

Note: This interview transcript has been substantially edited and does not correspond to the audio-recorded interview.

Int: Well, do I refer to you as Reuben Sr? Because there's two Reubens in the room (laughter).

III: I know (laughter)

Sr: Well, how, how do we handle that? (directed at Reuben the Third)

III Reuben Sr and Reuben Third is fine.

Sr: Yes, Reuben Sr. and Reuben III.

Int: Well, alright, Reuben Sr and Reuben III.

Sr: He really is the Fourth and his son is really the Fifth.

III: Yes... (laughter all round).

Int: Well, thank you very much for taking the time to do these interviews. I really appreciate it. I thought we could start, because it's an oral history, I thought, perhaps we could start, with a kind of more chronological account, in terms of your, for me to get a sense of your personal background, in terms of the formative influences...Why did you choose the legal profession? What was the impetus for you to choose the legal profession?

Sr: That's a question?

Int: Yes (laughter)

Sr: Alright. Well, I am one of those who always expected to be a lawyer. I was born into a family that had a very substantial underlying sense of one's obligation to the community and to take charitable roles. My family was a religious family and they expected a lot of me and my brothers. I served as a very young man in World War II as a naval officer and when I returned from the Pacific in the Spring of 1946, I was accepted into both Harvard and Yale Law Schools. Acceptance was rather easy in those days. It was a far cry from the highly competitive situation you have today. I went to Yale and very much enjoyed Law School. I then went to New York City to begin my professional career. After two or three years. I married and went to Washington, where I was employed in the U.S. Treasury Department, drafting a major piece of legislation, the Tax Reform Act of 1954. I then went into private practice in Washington. I was a partner in the mid-50's, in

a small firm, which in the very early 60's, merged with a firm headed by Lloyd Cutler. We became the firm of Wilmer, Cutler and Pickering consisting of 17 lawyers. I became a very close associate of Lloyd (Cutler) Cutler. Cutler, who died a couple of years ago, was a major figure of legal accomplishments with a rather unusual capacity for sensing the obligations of lawyers. He was a very brilliant and demanding man, and in a real sense, a generous and compassionate man. Now (slight laughter), this leads me down to the early 60's when I was a partner, doing tax work for the firm and the segregation wars broke out. As you know, the Brown vs. Board of Education . . . Reuben, what year was that?

III 1954

Sr 1954, led to an enormous divisive problem for this country, which, essentially acting through the Federal government had to dismantle the legal segregationist pattern of the South, which was called Jim Crow. Certain local laws and regulations were very humiliating, and very oppressive for the African-American minority. In fact, in some of the Southern states, they were not even a minority. At this point, the Kennedy administration had the very difficult task of supporting the courts in dismantling Jim Crow. At Law School I had been contemporaneous with Nicholas Katzenbach, who became (John) Kennedy's Attorney-General. One of my good friends and partners, Lou (Oberdorfer), became an Assistant Attorney-General. I should mention as we go down this road that (John) Kennedy called the leadership of the American Bar to the White House in early '62 and asked them to come together and form a private group of lawyers with the mission, fundamentally, of making contact with Southern lawyers to persuade them, regardless of their racial attitudes, to support the rule of law. Accordingly, Lloyd (Cutler) was instrumental in organizing what became and exists today, the Lawyers Committee for Civil Rights under Law. He had a friend, a very impressive friend, named Bernard Segal, S-E-G-A-L. Bernie (Segal) was or was to become President of the American Bar Association. He was a leading lawyer in Philadelphia. He and Lloyd (Cutler) helped put together the Lawyers Committee for Civil Rights under Law, which promptly went to work in a very effective way as a private group. Lloyd (Cutler) subsequently was co-Chair of the Lawyers Committee and my experience was first with the Lawyers Committee. I remember in '62, Mary Ellen (Clark) and I were having dinner one night with the Cutlers. After dinner, I was playing bridge and the phone rang and it was the Justice Department - Nick Katzenbach, calling Lloyd (Cutler). He said "I need a lawyer to go to Selma Alabama". Lloyd (Cutler) came over and tapped me on the shoulder and said "Reuben, you're going to Selma tomorrow". (slight laughter from all). That was my introduction to the whole thing and I did go. Well, I went down to Selma for the first time in the company with a representative of the National Council of Churches. Our mission was to meet with an Orphans Court Judge, who had jurisdiction over children. A group of black school children alerted by Martin Luther King, Jr., had the effrontery in Lawrence County, Alabama to make a protest march. The Orphans Court Judge threw them all into a work camp. So we met with this chap and he turned out to be a racist to his

fingertips. It was extraordinary. He spent most of his time telling us that the local blacks in and around Selma were "blue-gummed Ibos". I had never really heard anybody talk like that, but the interesting thing was that he listened to us, and the kids got released and we returned home. That was a very interesting beginning for me, because later, with the LRC, I found that the LRC lawyers in apartheid South Africa had somewhat the same experience with some apartheid judges, that is, a call to a judge as a responsible person, regardless of race, might be relied upon. They found they couldn't help themselves. Now, this wasn't true of all judges of course, neither in the South nor in Africa, because sometimes race was a dominating consideration. But it was extraordinary how you could get through to a judge if you had a reasoned legal argument and you made him realize that he was called upon to apply the law. I went to Selma again as a member of the newly formed Lawyers Committee. Our firm Wilmer Cutler and Pickering had a very close relationship with the Lawyers Committee. Jim Robertson was a young associate in those days and he is now a Federal District Judge. He was my successor in 1989 as the President of SALSLEP and as a very young lawyer headed up the Jackson Mississippi office of the Lawyers Committee. Several others, like John Payton, another President of SALSLEP, and his wife Gay McDougall, who was Head of the Lawyers Committee African Project. They both made many trips to South Africa during the time of the emergence of the (Nelson) Mandela government, and were involved particularly in the electoral process. My friend Lou Oberdorfer, who was at that time, Assistant Attorney-General, and was later a Federal Judge, at one point was the Director of the Legal Services Corporation, which was established by the Federal government, as a supportive functionary of public interest law firms. In this company, it was hard not to become involved.

III And both Lou (Oberdorfer) and yourself were Southerners.

Sr Yes, my grandfather (slight laughter), Reuben's (reference to Reuben Clark III), his great grandfather, the first Reuben Clark was a Confederate Army Captain. Lou Oberdorfer's grandfather was a Confederate militia man. So we both had a background against which we had reacted very strongly against Jim Crow. In my case, particularly, I had been disgusted in World War II by the U.S. Navy's treatment of black sailors.

III Can I also add one more footnote?

Sr Sure.

III Dad had an accomplished pro-bono career in his own right, particularly in the housing area. In the 1950s, he and others started the first non-profit low income housing development corporation in the country – which was a prototype for the future. In the 1950s, he also taught at Howard University, in the Law School. In the late 1960s, he was regarded as the 'go to' lawyer in the country for the HUD New Communities Program. He also served as a consultant to the Kaiser

Commission mandated to examine low income housing conditions and development alternatives, in the late 1960s. So, independent of, pursuing his firm's interests, particularly in the area of housing, community development and urban renewal, he had a reputation in his own right. But, what he has outlined here is what is relevant to this interview.

Int Sure, absolutely.

Sr Thank you, Reuben. But I may say also that the housing association which I was involved with before I came to know Lloyd Cutler was founded by Mrs. (Eleanor) Roosevelt when the area around the Congress was shamefully blighted. Mrs. (Eleanor) Roosevelt wanted to do something and she formed the Washington Housing Association, of which I eventually became the President. But that is another story. Anyway, coming back to 1978, I had been for two or three years heading the newly established London office of Wilmer Cutler. There, Lloyd (Cutler) was a friend of the Kentridges, Sydney (Kentridge) and Felicia (Kentridge), to whom Mary Ellen (Clark) and I were introduced early on. The Kentridges had told Lloyd (Cutler), and I was filled in later on, of their plans to create a public interest law firm in South Africa modelled on the American experience. Lloyd (Cutler) volunteered to organize a U.S. non-profit to support the forthcoming LRC and promptly tapped me on the shoulder again and said, "You've got to run this, Reuben". So SALSLEP was created in 1979, and organized as a non-profit charitable entity, with a mission to support legal services and legal education in Southern Africa, but primarily to focus on the forthcoming LRC. Four distinguished lawyers were its initial Board of Directors. One was Lloyd (Cutler), one was Bernie Segal, the third was Lou (Oberdorfer)is Loss, who was a distinguished professor at the Harvard Law School and the country's leading authority on securities law. The final one was Erwin Griswold, the former dean of the Harvard Law School now in Washington in private practice. He became subsequently, the Solicitor-General. These were really four extraordinary men and I was chosen to be the President of SALSLEP. I was joined by another lawyer in our firm, Jamie Kilbreth. He became the Secretary of SALSLEP, and for almost ten years, the organization was run by me, Jamie (Kilbreth) and our secretaries. There was no other staff at the time. It turned out that our four incorporators were great to work with, particularly, Bernie Segal, who was a charmer. That's how we got started.

Int Prior to your involvement with the LRC and SALSLEP foundation, what were your impressions of South Africa?

Sr Well, I hate to tell you. As a boy, I used to read John Buchan about Richard Hannay and (laughs) it was all a caricature, of colonial South Africa. Also in World War II, in the war against fascism and all that, the South Africans had a considerable military reputation. I was impressed by that, since I also served in World War II. But it was an impression that of course was substantially revised, as I had the good fortune to meet the incredible people of South Africa's legal

communities, largely of Johannesburg, who remain in my memory, as the finest group of people I've ever run into. It was really quite extraordinary.

Int When was your first visit to South Africa?

Sr 1982

Int Right and I understand that Reuben the III went with you, is that correct?

Sr Yes

Int So maybe the both of you could share your impressions of that trip, your memories.

Sr Oh, yes. Well lets see, in 1982, SALSLEP had been organized for little over a couple of years. It took us a while to get going, as it took the LRC time to get going. Reuben (Clark III) at this point was in fact an experienced public interest lawyer. Today, he is the Treasurer of the SALS Foundation. You will forgive me, I am now going to talk about you, Reuben (laughter from all). He graduated from Stanford in 1974. On his departure from Stanford, he organized four classmates who collectively presented themselves with him as paralegals to an organization in Philadelphia, called Lawyers Committee for Civil Rights under Law, later known as the Public Interest Law Center of Philadelphia (PILCOP). As a paralegal he administered the Police Abuse Project of the Lawyers Committee/PILCOP and through his work, made himself a conspicuous target of the Philadelphia Police Department.

