

Int This is an interview with Richard Moultrie and it's Monday the 20th of July (2008). Richard, on behalf of SALS Foundation we'd really like to thank you for giving your time so generously and participating in the LRC Oral History Project. I wondered whether we could start the interview...if you could talk about your early childhood memories, what was it like growing up in South Africa under apartheid, where did your sense of social justice and injustice develop, and then moving on to some of the formative influences that may have led you into the legal profession?

RM I can't tell where my sense of injustice about apartheid developed but I think there must be things that...I think it must have happened pretty early on. I came from a very privileged background, my family...my father was a businessman and my mother worked at his company. And we (they) had four children and I think that large families can contribute to an early development of a notion of justice and injustice. But I think that the first thing was a particularly messy divorce on the part of my parents. They really, really had a difficult time, I think, facing up to the fact that they were getting divorced; it took a long time and it was very acrimonious. At the same time my mother started working for the Black Sash and I vividly remember her standing on a street corner with a placard saying 'release all detainees'. And so that was something that she was doing that was very obvious sort of anti-apartheid stuff. She also at that time did a history honours degree – my parents kind of retired when I was about nine or ten, or thereabouts and my mother did a history degree and her subject was deaths in detention. So, I mean, I grew up very...with vivid images in my mind of the (Steve) Biko killing particularly. So that was...I think I must have been...particularly the image of the Biko story and the storied of people slipping on soap in showers or allegedly falling out of windows in police stations. Ya...my elder siblings who were about five years older than me at the time, then joined a youth organisation that was a UDF affiliate and was banned. You know I was born in '74, so when I was kind of ten or so, it was '84 and the UDF kind of around that time and then the banning, and I remember vividly this little student's...it was a children's organisation, was banned. It was called PAG, I think Pupils Action Group or something like that. And...I mean, you know, they weren't radicals but, you know, private schools and...(laughs) and you know, it was very much of a middle class thing, although I think that they were at the time actively involving themselves in more broad politics. But I wasn't involved in any kind of way. For me it was a matter of just watching it all happen. And then I got into high school, my mother remarried an editor of a large national newspaper at the time and he was an important influence because he was quite involved in the politics of the time. He went to Dakar in '88, I think it was, with one of the large delegations. And I remember him coming back and saying, you know, I met Thabo Mbeki and he's a fascinating guy, really interesting and clever. And you know, I remember also at high school my friends used to say...I mean, because of that, I kind of identified with the ANC, so I started drawing ANC flags on my files and, you know, carrying...putting stickers saying Stop the Death Penalty and those kinds of things on my files at school. And my friends who were very conservative, who were my peers, at by then at a private school here in Johannesburg used to joke about it and kind of tease me and I used to say: you know, the ANC is the future, and, you know, of course being the kind of school that we were there would be debates about the validity of the armed struggle and stuff like that and

I would always defend it, and so I think that, you know, moving on from the sense of unjust, injustice, became quite sort of linked up with a party political thing. And then of course the transition happened and by then I was just in...I matriculated in '92, so that process happened as I was really sort of waking up to politics and life, and then at varsity, campaigning for the first election for the ANC was great. There was an interesting experience, because you know, the big debates were at that stage about the politics...I mean, the economics of the ANC, what kind of an organisation would it be? And I come from a strong liberal background and the feeling...I always felt that the ANC could, and I still think, it has a traditional liberal element to it, which I'm very attracted to, and particularly in relation to the questions of injustice. So ya, it was interesting sort of learning about the policies of the ANC prior to the first election. And then sort of we...I remember campaigning in the suburbs of Claremont, walk into people's houses and there was I, all of 18 saying, telling people why the ANC policies on economics are...you know, will be fine and you needn't worry about your house (laughs) and...which of course they needn't have. And you know, these people were quite interested I think to have these youngsters walk into their houses and speaking to them like that. But I think...I wasn't actually quite that involved in politics at university and I always felt that I was in a kind of interstitial stage of politics because I never had to make the decision not to vote, for example, you know, for an unrepresentative government. So my first opportunity vote for, was in '94, and was fantastic. And...ya. But I...you know, by the time I got to varsity I was much more interested in partying actually, so I didn't, although I had lots of friends who worked in the political environment, SASCO members and because, you know, NUSAS had moved, given over to SASCO, and it was an interesting moment in UCT politics at the time.

Int So you went to the University of Cape Town?

RM Ya, I'd grown up in Cape Town for kind of the formative period of my life and we'd moved to Johannesburg when I was at high school and I hated it, so I went back to university there, and that was really, ya...it was exciting for me to sort of rediscover my youth whereas as opposed to my high school days which were actually quite...I found quite...I didn't enjoy at all. So ya, I was much more sort of socially orientated at university but certainly, you know, my current wife who I met then was on the SRC as a women's movement member and SASCO chair, and...ya...it was...I just kind of got the feeling that life was going to be much better and a lot of not so much effort would have to be made. So then I became interested in history and I did a history degree, history and politics, and I thought...I had no idea really what I wanted to be, and I became then an actor for a year, worked in a theatre company, and then during that year my father died and I had a sudden wake up and I decided to become a lawyer.

Int Why?

