civil rights, and so I got a few death threats in that case. From whom? From members of the gay community who thought that we were doing this as an attack on the gay community.

Michael Green: [00:45:35] Once you've established that negligence on the part of Red Cross, CSL, the hospital, is it then a matter of settling the rest of the cases you've got for people that have acquired HIV through blood transfusions? You don't have to run each case, surely?

Peter Gordon: [00:45:50] No, so the first case we ran, we sued the Red Cross who collected the blood, the CSL, fractionated the blood into products that haemophiliacs could use, and the hospital who actually provided the care. The case only succeeded, the first trial, which went for eighty seven days, by the way, was a record in terms of length, got a result on Christmas Eve in 1990, we only won against the hospital. My theory about it was, first of all, Jeff Scher was for the Red Cross and he was bloody

good, but the hospital was so negligent by comparison to the others that I thought that it tended to color the jury's view of the others in a favorable way, but because their conduct was limited to his case, the defendants were able to say, Well, that's kind of a one off, and it doesn't give you any generic basis to say we should pay everyone, So our next step was to say, all right, we'll leave the hospital out next time, we will find one in the frame, which was right at the epicentre of when the Red Cross knew they should have had designed the criteria differently and we'll just go up against you, and we did that and they had taken a very sort of philosophically, we will never pay hell will freeze over before we did this, and then the night before the trial, they caved, and that gave us a statewide generic basis for settlement.

Peter Gordon: [00:47:07] CSL is now privatised, it's a public company, but it was at that stage an arm of government, and in order to get a national settlement, we needed to do them, so we did the same thing. We dropped the Red Cross, we dropped the hospital, we just went against CSL, and we got the same kind of thing, because at the time, Australia's Deputy Prime Minister, Brian Howe, I think Bob Hawke's Deputy Prime Minister, was also Minister for Health, and he had a really hostile attitude to this. In fact, he had a personal go at me in Parliament that I was falsely inflating the hopes and expectations of HIV victims, etcetera. We had to fight for another year just against CSL in order to establish that. Once we had done that, we were able to negotiate settlements state by state. The last state to cave was New South Wales, but in the end, after about four or five years, we got damages for every single one of the four sixty seven people who suffered a medically acquired HIV in that period.

Michael Green: [00:48:05] It's the good fight you take, oh, by gee, they must have been taxing on you, Peter. Peter, what was the background to the cases that you ran, mid-90s, against the tobacco companies?

Peter Gordon: [00:48:22] The first case against the tobacco companies was run by Bernard in 1986, a case called Scanlon.

Michael Green: [00:48:29] And it came out then that they'd known since 1954 in all that stuff.

Peter Gordon: [00:48:32] Oh no, that case met a pretty rocky end, and then there was a whole lot of litigation in The United States leading to a master settlement by American

states against the tobacco industry in about 1995, the payment of about \$250,000,000,000 by the states for healthcare cost recovery. And one of the terms of settlement of that case was that all of the documents which should have been handed over in discovery had to be put in public depositories in Minnesota and in The United States and in Guildford in England. So when that happened in 1996, we sent lawyers to both Minnesota and Guildford in order to find the Australian documents. So our first real mean, Bernard had heroically pioneered the Scanlan case back in the '80s. We got trounced in it. They did some pretty despicable things. We left it alone while we did other things and then came back after the master settlement armed with these documents, and we found an enormous number of documents which demonstrated that both the knowledge and the conniving conduct of the tobacco industry, their collusive conduct, the fact that they knew in the late 1950s that it was pharmacologically addictive, but chose to lie to The US Surgeon General about it, and so the whole world believed that there was no real evidence of the pharmacologically addictive properties of nicotine until the late 1970s, around 1980s, but the tobacco companies knew, but they deceived the entire world about it. And one really interesting sidelight to the research that we did was that the original science in relation to the pharmacologically addictive properties was actually done in New South Wales by the precursor to British American tobacco, WD and H.O. Wills. Remember they used have WD and H. O. Wills songs around the boundary line when you played footy? I think it was in Pagewood in Sydney where they had scientists who were doing those tests and understanding this stuff. Tobacco companies were such experts at everything, marketing to children, creating doubts so that most adults who smoke don't want to smoke anymore. The cigarette companies had a term for that, they were called dissonant smokers, smokers who understand enough about it to know they shouldn't be doing it, but they really crave doing it, and they understood at that time that what really helped the tobacco companies most at that moment was doubt. Didn't need to be reasonable doubt, just needed to be doubt. So they were in business of finding doctors and scientists who would cast doubt in order to feed the ability of those dissonant smokers, as they called them, to continue to smoke, And in exactly the same way, they got into the science of how to attenuate the nicotine plant, the tobacco plant, so it had the optimal amount of nicotine, that it didn't taste too shitty for people to smoke, but enough to be powerfully addictive for it, and they had a process of cropping the tobacco leaf called retuning, which they're now like decades ahead of everybody else in all of those ways. They were brilliant at what they did.