III In fact, I was sued by the Fraternal Order of Police in my individual capacity. That work actually started in '74; I was a VISTA (a Volunteer in Service to America) and worked for a year for the Lawyers Committee which then became the Public Interest Law Center of Philadelphia. The Lawyers Committee expanded and in late 1974, became a public interest law firm. A high point of my work was preparing a deadly force study comparing the frequency of incidents in Philadelphia versus New York at that time which study was picked up nationally and may have been the basis of a future Pulitzer Prize article on the same subject by a journalist of The Philadelphia Inquirer. The study documented that accounting for respective demographics, the Philadelphia Police Department was involved in literally four times the deadly force incidents as those of New York. In Philadelphia regarding police conduct, it was an extraordinary situation back then. A Superior Court Judges was beaten up on the street, for example. As part of the work, Lawyers Committee attorneys initiated a well-known federal court action, Goode v. Rizzo which sought to curb police misconduct by injunctive relief and was appealed all the way up to the United States Supreme Court. Unfortunately in that instance, the well conceived injunctive remedy fashioned by the trial court was ultimately rejected. We also organized a referral panel, and as part of that work put the City of Philadelphia and the Police Department on notice

of the prior bad acts of certain policemen, thereby possibly establishing through a subsequent civil action by a doctrine called "respondeat superior" the liability of the City. We generated a number of lawsuits in the City of Philadelphia with respect to problem policemen. In instances, significant money judgements were achieved. The Lawyers Committee police abuse referral program had the widespread participation of the Philadelphia Bar, involving over 60 lawyers. After this "activist" period, I went to the University of Pennsylvania Law School intending to become a civil rights litigator. One of my teachers was Julius Chambers who was a great practitioner and teacher whom I was later acquainted with in North Carolina. He has just retired as Chancellor of North Carolina Central University. He was a preeminent Lawyers Committee lawyer. Among others, he worked with Jack Greenberg who himself was one of the most accomplished Lawyers Committee lawyers in this country, and as I understand it, advised the Kentridges in the formation of the LRC. In any event, when I went to South Africa in '82, I was then working as a legal services attorney after graduating from Penn in 1979. I had been a Reginald Heber Smith Fellow in Legal Services. Previously I had worked summers in Harlan and Pike Counties, Kentucky, specifically for the Appalachian Research and Defense Fund, a legal services organization located in the coal producing areas of eastern Kentucky, one of the more impoverished areas in this country. So I intended to be a "lifer" as a legal services lawyer. And with that experience and orientation I had a reasonably good orientation of how to run a legal services organization. I changed, however. I saw the inefficiency of litigation, and while I respect people in legal services who do that, I personally wanted to engage in the housing and community economic development areas. And so I started working at a non-profit called Regional Housing Legal Services, which still exists and is well known in Pennsylvania. Among other things, with our non-profit development company clients, we developed the first independent farm labor housing north of the Mason-Dixon Line, in Chester County, Pennsylvania. At that time, I acted as the President of the Pennsylvania Rural Housing Coalition. We did a number of projects in Philadelphia. For example, we did a commercial mixed use economic development joint venture with the Tastee Cake Baking Corporation, at the Connie Mack Stadium site in the heart of North Philadelphia, which was and is a distressed area. In my project work with Regional Housing Legal Services, I got to know an individual who was a player in South Africa, the Reverend Dr. Leon Sullivan. I got to know Dr. (Leon) Sullivan when he was the pastor of the Zion Baptist Church on Broad Street, Philadelphia and was running "OIC", the Opportunity Industrial Council of Philadelphia. One of my first major real estate projects as a community development legal services lawyer was buying out his group on behalf of a community-based non-profit development corporation located in North Philadelphia. The non-profit acquired an industrial park and converted it to commercial condominiums for the benefit of a number of minority businesses. It's still in operation today, and was purchased in foreclosure from the First Pennsylvania Bank. But through my work in North Philadelphia, I got to know Reverend (Leon) Sullivan well. In my view, he was a great man who embodied his Sullivan Principles, which applied a non-racial standard of foreign

- company conduct in South Africa. He died a few years ago. But what a tremendous individual he was, and he's another player in all of this. But anyway, Dad and Jamie (Kilbreth) brought me along because they figured that I had something to contribute.
- Sr That's right. Yes, a public interest law firm was a newly constructed effort for social change and I knew very little about it. So I had to have Reuben (Clark III) come along with me and it turned out to be very successful, because he had the experience to evaluate LRC as a public interest law firm. Particularly he made friends with the younger lawyers at LRC at the time. We can go into that, as I expect we shall.
- Int Sure.
- Sr I would simply add an addendum to Reuben (Clark III's) account. After PILCOP, he went to the Pennsylvania Law School, and then into this Housing and Development work that he mentioned. At Penn he received the Jefferson Fordham Human Rights Award.
- III I don't want you to read off the resume (laughter).
- Sr I am not going to read off your resume. I'm just going to report that you got the Fordham Award and also a Heber Smith Fellowship, which is awarded annually to, essentially, forgive me (slight laughter), the outstanding young public interest lawyer. This is available for a year or two of fellowship work.
- III We are the proverbial mutual admiration society.
- Sr So therefore, Jamie Kilbreth and I and Reuben, the three of us, in 1982, travelled to South Africa. Our Board by the way had previously passed a resolution urging us to do that, because at that time, our communication with LRC had largely been Lloyd Cutler talking to the Kentridges.
- III This was also intended as a program audit because funding had commenced. SALSLEP was also created at the behest of three foundations, Ford, Carnegie and Rockefeller, and they provided much of SALSLEP's funding. These foundations needed a conduit to fund the LRC in 1982, with responsible oversight and well-heeled American lawyers that added credibility.
- Int How did that...
- Sr And let me say, oh, excuse me...
- Int How did that emerge, the actual partnership with Ford, Carnegie and Rockefeller?

Sr Well, let me say that the beginnings of LRC independently of SALSLEP, was that in 1978, when Ford, the Carnegie Corporation and the Rockefeller Foundation sponsored a conference in South Africa to determine what might be done in developing a legal aid program. This was a very seminal occasion which captured the attention of many philanthropic communities of South Africa. However, much help for legal aid did not come out of this. The beginnings of a public interest law firm did. I don't know all the facts here but I have been told by Felicia (Kentridge), that the Kentridges, major players in all of this from beginning to end, were friends of a law professor at Columbia, named Jack Greenberg. Together with Thurgood Marshall, (Jack) Greenberg was a very conspicuous figure in plotting the strategy, including the litigation strategy, for the appeal to the United States Supreme Court, that resulted finally in Brown vs. Board of Education. Jack Greenberg was a very major figure in the American legal effort that dismantled segregation in the South. He was a friend of the Kentridges and, I think also of Arthur Chaskalson. Anyway, and this is a story that has yet to be told, LRC became an extraordinary public interest law firm, created in South Africa, and based in part on the American experience but also on a lot else.

III Dad, I think it was home-grown.

Sr What?

III I think it was home-grown. While I think the LRC had essential consultation, what made it so successful were the people involved, their standards and grounding in the rule of law, and their overall concept which was tying in with the goals of their clients through legal service and law reform. Their initiatives were well conceived legal initiatives, which was in the form of court challenges to the Pass Laws initially. And, you know, the LRC has the imprint of Arthur (Chaskalson), the Kentridges and others as much as any consultation with Jack Greenberg, and that was what made the LRC so effective.

Sr Well, I can say it didn't take very long for me to get a completely revised opinion of South Africa, when we arrived and ran into all those people connected with the LRC (laughter from both Reubens). Incidentally Reuben (Clark III) made a good point that at the time the tax laws governing charitable contributions to foreign charities required that the contributor, and here we talk about SALSLEP as the contributor, it was necessary that funds were not merely conveyed to a charitable organization, but that they were in fact expended by that organization for purposes that are charitable under US law. Thus, it was important that we, in making a grant, not only identify that the funded activity was charitable, but make sure it was so used. We had just made our first grant, on an application Felicia (Kentridge) submitted to us on behalf of the Legal Resources Trust, to whom we transferred the funds for the benefit of the LRC. This was a 3 year program for \$50,000 a year for legal fellowships, that is, for young legal staff on LRC. We felt that we had to go over and make sure that that's where the money was going as well as assess the LRC generally for future funding purposes.

- III At that time, the LRC had their own base of funding from the Johannesburg Bar. The European Churches stepped forward in a big way and I think the LRC also had support from the Canadian Bar which, I believe, still supports them today. They've also had some direct foundation support from the United States, I believe. But the point here is that SALSLEP was supposed to be a backstop. There was substantial initial funding from these three foundations and if there ever was an urgent need, SALSLEP would then step in and provide funds on an interim basis to keep things afloat as circumstances required. So preliminarily, given other LRC funding, SALSLEP support was in the form of fellowships and other special funding. The reserve concept was in place to keep things going at the LRC if things got very difficult. And as you know, things can get difficult, as in the case of Zimbabwe now.
- Int Just coming back to the trip, when you arrived there, I understand that your opinion of South Africa changed substantially from meeting people at the LRC. However, in terms of the country and its actual state, at that point, in 1982 in terms of apartheid, which was at its height of repression, what was your sense of what was going on? What was needed from a legal perspective?
- III One of the most educational but horrifying aspects of the trip was the sitting in a Pass Law Court and observing a defendant who clearly didn't understand the proceedings. The Prosecutor was speaking in Afrikaans to the Judge, and a court officer was translating marginally for the defendant. The Defense Counsel was literally not involved in the proceedings. It was justice at its worst and there was nothing subtle about it. On another occasion, we met with (Arch)Bishop (Desmond Mpilo) Tutu. While a peaceful man, Bishop (Desmond Mpilo) Tutu was then clearly agitated. He and his diocese were under investigation by the government for misuse of funds, as I recall. A Commission had been formed to investigate whether funds had been converted for an improper use. He was clearly upset by that. He was and is a magnificent man, gentle and responsive in our interview, but you could tell that there was an undercurrent problem troubling him. On another occasion, we went to Soweto to the IBM facility there. Literally more than a hundred young women were being trained as data processors. I remember getting into a discussion with their supervisor and inquiring, "Is this what they do all day?" and commenting "This isn't an education." I got a response, which was extraordinary, to the effect that this is all that was warranted and this is all that they are capable of doing. In some respects, the Sullivan Principles failed, in this instance in terms of educating people. The Sullivan Principles addressed issues in the workplace but in terms of educating and creating dynamic leaders in a bi-racial society, nothing was going on. From my standpoint, as somebody who is interested in economic development and advancing well-conceived development on all levels, what was depressing to me was observing the various townships. As large as Soweto was, it contained literally no commercial development. The Crossroads in Cape Town was and is a shanty town without commercial development of any significance. I have

photographs from this trip which I'll send to you, if you want them. For example, I have a picture of the LRC Advice Center in Soweto. I've also got a picture of the Town Hall in Soweto with other public buildings. As I suggested, there was no commercial development because part of the approach adopted by the apartheid government was to try to keep the black population rural. There appeared to be literally no black small business development there – at least as visible in the townships and shanty towns. Soweto was just a sea of houses with no commercial infrastructure. There's a picture of people getting on the bus in Soweto and otherwise literally walking to work. Hundreds of people on the main road coming into and out of Soweto. That's how things worked. So we had an extraordinary range of impressions. Also, I thought we might be under surveillance there. We were early in our visit, compared to other LRC supporters. In Cape Town, there is a café situated on a mountain to the south that overlooks the City and Robben Island where (Nelson) Mandela was incarcerated. After driving around the Cape, I sat in that café crowded with a number of well-to-do locals. I used to take trips with my family to the South during the '50s and '60's. I remember the 'Whites Only' signage in the various Southern towns. In 1982, such signage existed in the outlying areas of Cape Town. At a particular beach I remember seeing an organized group of young kids, white kids, playing water polo in the surf. They were swimming in the surf at this 'Whites Only' beach and there was a sign there to that effect. And this was 1982, and the segregation infrastructure was still in place, perhaps a bit drawn back, but it was still in place. As I looked at Robben Island, trying to make out the outline of prison buildings and the lay-out, I had thought that Nelson Mandela was still there although unbeknownst to me then, he had been transferred literally days before to another prison after 18 years incarceration there. And I remember thinking about him and his circumstance that he was still incarcerated, that he was and is a lawyer, and I was trying to project my best thoughts in his direction for his benefit. I guess that he got out ultimately in '86 or '87?