RM My mother had, interestingly, after her history degree and after her remarriage, she had moved to...when we had moved all to Johannesburg, she'd gone to start a law degree, and she went to Wits and the whole way through high school, I mean, she was studying law, doing an LLB. And then she went to Denys Reitz, which is a big

commercial firm here in Johannesburg, and she persuaded them that they should allow her to be their in-house human rights lawyer, which was to effectively take...be a partner and do work for no money, but obviously, you know, it's all part of the marketing of the firm but certainly they were committed to that kind of work, and she did a lot of work for people like the east bank residents of Alex on housing and did the people at Lohatla, the army base evictions and she fought a civil case against Eugene Terblanche with George Bizos as her counsel. And I mean, I also remember that when I was at high school, I remember her discussing how she'd gone to Ventersdorp to bring this case against Eugene Terblanche with George (Bizos) and they discussed food the whole...my mother's very interested in food and George (Bizos) is quite as well, and you know, it sounded... (laughter)

Int Sounded good?(laughs).

RM Ya, it was kind of romantic in a way, and you know, obviously he was an amazing person just to know about and, ya...anyway. I think that what I realised during that time was that I had quite a lot of understanding about law, as a result of the fact that my mother was studying it, at high school, and I sort of at high school, growing up with quite a sense of law and, you know, things like, my mother used to come home from varsity and discuss the difference between appeal and review, you know, while she was struggling with that at law school I was interested in it as a kid. And so when my father died I realised that I'd have to do something with my life and it was kind of a wake-up call about becoming much more serious about life, which I did very quickly, rightly or wrongly, and I went...I enrolled for my LLB, and it was amazing. I'd taken a year off from varsity from my earlier degree, was a little bit more mature than the other students and I was fascinated by it, it was...I started law...I think it was...the new Constitution came into effect on the 3rd of February 1997, after having been passed by the Constitutional Assembly in '96, and I started varsity on the same day, I think...started my law degree on the same day. And so the whole way through it was very...you know, we were struggling with the new Constitution and I had the benefit of not having to...although, you know it was still relevant, but struggle with the old...with the interim and the final Constitution. But by the time I started we knew the ground that we were on and we knew as lawyers, well, I started learning as a lawyer what the kinds of arguments we would have to make to win the kinds of cases that I wanted to be involved with. Which was nice, because I think a lot of people were hit by a lot of confusion about the Constitution as it came around, I mean, certainly there are many senior lawyers these days who still regard the Constitution with some...with some trepidation, I think, because you know, they're used to being, as all lawyers are used to being the cleverest person in the room. And they like to show that off and you get a top common law lawyer, perhaps many of the top judges at the Supreme Court of Appeal even, who didn't grow up with the Constitution. It's kind of alien to their way of understanding the law. And, you know, now they're a little bit dubious about it so they try desperately to avoid looking at it and thinking about it. Whereas it's just...it's part of this...not...you know, it's part of who I am.

Int I'm actually going to take you right back, because what's interesting is that your mother seems... a fascinating character in the sense that this metamorphosis that happens and she changes and she's very politicised and...she engages with the law

and she takes on cases and the fact that she persuades a commercial law firm to do human rights work. As a young person... what was your understanding of what was going on and how did you engage with what was happening to her and the changes?

RM Well, I mean, I should say for a start that the seed was probably, you know...I mean, she was in Paris in '68, she'd had also a very middle class, in fact highly privileged background in the sense that she was the daughter of an ambassador, South African ambassador during the apartheid era, but grew up all over the world and in Washington, Australia, in Sweden, and then went to the Sorbonne, as a student. So I think that she'd been kind of radicalised at some level intellectually at university and then back to UCT as well during the time of the ARM and kind of stuff that was happening in the sixties, I think, early sixties, which she had kind of put aside to have four children and marry a man who was a businessman. And a bit of a maverick. And the two of them started a business from nothing, and I think that when the divorce happened, she...I don't know whether she felt that she had suffered a great injustice and it's far be it for me to say that...to weigh the injustices on either side of that divorce, which was as I say, a messy one. But I'm sure that associated with that struggle that she's having in the family was a realisation that she could have a struggle outside of the family as well. The Black Sash at the time, I mean, I'm not sure about it, but it as also quite a social scenario, you know, it was a group of mainly whites, mainly middle class women and I think that she found a kind of a social home there, as well as a political one and that kind of thing.

Int And her going into law...you said you really started understanding law, but that didn't really lead you to do a law degree immediately.

RM No, no, in fact I was quite opposed to it...not opposed, but I'd...I mean, as I said, high school I was a little bit disaffected with life, and I figured that I wanted to be...I had got it in my head that I didn't want to do anything that was kind of technical or professional, I wanted to be in the heart. So...and my maths marks and my science marks dropped dramatically and I barely passed matric with, you know, particularly in those subjects, I did well in others. And I basically figured I needed this amount of points to get into UCT to do a history degree, which is what I wanted to do. And I hadn't conceptualised what, you know, earning a living might involve (laughs). So...and that comes from being a privileged child, is that you don't ask those questions at such a young age. And I was encouraged certainly by my father particularly, not to. You know, he always said, don't peak too early. Wait till you get to university that'll...you'll begin to know. So ya...no, I thought that law was a little bit too sort of corporate for me and I didn't really have a strong sense of more radical forms of law at the time.

Int But in a way, you were also very lucky because your mother having done law and also the case you mentioned with George (Bizos)...at that time, did you really have a sense of who George (Bizos) was and...?

RM Ya, I mean I did...well, once, you know, she explained. You know, ya, and then together with my stepfather, you know, in the politics of the day and we had a strong

sense of who people like Arthur Chaskalson were, and you know, things were really beginning to happen in relation to the notion of constitutionalism.