Michael Green: [00:51:37] So Peter, you've got this huge store of knowledge about tobacco and the tobacco companies and the way they acted, and then you commence a class action against Philip Morris.

Peter Gordon: [00:51:49] Three companies: Philip Morris, Rothmans and British American Tobacco.

Michael Green: [00:51:53] Why did there need to be a class action? Why didn't they hold up their hands and admit and say, We'll pay you, because the world knew they'd acted despicably?

Peter Gordon: [00:52:01] Well, they never have. They still haven't. They never have, no. No. I mean, they've understood, and in fact their internal documents say they're as much in the litigation business as they are in the cigarette business, but they have always found a way to defeat liability, and it's actually a master class in advanced tort and litigation generally as to how they do it. They make a product which, used as they intend, kills people and causes dramatic disease, but they've understood one fundamental principle. You can be the worst tortfeasor wrongdoer in the world, but in the end, each plaintiff needs to prove their individual case, and if you drill deep enough into the individual circumstances of each particular plaintiff, you will find a weakness, you will find a hole, and that's the approach that they took.

Michael Green: [00:52:50] And still take?

Peter Gordon: [00:52:51] Well, no one takes them on anymore in relation to these cases, because plaintiff lawyers fear the tobacco industry, and they've got good reason to, because being very, blunt about it, the tobacco companies have had a dream run from Australia's judiciary, with a few noble exceptions, Geoff Eames being one of them in the original McCabe trial.

Michael Green: [00:53:14] Tell us about that, the McCabe trial.

Peter Gordon: [00:53:17] A brief history. When the American Master Settlement happened in the mid-1990s, they opened these document depositories, we went and got the Australian documents, we collided them, and we realized that there was a terrific case that we thought worked as a class action, because they had collusively, these

companies, misrepresented the dangers, hidden the issues of addiction, marketed to children, done all of those things, almost every aspect of their business was egregiously negligent, and so we put that as a class action in a case called Nixon and Philip Morris, but it was against all of the tobacco companies. The tobacco companies brought a strikeout motion. It went before Murray Wilcox in Sydney. He allowed it to proceed, and then they appealed it to the full federal court, and we got monstered. One of the judges referred to the case as the Ben Hur of ambulance chasing. If I had my time over again, I would have we had Jeff Nettle appearing for us in that appeal. He did a fantastic job over four or five days. But if I had my time over again, at that moment when he accused me and the firm and the case of being the Ben Hur of ambulance chasing, I would've stood up and said, You've got to recuse yourself right now. That's not just the appearance of bias, that's bias. It's not up to you to decide what the motives are of the people doing the case, you've to decide on the issues. But we got monstered in that case and it got thrown. I will say, most class action lawyers will know that the decision in Nixon and Philip Morris has now been overruled and is ignored by all class action jurists now.

Michael Green: [00:54:46] Overruled by the High Court?

Peter Gordon: [00:54:47] We took it to the High Court, but were denied leave. It was thought to be not a point that deserved special leave, and each one of the three judges on the federal court dismissed it for different reasons. So it had those issues. At that point, my thinking about it was I've cast the net too broadly here, I've been too ambitious in relation to what I've done, and I've really tried to change the world in a way that Australia and the Australian judiciary is not ready for. So what I ought to do is pivot and try to isolate and get just one judgment against just one company, because that alone would be a really significant step in closing down the danger of smoking and health. And so we built up a bank of about 4,000 registrants who were class members in this case, and so the technique that I have always adopted with these cases is to say, what is the profile of case which would put the defendants at the most risk? So I've got a bank now, I've got a database of 4,000 people. I want someone who started smoking as a child, because as a child, they don't get to exercise an adult judgment about the whole thing. I want them to have smoked for a long enough period that by the time they are 18, they're pharmacologically addicted. So I want someone who started smoking when they're 13 or 14. I want someone who started smoking before there were advertisements on TV

and warnings on packs, because they then don't have the sort of warnings that can be thrown at them.

Peter Gordon: [00:56:13] So in effect, you've got someone who started smoking without being warned about the dangers, wasn't in a position to know about or exercise an adult choice about it, and by the time that they were in such a position, the evidence was pharmacologically addicted. And then ideally, I would like someone who only smoked the one brand, because it's way better to have one defendant at the other end of the bar table than to have three, because you only get one set of cross examination, etc, and of all of the 4,000 people that we had on the database, Rolla McCabe stood out as someone who fit all of those criteria. She was born in about 1950, she started smoking in about 1962. Companies had known for erasing certainty that it caused cancer for about ten years by then. It was about the time, it was four years after they understood the addictive nature, it was around about the time that they decided to lie to The US Surgeon General about it, and she had always only smoked the products of WD and H. O. Wells, so it looked to me to be a perfect case. And we got it going, and it was signed to Jeff Eames, who was a really, I think, incredibly good and diligent and smart Supreme Court judge, who was kind of onto some of the delaying tactics of British American tobacco and put it on for a trial setting, and we eagerly awaited getting discovery in that case, because we already knew some of the documents which were in the document depositories, but when the affidavit of documents came from this company which had been in business doing all of these things for decades, it discovered less than a dozen documents that were relevant to its entire business, and when we delved into why, it was because they said that they had something called a document retention policy, and it was, of course, one of those Orwellian euphemisms.