Int I think he was moved to Pollsmoor in the mid-eighties, but then only came out in 199...

III 1990?

Int Yes, 1990.

III It was an extraordinary experience for me. There was an undercurrent of discontent. Everyone was affected. The people we went with to Kruger Park, people carried hand guns in their pockets and purses. We were careful how and when we drove. The country was a dichotomy of extremes. Real repression and real poverty on the one hand but a beautiful country. It looked like Southern California in many ways. It was pretty extraordinary.

Sr Let me say also that the trip was eye-opening for me in another respect. I am an American lawyer. I have always felt that we were much superior lawyers to

anybody else. That attitude was shaken somewhat by my experience in London where I (slight laughter) came to realize how so much of the world felt that they didn't want to touch the American legal system because it's simply too expensive and too litigious. Nevertheless, I was unprepared for the sophisticated quality of the Johannesburg legal community. It's first class stuff. They were a very knowledgeable and self-respecting crowd as far as legal work goes. The judicial system, other than its racial laws, was sophisticated but given the laws, of course, a non-constitutional system. The legislature wrote the laws as it wished, including revoking any court decision it didn't like. This gets into another story that I hope we'll touch on, that is how the LRC developed legal ways of effectively challenging apartheid. Anyway, it was an eye-opener for me, the level of legal competence and the motivation of these people. We arrived and we were met at the airport by Geoff Budlender. Geoff (Budlender) was a young lawyer who was fresh out of house arrest as a student leader of the South African Students (reference to National Union of South African Students -NUSAS). Also at the LRC, was a young lawyer, whom I never saw much of but whom Reuben became a good friend of, Charles Nupen. Charles (Nupen) was a labour lawyer who left shortly to join a labour firm. He was also a leader in the student union; I don't know the acronym. (Interviewer's note: NUSAS - National Union of South African Students Union).

III He was also banned. Is banning different from house arrest?

Int Well, house arrest is a form of banning, yes.

III Well, both of them were banned.

Sr Incidentally, one of our current SALSLEP Directors was another ex-leader of the Student's Union. Margaret Marshall, a South African and a very useful and hardworking Director of SALSLEP today. She is the Chief Justice of the Massachusetts Supreme Court, who wrote the Gay Marriage decision. But anyway, let's get back to the LRC. This was clearly a time of real tension. Reuben's (Clark III) quite correct that you kept your eye on the road when you were driving and that sort of thing. The devotion of the LRC people involved was quite extraordinary. I remember we met a non-lawyer on the LRC staff who was a total Afrikaner, an old rugby Springbok. You can't be more Afrikaner than to be a Springbokker. (Interviewer's note: Reference to Morris Zimmerman –not an Afrikaner but Jewish and a famous rugby player). He was meeting the train from Soweto everyday, and as people poured off, he met those who came looking for legal assistance of one kind or another. You were left with a sense that this was just an extraordinary group, and it was.

III In a society where there was little or no permitted integration, the LRC was a very integrated group. There were other organizations that had integration, but my sense was that with the LRC, there was a concerted effort to engage and retain black lawyers, which was difficult to do. Historically it's been difficult. One of

strengths of the LRC was its ability to recruit strong lawyers, black and white. Another LRC strength was its ability to effectively evaluate the needs of its client base. One problem with many public interest law firms is that they often proceed with the agendas of their lead lawyers. The LRC people formulated their litigation in conjunction with their clients. The LRC had a service component through their advice offices and their day to day service work helped to identify the issues and gave the LRC credibility with the community they served. Their client work made their law reform initiatives more precise and directed. That is really the best way to operate. The LRC knew that early, and hence, they weren't accused of pursuing their own agenda. They had absolute credibility. The other component that Dad mentioned is the local Bar support. There were a number of South African lawyers who stepped forward to support the LRC. Johann Kriegler was one.

Sr Let me say that as we...

III I'm trying to remember some of their names...

Sr We met Johann (Kriegler), today a member of the Constitutional Court, on this trip. Of course, the LRC was formed in 1979 around Felicia Kentridge's kitchen table. The four people who put it together were Sydney (Kentridge) and Felicia (Kentridge), Arthur Chaskalson and Johann Kriegler. Johann (Kriegler) was another Afrikaner also. By that, of course, I mean, one who spoke Afrikaans as his home language. He was a leading figure of the Bar as an Advocate. He specialized in the Appellate courts of Zimbabwe, I think it was still Rhodesia then, I am not sure. As it turned out, at the very end of our trip, he and his wife took Reuben (Clark III), me and Jamie (Kilbreth) in a family caravan to the Kruger Park. Incidentally, I would like to say something about our trip in the early days when apartheid was at its most oppressive. In 2004, Johann (Kriegler) sent me an email. I'd like to read you a little part of it.

III Here, I'll find it.

Sr I hope so.

III Here it is.

Sr Good. Thank you. Johann (Kriegler) sent me an email. I had sent him one saying that Leigh Middleditch was coming to Johannesburg, in the early stages of his development of the BLA commercial law project. And Johann (Kriegler) sent me a response, part of which I will simply read. He says: "...those were dark days. (He's referring to the apartheid years). And were it not for people like yourself, the LRC would not have survived, if ever it managed to get off the ground. I have also been convinced that it was not only, or even so much the generosity of your financial support that sustained us but the quality and standing of our donors that shielded us from the worst of the governmental heat."

What Johann (Kriegler) is talking about here is certainly not addressed to me personally. It was to the whole group of support that came from overseas not only from the U.S. but from Canada, the U.K. and the European Churches. It was early and there was much tension. As you know, as Reuben (Clark III) said, (Arch) Bishop (Desmond Mpilo) Tutu came around to the LRC to meet with us, the three of us. He was very impressive but clearly under great stress. As it turned out again, there were links between our much less severe problem of dismantling of segregation in this country and the South African fight against apartheid. Both disclosed that a weapon in the armoury of the oppressor is to attack their opponents, particularly their leading opponents, on the basis that they somehow committed a financial or similar kind of crime. During the segregation wars, I was asked, largely because of my teaching at Howard, to represent the only black lawyer in the state of Alabama, who was then under assault by the Internal Revenue Service for the personal mishandling of his funds. Happily, we were able to get a good accountant to help us, go through his records and meet with the IRS, and there was nothing there. That was exactly what the apartheid government was trying to do to (Arch)Bishop (Desmond Mpilo) Tutu. So, it was a very interesting trip for us and we came away feeling that there was something really important going on there.

- Int I just want to take both of you back ever so slightly, because you mentioned something which I think needs some expansion on, which is the idea that the LRC stemmed from...there was this major conference in 1978, I think, which was organized by Ford Foundation and I think it was held at the University of Natal, if I am not mistaken and at that point, how did the trajectory develop with the formation of the LRC? How did the idea really emerge?
- Sr Somebody else has to answer the question. From what Felicia (Kentridge) has told me, the relationship with Columbia University in general and with Jack Greenberg in particular, was very influential. But as Reuben (Clark III) pointed out, a lot of it was very good lawyering, by sophisticated South African lawyers. And once they had a sense of what a public interest law firm could do, they constructed their own vehicle.
- III I think the LRC constructed their own vehicle. It was extraordinary to me to see Arthur (Chaskalson) doing the LRC books. The financial accountability factor was so prevalent then, as a sword by the government to undercut an organization, that Arthur (Chaskalson) kept it all very close to him. And my sense is that the LRC litigation record was exceptional. Much of the success as I recall emerged in the mid '80s. In fact, the victories in striking down the certain Pass Laws wasn't something that occurred when we were there. We saw the Pass Courts in full operation. We observed the LRC advice centres which were just getting off the ground. We saw the LRC going through the pains of starting a legal services office. I remember Chris Nicholson, who is now a Judge, speaking about the difficulties in getting his Durban staff together. I know about legal services office operations and there is a lot to do. There is fundraising, there's intake, there is

training, there is case management and quality controls. And there is a great deal of inexperience, particularly with respect to the lawyering. A lot of people needed attention. It's a tough proposition to get all of that going. Mr. (Arthur) Chaskalson's capacity to do many things well, was extraordinary and just observing that, was inspiring. The Johannesburg office was starting its operations. There wasn't even a Cape Town office then. There was a start-up satellite office in Durban and in the Johannesburg office, they were taking things incrementally but challenged by demand. And they had the cases on a number of fronts. Charlie Nupen was focused on trade union and labour work, which was very important to do but was a little different from the work of a typical legal services organization. There was a lot of family law and other work that had a broader context given the apartheid system. The LRC was pragmatic, provided services, tried to establish credibility with its clients and was subject of higher scrutiny due to the circumstances, but it was ultimately effective. You know, its extraordinary what happened, and there were a lot of factors that created the miracle of South Africa in terms of the transformation of the government and the transference of power. The LRC is certainly not the sole factor in that, but it was a factor. It is extraordinary what happened.

Int The LRC's approach to challenging repressive apartheid laws was to become involved in specific categories of issues, what's called the 'test case' approach.

III 'Test case', that was a phrase that they used.

Sr It was a 'test case' approach yes, but at the same time, it was a case based upon the facts of that - case and that called for very disciplined lawyering.

III It also calls for good strategy. I mean getting the right legal theory such as adopting the ultra vires doctrine to strike down the application of a Pass Law on legal grounds.

Sr That's an important point.

III But in my experience in legal services, it's only out of doing the service cases, finding the real facts, and doing extensive intake that a test case is found and defined. In one federal case in which I was involved, which sought to enjoin on Title VI discrimination grounds, the relocation of a public City hospital to the distant suburbs, out beyond the bus lines, the best witness was a legal services client, who worked as a domestic, was dying of cancer and could not get to her treatment if the hospital were relocated to its intended location. She was legal services eligible because she made so little money. She died four months after she testified in the federal court. But her depiction of what she might have had to go through and the cost to her if in fact the hospital were relocated was compelling. Even her getting to the existing City hospital was an extraordinary fete, and you know, while the testimony didn't win the case, it made the matter close, and forced the new hospital to make meaningful concessions to ensure access. To me,

it's that kind of factual workup, that is the basis for success. As every lawyer knows, it's always the facts. The hard work in presenting something compelling and that will reverberate with a judge who may be biased, is an effective way to communicate and sometimes, wins the day. The good will hopefully prevail but actual success is based on the facts. The outcome in *Brown vs. Board of Education* is an example.