Int Right. At university ...was there much training in terms of public interest law?

RM Um...I don't know...I mean not formal training. The legal...the Law Clinic was an option and I was immediately attracted to that. I think many were attracted to it because it was a kind of an opportunity be hands on, but for me it was obvious, I tend to do things quite simplistically. If you have a skill no matter how bad it is, it's better than nothing. And if somebody else can't get anything, well, you should give your skill. And I thought that...you know, we helped poor people get access to justice in very basic forms...I remember vividly helping a woman with a divorce, for example. We weren't allowed to do many kinds of law, at the Law Clinic, but that was for me, something that I had to do as a law student. So I worked very hard at it and I became the Head of the Law Clinic at UCT. Which was great, and you know...it opened up all kinds of other things so that was kind of a social element to law. Even though, you know, I must say, that by then most of the people who were doing law had no concept of the past, you know. By then I was sort of three or four years older than the other people who were doing law, and even I was on the tail end of the struggle, and as for them, I mean, they really had no clue, and by far the majority of people at the university...I mean, UCT was not transformed in terms of race, or particularly or in class, and so, you know...and the youngsters who were there, the whites, they didn't feel that they...you know, they felt that it had all been done. there was no need to fight anymore so no form of political conscientising or anything like that. I mean, I remember the SRC elections used to get...sort of 15 percent of the full-time student body would vote. And most people were just much more interested in getting a good degree and going out to earn some money. So I think that a lot of the other people involved in the clinic thought that not as a means to sort of give skills or to help people but more of a means to get skills. Which of course was part of it, and rightly so.

Int Sure. Being Head of the Law Clinic, what did that entail and what were some of the cases and what were some of the challenges for you?

RM Well, first of all it was about inspiring people to do work that was helpful and to inspire people as to the reasons why we would do the work that we did. So I did a lot of thinking about that because it was not...it's not easy just to sort of refer to the past because the past was the past, and one had to actually engage with the students on the sort of deeper meanings of law in a much more sort of nuanced way, than not such an oppositional way. So that was interesting. Also just becoming exposed to just kind of organisational politics, I mean, that's part of the life and you...so that helped. I...interacting with staff at a close level was nice. I mean, it was just an opportunity to talk to people who...about law, and...no, I was much...I was very academically orientated. I was quite interested in the theory of it. And I worked very, very hard and I did quite well on that sort of...but, you know, so engaging with staff on those issues was nice. I also arranged at the time an exchange with...I was living with two people who were working with researchers at the TRC, which was quite something because...so we're in a digs, quite a nice house in Tamboerskloof – it was actually my

brother's house, he's an actuary – so it was kind of the lap of luxury for students, but we were all post-grads. And they were both at the TRC and they used to...obviously come back and tell the stories about what was going on there, and that was obviously a massive eye-opener as well. And it was quite a lot of gender politics going around, a lot my friends are gay, those kinds of things, so...but anyway, as a result of that TRC link I met a guy who was from Harvard who was at the law school there, who'd come to do an internship at the TRC. And he was moving into the leadership of the Harvard legal aid clinic, not the human rights one, the other one, the legal aid clinic one. And we arranged an exchange between the two of us. I don't think we ever got as far as sending some UCT students to Harvard (laughs), but certainly some Harvard students came to UCT. So I spent a lot of time contextualising South Africa as well, with them, to foreigners, and you know, talking, thinking about the Constitution, thinking about what had changed, and doing that...a lot of explanation.

Int Sure. It sounds like you had such grounding having been older, and also having had a political understanding by the time you did law. When you had finished your LLB what did you decide to do?

RM Well, I decided that the only thing that I wanted to do in life was to go and join the LRC.

Int Really? How did that come about?

RM Well, you know, if you read the law reports, you know, from between '97 and '99, those three years, the first groups of law reports, of reports are from the Constitutional Court, were of course case after case after case were LRC cases. And just sort of what I was interested in, I wanted to do only public interest law and so I applied to the LRC and they refused me...which I was quite angry about, and outraged with them (laughs).

Int What was the basis on their refusal do you think?

RM No, I'm sure it was because I was a white male. Which I think is unfortunate and you know if we do get to talking about the LRC more recently and the crisis that it faces in relation to skills...which is not per se a race thing, but, you know, there's a strong correlation in skills there and to do with the history of our country. And...

Int You applied to the Cape Town office?

RM I think so, ya, I mean, I would have...I don't know whether, if that was a national application. But you know, they...and there was a lot of scare stories, I remember somebody had written an article...I was publishing, as well a student law journal which was more kind of radical we thought, than the stuff that was going on this little piece of paper called...what was it called, I can't remember now...anyway, ya...and I remember somebody and we prided ourselves on pretty much publishing anything

that was as controversial as possible, including stuff from the other side of the kind of divide. And I remember one guy wrote, he had an article and he was saying, the chances of white males getting any jobs in any law firm anywhere in law in the country was basically zero. Which caused a big hype and I remember writing a piece opposing that. But you know, certainly there was this worry that we wouldn't get jobs. So I applied to the big law firms and of course I was offered by all of them, so (laughs) I need not worried, but...and I picked one...

Int Which one did you pick?

RM I picked Bowman Gilfillan.

Int Right. So in the Johannesburg office?

