

William Kerfoot LRC Oral History Project

Interview 1: 13t December 2007

Interview 2: 29t August 2008

Int

WK

Int

WK

Int

WK

This is an interview with William Kerfoot at the LRC Cape Town office and its the 13 December (2007), Thursday. William, thank you very much for agreeing to be part of the LRC Oral History Project, we really appreciate it.

Youâ\200\231re very welcome.

I was wondering whether we could start the interview by...talking about your early experiences growing up in South Africa under apartheid, what were the formative influences, if any, that led you into the legal profession?

Iâ\200\231m a bit of a former colonial. I was born in Zambia and lived in Kenya until I was ten. So I only came to South Africa when I was ten and then spent five years outside Stellenbosch and then went to Johannesburg until coming down to work in the LRC in Cape Town. And, you know, colonial Kenya wasnâ\200\231t that different as far as sort of society was concerned, it was shortly after the Mau Mau matter so there was a great deal of segregation but it wasnâ\200\231t as vicious as in South Africa. And...the thing that struck me in South Africa was the hostility towards black people on the part of white South Africans. There was also in Stellenbosch, at that time, quite a lot of hostility towards English speaking people...

Interruption

So that was quite interesting coming in as a Rooinek (laughs) and five years at quite a traditional school in Stellenbosch and then going to Johannesburg.

Did you go to Wits University?

I went to Wits. And really the inspiration for doing public interest law came through Professor John Dugard who was meant to teach International Law but in fact he (laughs) taught Human Rights, whatever the subject was. He did criminal procedure which was Human Rights 1, International Law, Human Rights 2. And aspects of Public Law which was legitimately Human Rights 3. So that was inspiring. In my second year at my LLB I worked at the Johannesburg Legal Aid Bureau, which was like an advice office, with good links though with the Johannesburg Bar and with a lot of Johannesburg attorneys, so that matters that we couldnâ\200\231t resolve would be passed on to law firms, or directly to the Bar - they had no objection to doing matters on behalf of the Legal Aid Bureau, but it effectively dealt with everyday issues, some pass cases on an individual basis and the usual run of appalling mistreatment of casual workers and that sort of thing. And that was very interesting and I found it very rewarding. And it was around about that time, in fact, that was 1977, when the notion

Int

WK

Int

WK

Int

for the Legal Resources Centre was first being mooted, and I remember the Director of the Johannesburg Legal Aid Bureau talking about it.

Who was that?

It was Pauline Lipson. I think she's now in Australia, and her colleague, the co... I

think Pauline was definitely Director, but her Co-Director was...her surname was Goldblatt...Lily Goldblatt, who's married to the famous photographer. She was a social worker, she did the social work and family work...family law angle at the Legal Aid Bureau, which really did good work but it was a shoestring operation and, you know, there were only two permanent members of staff doing the actual intervening work. They always had a secretary or two as well. So, and, as I say, it was a half day operation but it couldn't do all it might have done. And then I did articles

with a firm in Johannesburg called Damant Bostock, which no longer exists and there the most interesting work that I did was public interest work. I got involved with Actstop to a certain extent, did a couple of cases for them, and then I got the Indian community from Fordsburg, Pageview, who were being evicted in terms of the Group Areas Act, and there were 66 families left that were then threatened with eviction. It was an interesting matter because purists (laughs) weren't very sympathetic to the matter because it was...they regarded it as buying into Group Areas whereas I regarded it as defying Group Areas on any basis. So we took the matter on and there were a lot of ancillary matters because the community development officials would target individuals, so we had to bring a couple of interdicts for spoliation where households were evicted and so on...

Interruption

So you were talking about your work prior to the LRC.

About Pageview. And so we launched an interdict on behalf of the entire community which was threatened with being moved to Lenasia. And, I mean, I was completely inexperienced, the counsel I used, although brilliant, was quite inexperienced and felt we should get in a senior. So we got the late Jack Unterhalter who had had a lot of experience among others with the flower sellers in Johannesburg who were targeted by the City Council and with Group Areas as well. And his immediate suggestion was that we got a surveyor to check the area proclaimed by the authorities. And we got a professor of surveying at Wits (laughs) who found that the authorities had made a mistake so they'd designated a wrong area. And only, I think, three or four or five families actually fell within the targeted area so they and the rest were really safe unless, or until, there was a re-proclamation. But I didn't finish that case because I left

to come to the Legal Resources Centre, but they ended up staying in Pageview until after 1994, which was wonderful, and it was during that period that I saw...I'd applied to the Legal Resources Centre in 1981 when I qualified, but...in Johannesburg, which was the only office and they said they didn't have a vacancy, so I then saw the vacancy after the Cape Town office had opened in...

"83?

WK

â\200\23183...they advertised in 84, and fortunately came down here, which was just wonderful. In those days the main operations in Cape Town were Labour Law, which was a completely phenomenon and the Industrial Court. Labour Law wasnâ\200\231t such a new phenomenon and though it was relatively new, but the Industrial Court was completely new and employers were just struggling to get to grips with the fact that you could no longer hire and fire and treat your workers as you pleased. So that was a very important aspect of work, I think, by the Legal Resources Centre throughout the country. And contributed I think towards there being a recognition of peopleâ\200\231s rights and dignity. And the other aspect really, was still the pass cases arising from Rikhoto, Komani and Mthiya. So we had a lot of matters involving communities being threatened with being sent back to what was then Transkei or Ciskei. And intervening for them, and damages claims against the police at practically every level. And there were a lot of big damages claims done where police were just absolutely brutal. The one famous case, which George (Bizos) mentions in his book, we had where a youngster, a fifteen (year old)...who was standing outside or at his gatepost when an army vehicle went past, I think a Casspir, and a member of the police just fired at him, you know, on a whim, and paralyzed him. And then they lied at court. First of all they tried the defence that the Emergency regulations covered it, and that got knocked out. And then they said, it was put to an expert witness, Dr Shrosbree (inaudible) who was a spinal specialist, he was asked what the effect of that, severing of the spinal cord would be. And he said: he would have dropped in his tracks, where he stood. And the counsel for the police said he had an expert who would bring a textbook to show that he could have run at least 15 yards, which is what the cops said he did. So Dr Shrosbree (inaudible) said (laughs), he hoped it was a textbook of medicine and not a textbook of miracles (laughs). That was the end of that point, and of course it never got produced. But there were a lot of awful cases involving that kind of thing, and the great one, which youâ\200\231ll discuss, I'm sure, with Steve (Kahanovitz) and with Matthew Walton if you see him, was the KTC case of 1986. There we had had...weâ\200\231d been helping informal communities, informal settlements, at what were called Nyanga Bush, Nyanga Extension, Portland Cement and KTC One weekend Portland Cement, Nyanga Extension, Nyanga Bush were attacked by the Security Forces and the Witdoeke, who were sort of their agents. Witdoeke because they wore bands of white cloth around their heads or their arms to identify themselves, who were reactionary and in league with the Security Forces and government. They attacked these three settlements and it was too late for us to do anything, to get an interdict, because the settlements were destroyed. But we knew they would go on to KTC, which was some distance away. So we brought an urgent interdict which was granted and which we were very pleased with. You know, it was exciting, we felt it was a vindication of law, rule of law, all that kind of thing and the courtsâ\200\231 proper role, and two weeks later they just went ahead and attacked KTC, so that was very sobering and it led to a very lengthy and enormous trial for two years before a very unsympathetic judge who was clearly steeped in white supremacy and anti any kind of opposition to the government. So we would have lost. I hope we would have won had it gone on to the then Appellate Division but the interesting thing there was that at an annual general meeting at the Legal Resources Centre at Mount Grace in Gauteng in the Magaliesburg, it was discovered that the hotel owner had collaborated with the Security Police in bugging our conference and more particularly the reports on what was happening at KTC. So our Trustees used that as leverage to get a settlement and an excellent settlement was got, which led to the establishment of a development project at KTC, and the land was also set aside, I think, in a...I donâ\200\231t know whether it was part of the same deal, It may have been a separate deal for the people from

Int

WK

Portland Cement and the other communities at what is now called Brownâ\200\231s Farm in Philippi. But something which I find interesting (laughs) about that is that getting people onto Brownâ\200\231s Farm and the development of Brownâ\200\231s Farm in general was nightmarish. We had meetings after meetings with the authorities and eventually one of the leaders of the communities took his people onto Brownâ\200\231s Farm before it was ready. They just occupied it because they were losing hope really and losing trust in the provincial authoritiesâ\200\231 ability to make this happen. And itâ\200\231s interesting to have seen, you might have got something from Henk (Smith) on this regard about other development issues where communities fall out with each other where there are difficulties and hostilities and so on. And Steveâ\200\231s (Kahanovitz) present matters, the railway reserve matter, which youâ\200\231ll probably talk about, where there was an agreement that people living on the very dangerous railway reserve get moved to another area, and where the people of that area are now hostile to their going in. So these land issues have remained fraught even after apartheid. But the...I donâ\200\231t know whether I would have enjoyed and lasted at the LRC as long as I have, had it not been for the change in regime. You know, it was wonderful work during those days, but it was all so adversarial and often defensive and you were within the constraints of a supreme Parliament and that sort of thing. So, I probably would have but certainly the change has been wonderful from a work perspective, quite apart from everything else, and I think for me one of the issues that defines the change is the case youâ\200\231ll be talking to Wallace (Mgoqi) about, which led to the establishment of Wallacedene, where a small community, a few families came to see us. They were threatened with eviction under the Prevention of Illegal Squatting Act, and we saw a point that the wrong person had written the letter of notification, which was a typical point of those days. It was all you could do. And then Wallace (Mgoqi) took that on very imaginatively, to negotiate with the owner, with the authorities and with the community, to establish Wallacedene, which again, then led to the Grootboom case, which youâ\200\231ll be discussing probably with Geoff (Budlender). Because although the place got created, the facilities and conditions for the communities deteriorated rather than improved after the initial heady start with that wonderful establishment of Wallacedene. And it signalled to me a change in attitude around about the early 1990s, late eighties, early nineties, and since then, as you know...

Interruption

...and so the change leading to the LRC having two major functions, as I see it, the one: land, housing and development, which obviously incorporates a lot of constitutional and socio-economic stuff, and then on the other hand the Bill of Rights litigation which has been my main focus, and has just been fantastic.