- Sr Reuben (Clark III) mentioned "ultra vires". During the apartheid years, LRC continued and developed a strategy to stop the government from enforcing certain unjust laws. The following fact situations were the bulk of what they were doing with these test cases. First, was trying to block the carrying out of forced removals. Second, stopping the detention and torturing of political opponents. And third, and this is very important, curbing enforcement of the Pass Laws, which were brutally intrusive into the lives of black workers, who sought jobs in the urban areas but were limited to compliance with very intrusive rules. How to do this? You don't have a written constitution. You have no constitutional rights that even if asserted by courts can be blocked by the legislature promptly to overrule a decision. What did they do? They turned to the old English common law concept of ultra vires to attack bureaucrats acting beyond the authority that the law gives them. Since the Afrikaaner bureaucracy enforcing apartheid often went unreasonably far in interpreting the law, the LRC could sometimes win. I remember one case that gave permission under the Pass Laws for urban black workers to bring their wives in when they are under long-term obligation to work. This was an ingenious way of using common law provisions in some instances to block some harsh apartheid provisions. Good lawyering did it.
- III On a day to day basis, given the extent of apartheid law, a narrow test case may have been perceived as having a negligible impact. But in striking down certain unjust law, there ultimately developed momentum and a belief by many in the rule of law. The LRC litigation record and agenda was impressive, it was well conceived, it was mandated by their clients and it was worked up by some very good lawyers.
- Int Do you think it was solely the lawyers? Because given that under Parliament, apartheid laws were supreme and that adverse judicial decisions could be overturned, I am wondering how, what you think actually acted against the threat of closure of the LRC and also the reversal against legal victories?
- III Well, I think that dynamic of reform is created. An oppressive government can come up with any number of measures that require subsequent challenge. But I do think that legal victories have a way of providing hope, prompting momentum and framing the issues for the public. A successful test case can create the dynamic of teaching society that the rule of law can affect a just result. Also, to light a candle in a sea of darkness, you know, there is validity to that. While reform is largely a political process, individual victories to redress wrongs when cumulatively applied can create a widespread belief in the rule of law. I also see

things as cyclical. The LRC has had its ups and downs as with any organization, but I think it has created a belief in the rule of law as it now engages a new period where law reform litigation may not be as important as it was in the '80s. But the LRC is again reminding South African society of the importance of the rule of law for the redress of grievances, on a widespread scale.

Sr Let me just comment also that in the apartheid years the fact that a Parliament is capable of overruling courts, if they don't like the decision, sometimes is affected by the fact that the legislative process has its own rules. It's hard to bring in a matter and have it passed as law because of crowded dockets and that sort of thing. In fact, this effect is true in this country, where the courts often make decisions not approved by the legislatures but the latter never overturns them. The legislature just doesn't get around to it or does not have ultimately the political will to do it. The new South African rights based constitution was designed as a formative document. It has much to say about how courts and legislatures should share responsibility for enforcing socio-economic rights in a world of limited resources.

III Brown vs. Board of Education is still not fully implemented in this country. In fact, in response, private academies in the South and elsewhere emerged in the seventies and even later in response to the federal courts subsequent attempts to enforce the ruling by desegregation orders. It took almost 30 years to implement the Brown ruling to any satisfactory degree. A lot of desegregation litigation occurred. Segregation still manifests itself, but the terminology is different. It's "neighbourhood schools" now. In this country, the Brown vs. the Board of Education ruling was a beacon from which a lot of good acts occurred.. Apart from law reform, the Sullivan Principles worked, I believe, to effect a less violent transfer of power. The enlightened element of the private sector, specifically certain foreign companies investing in South Africa played a role in the peaceful transition from apartheid. The restraint of the ANC and how they went about their political activity albeit underground played a vital part. The ANC was ultimately respectful of human life. All kinds of factors were at play. I do think that the rule of law is integral to the peaceful transference of power and to a functioning society. That's where lawyers may play a special role and where well-conceived public interest law firms, which in the case of the LRC, which Jim Robertson described as the best public interest law firm in the world, may make a contribution. The LRC was a real success story and hopefully it will continue to be.

Sr Politics involve a race to the bottom (elicits laughter from all). The quality of life in South Africa has been improved by the leadership of many people. If we get to my second trip with Mrs. (Mary Ellen) Clark, I want to comment on the role of women in the war against apartheid.

Int This was a trip you took when...

- Sr In 1985
- Int I am wondering at this point if either of you, both of you would like to take a break.
- Sr Yes.
- Sr Going back to the Sullivan Principles, I was, as I say, an incremental reformer. I was a great supporter of the Sullivan Principles because I was impressed that the only companies in South Africa that paid any attention to them were American: IBM; Exxon –a major contributor to SALSLEP; Ford; Cummins and lots of others. I always thought that putting in rules of non-discrimination in the workplace was progress, but I was amazed to see some coolness on the part of the people at LRC towards the Sullivan Principles. I couldn't figure out why. But I think that it was largely because they felt that it was a sort of quasi-acceptance of apartheid. You put me onto this line of thinking, Reuben (Clark III), when we visited IBM in Soweto. I think that you certainly came away with the feeling that they (referring to IBM) were in a way cooperating with the apartheid government.
- III We just read the Principles. We pulled them up last weekend when we were pulling out what little files that we still had concerning SALSLEP. The Principles were all workplace related and in that respect deficient. They also lacked any real teeth as a worker's right to organize and control workplace conditions. It was only until '84 that there was a broader statement in the revised Principles, towards social justice, among other things. The original Principles were literally like workplace rules - with very little recognition of individual self-determination. The Principles reflected the times and you can understand why the LRC people might have been cool to them because of their limited vision.
- Sr Well, probably the fact is that the apartheid government really didn't object to this sort of lawyering because economically you had a better workforce and the whole structure had to continue relying on black workers.
- III Although integration was antithetical to apartheid, contact between the races was necessary to enable the South African economy to function. The problem was that the terms of such contact was pernicious because of the acceptance of racism. In Soweto, for example, IBM was training young black women, all in uniform, in an academy-like setting, and all they were doing was doing data processing and nothing more. It was Orwellian in my view and in different contexts, we saw that repeated. In Soweto, we also observed a police training academy. At that time, there was a real effort by the government to have a black police force to regulate its own. That dynamic was clearly at play. Apartheid at that time was sometimes very subtle but its workings were in place and you could see them. There was real tension then, and you could observe that tension everywhere. People were considering leaving the country, and many did. Things were highly politicized.

Int This was 198...?

III '82. You know the overriding issue, how do you implement democracy - the only way to do it, is one person, one vote. But at that time, many people of apparent good will wanted some kind of power-sharing arrangement. "Power-sharing" was a term used at the time.

Int Absolutely, it was around the time of the tri-cameral parliament, which you might know of, giving power to Coloured and Indians but not to Africans.

III That's right. Right. I am trying to remember the Indian lawyers who were with the LRC.

Int Mahomed Navsa?

III That's one. We met him briefly. He's an impressive person.

Sr He's an Appellate Court Judge now. He was a very highly thought of lawyer in LRC.

III Fikele Bam was somebody you may remember (speaking to Reuben Sr)

Sr Well , we will get to that...

III Later, okay.

Sr In 1985, we had quite an experience with Fikele Bam, one of the most lovable people I ever knew, I ever met actually (elicits laughter from all). And do you know much about him?

Int I have heard lots about him and watched a video about him recently, yes.

Sr Yes.

III We met with many lawyers. You ought to outline briefly whom we met in '82 in Joburg when we went to the LRC offices. Also, we met with Godfrey Petrie at his law firm (speaking to Reuben Sr).

Sr That's right. We met with Godfrey Petrie who was running the Black Lawyers Association. At SALSLEP, we believed that our mandate was for Southern Africa. Of course, for various reasons, we put LRC first in priority but we also felt that it was important for us to support the Black Lawyers Association, which turned out to be a difficult thing to do.

Int Hmm.

- Sr We met with Godfrey Petrie, who in fact came to Washington at one time and met with our Board. The BLA also had a very interesting chap, associated with them, named Ernest Dikgang Moseneke. Ernest (Dikgang Moseneke) was a veteran of Robben Island. He was sent there as a very young person and he became, I believe, the first black barrister. There were non-white barristers but they were largely Indian or coloured. We met with him and he submitted later an application for funding, and to the Ford Foundation, which at the time was very active in making grants in South Africa. We found that Ford was having a hard time making grants to the Black Lawyers Association for technical reasons, not very good accounting. Another reason appeared to be beyond the BLA's control. The BLA could not qualify for grants from foreign donors, under South African law.
- III That is similar to what SALS faces in Zimbabwe now, specifically serious accounting problems as well as monetary conversion laws.
- Sr Zimbabwe came after my time as an active president. We'll get to the setting up of our endowment for the LRC as an off-shore trust by the Ford Foundation who intended to withdraw from grant making. They say they are making no more grants, but that doesn't seem to be true. Have you met Alice Brown by any chance, who is a Ford Foundation representative.
- Int No...
- Sr Well, we can get to that because you may find it interesting. But we finally made a grant to the BLA in the late eighties to fund an LLB program, scholarships for Black LLB candidates before they become articled clerks. It was very difficult. Godfrey Petrie was a very lively fellow anxious to get things done, but the BLA finally had to bring in new leadership in order to qualify for foreign grants. They had not been able to qualify for foreign grants, as LRC did.
- Int How did the LRC... sorry to interrupt you, what gave the LRC the ability to receive funds? Was it because it had been set up...
- III Well, they were scrupulous in meeting requirements for administering a good program, whether it was for South Africa or US.
- Sr When we got there, the first thing that we did was sit down with Arthur (Chaskalson) and see where our funding was going. Among other things, they introduced us to their accountants. We left with great confidence that they were scrupulously handling our funds.
- III It wasn't just their accountants, it was Arthur (Chaskalson).
- Sr Well, Arthur (Chaskalson) was the local person was doing it but the fact that the accountants came in annually and professionally auditing the place was a matter of great reassurance to us. LRC at an early stage went through the rigmarole of