Peter Gordon: [00:57:54] It wasn't a document retention policy at all, it was a document destruction policy. It was a policy which was literally designed around the principle of let's get a group of lawyers together and work out every way in which we might be sued for negligence. And so there's marketing to children, and there's attenuating nicotine, and there's creating dissonance about whether smoking is done, all of those things which might be negligence theories, and so let design a system which we'll call a document retention policy, but which actually mandates the destruction of all of those documents in order that when we do get sued, because we know we will be sued, they won't be available for the plaintiff to be able to prove those cases, and so we got an

affidavit of documents with virtually no documents in it. We then went on the hunt and there were references to document destruction retention policies, etcetera, and we brought an application to strike out their defence on the basis of discovery abuse. It went before Jeff Eames, and they put in, in response to our application, a whole lot of material, including one particular line saying, We did this on legal advice. And when they said that, we jumped on it and said, if you're saying that you've done this on the basis of legal advice, then you've waived privilege over the legal advice, and not just that legal advice, but all the legal advice about the document destruction policy, and they were in absolute apoplexy about it, because they had this whole system of privilege covering up this system, and all of a sudden it had ruptured because someone had done something wrong in an affidavit, and so they had to hand over all of these documents, which exposed very serious misconduct. Jeff Eames, on the basis of it, struck out their defence on the basis that there was no possibility the plaintiff could get a fair trial because of the ubiquity and comprehensive nature of the deliberate destruction of evidence. There was no issue of contested fact which was not contaminated by their destruction of evidence. And people can read, because it's in the law books, you can still get online the Eames judgment. I can't talk to you about some of the stuff that's in that judgment because the Court of Appeal has ruled that Geoff Eames' ruling about waiver of privilege was wrong and that some of these things can't be talked about, but you can read the judgment. People can go and read the judgment and it makes perfect sense. I still regard the decision of the Court of Appeal in the McCabe case as the most disgraceful miscarriage of justice I've seen in forty seven years in the law.

Michael Green: [01:00:20] But the story goes on with a whistleblower approaching you?

Peter Gordon: [01:00:24] Yeah, well, one of the oddities of the McCabe case and one of the things that the Court of Appeals skated over is that their excuse in relation to the document destruction was they were trying to save space. They had all these documents, and it was occupying so much space in the room, but what they'd ignored is that they digitized these documents. All of these documents which were relevant, which had been discovered in a previous case at Holding Red Liquoran called Cremona, had been reduced to two compact discs, so like two DVDs. And so the argument that they had to destroy them to save space actually reduced itself to an argument that they needed to get rid of two DVDs in order to save space, and The Court of Appeal brought

that argument. Speak more freely about these things these days because after it happened, a person who had been the in house lawyer for British American Tobacco, a guy called Fred Goulson, called me and said, didn't know whether I should make this call, but I had the job of implementing that document retention policy, and everything you alleged about it and everything that Jeff Eames found about it was true.

Michael Green: [01:01:30] Did you get an affidavit from him?

Peter Gordon: [01:01:32] Eventually, yeah, Took a bit of persuasion. It had kind of a pretty bitter ending in Australia, but ironically, and thankfully, the US Department of Justice at the time was running a RICO prosecution, which was an act in The United States called the Racketeering Influence and Corrupt Organisations Act against the Tobacco Industry, and a critical part of their case was to demonstrate that the corrupt conduct was ongoing, and so the defence of the tobacco industry was, look, true it is, we were really bad boys in the 50s and 60s. We lied about addiction and we didn't confess about cancer or we may have marketed to children and we may have done all those things, but for the last ten years, we've been cool, we've been really, really good. And there was a bright young fellow at the US Department of Justice called Brett Spiegel, who had been following what was going on in Australia and contacted me to say, the relevance of what you've uncovered there is that it demonstrates that their corrupt conduct is ongoing, that deliberate destruction of evidence is in fact continuing misconduct. Would you be prepared to work with us? So I went over to Washington with Fred Gulsen and Jack Rush to assist Fred to give his evidence. He first of all gave his deposition. I always remember it. This long conference table, like you see in some of those American movies. There's me, Jack, and there's Fred on one side, the three of us, and I think Brett might have come along too for the Department of Justice, and then on the other side was 28 lawyers, you know, Brown and Williamson, Philip Morris, they were all there and they all wanted their go, and it went for about thirteen or fourteen hours. And Fred didn't do a great job, like he was, you know, he was under a lot of pressure and they monstered him and they really thought they'd nuked him. Brett was sufficiently concerned about it that he thought, I'm not sure my higher ups are gonna they're even gonna allow me to call him at the trial. But he eventually took a decision to to call him, so we went back for the trial and he gave evidence. He started getting cross examined and they were playing some of the worst bits of the video of his deposition. He turns to the judge and he says, Your Honor, I apologize. I really have a very bad

account myself at the deposition. I was incredibly nervous, I was jet lagged, wasn't feeling very well, and I want to apologize, both to my learned friends from the tobacco company and to you. I'm sorry to have wasted your time. I said a lot of bad things in that deposition, but I'm here to tell the truth. He gave his evidence, and she accepted all of his findings, including about the deliberate and wrongful nature of the destruction, and they never appealed it. So for all that we lost at that point, and I guess I'll never get over it in relation to Roller's case and McCabe and the miscarriage of justice in Australia, in America, the wrongfulness of what they did was proven in court and accepted, and they never appealed it.