I wondered...William, youâ\200\231ve taken me through a wonderful trajectory...I wonder whether we could come back. During the 1980s you started at a very crucial time in the countryâ\200\231s history. So, if under apartheid Parliament was supreme, what do you think actually led to the LRC victories...I'm thinking Rikhoto, Khomani and subsequent legislation that Cape Town office may have undertaken...not being overturned by the apartheid regime?

I think A: history. Even though the States of Emergency and the more and more desperate attempts by the regime to impose and control, it just got to a stage where it was difficult and a case which wasnâ\200\231t the LRC case but which exemplifies that for me, was the Springs swimming pool case, when the Springs municipality tried to

Int

WK

close the swimming pool so that it wouldn't be non-racial. And that was overturned by a very conservative judge, you know, if that case had been brought three years or four years beforehand I'm sure they would have lost, but so to a certain extent the right historical moment was chosen but more importantly as far as Rikhotso is concerned, I think the way the LRC strategized and involved the media and civil society, was the reason that government couldn't do anything about it. If the LRC had simply...and I wasn't at the LRC then, and I felt, God these people are preening themselves (laughs) A lot of people are doing this kind of work! But it was absolutely vital the way the publicity was managed, the way international support was got and so on. If it had been, as I was saying, a case that had, you know, just been quietly won, newspapers not got in or only in partially, and it had gone to the Appellate Division and we'd nevertheless won, there would have been a possibility that the government could have done something about it. But...um...in the light of the publicity attendant on every step of that matter, they just couldn't have done it; it would have caused an enormous outcry nationally and internationally. And that was that. And then it's again possible that after a couple of years something could have been...legislation could have been changed, but I think the involvement of the Black Sash in running, getting, teams of lawyers to oppose pass cases, also made it impossible. As you know, there was a sausage machine system in the Bantu Affairs Commissioners Court...Bantu Commissioners Court, whatever it was called...where 120 cases got disposed of in a day because there was no defence. So putting in lawyers, even if they only represented two or three people a day, that meant an enormous backlog built up and at the same time it accompanied an inevitable move to the cities to try and get work because of the impoverished situation of people in the so-called homelands and homeland states. And the combination of all that was irresistible. It just had to mean that the pass system got scrapped.

Sure. In terms of the Emergency regulations, what do you think were the reasons behind the LRC not being threatened with closure, banning, etc?

Um...as you know, we weren't very popular (laughs). Um...but I'm pretty sure again that the reasons were the essential original strategy, which was brilliant, that very eminent Trustees get appointed and act as a buffer. Some of them were quite conservative, hey! This will be censored in due course (laughs) but...Judge Wilson for instance, horrified us at a conference one day by saying: he would...or we should...either he or we would talk to Bassie Smit, who was a notorious Security Policeman in Durban, about something or other! It was just appalling! But there was a decent, very clever, establishment judge, who nevertheless stood up for us. And there was an attempt to get people who'd become judges or who were judges to start with, as our trustees, to resign. And the order went out from the then Chief Justice, Rabie! And several of our Trustees were contacted by, either by Rabie himself, in at least one instance, or by the Judges President, telling them that they should resign. And one or two did, and one or two, notably Wilson and (Johann) Kriegler, exploded (laughs). And said: in no circumstances, which again, I think meant that there would have been a terrible outcry if we had been closed down.

Interruption

Where was 1?

Int

WK

Int

WK

Int

WK

(Break-

Int

WK

You were talking about the fact that the Trustees...

Yes. And you know, Iâ\200\231ve got some material, which I can give you..., which JP (Purshotam)...are you speaking to JP (Purshotam)?

Yes.

Good. Got and sent to us, about, I think, Security Police or some...or intelligence reports on certain members of the LRC. And you can just see, itâ\200\231s fascinating, because of the mindset of senior officials in government about what was going on and what our role was. So, there was enormous hostility and suspicion and distrust of us. But as I say, I think the way the LRC had been conceived and its strategic approach towards Rikhoto, towards the issue of influx control and its vision of how it would be able to survive against a hostile State was so well done that thatâ\200\231s the reason both the regime didnâ\200\231t pull the kind of knee jerk stunt it did with matters where court cases have been successful and then the legislation got amended insofar as Rikhoto was concerned and why we were able to continue. But I suppose youâ\200\231ve heard all that from other people .

No, I think itâ\200\231s quite important to hear it from you....The other thing that I was wondering was...you said that when transition happened it was quite wonderful because in a way it kind of created a change in terms of the lawyering you did. I'm just wondering...the LRC had taken on cases that were really in line somewhat with the LRCâ\200\231s anti apartheid...stance, and so come 1990 to the period 1994, youâ\200\231re then having to adapt as an organisation. What were some of the discourses around the idea that youâ\200\231re going to have to take on cases against an ANC led government?

Well, I think our mandate was always that it was for the poor and the oppressed and the voiceless, who would continue to exist even under a democratic government. So that really wasnâ\200\231t such a difficult issue. The issue is more psychological in that. .. thereâ\200\231s almost a perception that if you oppose this democratic government, you are not in favour of it. And itâ\200\231s been articulated, itâ\200\231s been articulated even by Jody Kollapen that we should set our sights in evening the balance between going for government and going for industry or corporations, rather than, you know...rather being seen to be uniquely anti-government.

interruption)

Weâ\200\231re talking about deportation and under transition...

Just talking about influx control, the Department for Home Affairs in relation to asylum seekers has inherited the mantle of the community development department. They behave with exactly the same kind of defiant nastiness towards asylum seekers in the teeth of court orders that the old community development people did...

Int

WK

Int

WK

Under apartheid...

Under apartheid. And it really is unfortunate that the Department of Home Affairs has been such a poor department, because the Refugees Act is actually quite a good Act, the Constitution is wonderful. The protection notionally afforded to asylum seekers and refugees is really one of the best in the world but its implementation has been disastrous, and in many cases, actually contemptuous of court. Weâ\200\231re fighting at the moment a matter where there was a court order obtained by consent some years ago where theyâ\200\231re flouting on a daily basis, as far as foreigners married to or in relationships with South Africans are concerned. But anyway, thatâ\200\231s by the way.

What do you think, William, are the reasons behind this kind of contempt of court rulings?

I think itâ\200\231s incompetence, lack of capacity, rather than a deliberate political strategy, but there are elements in it which are indicative that if they thought they were to provide a better service they would then get more applicants. Itâ\200\231s faulty reasoning because...if an efficient, competent assessment of an applicantâ\200\231s claim to asylum were done within a reasonably short period, it would be the surest means of ensuring that people donâ\200\231t try their luck. And conversely itâ\200\231s taking forever to...which is illegal...itâ\200\231s in conflict with their duties in terms of the Act, to grant a person, an asylum seekerâ\200\231s permit, is just an invitation to corruption. And the amount of corruption is appalling. Last year or earlier this year, in despair we got the Cape Times to send someone undercover to Customs House in Cape Town, and he posed as a Zimbabwean asylum seeker...he grew up in Mpumalanga or Limpopo, right next to the border and spoke fluent Shona...and within a few days heâ\200\231d bought his permit for eight hundred rands and it was flashed all over the front of the Cape Times, and for a week or so, controls were exercised and there were police down there, but itâ\200\231s reverted to type since then. Itâ\200\231s disastrous but the point you were dealing with, I really do think itâ\200\231s a matter of a department, which was basically disinterested in, if not hostile to, foreigners under Mangosuthu Buthelezi. Itâ\200\231s been taken over by someone whoâ\200\231s no better, to put it mildly. And itâ\200\231s just, I think, a department thatâ\200\231s unable to deal with the greater influx of people, particularly at the moment the huge incursions from Democratic Republic of Congo, both shortly before and after the elections, and because of the nightmarish situation in Zimbabwe. Now...the reason I said, you know, there may be some element of intention in it, is that at a meeting earlier this year in desperation...we got by the way a structural interdict going, which goes back to court on the 18th of February, which has already said that their conduct is in breach of the Constitution and called upon the department to fix things up, which it hasnâ\200\231t yet done. But in desperation because things were so bad in the meantime, we had a couple of meetings with the regional representatives and others of the Department of Refugee Affairs and over a simple issue about making more staff available to deal with newcomers. We said: instead of making people who have already been given a Section 22 permit come back every three months, extend it to six months or nine months, reduce the load on yourselves, free up other people. Oh, no, no, that has to be a national decision. Well, make it a national decision then, we said, but in the meantime canâ\200\231t you do this? Oh, no, because then more people would come to Cape Town because theyâ\200\231d see things would work quicker. So effectively theyâ\200\231re saying, the more efficient they are, the more work theyâ\200\231re going to get. So making things

Int

WK

Int

WK

Int

WK

unpleasant, failing to give people Section 22 permits, which isn't that difficult may be deliberate. There may be an element of deliberate obstructionism there from a sort of really dumb tactical perspective, but I don't think so.

I'm curious you mentioned that one of your Trustees currently actually said that the LRC needs to balance its attacks on government and the corporate world. Does that not in a way create a sense of extreme caution?

I was appalled! I don't know whether he'd thought it through or whether it was a spur of the moment thing. Um...I think actually one should perhaps interpret it as saying, the government isn't the only villain. And one should generally look at trying to enforce socio-economic and human rights where they're threatened at all levels. But I think that might be quite a charitable interpretation. But...and I mean, I was depressed myself about the prisoner's vote case before the last elections. The Human Rights Commission didn't want to launch an application on behalf of prisoners and Jody (Kollapen) was taken aback when we did it. He expressed at a meeting concern, before the case was over, and I think the outcome and the judgement by the Constitutional Court utterly vindicates our decision. So again, that was...we didn't get funding for that through the European Parliament. Foundation for Human Rights I think is the link, because it was seen as so anti-government...

Interruption

Do you think...and I know this is sensitive, but I'm wondering what your sense is of a Trustee imposing that kind of limitations on what the LRC does and how that impacts on you in terms of the cases you take on?

Well, there was no imposition. It was a statement made at an Exco meeting, the one about, you know, doing our duty towards corporations as well as towards government, not ceasing to take on government. And the prisons one which was at a strategic planning meeting, I think, possibly at an AGM, I was just appalled by it but disagreed with, but no Trustee has ever said, and never will say I'm sure, thou shalt not take on this case for X, Y, and Z reasons.

Well, that's good to know.

I'm confident about that, but it is...I think what it does show is the...paradoxical vulnerability of the LRC under a democratic regime. Funding is difficult from overseas because there's a perception that we're a democratic State and there are clearly countries more desperately in need of funding...NGOs and countries more desperately in need of funding than we are. But it is sad that, and ironic, that where the field for human rights work and socio-economic work is so fertile under this Constitution that there's more scope for us than there ever was before, that we're being forced to reduce in size and for purely logistical reasons being unable to take on a lot of cases which we would have liked to take on.