- qualifying for receiving foreign grants. The Black Lawyers Association at that time did not do that.
- III Yes, the proper accounting for funds and expenditures is critical from a grant compliance and legal standpoint.
- Sr We had some rather tough Directors at that time. One was a very interesting older man named Bob Clare, who was Chairman of Shearman and Sterling, a major New York firm. He was really suspicious that we weren't adequately policing where the funds were going but we did. And LRC was a very happy donee from our point of view because Arthur (Chaskalson) knew where every penny was going.
- III The LRC was also a vibrant law office. LRC attorneys met with clients regularly. The advice offices were used to capacity. While we didn't do file audits, we had summaries of various cases, mostly service cases. At that time, there was some emerging test case litigation and we met with Arthur (Chaskalson), Felicia (Kentridge) and Geoff Budlender regarding that. On our trip to Soweto, we met a woman who was running the LRC advice office there. I've got a picture of her; I can't remember her name. We met with some of the strongest LRC supporters, (Arch)Bishop (Desmond Mpilo) Tutu and Nthano Motlana, among others. We had a crowded itinerary. We went to the pass court, we met with the Black Lawyers Association, we met with other non-profit representatives in Johannesburg and elsewhere. We did all this in about eight days, and we went first to Jo'burg, with a side trip to Soweto, then we went to Cape Town, with a side trip to Crossroads. Cape Town was a fascinating place. We then went to Durban, met with Chris Nicholson and then a Professor at the Law School at the University of Natal, among others, with a side trip to the University of Zululand.
- Sr I think the Professor was, his name escapes me. He was very important in all these various law reform activities. I'll try to think of his name. When we get the draft back, I may be able to insert his name.
- III There was strong support for the LRC from attorneys of the various Bars. Richard Rosenthal was in Cape Town, and as I mentioned, Chris Nicholson headed up the LRC Durban office at that time. And we met other lawyers. I wish that I had kept my notes. There was clearly an element of the local Bars that supported the LRC and its work. It was very important to Arthur (Chaskalson) that there be local Bar support, for the start-up office in Durban, among other things. I could tell that there was some tension between Durban and the central LRC office in Jo'burg; my sense was that Arthur (Chaskalson) kept a tight rein on things and there were some issues in terms of organization and administration of the Durban office - standard issues that arise with the start-up of a legal services office. But there appeared to be a number of motivated young lawyers. I am trying to remember the names of a couple of the young attorneys in Durban who impressed me. The LRC offices looked and felt like their American counterparts. In many ways, the

- LRC offices were similar to the legal services offices that I was acquainted with in the United States. But the real significant thing was that not only was the LRC a legal services operation, it also was effectively a public interest law firm implementing essential law reform. My sense is that the LRC really had strong client relationships, which sometimes don't exist where the lawyers are of a different race and class than their clients. There was an accountability as between the LRC lawyer and the LRC client, which in my view is fundamental to the lawyer-client relationship. My sense is that the LRC attorneys were as a rule well-connected with their clients.
- Sr The importance of advice centres was not an accident. The second grant that we gave was to support advice centres, including the setting up of advice centres. And that was as critical in setting up the legitimacy of a rule of law organization like the LRC. I may have mentioned before, that the LRC had on board, this former 'Springbok' (reference to Morris Zimmerman). He met the train from Soweto which came into Johannesburg every morning, to a station not far from the LRC offices. Many of those commuters came to the LRC office for help where they were processed and represented. And that went on, month after month, year after year and...the LRC office in Jo'burg was itself, the principal advice centre.
- III I think that the LRC was early in establishing advice centres. In America, what evolved later were special courts to administer smaller disputes and problems. Even beyond small claims, we established special housing courts and other special tribunals to solve disputes. The LRC evaluated their clients' needs, and embraced the advice centres as an important service component. They were helping people with their problems, and they didn't make a big deal out of it. That to me is important. The LRC did not pursue its own law reform agenda but provided an ongoing service that was meaningful, by using good paralegals to achieve good results for their clients.
- Sr I don't think there's any question but that Felicia Kentridge was a major initiator of advice centres, particularly in the rural areas. Remarkably, this elitist urban lawyer organization saw the importance of stretching out to rural areas.
- III They had an advice centre in Port Elizabeth to assist the cane workers early on. The LRC was trying to get in areas where there were known problems to provide redress. We never made it to Port Elizabeth.
- Sr We went to Grahamstown, in the '85 trip. That's where Rhodes University is, I believe.
- Int Yes, that's correct.

- Sr Yes. Incidentally, there we ran into Sydney Kentridge, who was doing some pro bono work in the library of the local court house. We didn't know he was there. There are so many stories to be told and part of it is: how in South Africa was a public interest law firm put together so quickly, pushing all the right buttons in doing so? I would love to know sometime.
- III There's another component we haven't talked about and that's Felicia (Kentridge)'s role.
- Int Yes...
- III She was integral to the LRC's success. She was the one who did most of the fundraising. She was the one, I believe, who championed the service component and managed it, and I don't think she was a litigator (addressed to Reuben Sr)
- Sr No, she wasn't...
- III But she was the face of the LRC publicly, throughout Europe and in this country.
- Sr Felicia (Kentridge), for example, came to a Board meeting in 1988 or '89 and simply told us, the Ford Foundation is prepared to make very substantial gifts to off-shore trusts or endowments for LRC, Namibia and Zimbabwe. We weren't then responsible for that. She was both an extraordinary fundraiser and an extraordinary strategist, and it's quite a story. I don't think she appeared in court at any point during her time at the LRC.
- Int What was your earliest association with Felicia (Kentridge), when did you meet her?
- Sr I met her in 1978 when Lloyd Cutler introduced us. I think we met in that fancy hotel, not the Connaught, but the other one?
- Int Claridges.
- Sr Claridges. Lloyd (Cutler) happened to be a great Anglophile and he loved the structure of the British legal system in you know, (laughs), Inner Temple, Middle Temple, all that sort of thing. He just took to the British system of lawyering and became a friend of the Kentridges. Mary Ellen (Clark) and I met Sydney (Kentridge) and Felicia (Kentridge) at Claridges Hotel. One thing led to another but of course, be careful, you will stimulate us - at least stimulate me - into going into the whole system of bottom-up law that started with the Great Writ at Runnymede (elicits laughter from all) and which South Africa was an inheritor in large part.

- Int You met Felicia (Kentridge) in 1978 and SALSLEP followed soon after in 1979. At that point, did you have any reservations about the LRC; how it would function, given that you hadn't gone to South Africa as yet?
- Sr I had in fact visited South Africa...
- Int Oh, you had...
- Sr Yes. In London, I was the American Counsel for a nuclear power group called the Uranium Institute, which was fascinating legal work because the Institute was the marriage of the uranium producers and their customers, which were nuclear power plants. I had to go along with their various activities because they had to prove to the Americans that the cartel which some producers had previously put together was finished. We had a very interesting trip to South Africa, which was in 1977. I went down in the mines and came away with a sense of the considerable vitality of the South African economy, certainly in its mining industries where uranium was an offshoot of diamond and gold mines. I was at that point basically unaware of the problems of apartheid but I saw enough of it to recognize Jim Crow. This seemed to be pretty late in the game.
- III In 1982 was the first real audit trip for SALSLEP. The expenditures had not been substantial to date. We are talking about \$50,000 a year for three year period (refers to Reuben Sr)
- Sr Three years, totalling \$150,000, which we pledged unfunded and then raised the money which resulted in a second LRC application. The first had come from Felicia (Kentridge), the second came from Arthur (Chaskalson). The second application was for so-called core support, which was allocated to LRC's offices and advice centres, including rural centres, for which Felicia (Kentridge) was strongly committed.
- III SALSLEP was not a primary funder until later, and it still is not. The SALS Foundation serves a reserve resource like an endowment. Currently SALS has about 5 million dollars in funds, received primarily from the grant occurring in '89 or '90 to fund legal services and law reform in Southern Africa, including South Africa, Namibia and Zimbabwe. Regarding Namibia, SALS is just releasing over a million dollars on account there, and funding to Zimbabwe remains problematic - the same kind of concerns as were presented in the late seventies and eighties for funding the LRC during apartheid. It is important to have the face-to-face visits; it is important to have proper financials. You can assess quickly whether the people in the funded organization know what they are doing, and whether they are accomplishing their mission. In evaluating grants compliance, an area which I had some experience by working in housing and community development as a legal services attorney, you always wanted the donee to meet specified standards in terms of financial reporting as well as provide cogent and concise program reports but not get embroiled in justifying to

yourself or documenting every expenditure, as often was the case in an audit with respect to the use of government funds. The trick is to be a friendly donor supportive of the mission, but to do a proper and complete assessment. In 1982, real goodwill was generated by our just being present. You know they get excited when SALS board members attend their meetings. I hope to do that this May for the first time. I haven't been to one; I haven't been back since '82. But you know he (refers to Reuben Sr) wants to do it, so we hope to do it, and see what happens.

Int Sounds very good, I was thinking at this point, maybe we should move to 1985, that's come up quite a few times.

Sr What, sorry?

Int The 1985 trip.

Sr 1985 trip. Oh yes, let me get my notes here because I thought this was probably going to come up. I don't handle my files like I used to (elicits laughter).

III Some would say...

Sr 1982 trip to South Africa, notes okay..

III That's '85

Sr No, it was '82

III No, you want '85

Sr Didn't you say '82? Or '85?

Int Well, have you covered...

Sr Wait a minute, you're quite correct Reuben (Clark III), you are quite correct. The trip was '85 trip.

III The trip with Mom.

Sr The trip with Mom. This was for two weeks. Mary Ellen (Clark) and I went. By this time, we were quite good friends of the Kentridges. They would stay with us when they came to Washington or to the farm here in Charlottesville. And when we went to South Africa, we stayed with them as houseguests in Houghton. On this trip, we found that the tension observed in '82 had to a certain extent been lifted. The economic situation was bad, the rand had deteriorated badly. But the kind of tension that we had noticed in (Arch)Bishop (Desmond Mpilo) Tutu was to a very substantial extent lifted. The LRC morale was higher. They realized that

they had put something together that was working and was supported by the legal establishment.

III And by then, they had some legal victories.

Sr They had some legal victories. At the Kentridges, we met a lot of people who were involved in either LRC affairs or related affairs. We met their family, Matthew, William and Eliza. Matthew was going to get married shortly. We went to a party at Arthur (Chaskalson)'s house and met the whole cast of characters involved, including Charl Cilliers who was the Head of the Law Society and a long-time member and Chairman of the Legal Resources Trust.