RM Ya. The other thing that had happened was that I'd just got together with my now wife, Johanna, and she despite the fact that she'd been doing politics for four years, both, you know, practically and, you know, at varsity, and had just finished an Honours degree, had decided that she wanted to be a doctor. So her mother worked for Wits so she got free tuition at Wits, so she had to go to Wits and even though we'd been together...she went at the beginning of my law degree so we were apart for three years but we were still together at the end of that. So it was quite clear, in fact I think we were already engaged, and so it was clear, she was in the middle of that, that I had to move to Johannesburg.

Int Right ok. So you got to Bowman and you did articles...

RM Oh, I must have applied in the Jo'burg office. To the LRC. Anyway...I got to Bowmans and I was...I mean, obviously you somehow you buy a suit and a tie and you, you know, start looking all professional and stuff, and there's money and clever people and I was really struck by how there was an absolute focus on excellence, and they billed very high, at very high levels. But an unstinting focus on getting things right and getting it right for the first time, not getting it wrong. And I remember...I was quite inspired by that and I kind of fell in love with Bowmans and I still am because it's an organisation which really focuses on that kind of thing and they were working quite hard at integration and transformation of the firm. And I worked for a woman, I remember, who I at first absolutely hated and because she used to correct every...she used to change every letter, and I used to...I started...at first I thought it was on principle, but I realised that what she was doing was helping me develop a style of writing, which is a kind of training which you can't do theoretically, you've got to do on the job, you've got to...and you know, I'm massively grateful for that. So I did articles there and I was always, it's kind of told, that there were always opportunities to do public law, so not only could we do pro bono work, which I did immediately a lot of, we...I did employment law. Although we worked fundamentally for employers almost in every instance over 95 percent of the cases. Learning employment law was an amazing experience because it's, you know, it's fundamentally about fairness. And I realised that I was still learning, there was just absolutely no ways that my university training would do justice to me as a lawyer.

You know, I had to, you know, and I knew that it would be the place where I would get...and there were opportunities to appear in court, and I started thinking that I might want to be an advocate. And I started in that employment environment, you know, for jurisdiction reasons you can appear in court as an attorney in this country. So I started doing that and then I became quite involved in access to information law, once again on the part of...on behalf of employers, I mean, of companies, as opposed to *requestees* for information. But I did some work with the Human Rights Commission at that point on the development of the Act, and I remember overcoming the opposition to the sort of corporate interest people saying, but you're from Bowman Gilfillan, how can we trust you? And coming in there and saying, well no look guys, what counts are the principles. And having ultimately a very effective discussion and working with the law in a way that I thought was ultimately...and had an effect on it that I thought was ultimately effective, which was to decrease administrative burdens on private organisations and small organisations in particular.

Int Did you stay on at Bowmans?

RM I stayed there after articles. They promised me that I could...that I would be able to do...that I would become like an in-house counsel. You can ultimately qualify as an attorney to appear in all courts. And I've done some competition law and I knew that I could appear in the competition tribunal and they said if you stay we will give you work that we might otherwise give to junior counsel. And I was also starting to train younger people and there was, you know, that element and the transformation stuff happened around that time and I became quite involved in that, you know, fighting for a really effective racial transformation of the organisation.

Int So BEE?

RM Ya, ya. And I saw a kind of future in it...so I stayed. But it didn't really happen and I knew that I was on partnership track and it was going to happen any moment and if I became a partner I wouldn't be able to leave ever. I remember a senior judge once telling me around the time, a family friend, saying, you know, if you...you can't give up life as an attorney, it's not the fact that, you know, you can't give up the money and things like that, it's you can't give up the clients. You can't turn around to your clients, no matter who they are, and say, sorry guys I'm just not...because you become kind of an intricate part of their lives. So I saw that coming and then my wife got a job...well, had to go and do community service as a...she'd qualified as a doctor, and she had to go away for a year to Mpumalanga, so I was going to be alone in Johannesburg and my needs were much less and she was now earning a salary, so we decided that I could do pupillage during that year. So I came here to do pupillage, which was by then a year, which was frustrating. But, I mean, at that point my goal was to become an advocate and to get what work I could get and not be picky about it, but hopefully do some good public interest work as well.

Int Sure. So you did your pupillage and then did you go back to Bowman or did you go to LRC?

RM No, as a pupil, as an advocate, then you start as an advocate in private practice in a building like this in chambers. And about three quarters of the way through I was called by Alan Dodson and...in fact, I'd worked closely with Alan (Dodson) when I was at Bowmans and strangely enough I have a long strange family connection with Alan (Dodson) through my godfather and we used to have family holidays with him when I was a child, even though he was obviously a little bit older than me. Anyway, but Alan (Dodson) was at the Bar and I briefed him when I was at Bowmans on some matters, public law matters, and he phoned me and said...during my pupillage...he said: I'm leaving the LRC would you like to come? And, you know, to be honest, I was...I mean, I was given the impression by him that I would be given the job as the head of the Constitutional Litigation Unit. But, you know, I wasn't particularly worried about that but...and I was looking at life and obviously now facing up to life at the Bar and it all seemed very...once again, very commercial and now obviously worried a little bit about security because you don't get a salary, and so this sort of opportunity arrived at the beginning to be an advocate but yet get a salary and get only human rights work.

Int And the kind of work you're interested in?