Int

WK

Int

WK

Sure. Earlier you said that you wouldn't have been able to sustain being at the LRC had it not been for transition...

Maybe not, yes.

I'm wondering from 1994, would you say, to now, what are the sorts of cases you've taken on? You've also been involved in key government legislation from what I understand...

I haven't. Um...except tangentially on the Refugees Act. But the legislation has been

largely people like Steve (Kahanovitz), Henk (Smith), particularly Kobus (Pienaar), and Moray Hathorn, people like that. Um...and you know, the extra litigation role, I think you can discuss a lot with Vincent Saldanha. He plays a very strategic role outside pure litigation. But the cases we've been involved in that have been really exciting for me, the Gay and Lesbian Coalition, the Shalabi/Dawood case, both of those involving relationships with foreigners and rights in terms of what was then the Aliens Control Act. And then the refugee cases largely, and the vote case, and the TAC stuff against Dr. (Matthias) Rath. Geoff (Budlender) will be talking to you about the Nevirapine case. And then, you know, this unbelievable saga over HIV because of the government's approach...and basically Thabo Mbeki's approach to HIV...led to

this lunatic profiteer megalomaniac, Dr. (Matthias) Rath... I don't know whether you've heard about him at all? He is a former cardiologist, I think, who developed...

who's got five patents relating I think to vitamins. And his approach is that the pharmaceutical industry is a nightmare, which to a large extent it is but his solution isn't the right one. He says that you can cure everything from cancer and AIDS to bird

flu, by taking his snake oil vitamin concoctions. And he's found ready co-operation in

South Africa from our Minister of Health, and he's come in here and sent disturbing messages about the toxicity of ARVs and how one should not take them, one should take his stuff. And he's promoted his tablets in South Africa for free. Because he makes enough money elsewhere. He's been discredited in most countries around the world, but here he still inexplicably has an ability to run, or to collaborate in illegal clinical trials, and to sell, because the definition of sell in the Medicines and Related Control Substances Act, includes distributing for free...um...unregistered medicines. He makes medical claims for these vitamins with bits and pieces added, and has been able to get away with it. So the first legal case against him was an interdict to stop him from defaming the TAC, which couldn't care really if it's defamed or not, it's

used to that, But it was interfering with its work, and people in the townships were thinking they couldn't take ARVs because the government and Dr (Matthias) Rath said they shouldn't. And they made absolutely defamatory comments. So we got an interdict against them, which he then proclaimed as a triumph for himself, because the wretched court stopping him from saying the really ridiculous stuff, that we were funded by the pharmaceutical industry for instance, but said a robust debate particularly about meetings and demonstrations has been a feature of South Africa during the struggle and after, and really no-one can take too seriously the fact that he says the TAC pays people to come to its meetings. It was such an unfortunate thing to say because that led (Matthias) Rath then to go onto his website to proclaim this court case as a triumph for him, because he said the court wouldn't stop him saying that they pay people to come to meetings. Anyway, they then, the AIDS Law Project, then proceeded with a damages claim against him arising out of that matter and we have

Int

WK

10

subsequently launched a case against him and the government for conducting these illegal tests, and it's a mandatory interdict against the government to do something about it. That's coming up, the hearing, on the 12th of March. So that should be fun. It's been delayed atrociously by (Matthias) Rath's late submission of answering affidavits, which was awful. But to get back to a point you raised earlier on strategy and stuff with the LRC, again I think one of the founding strengths of the LRC was their ensuring in Gauteng, and wider than Gauteng, when it was only the Johannesburg LRC, to liaise with and collaborate with advice offices and be accepted by the advice office structures. That was a vital and essential part of its success and it meant that in the early days particularly the LRC was able to focus on impact litigation because no-one got beyond the front door of the LRC in Johannesburg without having been referred there by an advice office. Whereas I think in some of the other offices, including our own and including me personally, you know, we try to help everybody, which means that you lose a bit of focus and you're then killing yourself for individuals when there's a big impact case out there waiting to be done, which is more difficult and therefore takes more time and you haven't got the time to deal with it. So I think that was an important part of the early success of the LRC, the advice office structures, and I think they did well in the Durban LRC with those structures as well and in the Port Elizabeth office when it started. They had a really good outreach program...and Grahamstown. In Cape Town we had a good relationship with the Worcester advice office, the Paarl advice office where Chantel came from, and one or two others here, Lotus River and a couple of those, but it was never a really strong project in Cape Town, as it was in Johannesburg.

Right. William, in terms of the LRC's funding issues, it's fair enough to say that under transition South Africa is no longer the darling of the world, but the argument then arises is that perhaps in fact there hasn't been as much effort by the LRC to garner funding internally, be that from State or corporate world or from other legal fraternities. I'm wondering what your sense is of that and would it not cause a conflict of interest to get government funding?

Absolutely. I've got no doubt about that. I don't think we can go for government funding. What we have done is get funding from the Legal Aid Board, which I think is legitimate for impact matters. So the fishing case where the government's fishing regulations really isolated traditional poor fishing communities, there we got funding from the Legal Aid Board, and in a prison case, which I launched which is a bit moribund at the moment, we got backing from the Legal Aid Board. But you're absolutely right, throughout, I mean, it didn't really matter in the eighties, insufficient attention was paid to internal funding, funding from South Africa. Again there were difficulties. You know, we used to get a very generous amount from Anglo American Chairman's Fund. Then a new Chairman took over and we did a case against St John's College in Johannesburg involving freedom of religion and the Chairman of the Board happened to be Chairman of the Board of St John's or something at the same time (laughs), so that caused problems with that funding. And...you're absolutely right, our funding, it just...I mean, this is anecdotal...our funding took a bit of a knock, we made a bad appointment three or four years ago and I think things would have been different had we not appointed that person and recovering from his appointment has been problematic. But I think we've not been imaginative with internal funding and it hasn't been pursued with the same vigour and imagination or creativity that overseas funding has been pursued. It must be looked at. Again

Int

WK

Int

11

internal funding, particularly in a relatively small country, has always got a problem of conflicts. For instance many years ago, we used to get, in those days, a really considerable contribution from Caltex and then we had to bring a case against them for their polluting the area around here, and there was a very arrogant and unpleasant man at Caltex who pulled the donation, which we were quite happy with, we felt we had to do our duty by our client communities. But, you know, one's going to run into that problem more and more. Pro bono help from counsel is a slight help, but again, I feel that unless you get a really devoted counsel, it's unsatisfactory. It's also unsatisfactory because new counsel, particularly previously disadvantaged counsel, aren't really in a position to provide this kind of service. A lot of people say, rather than give a donation they do pro bono stuff for us, which is enormously helpful provided they don't regard it as a nuisance and something to be over as quickly as possible. And the...but again, you know, a new young counsel from a disadvantaged background isn't really in a position to make that kind of undertaking. Um...so that then makes it hard to get better briefing patterns. And um...another recent advantage is the ability of counsel to charge on a contingency basis so that can solve that problem to a certain extent. And we've got several counsel who work for us almost exclusively on a contingency basis, which is useful. But again that takes care of counsel's fees, it doesn't take care of our time, and getting funding internally is going to remain a problem.

In terms of education and training it seems to me that the LRC has had quite an important history in terms of training young black lawyers, or even white lawyers for that matter, as Fellows and then as candidate attorneys. The argument now is that it's becoming increasingly difficult not only to find good quality young lawyers, regardless of race, but it's also very difficult to retain them because the opportunities are enormous.

Yes, that's absolutely so. But I...um...I console myself on two levels with that. The one is the point you make that they get, one hopes, good training, it is a springboard to advancing human rights or advancing transformation at several levels, even if they leave us. And secondly, when I joined the LRC, Arthur Chaskalson said that one of the visions for the LRC, bearing in mind that at that stage there was only the Johannesburg LRC, a fledgling Durban LRC, and an even younger fledgling Cape Town office was a small core staff and a lot of people coming through on a contract basis, which could still be implemented really. Um...and so from that point of view it's unfortunate and it does mean that offices like ours for instance in Cape Town, you know, there are a whole lot of steadily aging white practitioners and we haven't managed to hold on to black practitioners for very long, which is very sad. But they've gone on to do great things, so provided one attributes the credit to the training and the availability of human rights work for people to the LRC, one can kind of console oneself for the losses, but um...it is a real problem.

And it's 9:30 and I'm wondering whether you need to contact someone urgently or should we...

Break. Recording switched off whilst William makes an urgent call to Home Office on behalf of a refugee.

Recording continues...

WK

Int

WK

12

...so frustrating, because here they can work and study and so on, but getting to first base is so difficult.

Interruption

You were talking about refugee. ..

Again it was really wildly exciting new law in South Africa because no-one in his right mind from the rest of Africa would have come to South Africa for asylum until very latish in the eighties, if not only by the nineties. So in the Aliens Control Act, the word refugee and the words asylum seeker didnâ\200\231t appear. And then what happened, there was all the trouble in Mozambique with Mozambicans pouring in so the United Nations High Commissioner for refugees cobbled together a little tripartite agreement between the South African government and the Mozambican government and itself, to cater for them and it was really a sort of patchy little matter based on the Geneva Convention and New York Protocol. And then they started extending that to other people informally but appallingly badly - they wouldnâ\200\231t give you the reasons for th
e

rejection of your application for asylum, they would only give you seven days to appeal, you didnâ\200\231t know what you were appealing against, all that kind of stuff. So
we

had litigation about that. And in the early days, to its discredit, the state tried to take the points, which the previous regime would have taken, that asylum seekers donâ\200\231t have standing to object. It was just bizarre. But that then got sorted out and in 1996 there was a really good meeting with the UNSCR, the Human Rights Commission, Barney Pitsoana was there, us, t UCT Legal Aid, LHR and others...and Wits, to discuss the whole issue. And the debate was whether one should have an overarching Immigration Act or whether one should have a separate Refugee Act. And probably the more profound philosophical thinkers thought it would be better to have an overarching immigration act. My view was that the situation of asylum seekers and refugees was desperate, it was going to take time to implement anyway and an overall act would take a lot longer, which proved to be the case, so we should go with the Refugees Act, and that eventually happened. I donâ\200\231t think I had any influence on it but I did agree with that taking place. And, as I say, the Act is a fine one. Itâ\200\231s just been

the implementation has deteriorated, and the attitude of officials. So we had enormous trouble with people being told that if they had applied for their asylum seekers permit...I mean, had it granted in Johannesburg or Pretoria, and had then two years later, before their matter had been processed, come down to Cape Town to work, they would have to go back every three months to renew their permits! We had to go to court repeatedly for that, and that was a mistake by me, because the first time the State Attorney undertook..., they wouldnâ\200\231t do it, and so we didnâ\200\231t bother t
o take a

court order, and of course Home Affairs reneged on that, so we eventually had to get a court order. And itâ\200\231s that kind of villainous approach. Then some bright spark sent around a circular saying that: an asylum seeker couldnâ\200\231t work or study for the firs
t six

months he or she was here. Now anything more calculated to favour drug lords applying for asylum and discriminating against a genuine refugee would be hard to find. And I was itching to take that case to court and we got...if you donâ\200\231t mind a
n

anecdote...we got a fantastic case! A South African person who felt that he was a male trapped in a female body, very highly qualified person, came to see me, and said there was someone similar coming from Botswana, an asylum seeker, and could we help? So I said, certainly. And this person came to see me, a little wispy beard and a