Michael Green: [01:04:19] But it didn't play out in a damages award to your client back here in Australia?

Peter Gordon: [01:04:23] No, she, after Justice Ames struck out the defence, we proceeded with an assessment of damages. So she actually did become the first smoking victim to get a damages award. Dick Stanley, ironically, was on the other side, he was a British American tobacco, and we had Jack Rush, she got \$700,000 but almost the first thing the Court of Appeal did was insist that he'd be paid back.

Michael Green: [01:04:44] And that's where the tobacco litigation finished?

Peter Gordon: [01:04:48] Well no, after that, a lawyer at Clonewitz called Chris Dale was sufficiently guilt ridden and concerned about the miscarriage of justice that he delivered up to me and to Bill Birnbauer, who was a forensic journalist for The Age, documents which also tended to prove what happened, and the British American tobacco then threatened to sue a number of us. Vic Health quit Slater and Gordon and me personally, and The Age. The Age had already published the story, it was pages one, two and three of The Sunday Age, so they felt that they'd done their job and they handed back the documents. Vic Health didn't feel like it was in a position to fight that fight because of financial resources, and so they handed back the documents as well, but we couldn't hand back the documents. We felt that it was such a profound injustice and matter of justice and such an important pivotal moment in our lives, me and my partner Andrew Grech, that we couldn't do it, so we fought it. And they commenced proceedings against both Slater and Gordon and me personally, and after a few months they amended the proceeding against me to seek not only the return of the documents but in

order that I be disbarred as not being a fit and proper person to be a lawyer because I had essentially stolen the documents. My defence was that I was given those documents which demonstrated fraud and that it was a sufficient basis to hold on to them while there was an adjudication of this. This litigation went on for about six years before it was eventually settled on confidential terms.

Michael Green: [01:06:18] What a story.

Voiceover: [01:06:26] William and Lonsdale is brought to you by Greenslist, one of the leading multidisciplinary barristers lists in Australia. Greenslist believe in promoting conversation around the ideas and issues that shape not only our legal system, but our wider community.

Michael Green: [01:06:48] Peter, this takes us on my calculations to about 2009, 2010, at which time you've been a partner or initially an employee, then a partner of Slaters for about thirty years, running some very, very high level and intense cases, and you feel you need a break, so you resign from Slaters. Yes. But the longsort break that you were going to have didn't really eventuate.

Peter Gordon: [01:07:12] Yeah, no, I'd been gone from Slater's for almost a week. A whole week? I met a guy who suffered from thalidomide birth defects, he had two full shortened arms, And he told me that there was a guy who was trying to get better compensation for the thalidomide survivors in Australia who had got pitiful results back in the 1970s and 1980s. And so he got me up to Sydney to meet a guy, ironically, a guy who used to run British American tobacco, a guy called Ken Udall, who at the tender age of 86 and as the father of one of the thalidomiders had gone to England to demand that as gentlemen, and he was a gentleman who'd run a corporation, they should dip into their pockets one more time. And they'd agreed to send some pharmaceutical executives out to Australia to meet with him, and through this intermediary, Tim got me up there as well. He introduced me to these guys as a retired conveyancing lawyer. So we got to talking and

Michael Green: [01:08:07] Have you ever done conveyancing?

Peter Gordon: [01:08:08] No, not once in my life. But he needed to get me into the room, he thought, and in the course of the discussion, something came up about

someone who they said had lived an unfortunate life because his thalidomide claim had been rejected, and they described the case to me and it was a guy who had three severely malformed limbs and one good one. And the guy who actually ran the pharmaceutical company's corporate relations worldwide said, You should talk to him. He's in town for discussion. And so I talked to him and I said, It must be pretty unfortunate that your mom died before she could give any evidence about thalidomide. Said, No, no, she's still alive. What did she say? She said, Oh, she told me the doctors gave her thalidomide. I said, Well, that's pretty good evidence. Was there anything else? He said, Oh, there's the doctor's records. Well, what do they show? Or that he gave her the drug. Okay, well that's actually really good. Was there anything else? Look, not really. We kept the bottle, but in the 70s when we made the application for compensation, distillers took it and they never gave it back. So I got back into the room with those people and said, Listen, I've just spoken to this guy. He's got rolled gold evidence that his mom took thalidomide during the pregnancy and he's got three malformed limbs. And this guy says, Yeah, the medicine is really strange in the sense that the fact that he's got one good limb, that means that it can't really be thalidomide. I said, Really? Yep. I said to him, Ian, you know I'm not really a retired conveyancing lawyer, don't you? He said, Yeah, I've Googled you. It's my hope, I'm not supposed to say this because I'm a pharmaceutical company executive, but maybe you should take a look at I said, I will, you'll be hearing from me.