RM That's right. It was good. So he and I sort of talked a bit and then Janet (Love) and I talked, then I had a meeting with them and they raised particularly the silicosis cases, was a case that they were doing which is something that fascinates me because it involves the question of piercing corporate veils in...and I've just finished a masters at Wits where I'd focused on that and particularly the relationship between public and private law and holding private institutions responsible, and horizontality of the Constitution and that kind of thing. So that was quite exciting and we negotiated a salary and we said right well...and I had said I would stay for two years. I mean, I didn't want to stay forever, I was never going to stay forever right from the beginning, I knew that I wanted to be an advocate, I knew that I wanted to be a full-time advocate available to do all kinds of work, and not stay at the LRC.

Int So what were your experiences at the CLU? Who was the Director of the CLU at the time?

RM When I arrived...all the way through it was Achmed Mayet, and the...I mean, I had absolutely no idea what I was facing when I went in. The office was so incredibly under-resourced. The lawyers were in a state of torpor. They were totally, as far as I could tell, uninterested in fighting. They were much more interested in media. It was a sort of amazing thing where you were asked to go to sort of four or five or six meetings a day, totally undefined in relation to who knows what. Meeting after meeting after meeting where people would sit around and have an important discussion. You know, there was absolutely no organisation. You know, coming from an organisation like Bowmans which had been so professional, and where...you know, I think that there is a sense amongst NGOs and people that you can't be professional because that...you're being kind of corporate and you're pushing people into boxes and you're limiting their full potential or something like that, which is rubbish. You know, good organisation and good management is a skill and it's an ability, and you know, Janet (Love) had been there for like the grand total of one

month when I arrived, and I think she's done an enormous amount for the organisation. But you know, she's really dealing with the basis of...that is quite limited. And by the time, you know, I certainly arrived there people had forgotten basic skills, like writing letters. Most importantly they weren't training the juniors to do those things, there wasn't a focus on excellence, there was no focus on quality. Not only were they not training juniors but they were then promoting the juniors, and they'd lost all the seniors. They'd lost all of them. I mean, except for Achmed (Mayet) and Durkje (Gilfillan) who by then was working only half a week, and Achmed's (Mayet) dealing with a situation where all the attorneys were less than two years, experienced post articles. In fact I personally have now admitted as attorneys, all of the attorneys in the LRC except for Achmed (Mayet) and Durkje (Gilfillan). That shows how junior they are. And with the absence of training that they had, but in the Jo'burg office, I mean, I must talk very differently about the other offices...

Int Cape Town office?

RM You know, Cape Town...Grahamstown, it's an incredible place. One lawyer, one CA, one paralegal, one secretary. And they do the most incredible cases in the most incredibly effective way.

Int Really? That's Sarah Sephton.

RM Really, she's an astonishingly good and effective lawyer. Durban does similar things. Also with small amounts of resources. But Johannesburg as I said, you know, there's this...and you know, there are the old NGO hangovers and the...I couldn't believe how much admin staff, how many admin staff there were in the office. I kept meeting people and I had absolutely no idea what they did. And then when I went past their desks they were just staring blankly at their computer screens. If they had computers. That was the other thing is that the computers were antediluvian and I arrived there they gave me this machine that, I think, I mean, I was scared to touch it because it had clearly not been used, but it was also so old it was so dirty, physically dirty, I mean...and the offices were crumbling and the pictures were fading and torn and the...I mean, there was just no pride.

Int So by this time when you arrived the National Office had amalgamated with the Regional Office?

RM Ya. Pretty much.

Int So this was in Bram Fischer House?

RM Ya, I arrived in Bram Fischer House. It was wonderful to be there, I mean, that was amazing as well. The library. Incredible. This sort of going down there...because by then it was basically my personal library, because nobody else was using the books (laughs). Nobody else. I don't know how, whether I'm wrong here, but I don't think

that most of the lawyers knew how to use their computers and I don't know if they know how to use basic materials like law reports on line. They weren't using them on books either, as far as I could tell. And so I had this library to myself, you know, with Bram Fischer's personal hand written notes, and those of his father, and his grandfather, had some of the older books! You know, and so, I mean, I was just...that was incredible this resource there that, you know, the...the other resource of course was George (Bizos). And you know, that was amazing.

Int Tell me a bit about that?

RM George (Bizos)...the only time I didn't listen to George (Bizos) on a strategic issue was one of the biggest mistakes of my career so far. He's incredible! He's absolutely...his understanding of the law permeates his fingers. He...and you know, he would probably be the first to admit that he doesn't need law reports. He's not actually...doesn't seem to be that interested in it...not interested in the technical side. He's interested in the justice part. And he looks at a situation, he says, this is right, and that is wrong. And invariably his understanding of what the law is without looking at a law report, is correct, especially now we live in a just...more just, environment. So you know, that kind of resource is incredible but, you know, what I found was that he wasn't doing any LRC work and people were scared of him. I mean, the juniors who hadn't been trained, you know, he would be...you know, they would have these meetings, hilarious sort of lunchtime training sessions, and sort of walk in and George (Bizos) would sit down at the end of the table and all these juniors would sit there sort of wide eyed, terrified that he would ask them a question. And, you know, he would talk at a kind of a generalised level and it would go straight over their heads. And they would demand training, you know, this new thing about people, you know, we've got to be trained, we can't be lawyers unless we're trained! Which is true but you can't be trained, you've got to do it. You've got to participate in that process, it's got to be, you know...and it doesn't happen in a theoretical way once a week on a Friday, you know, kind of stuff, kind of way. Ya...and so they never went to him for cases either and so he would sit in his office, I know he still does, and he does do private work which is great because that...and he obviously advises on strategic issues unrelated to certain cases and I've got him involved increasingly more. I mean, I'm probably I can boast and say that I got George (Bizos) into the Magistrate's Court for the first time in about 35 years of his career during the time that I was there. You know, going down, we went en masse to go and counter a big campaign in relation to refugees, and George (Bizos)...I was saying to George (Bizos) that he had to come to the magistrate's court and fight the case and he had a major effect. But you know, George is also...I mean, I started seeing it as not a negative way but I started seeing it as part of my job description, which was to be with George (Bizos) and to, in a way, to be a sounding board for him and he was for me. And he was the most, he was the closest that I had to a friend there, so...you know, because the rest of the people weren't that interested in the law. But George (Bizos) is, you know, fascinated and interested in all kinds of things. So...but I had to spend a lot of time with him and especially, you know, in circumstances where I was busy, George (Bizos)...he's got an expansive sense of time (laughs), and you know, he and I would sit for over an hour every day on average, talking about everything and nothing, which was wonderful for me as a lawyer and as a person, but it actually took up quite a lot of my time (laughs).