Int

13

gap in his tooth, he was really a sweet chap, a Ugandan, who had been at a fairly exclusive girls' boarding school in Uganda and had realised that he wasn't...first people suspected he was a lesbian and there was awful stuff in Uganda. He was in the newspapers...and so on, and anyway, later he confided in someone and went to Kenya and got chemical treatment.. And after school he set up with a young woman, and a relative of the young woman burnt their apartment down when they found out what happened. So they fled to that haven of democracy and gender rights, Zimbabwe (laughs). After about two days they reckoned that wasn't the place for them and they then went on to Botswana. And he's a member of some charismatic sort of church, so he got a job with the church, a very skilled computer guy. But the church then thought they couldn't have these people (laughs) living in sin, they didn't know the real situation and wanted them to get married. So he then went on the web and found this South African and duly came here. So I thought, what a wonderful case to do the prohibition on work from, because A: they're going to reject this guy, and B: he's got an offer of a job in the computer industry courtesy of the South African. And lo and behold we landed on a sympathetic...who's still sympathetic and still a very nice man...member of the Refugee Affairs office here, and this guy got asylum in record time! So bang, went our case. I was desperate to get another one and a Mrs Watchanuka pitched up from Zimbabwe, who as the judge who gave the judgement in the Watchanuka case in the Supreme Court of Appeals said: perhaps the grounds for her seeking asylum weren't the strongest he's ever seen. And they weren't really, though she had a son who couldn't speak or hear who was obviously, a tall strapping guy, he would obviously be at risk, had been at risk with Zanu PF, youth thugs and so on, and she had a couple of problems, so I'm satisfied that they were justified in seeking asylum here. But they didn't want her to work or study and that then got... we got a lovely judgment in the Cape High Court and a decent judgment from the Supreme Court of Appeal. And the Supreme Court of Appeal said a wonderful thing about human dignity knows no nationality or something like that. So that was a nice one. Um...but...you know, the obstacles that get put before asylum seekers are too awful, and while one can sympathise with the immigration offices, they have a difficult job, but the chief immigration officer just has no notion of legality, and he's ulcerated by people applying for asylum who are, in his view, economic migrants. So his solution to that singlehanded was to send his immigration officers down to people standing in line applying for asylum, and pulling them out. You know, he said the Mozambicans and the Malawians. But they arrested Congolese, which led to this Kiliko case, this structural interdict, to get Home Affairs to provide Section 22s in terms of the law, or at least timeously. Um...and you know, it's nothing to do with the immigration officer. If I stand there saying: I'm a refugee from Sweden because I haven't got blond hair anymore, I'm still entitled to have that adjudicated by a refugee status determination officer, not by an immigration officer. So it's really problematic. And it's become terribly problematic with people waiting for over a year without any documentation! Then they get arrested and there's this ludicrous thing that you heard me talking about earlier today, they've launched what they call Operation Umbrella, which means that a lot of hapless, would-be asylum seekers who have tried for weeks to get documentation from Refugee Affairs are getting picked up and potentially deported. So with a bit of luck the Kiliko case, the structural interdict will create some havoc there.

Earlier you said that...you tried to help everybody, but it also seems to me that you are in a way carrying on the tradition of the test case approach from what you've described.

WK

Int

WK

Int

WK

Int

WK

14

With a bit of luck but we should have had more test cases. You know, again, my excuse for often dealing with individuals is that often you only detect a pattern after youâ\200\231ve tried to help various individuals. Again that should be catered for by the screening system that perhaps isnâ\200\231t. But no, I think on...I mean, for a while, earlier this year we would have 200 people a day in the waiting room unable to get assistance, and thatâ\200\231s all going in to the Kiliko case because we must submit further documents before February. Um...but again, I think a lot of help is being done down there by this new crazy NGO outfit called Passop, which is run by Derek Hanekomâ\200\231s nephew.

And they do refugee...?

And theyâ\200\231re doing demonstrations and a lot of assistance and theyâ\200\231re giving us a daily list of asylum seekers not being helped. Thereâ\200\231s 300 or so a day.

Gosh, thatâ\200\231s significant. William, it seems to me that besides land, it seems that refugee issues, asylum seeker issues are pivotal to the work the LRC ought to be doing, or is doing.

Iâ\200\231m glad you see it that way (laughs).

Because itâ\200\231s not come up as frequently in my interviews previously, and is that something synonymous with just the Cape Town office, that itâ\200\231s taking on more refugee issues?

I think so. Um...you know, itâ\200\231s a new...still relatively new area of work and JP (Purshotam) did a very nice refugee case, Tettey, in Durban, and for a while in the Durban and Johannesburg office there was a wonderful lawyer whoâ\200\231s now with Cheadle Thompson, called Sheldon Magardie. Itâ\200\231s really sad he left us. He was a lawyer we should have hung onto. He had been with Lawyers for Human Rights working with refugees with them; he then came to us and did some outstanding work on refugees, especially with regard to the rights of foster parents to get funding for refugee children. So he and JP (Purshotam) did a bit of refugee work in Durban. Achmed (Mayet) did a case for a Chilean general...or Chilean refugee, might not have been a general, whoâ\200\231d been tortured in Chile. He and George (Bizos) did that matter. But otherwise very little had been done for refugees in the other offices. The only reason, in fact ironically, I was originally against doing refugee work, because I said awful though their predicament may be, which I didnâ\200\231t know much about, you know, is our basic duty is towards...responsibility is towards South Africans who are in appalling situations. And then Leanne de la Hunt, who was then at...in charge of the UCT Law Clinic, came to address us on that and I was an instant convert, and really Iâ\200\231m very glad I was converted. Itâ\200\231s interesting and worthwhile work I think.

Int

WK

Int

WK

15

Iâ\200\231'm also wondering...in terms of the LRC, it seems to me that the Cape Town office manages to hang on to its staff for a long time. Youâ\200\231ve been here more than 20 years and yet in the Johannesburg office thereâ\200\231s been an incredible high turnover, youâ\200\231ve had to downsize in Pretoria, Port Elizabeth. JP, for example, has left the Durban office. Whatâ\200\231s your sense of the Cape Town office and its success in holding onto people?

I really donâ\200\231t know. Um...speaking for myself, I shouldnâ\200\231t think anyone else would offer me a job. But that canâ\200\231t apply to my colleagues. The work has just been fantastic and the environment in which to do it has been fantastic. But I would be surprised if that hadnâ\200\231t been the case in the other offices. I think to a certain extent a lot of people are unhappy (inaudible) about being forced to do work they donâ\200\231t want to do, which is a possible consequence of the funding thing and the projects kind of system. And I think that might have affected other offices differently, or that, you know, there have been personal frictions in other offices which perhaps there havenâ\200\231t been here. But my feeling is that the wonderful thing about working in the LRC is that you can do work that youâ\200\231re interested in and that you think is worthwhile and youâ\200\231re free to do that, or that has been certainly the case in Cape Town. So youâ\200\231ve had Henk (Smith) who with Geoff Budlender, I think, is the pre-eminent land person in the country. Kobus (Pienaar) whoâ\200\231s just unbelievable on development stuff, which he works, honestly, 18 hours a day on! How his family put up with him, I donâ\200\231t know. (Steve (Kahanovitz), who also doesnâ\200\231t need sleep, who has now become the housing person, because heâ\200\231s fascinated by it. Angela (Andrews) on environmental stuff. So everyone...and Chantel (Fortuin) on gender...everyoneâ\200\231s doing work they love and are interested in. But I canâ\200\231t see why that hasnâ\200\231t happened in the other offices. To a certain extent, I think personalities unfortunately were an issue in the Pretoria office. And itâ\200\231s very sad because there are some very gifted lawyers who have left the LRC.

It also seems to me that from â\200\23195 onwards, youâ\200\231ve had an enormous organisational shift, where before there was a upper tier with Arthur (Chaskalson) and George (Bizos), etc, and then you had a really good coterie of middle tier lawyers, a lot of them NUSAS...but just very highly experienced lawyers. And then you had the young upcoming...who got good education and training. It seems to me from â\200\23195 onwards something changed, and Iâ\200\231'm wondering whether that has to do with the Directors that were hired, whatâ\200\231s your sense of that was?

Ya...um...it...probably was inevitable. You know, just as, for instance, new opportunities in the work, in the LRC opened up, so opportunities outside the LRC opened up. And it was important for a lot of people to go off and sort out IMSSA or the IEC, or become judges, or go into other roles. And a lot of lawyers at every level went off into that kind of thing and particularly the original sort of eminent generation. So the last person from the...from the original founding bunch was Geoff (Budlender), who lasted here until quite recently. I donâ\200\231t think heâ\200\231s been gone four years. And various things...I mean, the fact is that...well, as far as those people are concerned they were needed. Geoff (Budlender) had to go originally because Land

Affairs would have been a disaster if anyone but him had been made Director-General. Then he came back, thank heavens, and did some fantastic work for us until quite recently. So I think it was...you know, of course weâ\200\231re getting a little bit of a swing back. Arthurâ\200\231s (Chaskalson) back once a week now kind of thing, but it was,

Int

WK

16

you know...without him as Chief Justice, or originally President of the Constitutional Court, our law would have taken a different and inferior direction. Um...and it was essential that people who were able to take up those posts. So I think it was just inevitable and that isn't the problem. The problem as you indicated earlier is that when we're not getting the kind of young people who made it their career previously staying with us, which I think is to an extent funding related, but also because there are such wonderful opportunities out there. And, as I say, one should not be too despondent about it.