Michael Green: [01:09:42] This led to you then opening your own practice, Gordon Legal, as it is today.

Peter Gordon: [01:09:47] Yeah, well, I thought that I was fascinated by the case, I thought a grave injustice had been done, I'd just left Slater's, It had become too big for me. I didn't want to go back, but I thought that I had a unique skill set to run this case. So I started Gordon Legal in 2009 just to run that case, and one of my closest friends in the world is Andrew Greck, who was running Slater and Gordon at that time. I went to see him and said, listen, when I left a week ago, I really didn't intend to do this, but I want to start a law firm just to do this case, and I don't want to compete with you. In fact, why don't we do it together? So he generously agreed to do that, and so for the next four years, all Gordon Legal did, and my only intention in originating Gordon Legal was to do this case, but over the course of the next four years, we reinvented the medicine of thalidomide, we exposed all the mistakes in the way in which they'd done the science,

and we tripled the number of people who were recognised as thalidomide survivors, and we got them well over \$150,000,000

Michael Green: [01:10:50] Can I go back to Gordon Legal? So you're back on the same treadmill that you'd got off at Slaters in Gordon Legal. Was it, and is it now, a plaintiff common law firm, that's what you do, or are you a broader spectrum that covering many areas of the law?

Peter Gordon: [01:11:05] We certainly do do a lot of the work that I used to do in the first thirty years of my practice. These days I'm in the privileged position of doing work that appeals to me I can pick and choose what I do. So in the last four years I've done RoboDebt, I've been to Miami to run the White Island Volcano case, and in recent times I find myself in the Pilbara, in the Outback acting for the Barnjama people to clean up the mess that CSR left in terms of 3,000,000 tonnes of blue asbestos waste, which has given the Banjima people the highest incidence of mesothelioma per capita in the world.

Michael Green: [01:11:39] Well, can we get back to that? I'd like to go back to Robodebt. How did you get involved in that?

Peter Gordon: [01:11:44] So John Fain convinced me to do a Friday morning footy tipping program, and so we would have fun on a Friday morning for half an hour talking about footy issues, and one day at about 10:00 when we broke for the news, Bill Shorten was the next guest and he saw me, he said, I don't know if you've heard about this Robodet thing, but I've shopped it around to all of the firms and none of them will take it. And it's this massive injustice from the Morrison government, which is costing some of the most vulnerable Australians their lives and their livelihoods and thousands of dollars. Would you have a look at it? Yeah. Of course, Bill. I I will. Can't promise you anything, but I took it back. And one of the beauties of Gordon Legal at the moment is we were small enough. There was me and Andrew and this great group of young lawyers and we had coffee, I told them about it, I said, Let me know if you can come up with anything, and then two weeks later, I see in my diary that they've booked out two hours of my time to talk about robodebt and the tort of unjust enrichment, and I thought to myself, that's pretty impressive.

Michael Green: [01:12:43] Remind us, Peter, what unjust enrichment is.

Peter Gordon: [01:12:45] It's a very underused, little used, old English common law tort, where someone has acquired wealth or rich enrichment by unjust means. And no other cause of action theory worked in relation to Robodebt, but that tort did. And I often tell this story because we had a young barrister involved in it as well, but a couple of young second, third year solicitors at Gordon Legal and we were talking about it and I tell the story on the basis of I think one of the more important things about legal practice and running a law firm is it's not the seniority of the person with the idea, it's the quality of the idea. And they had this idea, they had the confidence to bring it, we workshopped it, we thought it worked, we thought it worked on a class action basis. When we first foreshadowed that we were issuing it, I remember coming under this, not for the first time in my life, severe attack from the then minister, Stuart Robert, who said, They've got no plaintiff, they've got no court, they've got no cause of action. In a big press conference, I found myself on the 07:30 report that night with Lee Sayles saying to me, I've just got three questions for you. What court? Federal court. What cause of action? Unjust enrichment. When's it going to come to trial? Sometime in the next twelve months. Peter Gordon. Thank you. And that's what we did, and when we were a couple of months away from trial, they suddenly announced, this has nothing to do with Gordon Legal, this has nothing to do with the class action, but we've decided out of the goodness of our hearts to refund \$730,000,000 to people in relation to Robodebt. We later found out through the Royal Commission that it was all to do with the class action, that in fact they'd had legal advice saying, Gordon Legal are about to make a complete mess of you in court, so you can either wait for that to happen.

Michael Green: [01:14:28] When you say you, it was the Morrison government which brought Robodebt into existence, but it's the Albanese government by this time.