Int I can imagine. The LRC from its inception, has always been plagued in a way by racial dynamics and one would say that's also because of ...it's being a microcosm of the...larger society. I'm wondering when you were there, in relation to perhaps the junior lawyers... the demand for training, was there a sense that...they weren't being trained effectively, was a racial element to all of this?

RM I doubt it because the senior lawyers were not white, except for George (Bizos), and I, as I say, I don't think that he was the appropriate person to be training. I think that the people there should be training were people who were working on cases who were the lawyers involved in matters. So it may have been at an earlier stage that there might have been a racial issue. But I don't think that that was...I...the fact when I was there.

Int What do you attribute the malaise to, because it seems that the Johannesburg office in particular has had difficulties...?

RM It's about confidence, it's about confidence, and confidence comes from...you know, in the first place, before you get into the practical skills of training, there is the theoretical knowledge. And if you start with theoretical knowledge and you know what is right, then your confidence in seeking out the practical solutions just increases so much. The malaise has got to do with people becoming over specialised in their work. I mean, this focus on land work in the LRC, I personally think is a massive mistake.

Int Really?

RM I think it ignores...obviously land is a key and important element of the fundamental question in the new South Africa, but the LRC is a much bigger organisation and it should be. And people who are forced to do one thing day after day, and especially something like land, which is really all about process, it's in fact so little about law that it's like being a glorified administrator, and there are people in the office still who just work on these sort of: write letter, respond to letter, write letter, respond to letter. They never go to court or very seldom go to court and they don't...there isn't that sort of legal cut and thrust. So people don't develop the notion that you can- if I am faced with a new case, a client walks in the door and he's got an interesting new case, I will be able to find the solution, I will be able to find the answer and I will be able to find the solution in a practical sense- there's not that sense that, you know, a case comes in and we take it. I mean, I do think that changed a little bit over the last two years.

Int You mean now?

RM Ya. I think that there was much more of a proactive sense in relation to cases, rather than...you know, the reasons for the malaise, I only I suppose talk about the...no, I don't know the reasons. I don't know the reasons. I mean, one can talk endlessly about the results of it. The results of it, you know, include things like the lawyers don't...they get advocates to brief...to settle every letter. And they get advocates to,

you know, work out cases and tell them if, you know...and they rely on other people to come and say, this is a case that needs to be fought so we...I mean, it's amazing that there's, you know, the prosecution's case came from outside the organisation, from particularly Yasmin Sooka, and the Shilubana case came from Aninka (Classens) and this CLRA case also came from Aninka (Classens). And a lot of cases come from Geoff. And, you know, it's not as if there's a fundamental sense of inside the organisation we are actively identifying situations of injustice and going out to fight them.

Int Do you think that has to do with leadership structures?

RM Structures, I think...I think it's really got to do with management structures. I think that the organisation must move into the 21st century. I think the organisation must stop inviting the sweepers and the tea ladies to come and discuss the cases that we will choose and why.

Int Do they do that?

RM Serious. I mean, I'm sure that it's very empowering for those people, but it is not what we do and is not what we should be spending our money and time on. We cannot have a situation where meetings happen and there isn't even somebody on the switchboard. You know, scenarios like that. The switchboard is the switchboard, it is there to service the lawyers, the lawyers are what the LRC is. And if that sounds harsh, you know, I can't...that is who we are, that's what we do, and the lawyers are the heart of it, the lawyers must be the best lawyers. We must be better than other lawyers, we must not just be average lawyers, we must be the top link because we have to be the most creative and we have to be the most effective. You know, the law that we do is highly complex. So we need to work in teams, I think, within...the identifiable lawyers need to be identified as being a senior lawyer and a junior lawyer and a candidate attorney on every case. On every aspect of every case. On every letter of every case all of those people should be involved. This is what happens in the corporate world. You know, it sounds inefficient but that's the way it works. So I do think that that could...the team structure...but you know, with the absence of lawyers we can't even put together one team. So I think that we've got to decrease the amount of work. That's a sad thing. That we must put together a crack team of lawyers and give them as much work as they can do and no more and no less.

Int Ok, so within this scenario, given that the LRC is strapped for funding, how then does it proceed to move into the...21st century?