I'm wondering also, William...it seems to me, and this may not be the case in Cape Town, it seems to me that there are lots of smaller public interest law organisations that have sprung up...I think of the Aids Law Project, Legal Project, for example. Where do you think the LRC is positioned and where should it...be?

Not only positioned vis-a-vis those but in a regional context. Again Vincent (Saldanha) a good person to talk about on this issue. Ya there were always organisations which were around and with which we collaborated rather than competed. So there were always Lawyers for Human Rights, the Black Sash, all that kind of organisation. We do lots of work in conjunction with ALP and TAC. So, I don't see that as the problem so much. Women's Legal Centre, all that kind of thing.

The problem is more...perhaps, as far as funding is concerned, I don't think conceptually though and we will still be able to do the kind of work we regard as being worthwhile and important to do. But I think, from a funding perspective possibly, the fact that at last, and I mean, the Legal Resources Centre has tried to do things about it without success, a sort of clearing house system has been established. And now in South Africa there's a trend, which I'm afraid looks like being a bit of a phony trend, of the huge law firms suddenly becoming very sanctimoniously pro bono. But so far, with the glowing exception of Moray Hathorn's bunch at Webber Wentzel, I don't think their hearts are in it. And certainly in Cape Town, you know

, the much vaunted Edward Nathan Sonnenberg pro bono unit were rumoured to have closed down their office in Mitchells Plain and I'm not sure how great that's been but

I still don't regard, even if there's a successful and a genuine pro bono culture created, and it's an important culture to create in the big law firms, as a great threat to the

LRC- I think...collaboration and co-operation is still there and we refer lots of matters to the pro bono sections of big law firms without much difficulty. Again, it might be a threat again that's more from a financial perspective I think than a conceptual one. If the Legal Aid Board really does its stuff with impact litigation then there might be more scope for big firms to take over matters because they'll nevertheless get remunerated for them rather than it's being pure pro bono which may

be a problem, and then I think...but I do think that the big challenge for the LRC to position itself properly is to become multi national or regional, so Vincent (Saldanha) who is involved in SADEC and on the International Bar Association and on the Law Society, is in a really good position to discuss our positioning ourselves with regard to the regions and legal development in the regions, and there there's a mob who set up in Johannesburg, which you'll know more of than I do, with a view to training human rights lawyers in the sub region and we should have done more about that perhaps. So that's a factor.

Int

WK

Int

WK

Int

WK

Int

WK

Int

WK

17

Iâ\200\231'm wondering William, in terms of rule of law given that itâ\200\231s a constitut
ionally based
society, what do you think would be the major areas that the LRC should be focusing
on for the foreseeable future with an ANC led government...?

In what sense?

In terms of what would be the key areas? Would it be the land reform, refugees...?

Ok. poverty at all levels I think is an issue. So the socio-economic stuff. Housing. |
think housing is vital because housing is a springboard for other things. housingâ\200\231s
been a perennial problem. I remember an annual report or an address given to their
AGM by Geoff (Budlender) in the mid eighties, definitely not later than 86, talking
about Mohamed Navsaâ\200\231s...I donâ\200\231t know whether youâ\200\231re talking to him?

Iâ\200\231ve met him.

Good. A phrase to the effect of â\200\230Mohammedâ\200\231s (Navsaâ\200\231s) perennial fru
stration with
housing.â\200\235 You know, and that has become exacerbated since then so I really think
more people should...again itâ\200\231s problematic because people will love the work theyâ
\200\231re
doing and donâ\200\231t want to be shifted...I think more people should be hired (laughs) t
o
co-operate with Steve (Kahanovitz) in housing. I think that really is a vital thing. But I
think the most important contribution, and youâ\200\231ve hinted at it I think, the LRC can
do,
is to promote legality. You know, where you see for instance the Minister of
Correctional Services refusing to take Dr. Theron back at Pollsmoor. Bizarre! Where
you have Home Affairs, in several cases we brought, we got a judgment or we got an
order, they said: no weâ\200\231re waiting for directions from Pretoria before we implement
it.
Itâ\200\231s that kind of approach that is dangerous to democracy and I think everything th
e
LRC does supports that. But...um...my obsessions at the moment are...education and
housing and health.

And refugees...

I mean, my own personal, thatâ\200\231s what I do, but I think perhaps more effort should g
o
into health, education and housing issues...

What about...

...weâ\200\231ve got a matter which with a bit of luck Iâ\200\231ll launch tomorrow, for th
e education

of severely and profoundly intellectually disabled children, who are just left on the scrap heap. It's only NGOs looking after them. They get a subsidy, not from the Education Department but from the Health Department, which is bizarre and inadequate. And that...one's in danger of losing sight of those. As mad Terry

Int

WK

Int

WK

Int

WK

18

Crawford-Brown said years ago, , the real threat to South Africa is not warfare and the need to get expensive arms, it's poverty. And we've lost focus on that, I think, I mean, nationally. So I think the LRC must continue with that. Again, where refugees are concerned there's still a strange and paradoxical mindset in South Africa, even in the government, that somehow we're not part of Africa, we are a unique phenomenon, like the Nats used to say, don't interfere with us, South Africa has unique problems. Which is nonsense! And they reiterate this! We had a judge in...we intervened as amici in that case of KK Mohamed, that guy who got kidnapped by the FBI...

This is the War on Terror case, right?

Ya. And the judge...one of them, the first one...and the judge here, an intelligent judge, said: is South Africa going to become a haven for criminals? It doesn't occur to him that every country that doesn't have the death penalty insists that if they extradite to a death penalty country, they get an assurance that the person won't be executed. And it's that where you have a judge with that mindset that's multiplied a thousand-fold amongst ordinary people and amongst members of government, that somehow it's wrong that people come across the border and have to be treated with certain rights, which is unfortunate. The big thing again, if you're looking for an area where there can be improvement. What I can't understand, I really can't understand, is the failure by the government to combat xenophobia with a proper campaign. And it can be launched at so...should have been launched at so many levels, with the exception of President (Nelson) Mandela's sunset tour where he said some nice things in Tanzania, there's been no proper acknowledgement of the role the front line states paid looking after South African exiles and refugees, and just a little bit of reciprocity would have been nice, quite apart from all the other things. And the second leg on which roll back xenophobia campaign should be launched, is the fact that immigrants and refugees help the economy. They don't steal South African jobs, which is the big obsession and perception, and there's a vast amount of literature and scholarship on that, not only internationally, but locally to counter the argument about South Africa being unique. It helps the economy. So that, a lot needs to be done there. But I think basically the role of the LRC to uphold legality at every level is its important role. We try and do that at various levels, not only the cases we take and the training we do but...by submissions here and there, especially before Parliament. And I think that's another interesting facet, you mentioned drafting legislation, but submissions to portfolio committees I think have been significant by the LRC and helped towards legality and proper governance.

William, why do you do what you do (laughter)?

(laughs) Because I hate law but I enjoy the perks. No, it's fascinating and has been

really rewarding. Iâ\200\231m so grateful to the LRC to have put up with me for so long.

Iâ\200\231m sure the LRC is extremely indebted to you.

It shouldnâ\200\231t be.

Int

WK

Int

WK

Int

WK

Int

19

Iâ\200\231ve asked you a range of questions, Iâ\200\231'm wondering whether there are things Iâ\200\231ve neglected to ask which you feel really ought to be included in our LRC Oral History interview?

No, I assume everything...I mean, itâ\200\231s been wide ranging. I think what I havenâ\200\231t told

you, youâ\200\231ll get from other people. I think what is unfortunate and while itâ\200\231s a nice

thing that thereâ\200\231s an Oral History being done, is that there hasnâ\200\231t been a proper history

of the LRC yet. And um...that perhaps is the one drawback. But again, , for all the fact that the LRC originally saw a proper role for publicity for its cases, um...it hasnâ\200\231t

kept that up so much. You know, Rikoto was such a success, but since then weâ\200\231ve tended like all lawyers are schooled, to go with no touting, no self publicising, all that kind of thing, I think we havenâ\200\231t managed media relations well, we havenâ\200\231t. ..Felicia

Kentridge was very keen, to her credit, on our getting through on radio, which is the vital medium, everyone has a radio, and it can be done in a language that everyone under..., it gets to people of all languages. And we failed there, miserably. And she tried and we had the odd talk to Bush Radio down here, this kind of thing, it hasnâ\200\231t

been done. That should have been...thatâ\200\231s one of the major failings I think. If we could have got a regular radio slot...especially gender rights and things like that... um...regularly, we would have done better. I think we tend not to be seen. People still confuse us with the Legal Aid Board and donâ\200\231t know the kind of work we do. So thatâ\200\231s unfortunate. So it would be nice to have a special thing. And then, you know

, but there are...and education, because when you look at the horrors that are taking place in Cape Town, the unemployment, the violence on the Flats, the drug problem on the Flats, by the time you get to court itâ\200\231s effectively too late and it should start

with early childhood, you know, so that girls at school are treated with respect, so that arguments arenâ\200\231t settled by violence, that proper facilities for aftercare and extr a

mural activities are created, so that you donâ\200\231t automatically go into gang culture. There are opportunities for that. Amnesty International is talking to Janet Love, I donâ\200\231t know whether you are able to see her?

Not yet.

About an education project theyâ\200\231re doing at the schools. So I think human rights education is an important thing for South Africa, for every country. And perhaps we could get involved in there. That might help, because peopleâ\200\231s lives arenâ\200\231t great

despite democracy in that...at the unemployed level and the poor level.

Iâ\200\231m wondering, William, what are the stories that remain to be told?

Ya, there are thousands, lots of anecdotes floating around.

What are some of your favourite memories of being associated with the LRC for that

long, a significant period of professional life?

WK

Int

WK

Int

WK

20

Well, being called a Communist was always nice (laughs). I felt I was doing my job (laughs). I know a few stories, but Iâ\200\231d have to reflect on them. You know, just ironically, a very good judge...well, sometimes heâ\200\231s a very good judge, and heâ\200\231s involved in the Kiliko case where heâ\200\231s been excellent, but two ironic things about him. The first is that shortly after I got here, Shehnaz Meer had an Industrial Court case in which he was on the other side as counsel, and the Industrial Court didnâ\200\231t have a Xhosa interpreter for that day, so she suggested that we use a guy whoâ\200\231d worked for us over holidays. He then became a paralegal at our office years later. Malusi Makalima, a wonderful guy, unfortunately he died. And this guy said: oh, well heâ\200\231ll have to be screened by the Security Police first, which outraged me. And then several years later I learned from an attorney in Bellville that when the LRC started in Cape Town, the Tygerberg Attorneys Association had approached him for an opinion as to whether the LRC was kosher. And he replied in the negative. He said itâ\200\231s unlawful to have advocates and attorneys under one roof, whereas that had all been provided for originally (laughs). So thatâ\200\231s ironic. But there are lots of stories like that around Iâ\200\231m sure. Werenâ\200\231t you at the Durban office for a while?