Peter Gordon: [01:14:37] No, no, no. When we first did Robodebt in 2020, it was the Morrison government, it was the Morrison government So was saying

Michael Green: [01:14:43] Back then that Bill Shorten had spoken to you about it, so I had my time wrong, sorry.

Peter Gordon: [01:14:48] No, he was the opposition spokesman for social security matters, and he had a genuine compassion and concern, and a lot of his constituents were I mean, affected hundreds of thousands of people. I mean, some of the stories of

trauma are still truly horrifying, and government changed, they called a royal commission, and we got to see some of the documents which underwrote this refund of \$730,000,000 where they said, you're either going to give Gordon Legal the biggest legal win of all time when they get the \$730,000,000 back, or we can pretend we're doing it out of the goodness of our hearts and take away all the credit. That all got exposed in the Royal Commission, But what also got exposed in the Royal Commission was we had tried to make an argument not just for unjust enrichment, but for misfeasance in public office, which is another old tort which requires that you actually know that what you're doing is wrong, a crime in effect, but do it anyway. And the Commonwealth lawyers are in court saying, How dare they make this allegation? There's no evidence of it, etcetera, and they didn't produce the documents. But what came out of the Royal Commission is there were those documents, they had simply wrongfully failed to discover them, and so we took the step in 2024 of seeking to reopen the case that we had ourselves settled on the basis of what we now knew it wasn't a fair settlement. So although it was the Albanese government at this stage, as governments do, they fought us like stuck pigs as well, and then a couple of months before we were going to go before the full court of the federal court to seek to reopen it, they asked us to participate in mediation talks, and that led to a further settlement for misfeasance in public office of a payment of an extra \$550,000,000 So the total benefit of what we had done for this very large group of people across six years in terms of foregone debts, repaid debts, and damages amounts to about \$2,400,000,000.

Michael Green: [01:16:43] What an amazing story. What an amazing thing that the Snowyasian government would do what it did. Yeah.

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Michael Green: [01:17:17] Now, Peter, so far, we've been going on the light stuff, a bit lighthearted with all that talk about governments and damages, but there's some serious stuff we need to cover. Your time as president of the Footscray Football Club. You think? Well, it's the most important thing in the life of the state of Victoria, we know that,

AFL football. So how did you become president of the Dawgs in 1989, your first iteration?

Peter Gordon: [01:17:40] So I told you that Rob Starry and I were social activist lawyers in Footscray, and our most potent expression of that was in the outer terraces of the Western Oval on a Saturday afternoon. He once had us evicted under police escort from Victoria Park when he was abusing Collingwood and their players, there was a group of them in the outer who were gathering to make him pay a physical price for this. And he turned to them and in an attempt to calm down the situation said, Look, I understand you guys' position. You're just not as smart as everybody else, and that's why you react as well. But for the fact that a well known barrister, Shane Collins, who was there with us that day had alerted the police that we might be in some trouble, None of us may have survived Victoria Park that day.

Michael Green: [01:18:25] Anyway Peter, none of this gives you grounds to be president of the Footscray Football Club.

Peter Gordon: [01:18:30] But I was a social activist, and so this is at the beginnings of the national competition, and they are looking to get rid of clubs. And I'd just finished the Wittenham settlement when they announced that the Footscray Football Club was to be merged into the Fitzroy Football Club, and so I flew back from Sydney to Melbourne to run the campaign to save the Footscray Football Club, and that had both a legal arm to it and an activist arm to it. We ran the campaign from the Footscray office of Slater and Gordon. We held a rally, we generated a whole lot of money, we had Tim Ganain, now a Court of Appeal judge, appearing for us in court, and the argument he was against Ray Finkelstein, and the argument was, Are they insolvent? And our case was, You can't say we're insolvent unless you give us a chance to go to the people, go to the members, and say, What are you prepared to do to save the club? And Fink and his junior counsel, Tony Nolan, said, oh, you want some time to go to the members? Fine. We'll give you three weeks. We make an agreement, we come out of court, and Dennis Gallenbergi says to the waiting media, there's now three weeks to save the traditions of Victorian football. We had a rally on the Sunday, we raised over a million dollars. I spent the next three weeks planning what the business would look like for next year and trying to find a president, and Victoria's deputy premier at the time, Robert Fordham, had kind of agreed to do it, and on almost one of the last days of the campaign, one of my last

tasks was to try and get the Transport Accident Commission sponsorship reinstated. And so I got a meeting with John Cain and David White, who was the senior minister there, and they said, Yeah, you've run a campaign, you put us under pressure, we're prepared to reinstate the sponsorship, but there's just one condition, you have to be the president. And I'm sort of feeling really chuffed, know, I'm sort of, uh-oh, why me, Mr. Premier, and David White, I think it was, says, I'll tell you why, because this whole thing is misconceived, you've been insolvent, you will be insolvent again, it's all going to end in tears, and when it does, we want someone to blame, and that person is going to be you. So we want you to be president because we want you to go to bed every night remembering this conversation, because when it goes bad and Victorian taxpayers' money looks like it's been spent, you're going to be the person accountable for it. So that's how I became the president of the Fritzsche Graffle. Surely that would have frightened you off. Certainly frightened me, didn't frighten me off. I guess I had some creeping sensation that I may end up having to do it, but I am without doubt the least skilled football wise person ever to occupy any role in football administration.