RM Well, ok, first of all it needs to get rid of all of the work methodologies that are outdated, to do with multiple support staff. It needs to fundamentally rationalise the front desk and the paralegal system. Nobody knows what happens in the front desk. I've tried for two years to find out, nobody knows.

Int In terms of how they actually identify a case that's viable?

RM ...You know, I'm convinced that 90 percent of the people who wait for more than two hours in our reception don't get any help from the LRC. And I think that we are actually wasting their time by making them wait for those two hours. So we need to cut down on this multiple staff scenario, we need to have one identified...oh, I must tell you this story, I mean, it's just because it needs to be put in the history. When I arrived at the LRC, we have two cars in the Jo'burg office. Two. And I'm informed that we've just managed to decrease the staff complement massively by having a retrenchment exercise which I thought was obviously something that needed to have happened and I thought maybe hadn't happened to quite the extent that it should have. But they'd retrenched the messenger and the replacement didn't have a drivers licence. They'd chosen somebody else. I think maybe...I mean, another admin staff member who'd been there longer obviously, but the key question hadn't been asked, do you have a drivers licence? So we had two vehicles and a messenger without a drivers licence. How can you run a litigation practice in that scenario? This is not...I'm not talking luxurious lawyering, I'm not talking...this is...these are...they're basics. They really are basics, and they are basics to do with that, you know, any lawyer who worked practically and effectively would never, couldn't have made a mistake like that. I don't know how it happened. So that, you know, we need just...we need a motorbike messenger, we don't need a car, well, we might need a car but, you know, in certain circumstances, but we don't need two cars. Oh, and you know, the cars were being misused under a rife level as far as I'm concerned, as far as I could tell. There was a total lack of understanding that the key resource was the lawyers, so that everything should be focused at the lawyers and so much time was spent by the lawyers doing other stuff. Managing other people who weren't lawyers, or writing reports when they didn't need to and that has changed significantly over the last two years though. You know, so there'd been this focus the lawyers must all write reports, so I arrive there and the lawyers are spending half of their time writing reports. What we need is a simple timesheet program, which is what we did have ultimately, which just records our time and then automatically gets identified onto a particular case and, you know, the reports should be written...the reports are reports to funders, they're not a management tool. So the people should be managed by their seniors because what was happening is that people were writing reports in order to defend the work that they've done, to say, well here's this 25 page litigation report, which says, oh look how hard I'm working, but doesn't say, well this case is in flux at the moment because we're waiting for an answering affidavit. It says I made a telephone call on the 25th and I wrote the letter and I had a meeting, etc, etc, etc. Which is all saying to the management, look, look, don't fire me. But instead what should be happening is that people should be managed in small teams and that the head of each team should take responsibility for the quality of the work of the people below them, their say so to management should be an absolute final word on whether that person is performing or not performing. It should be...I mean, apart from issues such as performance management tools, which are complex and expensive to put in place, but the lead lawyer must say no, this is a good lawyer or a bad lawyer. Or he's following his training, he's developing, I can see that he's got a future at the LRC, or she. Or I can't. It doesn't need to run on paper.

- Int There's also a sense that people who come in as article clerks ...well they're CAs and then they become junior lawyers, are given very complex cases, for example land cases, which they can't manage, is that accurate...?
- RM Ya. Absolutely true. And that's because of the absence of senior lawyers. You know, the juniors come out of a situation where as CAs they've got no training, or precious little, and then they're given cases which have been found often by someone else, but then they have to run them. And these guys are...you know, they're really, they're totally out of their depth and...ya...no, it borders on the negligent.
- Int Richard, for someone who in 1997 onwards was really intrigued by the LRC and wanted to work there, coming into this situation must have been a bit dispiriting to find this?
- RM Oh, it was terrible. I mean, you can hear it in the way I'm talking...
- Int I can also hear a certain passion because you used the word 'we' a lot and it's almost as if you're still at the LRC, and I wonder what that's about?
- RM I don't think I'll ever really leave. I don't think anyone does, you know.
- Int What do you think needs to change? Is it just a question of funding? Is it a complete overhaul of the system? What's your sense of...you've given me some excellent suggestions, but overall in order to get back to it being the leading public interest law organisation?
- RM People need to stop being so defensive, for a start, and they need to start being a little bit more confident about the work that they do, so...so I suppose the first thing is management. The very most senior people who are lawyers as opposed to administrators, suffer from this. So they have to do something about themselves because, you know, that can't be changed. The people below them need to be inspired by them, or by people that come into the organisation. I think that if you took all of the...to the extent that there is money wasted on what I think are additional salaries, and for every, you know, while I was there, I personally was involved in the dismissal of two employees. If you added their salaries together, these were admin staff – who it seems we didn't particularly need, because they haven't been replaced – if you added their salaries together you could pay for a good lawyer.
- Int Interesting...
- RM You know, I think that we cut...we must shed...additional funding would be good, I'm sure, but I'm not certain that it's what's required. What we require are lawyers, top lawyers, people who want to do only LRC work. You know, in fact I spoke to people who I was...and I had managed to head hunt a new lawyer for the LRC and I had great hopes for him and he's junior and he's from Bowmans and...