No, not yet, Iâ\200\231m going to the Durban office.

Because theyâ\200\231re full of stories. JP (Purshotam)...oh youâ\200\231re speaking to Chris Nicholson?

Yes. Thank you very much William, for a wonderful interview and for a very reflective indication of where the LRC is heading.

Stream of consciousness. Thank you. (END OF 15T INTERVIEW)

Interview 2: 29" August 2008

Int

WK

This is an interview with William Kerfoot and itâ\200\231s Friday the 29" of August (2008). William, once again on behalf of SALS Foundation I really want to thank you for agreeing to participate in the LRC Oral History Project. And for once again giving your time so generously in lieu of all your other demands. One of the key reasons I wanted to re-interview you is that, the last time I interviewed you, there must be...and you probably, from all the interviews Iâ\200\231ve done, are the only person whoâ\200\231s had maybe

5 tracks where you start the interview and then the phone rings and then youâ\200\231re attending to a refugee crisis, and then we have the track stopped and then we start again. And it all made for a very interesting interview because I realised just how important and how demanding your work is at the Legal Resources Centre. So I really want to take this time for this interview to focus solely on your cases and the kind of work youâ\200\231ve been doing at the LRC over the years, how thatâ\200\231s changed...beca use

now I think youâ\200\231re dealing predominantly with the refugee work. And also if you could talk a bit about the...I would say, constraints on you in doing this kind of work.

Ok. Um...I donâ\200\231t remember a thing about last time (laughs), so I hope Iâ\200\231'm not

repeating myself too much, but effectively from 1984 till really 1994, it was very adversarial work, a lot of damages claims, a lot of interdicts, a lot of labour law, which was interesting as I think I said, because the...legalising of black trade unions, the formation of the Industrial Court and the whole notion of unfair labour practice jurisprudence, only came about in the midish-eighties, â\200\23083/Â°84. And most employers in Cape Town were completely ignorant about those provisions. So that was quite satisfying and encouraging work. It stopped of course with the new Labour Relations Act because that provides for the CCMA and free assistance, and by then anyway, most of the kind of impact stuff had been done, so there was no real need for the LRC to continue with that and by then a whole core of specialist labour lawyers had grown up in South Africa, commercial labour lawyers, and were able to deal with that completely. The other hangover in the eighties was of course influx control and the LRC had had great impact cases in Rikhoto, Khomani and Mthiya, and it was just building on those, and there were still, it was remarkable, the end of â\200\23184, mid â\200\23185,

shortly after I got here, the number of cases we still had to bring on behalf of people who were having trouble with the so-called pass laws. Um...my work since the Constitution has come into fore, or since 1994, has been rather different, more creative and less absolutely adversarial I suppose. And um...I think youâ\200\231re right, the

most exciting part of the work has been working with asylum seekers and refugees and I donâ\200\231t know whether I said last time, itâ\200\231s ironic, because I originall y was against

doing refugee work because I felt however miserable and discriminated against their situation was, their conditions were, our mandate was really for poor, marginalised and victimised South Africans. And Leanne de la Hunt who ironically is now Special Advisor to the wretched Minister of Home Affairs, converted me. She came to the LRC, from the University of Cape Town where she worked, to try to persuade us to take on asylum seekers and refugee work, which Iâ\200\231ve never regretted. The previous Aliens Control Act, which was updated in the nineties, didnâ\200\231t mention the words asylum seeker or refugee for obvious reasons â\200\224 not many people from the rest of Africa would seek asylum in South Africa under apartheid. And it was only with the

Mozambican catastrophe really that the UNHCR got involved and brokered a little tripartite agreement which the Department of Home Affairs then extended to people coming from other places than Mozambique. But they didn't have a clue and it was a badly...you know, it was a very rudimentary agreement, so people wouldn't be given reasons for their refusal for asylum. They'd be given seven days within which to appeal without those reasons, without a copy of the documents. Things as bad as that. And to its disgrace really, the government tried to take points in the early days that an asylum seeker didn't have standing to challenge his refusal. So one had to go through all those old, almost apartheid era kind of technical points taken by the State. But fortunately those were soon disposed of. And we got several rather nice judgements on the rights of non-Nationals, not only refugees but same sex partners of South Africans, foreign same sex partners who were...had to have the requirement in the Act struck down that it only be heterosexual union, and the Constitutional Court did that in the National Coalition of Gay and Lesbians case. And also in the Dawood Shalabi and Thomas case where unfortunately, for bureaucratic reasons, I was prevented from acting for the Dawood couple, but in the next week or so, I refused not to be able to take on Shalabi and Thomas. And the three cases were joined and...although Leanne (de la Hunt) acted for Dawood, and that established almost an echo ironically...the fourth time I've used ironic...um...interestingly it was an echo of the pass cases. Mrs Komani's case in that it enabled a foreigner to stay in the country to be with his or her spouse. And then the actual pure refugee matters where for instance asylum seekers were forced, if they had been renewing their...if they had first applied in Johannesburg, and then moved to Cape Town months or even years later, before having their application dealt with, which happens with the Department of Home Affairs, they were told they had to go back to renew their permit in Johannesburg. And as the system then was every three months one could see the disruption to a person's life and economic situation by that. And we repeatedly had to go to court for that because the first time I made the mistake of not getting a court order when the other side undertook that it would not enforce that. And then after that, even with a court order, my colleagues in Durban had to bring an interdict against the Department of Home Affairs. And our experience since has been that despite the excellent framework of the Refugees Act and the excellent framework of the Constitution, implementation has been abysmal. And again it's an echo of the past system. You've had brutal and callous and stupid officials doing their best to deny people rights or just being plain incompetent. And that, you know...overcoming that has been, in odd instances, has been very satisfying. For instance there was a case, Mrs. Watchanuka from Zimbabwe, who came to us because she was unable to work. Some person in Home Affairs had issued a directive that you could not work for the first six months of your presence in South Africa, which clearly militated against the rights of genuine asylum seekers as opposed to alleged economic migrants or visitors for some other reason, and that went all the way to the Supreme Court of Appeal before it got sorted out...

Interruption

And Judge Nugent made a wonderful ringing statement that 'human dignity knows no nationality', which is encouraging. But to show...I'm really not exaggerating about the obdurate lack of co-operation with Home Affairs. We had another matter on behalf of asylum seekers and refugees married to or living with South Africans, where Home Affairs decided that you had to cancel your refugee status or your asylum seeker permit in order to apply for permanent residence on the basis of your marriage, which clearly meant that you were in some sort of limbo because they would want to check up on whether your marriage was one of convenience or not anyway. And they also required you to have a passport. Now most asylum seekers and refugees don't

Int

WK

23

have passports. So we went to court about that, got an order by consent, and then within two years Home Affairs was reneging on it and we ultimately had to go back to court on an urgent application to get that directive...to get the reneging on the thing set aside and they capitulated the day before we were due to go to court. There are numerous examples of that kind of behaviour. And...we brought what we hoped would be an effective case and a case with enormous impact, with the deterioration in service for new arrivals in South Africa. As you know, with Zimbabwe and the Democratic Republic of Congo over the past two years there has undeniably been an increase in asylum seekers but this problem had existed before two years ago, it has just got immeasurably worse in that people were here for over a year without getting any kind of documentation despite regularly applying for it, and it was tied up not only with inefficiency but also with corruption. And just to digress for a moment on the corruption issue, in desperation at some stage, because it would be hopeless going to court on that, we had tried to get a criminal case going unsuccessfully, but that was the fault of the asylum seeker rather than the authorities. I eventually got hold of the Cape Times, Tony Weaver, the news editor, and said, isn't there any way you can get someone to pose as an asylum seeker and expose this corruption. Fortunately he had a journalist working with him who spoke fluent Shona, although he came from Limpopo in South Africa. And he duly went down and within weeks having coughed up eight hundred rand, he was on the front page of the paper with his asylum seeker form. And it really didn't achieve anything. Within a couple of days the same situation seemed to prevail, people were saying you only get assisted if you promise to pay or if you actually pay. But the case we brought on behalf of asylum seekers as a whole was to force the department to process applications within a reasonable time. And we deliberately didn't make it a structural interdict because we thought that would take too long and be too cumbersome. But the judge very creatively converted it into a structural interdict. This was back in 2006, I think, and we've been back to court three times, each time the judge has slated the Department of Home Affairs and called upon them to provide more satisfactory reports and more satisfactory procedures, but the situation still remains unsatisfactory from that point of view.

So are they deliberately in contempt of these judgements?

No, I don't think so. They have been in contempt technically speaking in other matters, not on the Kiliko case. Though I think a mechanism they adopted originally to try and cope with the original Kiliko order was close to being in contempt. What they did was instead of assisting people, they would give them a little square of paper, which I'm not sure even...I think it had a Home Affairs crest on it, but it would just provide for an interview months down the line, which was of no use or significance at all, and we in fact launched a...we asked at one of the return days of the Kiliko case that the judge declare this to be inappropriate, but he said because it hadn't been in the original papers, as the practice hadn't originated at the time of the original papers, he couldn't deal with it, but he made it quite clear that he was critical of it. And we then launched another urgent application to stop that and they duly stopped it. But as you have seen recently, with this outbreak of xenophobic violence all over the country, it's really a logical development because what's been created by the government's failure to make it quite clear that foreigners, non-nationals, are on the whole an enormous benefit to the country and are entitled to the rights that they are seeking here, and that they should be welcomed as South African exiles were welcomed by much poorer countries during the struggle and at great danger to those people in those countries.