Int The LRT

Sr Charl (Cilliers) had us for a very private pleasant dinner. He was a very traditional man but a very strong supporter of the LRC and the LRT. He took us to a restaurant that was patrolled by armed guards. We discussed issues, me speaking for SALSLEP. Then we flew with Felicia (Kentridge) to the Transkei, which as you know was the effort by the apartheid government to set up a subordinate sovereign area run by chosen blacks, as brutal as, and maybe more brutal than, the South African government. We took a small plane, the hairiest air trip I've ever had. A small plane flew through terrible weather. We all set in twelve seats. We could see the pilot's compartment where there was a big radar screen filled with clouds. We knew that they had to find their way through the clouds, so we sat there observing with great interest. We had to come down for an emergency landing in Port Elizabeth and then went on to fly to the Transkei where we were met by Fikele Bam. We stayed at the Holiday Inn, the leading motel chain in the country, and in the Transkei, of all places. We went to a party the night when we arrived with all the LRC people who were there. Their names escape me for the moment. But we left the next day by car, Fikele (Bam) driving with the three of us, Felicia (Kentridge), me and Mary Ellen (Clark), to Port Elizabeth. You go through Grahamstown on the way. The drive was extremely interesting. Fikele (Bam) was a most enjoyable host. I understand that he's now a Lands Court judge. Whether he is still at it or not, I don't know. I saw Fikele (Bam) later in a meeting in New York hosted by the Carnegie Corporation on some potential funding that the Carnegie Corporation had in mind. Our drive was a wonderful drive - the country from the Eastern Cape to Port Elizabeth. On the way we passed a valley where you looked down from the road to a tribal village, which Fikele (Bam) said was where Nelson Mandela was born and came from. We went on to Grahamstown where Fikele (Bam) and I visited the University of the North, which was very depressing. We visited, had lunch there and talked to the faculty. The University of the North was one of the black colleges, which was deliberately set up to accommodate black students but insufficiently supported in terms of its students getting any kind of an education. We then left Grahamstown for Port Elizabeth which was very interesting. We had lunch at the invitation of a number of women, white and black. Their names all escape me now. Two of the whites

were killed two weeks later in a highly suspicious automobile accident, which I am told was evidence that the further one got into the country, away from Johannesburg, Cape Town or Durban, the more one sensed an oppressiveness which could turn into violence. In addition, this visit impressed upon us the role that women played in defeating apartheid. They, the women of Port Elizabeth, were determined to publicize incidents of oppression and they would get into a car and go out in the country, get the facts and publicize the violent events. The women that were killed later were very articulate middle class types similar to those of another organization called Black Sash. The women of Black Sash were very close to the LRC. Women were able to maintain links between white and black which was very helpful in the anti-apartheid effort. We left Port Elizabeth and flew to Cape Town. At the Port Elizabeth airport we got on a plane and Mary Ellen (Clark) gave a great affectionate hug and kiss to Fikele (Bam). It happened (laughs) that she was witnessed by some white females who sat behind her and glared at her all the way to Cape Town. On that trip, that was the closest thing to physical problems that we encountered. In Cape Town we stayed as a guest of Richard Rosenthal, who had visited us a couple of times in Washington. A free spirit if there ever was one. He wrote a book, are you familiar with his book (question posed to Reuben III).

III I am; I haven't read it.

Sr You haven't read it?

III No

Sr Well, Mary Ellen (Clark) has read it all. It was a book about his efforts to bring some immediate reform to apartheid. We stayed in the Constantia area, which produced the wine that Napoleon (Bonaparte) loved while on the Saint Helena. The Elphin Hotel was a lovely place to stay and indicated how nice living in South Africa could be, if you were of the white race. One day I was not feeling well, so Richard (Rosenthal) escorted Mary Ellen (Clark) on a day trip to Stellenbosch and Paarl, to taste wine in the vineyards.

III Both Mom and Dad have a personal interest in vineyards. For many years they operated one on their farm south of here.

Sr We had started a vineyard ourselves, and the visit under the patronage of Richard Rosenthal to all those wonderful vineyards in Stellenbosch and Paarl was greatly appreciated. Actually, Reuben (Clark III) and I had visited Stellenbosch on our '82 trip, where we had met an Afrikaner academic at the University. I think, but I'm not sure, he was or is currently on the Constitutional Court. I forget his name. Mary Ellen (Clark) and I returned to Johannesburg on the Blue Train, which was quite a luxurious experience. That said, it showed us how so much of South Africa was desert, especially the Great Karoo. And so we returned home. Our visit was to a large extent social but the experiences we had in our travels with

Fikele (Bam) in Soweto, at Port Elizabeth and at the University of the North, all of this was serious stuff. We came away once more quite impressed with the programs that LRC had begun, and with the sophisticated litigation they were bringing against the government. The widespread support that the LRC had developed from the legal profession, including the two Bar Associations; the Bar Association for Barristers and the Side Bar, as it is called, for Advocates, was truly remarkable. It was a very pleasant and confirming experience that the LRC remained a very impressive organization.

Int I am wondering from 1985 to 1989, whether there were any major issues in terms of SALSLEP and LRC?

Sr Yes, we at SALSLEP were the beneficiaries of grants from the Sullivan Principle companies. I don't have the figures here but our first grant, which I have mentioned, was for legal fellowships. Our initial funding to the LRC during our first fiscal year, which was 1981, was for \$41,000 dollars, which we had raised from the Exxon Corporation, from a small foundation called Kaplan Foundation and from individuals. Ford had not quite yet gotten around to making us a substantial grant. However, they did come through in a substantial way, although they, by this time, had set up an office in Johannesburg. Although in one sense they didn't need us anymore, since they talked directly to LRC - that is, they were in touch with Felicia (Kentridge). But grants did come to us in the last few years. I don't have the records, but they are available in the SALSLEP and LRC files. We had major funding from IBM. We had six figure funding from the Ford Foundation and we had funding from the American Sullivan Principles companies. And I noticed that in fiscal year 1989, we had \$349,000 in funding, most of which we passed on to LRC but not to entirely. By this time we were able to make a modest grant to the Black Lawyers Association. We also made a grant to John Dugard's group.

Int Applied Legal Studies ...

Sr John Dugard's Center for Applied Legal Studies. But this was because by this time the American companies were disinvesting and leaving South Africa. They gave us very substantial funds (laughs), as a departure gift.

Int Yes, it is a bit ironic.

Sr Yes.

III (laughs) Yes it is.

Sr In 1989, I retired. I had reached retirement age in my firm, which was 65, in 1988. Under the rules, I retired at the end of that year, which was January 1, 1989. That year, I also retired as President (of SALSLEP). I was succeeded by Jim Robertson, now a Federal Judge. At this time, the Ford Foundation wanted to sign

- off with substantial grants to SALSLEP for the benefit of the LRC, the Namibia LRT, and a similar public interest law firm recently created in Zimbabwe.
- III The Legal Assistance Trust.
- Sr The LAT of Namibia. Jim Robertson negotiated most of this. My understanding is that Ford transferred \$1,250,000 to SALSLEP for the benefit of LRC, \$1,000,000 for the LAT and \$1,000,000 for the LRF of Zimbabwe. We invested that well during the 1990s, then lost a portion in 2001 when the market declined and then made it all back. My understanding is that these three accounts are worth more than \$5,500,000 today and that some transfer of funds will be made at the request of the LRF of Zimbabwe.
- III No, Namibia.
- Sr Was it Namibia? Well, anyway, I was not much involved in that. I spent most of my time as a Director in working with the investment policies of SALSLEP with a new Director, who is the first woman and the first non-lawyer to join the SALSLEP Board: Judy Thomson. Judy Thomson is a dynamic individual. Among other skills, she brought to the Board a no nonsense approach to raising and investing money. At this time, she was the Chairperson of the Friends of the British Museum, directly raising funds for the British Museum itself. Judy (Thomson) was also determined that we should have some new blood on our Board of Directors. In particular, we needed more women. We brought in a number of additional women, including Margaret Marshall, a South African and the Chief Justice of Massachusetts Supreme Court, and Gail Starling Marshall, a Professor at the University of Virginia Law School, who is a very good lawyer and active in pro bono activities. Gail (Starling Marshall) is a former partner of Hogan and Hartson. Judy Thomson was also responsible for persuading Harvey Dale to take over as President. She showed us lawyers, among other things, how to get things done in the charity area (elicits laughter). Reuben (Clark) III became a Director at some point...
- Int That was when?
- III 2004.
- Int In terms of the Ford Foundation, Reuben Sr., what's your relationship with Ford Foundation and Bill Carmichael?
- Sr Bill Carmichael came on the SALSLEP Board in the 1990s as a Director, a very faithful Director. I had urged SALSLEP to enlist him. He must be interrogated for Oral History.
- Int We're trying to get a hold of him (laughter)

Sr But he has been contacted. Do you have his name down?

Int We're trying to get hold of him.

Sr Oh good. Bill (Carmichael) was a major player for Ford from the beginning to the end of the LRC story. His story must be told and from all I can see now, you are the person to get him to tell it. (elicits laughter).

Int Thank you. In terms of 1989, that's the point at which transition was starting, did both of you have an inkling that change was going to happen in South Africa.?

Sr Oh yes, absolutely. I had moved out of Washington and came down to Charlottesville, but continued to be involved as a SALSLEP Director. I was not involved in the administrative role as I had been before. We were quite sure and quite excited by 1989 that there was going to be meaningful change in South Africa. People had great expectations, which were largely met. Incidentally, in 1987 I think, it was Felicia (Kentridge) who came to me and said "Reuben you need a staff." As I said Jamie (Kilbreth) and I were the staff with our two secretaries. "Thank you Felicia (Kentridge), do you have anybody in mind?" "Oh yes, as it happens, we do." And she said Robyn Sealey, a South African, who incidentally, you are going to probably have lunch with tomorrow, if she can find a babysitter. I'll give her a call. I hope she can. Robyn (Sealey) was a very good administrator, took over the administration of SALSLEP and all that we were doing with all this money now coming in, wrote the minutes of meetings, travelled to South Africa and advised our Board on the lay of the land, which she was quite familiar with. Her husband, who is not here now, is Mike Sinclair, whom I met at the time, who is a South African, and ran a consortium of foundations. He now is in charge of a consortium of foundations led by the Kaiser Family Foundation on Aids. He is now in South Africa and is a major player in private relief efforts. Robyn (Sealey), whose email address by the way, is 'pigs might fly' (elicits laughter) and I am delighted to be in contact with her once again because she is living here in Charlottesville.

III When did Ann (Satchwill) come on board? (refers question to Reuben Sr)

Sr Ann (Satchwill) succeeded Robyn (Sealey) in the late '90s, I don't know the year. She's been with SALS for a while and is an equally effective administrator.

Int I am just curious, how did you have a sense that apartheid was ending?

Sr Well, so much of it was word of mouth.

Int And did you find...

Sr Excuse me.

Int Did you find that the LRC was preparing for this?

Sr Yes. Absolutely. They were to my surprise and to lots of people's surprise. In 1990, I guess it was then that (Nelson) Mandela was released from Robben Island - when serious negotiations took place.

Int CODESA, yes

Sr These were serious negotiations in which the LRC people were very much involved. Also, the LRC was instrumental in drafting the Namibian constitution and setting up the Namibian LAT. Our Board member, Erwin Griswold, quite an elderly fellow by this time, had made a couple of trips to Namibia, as an observer and he came back with a lot of information which he shared with us. The interesting thing was that as things developed under the new regime in South Africa so was LRC's role expanding in post-apartheid Southern Africa.

Int Yes, and that's what I would like to ask you about?

Sr Well, first of all, the demise of apartheid dried up SALSLEP's funding. The Ford Foundation left us with substantial off-shore endowments but told us that for the LRC, LAC and LAT, there would be no more grants made. The LRC had to find a new role and a capacity to raise funds, when so many people thought that the war had been won. The foundations generally were attracted to put their money in South Africa into Aids. All this called for a different strategy, obviously. In due course, I think what happened is that the LRC turned to a vital but different role in monitoring the new government's role with respect to the transformative constitution. And all of that has been very interesting. First, many of the LRC people went into government. Arthur (Chaskalson) became Chief Justice, and his successor Geoff Budlender took on a role in the (Nelson) Mandela government for land and housing. He didn't stay in that role for very long. The LRC was thrown into a state of some confusion; it didn't quite know what to do. Geoff (Budlender) shortly returned to the LRC, as a most important player in directing LRC as a private group to engage the government in the enforcement of a rights-based constitution, particularly socio-economic rights.

Int Within the LRC there is now the constitutional litigation unit, which is George Bizos and Geoff Budlender...