Michael Green: [01:21:02] I can think of a Richmond president who might compete with you for that title, Peter, the lady in Wilson. Okay. Anyway, we'll move on. So you avoid insolvency, which is a wonderful thing. I mean, and the dogs, they are the only club in the Western Half of Melbourne, you wouldn't want them to ever go out of existence. So you give it away, you've got a very busy legal practice, practices, Slater and Gordon and then Gordon Legal, but you come back.

Peter Gordon: [01:21:29] I did it for seven years between 'eighty nine and 'ninety then David Sworgan took over for sixteen years, and then after he'd had enough after sixteen years, he approached me and asked me if I'd come back. And I was just finishing thalidomide, we had some friendly discussions about it, but I eventually agreed to

Michael Green: [01:21:44] Do it. You wonder, there was no one else that David Smorgon could have approached?

Peter Gordon: [01:21:48] Oh, I'm sure there's plenty of other people he could have approached, but he approached me, and frankly, I always felt like it was unfinished business for me. I felt like I could have done a better job. I was the youngest ever president. I'd just turned 32 when I first became president. It was a hostile environment

with the commission, I didn't know much about business. I'd been a partner at Slavery and Gordon and an employer literally for four or five days when I got it, and I felt, a, that I was more experienced, I had a bit more money behind me, but also felt like The Times would suit me, because this was a commission that understood in 2013 that the Western Suburbs were important. It was the battleground between Australian rules footy and other codes, and especially people like Gil McLaughlin, he understood that, and he understood the importance of that role, and I'd learned a lot in it. So in that period, I did a lot of things I was pretty proud of.

Michael Green: [01:22:39] How much responsibility, how much credit are we to give you for the year 2016 in the history of Foot's Great Football Club? None. Can we tell people why that year's significant?

Peter Gordon: [01:22:50] Well, the Bulldogs won the premiership in 2016, which was an enormously important moment.

Michael Green: [01:22:56] Second time in the club's history.

Peter Gordon: [01:22:57] Yeah, and I'd lived my entire life without even seeing them in a Grand Final. So it was certainly an important moment in my life. But the people who deserve credit for that are obviously the players and the coaches and the staff. When I took it over, it was 12,000,000 in debt. When I left it in 2020, it had over \$100,000,000 worth of assets. So I'm proud of stuff like that. But I have always been incompetent as a footballer and I claim no credit for the twenty sixteen Premiership. What about

Michael Green: [01:23:28] The fact that in your second iteration as the president of the Footwear Football Club, you went against a lifetime of legal work and acted for a defendant, being the AFL?

Peter Gordon: [01:23:38] Yeah, I did that, and I still do. I acted for the AFL at Gill's request. As I say, one of the things I feel best about my last eight years with the AFL is developing friendships with people like Gill, and the faced and faces really significant legal issues. The first time he asked me to act was when Shine lawyers announced that they were going to expose systematic racism throughout the AFL in the biggest case of all time, and it was going to be this giant Colin Kaepernick type case. And he went to me and said, We're being cast as some kind of tobacco company in relation to this.

Would you consider acting? And I said to him, I'll do it, having given some consideration on these conditions, that we look at it and if we find that there has been systemic or systematic racism, we'll accept it and we'll do proper address and that we'll act with a proper set of ethics and integrity to the whole thing. And he's going to, Why would you think I'd have any problem with So I don't, I just Those are my terms, and he says, Done, so we'll do it, and we did it and we did act that way. And at the same time, we've learned so much, especially in the last ten years, about concussion, CTE, head injuries, etcetera.

Peter Gordon: [01:24:55] It was and it remains my belief that the AFL has not been negligently conducted in relation to these matters, but that doesn't mean that CTE is not a real thing. So the AFL has a capacity to pay, there's a need for it, and there's probably no generic negligence claim. So what I felt was in the best interests of everyone, including the players, was a proper no fault scheme, and I thought it was completely consistent with my history and my values to act in that. And so that was the second thing that I took on. So since then, I'm doing I'm defending the Phil Cracker Nikki Winmar racism case. I think that we're defending that on a proper basis. I don't feel particularly good about it. No one goes home at night saying, Had a really good day today, had a win over Phil Cracker in an interlocutory dispute. But on the other hand, I do not believe that the AFL acted negligently by reference to relevant standards in relation to the way indigenous players were treated over the period. I don't think it's irresponsible for the AFL to defend that case, providing it does it in an ethical way, and I think that it is doing so.

Michael Green: [01:26:09] We're moving on towards the end of your career, Peter.

Peter Gordon: [01:26:14] Well, so you say.

Michael Green: [01:26:15] Well, in this conversation anyway, I'm sort of amazed at how you could, anyone could juggle the sort of legal practice that you have been a part of for the last forty odd years and a role like president of an AFL club? I mean, would I be right in assuming being president of an AFL club might be an extra twenty hours a week worth of work for you, or was?