They have made life difficult for them and they've created a sort of under class. So you have people who are effectively not legal. If you're here for six...you know, wandering around without a permit for six months or a year, you're extremely vulnerable to all sorts of pressures, and that kind of rubs off, I think, on criminal and xenophobic people. It also applies though to people who almost always do have permits, like the Somali population for instance; they're readily physically distinguishable from any other people on earth and they have succeeded in running very good little businesses all over the place, and selling, often merely a stall, but a successfully run stall of cigarettes and sweets and crisps and so on. And there has been an onslaught on them, particularly in the Cape. Last year there was a month in which over 30 Somalis were killed. So, you know, it doesn't only apply to the really vulnerable people who've been unable to get any kind of regularised stay in South Africa. It even applies to Somalis who generally get refugee status quite soon because of the appalling state of their own country. And Home Affairs hasn't addressed that properly, the government hasn't addressed that properly. On the contrary you have a situation now where the government went through this after refusing, when we wrote letters of demand, when the violence had broken out in Gauteng, we wrote to the Minister saying: use the Act to say that for any period you like, Zimbabweans qualify as refugees. Failing that create a different category, some sort of exemption. Failing that at least provide a moratorium of six months or so for people to get their lives sorted out, given it's so hard to obtain an asylum seeker permit. And the Minister wrote back the most offensive letter, a sanctimonious letter, saying: absolutely not to all of those requests. Now of course she's changed. But in a really bureaucratic cumbersome way providing...one has to apply for a card, which gives one six months within which to get one's situation cleared up, which effectively amounts to a moratorium or would if it were honoured. And there's also been talk of a particular deal for Zimbabweans. But even on that wretched card, the latest development which we were told about in Gauteng, is that asylum seekers whose permit or status has expired, are now getting arrested and are facing deportation, despite their having this card. Now that's atrocious because it doesn't enable people to exhaust their remedies.

I'm not sure whether they're arresting people only who...I mean, whether they're arresting people who've only had their application rejected, or whether it's people who've been through the whole appeal process. But even if that is the case, people still have the right to apply to the minister for an exemption under the Immigration Act, particularly those from Angola for instance, where there isn't any political problem at the moment, though we'll see what happens with the election coming up next month. But many Angolans have been here 14 or 15 years, their entire adult life, and to think that they should now have their lives dislocated by sending them back to Angola against their will, is most unacceptable. And they should have the right to be able to await the outcome of representations to the minister before getting turfed out, or at least have the six month period within which to try and do something about that. But it's, as I say, without being too, I think, polemical or biased, I find that typical of the combination of incompetence and bloody-mindedness on the part of Home Affairs. But for all that, you know, one's spirits are lifted by the achievement of asylum seekers and refugees and by being able to do bits and pieces for them. I do far too much bits and piece work instead of concentrating on impact litigation for them. And there are a couple of cases which I have been threatening to bring for ages and just not got around to it because one is constantly interrupted by these small crises. But I do think that the small crises need to be responded to as well because they are significant and occasionally, particularly with the Cape Town refugee office, you know, a scatter gun approach bears fruit. They do become more reasonable in respect to particular problems, even if it's trying to get a wrongly spelt name fixed up or a late renewal of a permit resolved. Though I hear now again that there's been a directive

Int

WK

Int

WK

25

that has come out, and the timing is just so appalling, that if people are even one day late with applying for a renewal of their permit theyâ\200\231ll be arrested and their permits wonâ\200\231t be renewed. You could do that if you ran a...you could more or less legitimately do that if you ran an efficient office, but you canâ\200\231t do it when itâ\200\231s because of your own lack of capacity that people donâ\200\231t renew their permits or when you have a situation where people have been burned out or chased out of where they were living and are too terrified to go to the very user unfriendly office, which is now stuck out at Nyanga Extension. No consultation with interested people over that. It was decided to move, because the wretched Department of Public Works wants Custom House on the Foreshore to be used as a media centre for the World Cup in 2010. So they allegedly turfed out Home Affairs, which then went to Nyanga where there are no buses, no trains, and only a very dangerous taxi rank to draw from at Nyanga, which is not foreigner friendly. So it was a nightmarish idea.

How much consultation do you get with Home Affairs and other people...you mentioned someone who actually got you into this line of work, and Iâ\200\231m wondering how much negotiation youâ\200\231re having to do, or is it just adversarial litigation?

She was not with Home Affairs at the time, she was at the University. I occasionally phone her...

This is Leanne de la Hunt?

Yes, in order to discuss appalling matters. Sheâ\200\231s very difficult these days but still compassionate, so in a sense if one needs to get someone to travel on an emergency document because a parent has been killed in a car accident or something in a neighbouring country, then she has been very helpful on that sort of line. And again, ironically, once I wrote...a couple of months ago, I wrote a frantic letter, which I addressed both to the Minister and to the Director-General, or to the Head of Refugee Affairs rather, saying: could this person use the passport of his or her country to travel because of an emergency to pick up a minor child whose care-giver had been killed, or something like that, or for a gravely ill relative, I canâ\200\231t remember which. And the Minister, through Leanne (de la Hunt) I suspect, sent an authorisation. A few days later after the person had gone, the Head of Refugee Affairs wrote a letter saying, in no circumstances (laughs). So that was amusing. But no...one has constantly to negotiate with the immigration office because they are the sort of jackbooted section of what happens to refugees if they are thought to be illegal. So we have people being arrested improperly or detained for longer than they should, then itâ\200\231s usually a question of negotiating with the immigration office or going to court on behalf of the detained person. And over the years there have been people in Refugee Affairs who have been reasonable to negotiate with. Unfortunately one or two of them have been transferred because Home Affairs has got the notion that they will be able to fight corruption by transferring people they promote to another centre. And it just shows, I think, a futility. You know, if you suspect people might be corrupt, donâ\200\231t promote them, ...rather than sending them to another region where they have to learn the ropes again about what the problems are in the region and how to help them. But no, there are some co-operative people in Refugee Affairs whom one can send a person to and hope that something will emerge from that, but itâ\200\231s getting harder and harder.

Int

WK

Int

WK

Int

WK

26

Iâ\200\231m wondering, William...this work is clearly very stressful, what levels of support do you have in the Cape Town office, one. And two: what levels of support are you getting from the National Office?

Um...I get a lot of support from Ncunyiswa Hans, who is one of the paralegals in the office, and from my candidate attorneys and when I have interns. I get a lot of help from them. Um...I think one of the advantages to the LRC, or certainly that Iâ\200\231ve experienced in the LRC over the years, and one of the reasons people stay in the LRC, is because they love the work they do and usually develop a practice of the work they love. So not many of my professional colleagues do refugee work in the Cape Town office because theyâ\200\231re busy doing environmental stuff or land or whatever...

Interruption

So you were saying, William, in terms of levels of support in the office...

And then nationally, again, there was a wonderful lawyer in the Durban office and then in the Johannesburg office, but I think in the Joâ\200\231burg office he was meant to be doing some other work, called Sheldon Magardie. He did terrific work there. JP Purshotam did great work for refugees and foreigners as well. Particularly the Tettey case.

Both have left...

Both have left unfortunately. So not much gets done in Grahamstown or Durban now, for refugees or asylum seekers. But in Johannesburg Naseema (Fakir) does a lot and another recent attorney, whose name occasionally escapes me as it has now...um... Shulima? (reference to Sushila Devar) She does a bit of, I gather, asylum stuff. And the National Office seems to be okay with asylum seeker work. In fact, the Joâ\200\231burg office and National Office got wonderfully involved in the crisis in Johannesburg and worked with ALP and Bishop Paul Verryn and others over that. So the work is supported and so on. It would be nice if we had someone else who could really deal with...in the office, who could really deal with everyday queries. One of the problems for Ncunyiswa (Hans), superb though she is, is she doesnâ\200\231t speak French (laughs), or another African language like Swahili or whatever, which would be really useful. And it would mean that I could perhaps get on with my other stuff. But, one hopes that Home Affairs...that the government in April next year will appreciate how important Home Affairs is, and not make the mistake that was made since liberation unfortunately, in that Minister Mangosuthu Buthelezi was really not interested in Home Affairs, I donâ\200\231t think; he was running his fiefdom in KwaZulu-Natal and his political party and was not an effective or a sympathetic Minister of Home Affairs. And his successor is just appalling from every point of view. So one hopes for a better department. The most recent Director-General, although knowing nothing about immigration or refugees, is apparently a competent organiser, was a successful businessman, and seems to have made some improvements in Home Affairs as a

Int

WK

Int

WK

27

whole that obviously hasn't got as far as alleviating the situation of asylum seekers and refugees yet, but one lives in hope.

William...the recent crisis around xenophobia, there was a lot of discourse, particularly in the media prior to that about the fact that the criminal element in South Africa is really associated with the refugees and asylum seekers. And I'm wondering when the crisis then happened how that impacted on your work and what were some of the kind of complications in the kind of work you were doing?

Well, it didn't really affect our work other than needing...and I was out of commission for a while, so I didn't do much of the co-ordinating stuff, which was superbly done by Fatima Khan at UCT and above all Fatima Hassan at the AIDS Law Project in the Cape. But I think it's rather...the effect was on the public level that the newspapers and the media tended to give unfortunate coverage, so the implication was almost that people were justified in wreaking this havoc on foreigners because they took South African jobs or because they were associated with crime, which is a fallacy. And as I said, the government should have done something about that long ago. There was a roll back xenophobia campaign some years ago. There should have been more of an effort by the government to show that, you know, from emerging from being cut off from the rest of the world by apartheid, we should now adopt our position as a proper constitutional democratic state which involves interaction with other countries and the people in other countries. And it's really failed on that. And there was a lot of knee-jerk journalism and I think it obviously...well, perhaps it didn't affect people but it certainly did nothing to stop the knee-jerk xenophobia felt by people who automatically regard foreigners as people who take their jobs and women and who are associated with crime. If you say the word 'Nigerian' to most South Africans, the immediate association of ideas is drug dealer, which is unfortunate. So from that point of view that xenophobic outbreak has not been dealt with properly and the heavy-handed responses that I've told you about earlier to people being moved from camps...into camps...being told they won't be accommodated where their kids are at school, that sort of thing, and above all, this business about if your application for asylum has been rejected you're going to be on the next bus to Lindela, is just unacceptable and exacerbates the situation. Then I think I'm more or less...I can go on talking to you about refugees forever but I think I've probably exhausted that issue from your point of view.

I'm also wondering if you could talk about individual cases that you currently have or that you've just had, that you feel are very...embody what it means to be doing refugee work within the LRC as a public interest law organisation. I think that would be quite important. If you could highlight a few...do they have impact, or are they just everyday concerns but very important?