Sr Yes, Geoff (Budlender) was and is a great constitutional lawyer. The team of (Arthur) Chaskalson and (Geoff) Budlender is a very interesting team. I have a copy of a memorandum which was funded by Ford that Geoff (Budlender) wrote entitled "Using the South African Constitution as a mechanism for addressing poverty, a strategy memorandum for the Legal Resources Centre". (Addressed to Reuben Clark III) Reuben, I am giving you this memorandum, make a copy and send it back to me.

- III I'll do that.
- Sr Another interesting draft memorandum was one that Arthur (Chaskalson) wrote on enforcing socio-economic rights. The Constitutional Unit of the LRC was a major player in a series of cases of great importance in defining how a government should enforce socio-economic rights as a constitutional matter.
- Int It seems to me that if anything, even though, apartheid's ended, the actual work of the LRC has increased quite a bit.
- Sr No question about it. The LRC has been a leader, largely through the work of Arthur (Chaskalson), Geoff (Budlender) and George Bizos in dealing with this cutting edge question and from which we have much to learn.
- III I don't know the exact period from the transition. Did negotiations occur in the early nineties?
- Int Yes...
- III I have read descriptions of some of the cases. Andrew Sillen's piece, *"The Case for the Legal Resources Centre"* is a compendium of various cases. While I haven't assessed how well the LRC performed in the transition, or to what extent the LRC was involved in the transition, for that matter, I do sense that before Janet Love joined the organization, they were in some trouble in the early 2000s. But I do think that a theme throughout the history of the LRC has been their adaptability. The LRC may have a broader definition now, which is appropriate and pragmatic for these times. The LRC was first an anti-apartheid law reform organization, then negotiated and worked through the transition, and must now reinvent itself again. This exercise is useful, I suppose, but the real oral history as to what actually happened, lies with others, including Arthur (Chaskalson), Geoff (Budlender) and the Kentridges.
- Sr There are, of course, other lawyers involved in this. George Bizos, for example, is a fascinating person who, like Arthur (Chaskalson), goes back to the Defense Team of (Nelson) Mandela, many years ago.
- Int Yes, there is also Ismail Mohamed.
- Sr Yes.
- III The question that is significant for me at this time is what is LRC's role now?
- Int Yes, absolutely...
- III Is Geoff (Budlender) back on the Constitutional Litigation Unit?

- Int From what I understood he was back at the Constitutional Litigation Unit but I may have...
- III I think that is great. One overarching problem with public interest law firms, apart from inappropriately projecting the agendas of individual attorneys not that of their clients, is the lack of institutionalization. Many don't weather the storms. To work, public interest law firms require continued attention and lifelong commitments. If Geoff (Budlender) is of counsel, that's wonderful. You need senior people. The fact that Arthur (Chaskalson) is back on the Board is also a great development.
- Sr That's the Board of the Legal Resources Trust.
- III It strikes me that the potential for arbitrary and capricious action by the government is every bit as possible now as before.
- Int Absolutely, do you foresee a problem given that many of the lawyers in the LRC who have been very strong supporters of the ANC and its fight against apartheid. How do you see that as emerging?
- III That's an issue although the LRC has been dynamic in the way that it has maintained its autonomy as well as approached change. From Janet Love's statements, I could tell that this issue of the possible politicalization of the LRC is a foremost issue for them. They are principled, but they do have longstanding political affiliations with the ANC. Your question crystallized for me what I think is the ANC dilemma at this time – possible political cooptation which would undercut the LRC's original purpose which was and is to enforce the rule of just law. Where people who are skilled and of high character stay true to their principles and on the program for the betterment of those they seek to serve, and not be co-opted politically, great things can be accomplished.
- Int In terms of the Truth and Reconciliation Commission, I think you may have been following that to some extent, what has been the involvement of the LRC, if any, and what has been your reservations from the perspective of being part of SALSLEP (now SALS)?
- III That's a good question. I'm not the one to answer that.
- Sr Well, I think that during the apartheid years the law was largely a tool of oppression. But, I am impressed with what is going on today in South Africa, at least, as far as Arthur (Chaskalson)'s constitutional court is concerned and as far as (Geoff) Budlender is concerned that is quite extraordinary.
- Int Thank you.

- Sr I hope you can review a copy of Arthur (Chaskalson)'s draft memorandum, which may have been published. I don't know. The memorandum reflects the Constitutional Court's attitude towards defining the obligations of the government to enforce constitutional rights.
- III Wasn't the Truth and Reconciliation Commission the brainchild of (Nelson) Mandela?
- Int From what I can gather, it was really the brainchild of Dullah Omar and Kader Asmal.
- Sr Of whom?
- Int Dullah Omar, the Minister of Justice, I think he was...and Kader Asmal, the Minister of Education. I think they spawned the idea of adopting this kind of process.
- III Was the LRC on the record in terms of assisting in its implementation?
- Int That's what I too am trying to figure out and am trying to understand...
- III That's a good question.
- Int I think it hasn't been as an organization, but it may have had individuals who may have had input into the reconciliation process.
- III The reconciliation process was a masterpiece historically. As an organization, the LRC undoubtedly provided cover for people in enacting and implementing the process.
- Int Yes, I suppose. What people don't seem to understand is that the whole idea of Truth and Reconciliation is a legal process and so, I am interested in how the LRC has viewed this.
- III As to how to engage a novel process as this presents a great dilemma for lawyers. A great lawyer, like Arthur (Chaskalson), under the auspices of the LRC, may adopt a strategy to assist in the implementation of the Truth and Reconciliation process. But your average litigator in the trenches gets taken where his or her cases lead. With its broad mandate and historical standing, the LRC was probably prevented from becoming too categorical and unresponsive to the transition.
- Sr Well, let me say that clearly the Truth and Reconciliation Commission was an accomplishment of great significance. But the situation is not yet finished. You take Spain for example, Spain is going through much the same problem of how to deal with its past, which was the Civil War of the '30s and the oppressiveness of

the Franco government. In effect, they had decided on a very rough version of a Truth and Reconciliation Commission in that they decided not to pursue vindictiveness, or revenge or whatever that might be. However, there is an overwhelming desire in some quarters to go back and rake over the coals. It is a fascinating issue and in my judgment, South Africa has been more successful in this area of putting the past to bed than in any other comparable situation.

III Reconciliation is a new concept in terms of applying the law. The concept contradicts the adjudicative process of the law. In formulating a working truth and reconciliation process, South Africa presents a model for the rest of the world. It is a fascinating subject and I profess not to know much about it.

Int My concern is that a lot of the issues that emerged from the TRC are really now going to be the backbone of the LRC's work in terms of criminal justice administration. But how does that then parlay with social progress and economic development, etc?

III The enforcement of human rights is more prosecutorial in nature. Social progress and economic development are far broader in terms of remedies. How economic rights work with the legal services operations is uncharted for the LRC, in my view. In America, there were huge fights in the eighties over the permissible scope of legal services work. Many people wanted to get rid of legal services in the United States because they saw it as attorney ideologues pursuing an agenda. I didn't see it that way. I thought that the work was important, in particular the service work and well conceived housing and economic development work which by definition deemphasized litigation. Crassly put, in my view, legal services in America has been a highly effective form of "revolution" insurance. Legal services in this country has provided substantive service and opportunities to people who were aggrieved and put their lives on track. In my view, there must be a component for a society and its government to address the needs of the underclass. We have not done so well in this country, and still haven't accomplished the goal in legal services, but we are making headway. With respect to legal services, I have a bias toward the community development, housing and economic development work and that is because, by experience, I have become a great believer in the private sector. Where there is a strong private sector, societies tend to be more stable and opportunities for advancement are greater. I am still disappointed in the relative lack of private sector initiatives to be more responsive to the social agenda and to provide opportunities to low income persons, but that too may be changing for the better.

Int The LRC has increased exponentially; it's been in existence for 26-27 years and it has five offices. I looked at the Ford Archives earlier, and it cautioned against expansion particularly during the early part of the eighties. How do you feel about the expansion? Do you think it has been necessary? What are your concerns from a financial point of view about the expansion?

- III Well, the LRC has obviously funded the expansion and it certainly has not relied on the SALS Foundation to fund it. As I said, SALS funding exists as a reserve and for special projects. I think in terms of South Africa's service needs, I would expect that the expansion is justified. With that growth, however, I think, there are numerous issues and problems, both internal and external. In listening to Janet Love, the growth issues resonated with me. Essentially she is managing a large law firm consisting of people who are underpaid and in all likelihood without substantive pension benefits, if any. Management of lawyers can be difficult. In America, we use the term "herding cats". Lawyers of any type often pursue their own agenda, do their work on their own terms and some are not particularly effective. In a private firm context, the standard for good performance is profitability. But in a public interest law firm context, where the standard is what you have accomplished for your clients, and what have you done in terms of substantive real law reform, that is subjective and a harder assessment, in my view. On balance, the legacy of the LRC is a great one. Like many organizations, it needs to be retooled at different points in time. How to retool is an important question and I don't have many answers. I would expect that like in many situations, it is better to look to the future, but have learned from the past.
- Int Earlier, Reuben Sr, you'd mentioned the idea...that there were more women put onto the Board of SALSLEP and I am wondering whether this is an issue, because it certainly has come up in the Ford Foundation grants, the issue there being more black lawyers within the LRC....
- Sr Oh, that's been...
- Int And that's been something that you....
- Sr That was a matter for our Board, which proceeded to add some very distinguished women, lawyers and non-lawyers. I know that John Payton, a Director, pointed out to me that the failure of LRC to have more black lawyers was a problem. On the other hand, the work that Arthur (Chaskalson) and Geoff (Budlender) were doing demanded legal skills that meant it was very difficult to include the kind of lawyers that were required, given the fact that so many of them came from the University of the North, which I visited once and realized that this was a very inadequate beginning. This was part of the dilemma that South Africa has had to face, but it is certainly something we've all had to face, that the fact that we have to have black lawyers participating as a practical and substantive matter. But they're very hard to find in some circumstances.
- Int One of the key issues that emerged from my interview with Felicia (Kentridge) was that even though black lawyers are being sought by the LRC, there's a sense of wanting more jobs that are lucrative in the private sector.
- Sr Oh, no doubt about it.