Peter Gordon: [01:26:38] It would vary, I think. In the first couple of years I did it the first time, when it really was recovering from insolvency, there were massive hours

involved in that. Towards the end of in 1995, 'ninety six, in the era before David took over from me, when the AFL commission were at their most aggressive in terms of trying to get rid of Melbourne clubs, that was pretty hectic. The only way to do that was to work really, really hard at a different era in the twenty fifteen, twenty sixteen era. So after Ryan Griffin and Brendan McCartney left as captain and coach leave on the same day and we've replaced them with Luke Beveridge and Bob Murphy, twenty fifteen, twenty sixteen was a period where I was effectively executive chair. So I was doing both the chair job and the CEO job over that period. So I was there pretty much every day, but I didn't have a was between thalidomide and the reinvigoration of Gordon Legal. So it kind of varied from time to time. My last few years at the Bulldogs, 2018, 2019, 2020, I was really principally focused on We had the worst facilities in the AFL, so I considered it a passion project to get a bit of equity in the capital provision of funds to rebuild the Witten Oval, and the Witten Oval is now one of the prideful venues of the AFL in terms of the quality of its facilities, and that's one more thing in which I take a lot of pride.

Michael Green: [01:28:04] You have lived a very, very full life, Peter. What are you up to now? You're close to 70, on my calculation?

Peter Gordon: [01:28:10] 68. I would consider that mid-60s.

Michael Green: [01:28:12] You're mid-60s, sorry, 68. Are you winding down?

Peter Gordon: [01:28:16] No, in fact, think I'm probably working as hard as I ever have, certainly enjoying it more than I at least as much as I ever have. Mean, I've got three or four cases, I've got the real privilege of picking and choosing what I do and I've spent most of the last month over in Western Australia. As we've discussed, I cut my teeth on those Whitnum cases, but CSR left 3,000,000 tonnes of asbestos waste there and the Banjama people of that area have the highest incidence of mesothelioma in the world. So I've engaged in discussions with the state to get it cleaned up. Those negotiations have not been successful. And so a couple of months ago I issued proceedings in the federal court for the Bunjama people.

Michael Green: [01:28:56] Against whom?

Peter Gordon: [01:28:56] Against the state of Western Australia, which has owned both the waste and the land upon which it sits since 1979. And so that it's a claiming nuisance because

Michael Green: [01:29:06] And what remedies are you seeking?

Peter Gordon: [01:29:08] Well, they need to clean it up, they need to find a safe way to dispose of the 3,000,000 tonnes of asbestos, and they need to compensate the Banjuma people, as anyone who has their neighbours poison their children or their children's land, they need to compensate them for the cultural loss and the loss of amenity that has occurred over eighty years and will inevitably continue for the next decade. So in the last week or so, I've both been appearing in the federal court in Perth, and I've been out on country eating damper and sitting around a campfire with traditional owners, and I will say to you, Michael, some of those days swimming in water holes, trekking through bush tracks have been a really profound experience for me. I'm so glad I did it. Look back on choices that I've made. I got to the shortlist of being chairman of the AFL in recent months, and I found out late last year that I'd come a close second in that, but I was out eating some damper in the Outback a couple of weeks ago thinking to myself, if I'd got that job, I couldn't be here and I couldn't be doing this. So yeah, you make choices in life and some things come up and some things slip away, but I'm so glad to be doing what I'm doing. I love it, and I think that the concept of retirement is something I'll never really come to grips with. So on this very full and very fruitful career that you've had, looking back, I'm asking you to look back,

Michael Green: [01:30:31] Well, obviously, you're not much of a looker back, you're more tending to look forward, would you change anything? Going back to Slaters, going back to the legal service in Footscray or the Western Suburbs?

Peter Gordon: [01:30:42] Yeah, I think for anyone, that's a really profound question, and it's easy to answer in one sense, because you can look back on mistakes that you made and decisions that you made, but you never have the benefit of knowing the counterfactual. If I'd stayed at Slater's, for example, I don't think I would have ever had the opportunity to do the work that I do and get the satisfaction out of doing the White Island case or the RoboDit case or even the Banjima case. Now, just would have been different. I can think of executives that I've hired that were just real mistakes and I can

think of people that I've sacked that was just a real bad judgment on my part. All you can really do in life is do your best, and you never know what would have happened had you made a different decision. But yeah, this process of preparing to talk to you about this podcast today, I've really enjoyed it because it's been a period of deep reflection and on balance, I feel really grateful for the career that I've had and the life that I've led.

Michael Green: [01:31:51] And Peter, we are very grateful for you coming in this morning and talking to us about a most interesting life in the law, and in some ways challenging to all of us, I think, on the basis that you seem to have been motivated not by what's in it for you, but by what you could do on behalf of your clients, and what was best for your clients and what was best for the community, and that's a great way to live a life. Thank you very much.

Peter Gordon: [01:32:13] Thanks. Enjoyed it.