Well, cases like Kiliko and Ruyobeza and Watchanuka, and the others like Dabone, which although it didn't lead to a judgement, it led to the order by consent that I spoke about. They have enormous impact and have improved the lives of asylum seekers and refugees. The everyday stuff...uh...ya...the things that crop up on an everyday basis now and on an individual basis are people who are entitled to apply for...a Section 27c certificate which enables them to apply for permanent residence. The

Int

WK

28

criteria are that you have to have had recognition as a refugee for five years and be going to remain a refugee indefinitely. Now that's been problematic. And what has happened, the Wits Law Clinic have launched a challenge against that, because as they correctly say, when you're recognised as a refugee, you're not transformed, you're still the person you were. You were always a refugee, it's just time for you to

be recognised. So they say that the five year period should be from the date of your application for asylum rather than from the date of your being declared a refugee. Which I think is right, and I hope that comes about. The other thing though is that the standing committee is being very difficult about...remaining a refugee indefinitely. So what has happened is that people who have applied in all good faith, have found themselves being told: no, your country is now a democratic earthly paradise, so not only are we going to reject your application, we're going to withdraw your status, and you have 30 days to make submissions about that. That's enormously problematical and on an individualised basis we've had to do quite a few of those. The manifestly unfounded provision in the Act, which is appalling, it's a difficult notion anyway. Fortunately in the new Amendment Bill they've removed that, they now merely provide for unfounded applications. But the way the standing committee has been dealing with manifestly unfounded cases has been problematic as well, and it's problematic because the Refugee Status Determination Officials are largely untrained and incompetent, close on illiterate, and yet it's their decision, which then goes to the

standing committee for consideration and approval or not. Ordinary appeals where you've had an RSDO who said that...you know, the problem is that they haven't

provided...this was one of the cases, which I was going to bring and just never got around to...they haven't provided interpreters. People often have to bring their own

interpreters who's a family member or who's someone who's just not qualified, a

friend, sometimes a chance acquaintance on a street. Interpreting is a very important skill. Merely being able to speak two languages doesn't mean you can interpret properly. And certainly the RSDOs are not properly trained in terms of a very simple and excellent guideline given by the United Nations High Commission for Refugees on how to take statements from asylum seekers and how to assess the validity of their cases. They're just not followed. So there again one deals with individuals. You know, appalling misunderstandings on the part of officials and then one has to deal with those on appeal. But winning an appeal is a good thing and it means, one hopes that it filters back to Refugee Status Determination Officers and things improve. But, as I say, a lot of those recently, and a lot of people with faulty names or dates of birth or whatever, and one has to go through the motions and that. The other sort of flood of matters is, because of the failure of Home Affairs to issue refugee cards, refugee identity documents, and that's been a nightmare. Helping people push through their applications for identity cards, helping people push through their applications for permanent residence, which is rather individualised but if they manage to streamline the process it will help others. It will help the class as a whole.

I'm also wondering in terms of what level of interaction you have with UNHCR around these...?

Very little. The implementing partners of UNHCR are the UCT Law Clinic and we obviously have a great relationship with them and co-operate with them a lot. And you mentioned earlier negotiation with Home Affairs. In desperation last year because of the frightful situation, despite the Kiliko case, we set up with UCT meetings with the local manager, who just showed that she didn't understand what was going on

Int

WK

29

outside her office door. I doubt whether she understood what was inside, but she didn't know how the queues were formed, for instance, downstairs. And there were a couple of meetings like that, which effectively led to nothing, but UCT Legal Aid was a great colleague and ally in that. The Human Rights Commission has been superb since the xenophobic violence as well, in making all sorts of suggestions and recommendations. But for UNHCR, I refer people to UCT who want to be relocated in another country, which is a problematic thing. It's become particularly problematic

after the xenophobic violence because people naively thought that because they were in danger here, whole groups would then be taken to somewhere like Canada, and we had to disabuse them of that notion very quickly. So on the whole my dealings with UNHCR have only been where people needed medical attention overseas or desperate individuals needing family reunification, or whatever. I co-operate quite a lot with UCT on family reunification, UNHCR. And then for family tracing the International Red Cross is an excellent source or agent...I need to dash fairly soon...

William, is there a case around the disbanding of the refugee camps or do you think that that's not something...?

It's unfortunate that it's been handled so...in such an authoritarian manner. People have tried to reintegrate, and that's one of the ironies, you know. Home Affairs only

hand out cards to people in the camps, yet they are recommending reintegration. So people who then left the camps to reintegrate are unable to benefit from that while it's

still difficult for them to get to renew their permits and things. That's a bad situation. I

can only speak for the Cape, I don't know what's going on in Gauteng, but here what

could have been resolved quite well I think, was compromised by the stupid and um...arrogant conflict between the province and the city for political reasons. So they were scoring points off each other rather than attending to the community desperately in need. And I think that's been unfortunate and has bedevilled the whole process.

I think that, unfortunately, because I hate the notion of camps, and that was one really nice thing about the South African refugee picture, that you didn't have people incarcerated, they were able to work and study and stay in the communities. I think it's dangerous for a lot of people to go back to where they were. There are awful examples: there was a man who was living...he'd bought a house, he was living in Philippi, you know, he'd had his neighbours for meals over... the years, and with the

outbreak of xenophobic violence they told him to get out. I mean, in hostile fashion, not in order to save himself. So there are difficulties about reintegration. One would hope that ultimately everything will simmer down and provided again, I think there should be public campaign led by the government to accommodate foreigners. But it's not going to happen right now, so I'm afraid that camps should stay, or shelters should stay, and obviously there needs to be some consolidation to be able to provide proper services. So I just think it's been harshly done, it's been imposed rather than

negotiated, and for instance Youngsfield military camp, apparently the military has been difficult about it and wanted Youngsfield to be closed and a compromise was reached whereby it wouldn't close but that no-one new would be allowed in, or no-one from other camps would be allowed there. And I would think Youngsfield is the most appropriate for accessibility to the schools refugees' children went to before getting disrupted, rather than having these three centres now, one in Strand, one at Blue Waters and one at Youngsfield. But one would hope that ultimately people will be able to merge back into the community. But it's certainly not going to be safe for a while.

Int

WK

Int

WK

30

Final question before you leave. Clearly this work is extremely important, it's also extremely stressful and, you know, there are two things really: how the LRC provides you with a space...in various ways to do this kind of work, A. And B: from your perspective why you think this kind of work is crucial and the future of this kind of work?

If I can answer the second question first. I think it's crucial because...how you protect your poorest, most marginalised, most vulnerable people, whether they are prisoners or whether they are foreigners, sets the standard for your democracy...

Interruption

So it's how you measure your democracy, and if you're going to be consistent, if you're going to comply with the Bill of Rights, then the rights we are seeking to attain for asylum seekers and refugees must be recognised and respected. Then as far as the LRC is concerned, I didn't mention it earlier, there was a stage when they wanted me to stop refugee work because there wasn't funding for it, so I ignored them and it seems to have worked because now refugee work is regarded as quite kosher (laughs). So that's nice. No...I do get help, I do get my colleagues' support, and you say it's stressful work, it's also enormously rewarding, and not that one should think of that but to enjoy one's work I suppose is important and getting something done for people who need it is both important and rewarding.

Absolutely. William, thanks again for your time.

Thank you so much...

William Kerfoot\200\224Name Index

Andrews, Angela, 15
Bizos, George, 3, 14, 15
Budlender, Geoff, 4, 9, 15, 17
Buthelezi, Mangosuthu (Gatsha), 7, 27
Chaskalson, Arthur, 11, 15, 16
Crawford-Brown, Terry, 17
De la Hunt, Leanne, 14, 21, 22, 25
Devar, Sushila, 26

Dugard, John, 1

Fakir, Naseema, 26
Fortuin, Chantel, 15
Goldblatt, Lily, 2
Hanekom, Derek, 14

Hans Ncunyiswa, 26,
Hassan, Fatima, 27
Hathorn, Moray, 9, 16
Kahn, Fatima, 27
Kahanovitz, Steve, 3, 4, 9, 15, 16
Kentrige, Felicia, 19
Kollapen, Jody, 6, 8
Komani, Mrs., 22

Kriegler, Johann, 5

Lipson, Pauline, 2

Love, Janet, 19

Makalima, Malusi, 20
Mandela, Nelson, 18
Margardie, Sheldon, 14, 26
Mayet, Achmed, 14

Mbeki, Thabo, 9

Meer, Shehnaz, 20

Mgoqi, Wallace, 4

Navsa, Mahomed, 17
Nicholson, Chris, 20
Nugent, Robert (Bob), 22
Pienaar, Kobus, 9, 15
Purshotam, JP, 6, 14, 20, 26
Rabie, PJ (Justice), 5

Rath, Matthias, Dr., 9, 10
Saldanha, Vincent, 9, 16
Shrosbree, Dr, 3

Smit, Bassie, 5

Smith, Henk, 4, 9, 15
Theron, Dr. 17

Unterhalter, Jack, 2

Verryyn, Paul, 26

Walton, Matthew, 3
Watchanuka, Mrs., 13, 22
Weaver, Tony, 23

Wilson, (Judge), 5

Cases:

Dabone, 28

31

Dawood, 9, 22

Education of Severely and Profoundly Intellectually Disabled children, 17

Eviction under Prevention of Illegal Squatting Act, 4

Fishing case, 10

Grootboom, 4

Homeland cases, 3

Kiliko case, 13, 14, 23, 28, 29

Komani, 3, 4, 21, 22

KTC, 3

Methodist Church and asylum seekers, 26

Mtiya, 3, 21

National Coalition of Gay and Lesbians, 9, 22

Paralysis â\200\224police damages case, 3

Police damages, 3

Prisoner applications, 8

Railway reserve matter, 4

Refugees, 6, 12, 22- 30

Rikhoto, 3, 4, 5, 6, 19, 21

Ruyobeza, 28

Shalabi, 9, 22

Springs Swimming pool case, 4-5

St. Johnâ\200\231s College, 10

TAC case against Matthias Rath, 9 (see <http://www.tac.org.za/community/rath>)

Tettey, 14, 26

Thomas, 22

Transgender refugee case, 13

War on Terror (KK Mohamed), 18

Watchanuka refugee, 13, 23, 28

Legal Resources Centre Oral History Project

PUBLISHER:

Publisher:- Historical Papers, William Cullen Library, University of the Witwatersrand
Location:- Johannesburg

Â©2010

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. These digital records are digital copies of electronic documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

DOCUMENT DETAILS:

Document ID:- AG3298-1-074

Document Title:- William Kerfoot (x2) Interview
Author:- Legal Resources Centre South Africa (LRC)
Document Date:- 2007-2008