- III We continue to have that problem in the United States, Minority recruitment for legal services has always been tough but increasingly so, given the public companies' demand for greater diversity in the workplace. When my law firm interviews for the work of a public company, diversity is now always an issue. I have no answers but John Payton is absolutely right, there must be a presence, a meaningful presence of minorities participating in the LRC and other public and private enterprises for societal goals to be met. Also, the LRC's longstanding commitment to train black lawyers must continue, among its other important purposes. If the LRC had a larger endowment, it might better address diversity, training and related employment matters. I can't think of a more effective and deserving organization than the LRC for a more substantial endowment..
- Int One of the things that both of you have mentioned was that once apartheid ended, funding dried up. I am thinking now about the post-transition phase. Are there issues that SALS is concerned about with regard to the LRC?
- III We are concerned about the near term and long term funding for the LRC and other appropriate Southern Africa initiatives. SALS has about five million in reserve most of which is earmarked for the LRC. Now that's not very much, and it may not last that long. I would hope, however, that if the LRC were ever threatened, we would be energized to raise additional funds. Raising funds has proven difficult. It is usually the sexiest thing that gets funded, and the LRC's work, particularly litigation, is not always that sexy. One of the things we do in legal services in the United States is to generate our own fees, including fees from successful litigation and out of development projects. I think that may be precluded in South Africa, for various reasons.
- Sr Let me go back if I may to the post-apartheid role of using the South African Constitution. as a mechanism to combat poverty. I think that Geoff (Budlender)'s memorandum, which I've mentioned, is very interesting and tells us about issues that I think are important in this situation. For example, the LRC is now serving as an instrument of change under a post-apartheid, rights-based Constitution. However, it's experiences under apartheid continue to tell us something. Clearly the fact is that LRC must continue its examination of other jurisdictions, in terms of pursuing this mechanism for change in a constitutional way. Canada and India both have experience that one should look to. Indeed, the US should consider how foreign jurisdictions have used their courts as an instrument of change in a constitutional way. Geoff (Budlender) identifies two problems which are worth noting. The first is the relationship of courts to the legislature in terms of the fact that the allocation of resources is the primary responsibility of legislators. Incidentally, the Constitution in South Africa recognizes this. It recognizes that the function of the courts is to define the rights to be enforced but it is the function of the legislature to allocate resources. Necessarily there is a cost-benefit analysis which presents a paradox. Second, in that some kind of cost benefit analysis is necessary, it is also important to recognize that while the courts may

have the power to enjoin legislative action, better results are achieved if there is deference to collective political action accounting for constitutional limitations. In this respect, in his memorandum, Geoff (Budlender) quotes a great American public interest lawyer, Gary Bellow, whom I remember from my early days, in framing the...
Oh excuse me

(Leigh Middleditch enters the room)

Interview resumes after a brief interruption.

Sr I think we can conclude by identifying what stories are to be told, if that's okay...

Int Sure

III Well, maybe you can finish your comment on Geoff (Budlender)'s memorandum?

Sr Geoff (Budlender)'s memorandum quotes Gary Bellow for saying that the worst thing that a lawyer can do is to take an issue that could be won by a political organization and win it in the courts. I think that is important, as we continue to use courts to proceed through the process of eliminating poverty.

III That strikes at the problem of implementing constitutionally-based economic rights. There are limited resources. A court can, for examples, create the programs, it can require school standards, it can require police review boards, it can even take it upon itself to appoint a receiver or put itself in the place of administering the issue, but ultimately it is the enforcement or acknowledgement of rights by government that supports the rule of law. In my view, the enforcement of rights is not the function of a court primarily, but a mechanism of last resort.

Sr It's a political process.

III I guess what (Gary) Bellow is saying, although at some point the violence or misconduct of government may be so egregious and so out of balance with just law that a court is compelled to make a determination of rights. However, sound political action resulting in workable legislation is preferable to judicial action. Ultimately the matter is situational, a fact and situation analysis. You've got to have mature, nimble minds to do such law reform well.

Sr That's right.

III It's part of being educated - to provide the right solution to the problem presented. In this regard, I'm sceptical of a rights-based constitution.

Sr You're what?

- III My experience is different. I don't object to activism that gets good results. I would like to see so-called political work less partisan and more efficient and productive. In my view, that takes more self-discipline, like that of Nelson Mandela, and less focus on explicitly stated rights of entitlement. You know it's a challenge and unless you are elected to political office and assume an executive role, you really can't be effective in a broad sense. I'll tell you the system works in this country in one fundamental respect. The various States are incubators. California has led the way in terms of sound environmental regulation, for example. We need initiatives that are well-conceived and well administered. In my view, we must inform ourselves to support dynamic organizations and processes that are largely on the mark and effective. The LRC is one such organization. Dad's work has been a worthwhile involvement. It is going to be interesting to see what happens in the years to come. I hope that the successors to Felicia (Kentridge), Arthur (Chaskalson), Geoff (Budlender) and the others are as committed and competent.
- Sr Well, the cost-benefit setup has a bad reputation as far as rights are concerned. Nevertheless, it remains a critical evaluation. The costs of enforcing rights has to remain ultimately in the legislature. I think we can learn from South Africa in that the South African Constitution recognizes this.
- III I am not sure that other rights-based initiatives have been so well-conceived.
- Sr Well, India certainly not, but Canada tells us that the law has to deal with the costs of enforcing rights. And we have a mixed record in this area. The South African Constitution, in a way, addresses the problem. It recognizes that the courts have to define rights but that in their enforcement you've got a factual situation that has to be recognized which is that the resources may simply not be there to accomplish it. I think that we have to listen to South Africa. I think that the world has to listen to South Africa.
- III Yes, but the same old dilemma is presented. It is easy to declare an order stating the violation. The problem is presented in crafting the relief. As always, the devil is in the detail.
- Sr The devil is in the detail.
- III And regarding the necessary cost-benefit analysis, I am of the view that I'd rather see the courts spend less time on that difficult analysis and in the alternative, we get about the business of achieving bi-partisan political consensus to go ahead and address what needs to be addressed. And in that regard, the private sector must step forward and do more. Unenlightened capitalism continues to fail, in my view.

- Sr Well, I agree, and I think that the courts are necessary to tell us how to point the way.
- III Hmm.
- Sr But we've also seen too many instances of the courts grandstanding and their decisions never resulting in much.
- Int When you started off in 1979 with SALSLEP and the LRC, did you have any sense that the LRC would become such a great institution?
- Sr No. But we were impressed with the people involved. The more you saw of them, the more you concluded that this was worth doing. The LRC lawyers knew what they were doing. They did care about the details. They were successful and they developed experience that's worthy of recognizing. I think that South Africa now may have a constitution that is too ambitious but it recognizes the limitations that the country faces and what it is trying to do. Do you have more questions?
- Int Well, I have one more (laughter from all)..
- III I just want to say one more thing. I think that the peaceful transfer of power in South Africa was primarily a testament to the character of the black African. There are many different tribes but uniformly they are a noble people. A large part of the peaceful transformation was, I believe, the result of their collective character. It all leads back to the client, and I think Arthur (Chaskalson) would be the first to say that.
- Int So, my last question, when you look back on your involvement with the LRC and SALSLEP and the SALS Foundation, what do you think have been some of the highlights for you?
- Sr Well, I think that among the highlights was the realization that the LRC was pressing the right buttons by proceeding to establish widespread offices of legal services for all the people. I think that the highlight was the fact that in litigating against the apartheid government, the LRC won some victories, which sent a signal to the black population that the law might well prove to be an enemy of oppression. It is no small thing to persuade a racist judge to apply the law. I think that maybe this doesn't answer your question, but my relationship with the LRC seems to me to be one of the most successful events of my life.
- Int Yes, that is what I was asking.
- Sr And I think that now as I think about the post-apartheid years, it is clear that what South Africa has done is in many respects an incredible story. The Truth and Reconciliation Commission set the way for not letting the past demoralise us all. And the new Constitution put in motion the fact that maybe they were a long way

- from enforcing it; the war on poverty in many ways is a rights-based war. And I feel pretty comfortable in doing all that we did. It resulted in benefits that are undeniable. But the war is far from finished.
- Int Yes, indeed. What stories are left to be told?
- Sr Excuse me, what.
- Int What stories are left to be told?
- Sr Oh, the stories. Well, for example, the whole story of Ford's experience that began in 1978 and ultimately resulted in the creation of a great public interest law firm. I really do want to read Felicia (Kentridge)'s, Sydney (Kentridge)'s and Arthur (Chaskalson)'s oral histories. They, supported by Ford, created one of the most successful public interest law firms ever known. It contributed in many ways to the peaceful transition from apartheid.
- III Yes, I agree.
- Sr And I think that South Africa speaks to us all, in so many ways. I know that in 1982, there were those that felt that the effort was really hopeless.
- III Yes, I remember that we often said at that time, "It is better to light a candle than to curse the darkness". That was the perspective back then.
- Sr That was Mrs. (Eleanor) Roosevelt's statement.
- III Yes.
- Sr There was a prominent American lawyer involved in supporting liberal efforts in South Africa. He made it very clear that he'd given up. He was involved in raising money for South Africa, but he finally more or less quit because he thought that the government had succeeded with the Transkei operations and was going to win. There were others who felt that way too. We at SALSLEP hung in there and good things happened.
- III Yes.
- Sr Maybe we were surprised, maybe we didn't expect it, but it happened. It did not result in a bloody revolution with a (Joseph) Stalin or Mao (Tse-Tung) taking over. Frankly, it happened mostly in a civilized way.
- III And it wouldn't have happened but for the ANC.

- Sr Well, it wouldn't have happened but for the fact that, consistent with its traditions, the ANC determined that it was prepared to ultimately follow a peaceful road in the name of the law. It respected the right of all South Africans to exist.
- III I think that's a fundamental point. Also, there was a recognition by the foreign governments and companies that they had to object and disengage. There was a coherent process of disengagement initiated in part by the Sullivan Principles. You couldn't do business on apartheid's terms anymore.
- Sr And the ANC determined that it was not going to kill people, for example. Somebody made that essential determination.
- III I agree. I think that was as important a factor as any.
- Sr That's our part of the story. And hopefully you will be able to pursue the rest of it.
- III There were decisions made in this process that were extraordinary. The terms of the ANC resistance and the Truth and Reconciliation decision, among other things. The origins of those decisions, and how they occurred, is of interest to me. Force and retribution per se never accomplish anything in my view. We see that demonstrated repeatedly in other contexts. If there is a means to apply the rule of law and a process of negotiation that permits the forces of moderation and reason to act and prevail, then people can get about their lives in a productive and successful way. But the alleviation of abject poverty is the challenge still presented and I'm worried. You are far more knowledgeable about what's happening in your country than I am. I remain worried about South Africa's future from what I read and from what I otherwise observe from a long distance.
- Sr Yes, Reuben, but look at what they've done.
- III I know. So you have to be optimistic.
- Sr You have to be optimistic.
- III Capable people are emerging. That's why I remain a fan of the LRC and Janet Love, among others.
- Sr Who?
- III Janet Love.
- Sr Yes.
- III It only took a few minutes to size her up and determine that she was the right person for the job., I think that Arthur (Chaskalson) is an excellent judge of people and things.

- Sr Arthur (Chaskalson), you know, he could have gone in so many other directions and didn't.
- III Oh, I know. In this country, particularly now we have a tendency to overlook the public service component. With respect to the matters of South Africa, I was disengaged for many years, from 1982 to 2004. Hopefully my current involvement with the SALSF will continue to grow and be of help in these new times.
- Int You never know....
- III You never know. Actually, you do. You've just got to find the right role and do what you can. Thank you. I have enjoyed this.
- Int Oh, I'm glad. So do both of you have anything else to add to this oral history.
- Sr Well, I undoubtedly do but I can't remember (laughter). I think we are going to go to lunch.
- Int Okay, alright. Thank you very much to the both of you.
- Sr Thank you.

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