- Int Is that Adrian (Friedman)?
- RM No, Adrian (Friedman) and Jason (Burchill), in fact I found both of...Jason (Burchill) is the new one. Adrian (Friedman) is kind of in a sense even more junior even though he's also I think an excellent advocate, brilliant and analytical mind. Jason (Burchill) is fascinating, he's someone who like me went to UCT, was the head of the Legal Aid Clinic and went to Bowmans and now wants to do the LRC thing. But people who are passionate, people who are...and who are skilled, you know, we have to find skilled people at the higher levels. Ultimately, we can train people on the skills but we can't at the moment, I don't think.
- Int Is there is some concern that the LRC can be labelled as a 'neo-liberal' organisation, In the past it was identified and labelled as an organisation of liberal white lawyers, in the 1980s. And then...in the current situation where you have Constitutional Court judges called counter-revolutionaries and the judiciary...
- RM It just shows how meaningless the whole term is.
- Int I'm wondering what your sense is of how a place like the LRC can function effectively, because it does seem that it requires very skilled lawyers, a coterie of senior and middle, very good lawyers, irrespective of race?
- RM We need to change...well, I don't know. We've got to get black lawyers, senior ones, skilled ones, that is definitely the case. But the market for that is astonishing. I mean, I know some...I know many of those people who are top level, highly skilled, passionate, constitutionally orientated black lawyers, and I also know that they would love to work in an organisation like the LRC.
- Int Really?
- RM As long as it wasn't like the LRC.
- Int Oh. In what way?
- RM Well, that it didn't suffer from the massive malaise. So there's a chicken and egg story. You know you actually have to get somebody to pull it out of that to make it a little bit more attractive.
- Int That's interesting you say that because I get told very often that the LRC is unable to attract black lawyers...

RM Well, it can't be unable to do so. You know, this notion that black lawyers are only interested in money. Come on. We're all lawyers. There are of course many lawyers who are only interested in money, white and black. There are also many lawyers, or fewer, but there are many lawyers who are interested in the Constitution and human rights, and you don't have to be black or white to figure that. It would be good if we could pay them something close, close to what they are earning in the private sector. I mean, the actual figures are...this is not a myth that the LRC underpays its lawyers. The LRC seriously underpays its lawyers. I know for a fact that a lawyer at...and I only...I use it once again the example of Bowman Gilfillan because I know it...two years post articles attorney at Bowman Gilfillan earns five hundred thousand rand a year. A two years post article attorney at the LRC earns one hundred and eighty thousand rand a year. You cannot compare that! And if the big firms are offering lawyers the opportunity to do pro bono work, are offering them the, you know, a working environment in which they can be part of a team where being brilliant and excellent is highly valued, and they are given that constant affirmation, which they don't get at the LRC, then of course they're going to stay in corporate. Especially in a political environment where, you know, these, working for the corporates these days is working for exactly the same people that the LRC worked in 1980s.

Int Interesting.

RM You know, I mean, really. People who run the companies that those firms work for are the ex LRC clients, they were members of the...they were amongst the accused at the Delmas Trial, you know. That's who you work for now. We really...I mean, that of course that just shows that life has changed in South Africa. Of course what counts now is to litigate against the government to ensure that they deal with the poor. That's what it's about. And that the government doesn't ignore the people in our society who are basically struggling as to...as a result of neglect by the government...who is increasingly becoming self serving. And yes, I agree, there is a Constitutional crisis in this country. There is. It's becoming daily, this month, it's becoming an issue. Of course you know, that's short term history and as, you know, what Mao Tse-Tung said about the French Revolution when he was asked what did he think of it, he said, it's far too early to tell. And of course that is the case here, but...you know, the law is at the moment under serious threat by people in powerful positions in this country. And it needs to be protected by those who care about the law as a method of social transformation of social progressiveness, if there's such a word.

Int I was wondering...in those two years you must have done some very interesting cases with LRC. I wondered whether you could talk about a particular one?

RM Um...generally first of all...I appeared in the Constitutional Court three times in two years and I appeared in the Magistrate's Court on a number of occasions. So the work that we did covered the full range. And from the smallest one, half a day, ten minute urgent application to stop an eviction...and I think I did ten or twenty of those in the course of two years, and those were always very fulfilling, because you go into court urgently and you get someone's house back...and they're exciting and they happen quickly. From those to the ones that have been running and will run for years to come...I mean, the silicosis case is an example of a matter that has been running, had

been running for three years before I arrived, and will continue to run for at least another three or four years now, plus the two years while I was there. It's an important case because it's fundamentally about the way that private organisations were benefitting and complicit in apartheid structures and about how those are perpetuated now. There is a...ya, there's a need to litigate that now; sometimes I worry that it's a bit backward looking but...ya, it is still an important case. The inner city housing cases which I was involved in was also an issue that is really important right now and is in change, the question of alternative housing in eviction scenarios, especially, you know, evictions for public purposes. It's hard to talk about the cases in that much detail. The one that really exercises my mind is the prosecution case at the moment and I think that that is going to be...I mean, I suppose it's excited my mind because we're due in court next week.

Int This is the one you're working on?

RM Ya.

Int What is it about?

RM The LRC has represented the Cradock Four widows since 1986 when their husbands were killed.

Int Was that with George (Bizos)?

RM By George (Bizos), by Arthur (Chaskalson), by Mahomed Navsa...Bongani Majola, countless lawyers in the LRC have been involved in the case. And you know, it was first dealing with the inquest and the other inquest, then it was dealing with the TRC, first of all in relation to the victim's hearings, then in relation to opposing amnesty against those who had committed the crime, successfully so, and George (Bizos) was obviously in the lead there. And now post-TRC, the government has passed a prosecutions policy that appears to allow a situation where the prosecutors will make a decision, be allowed to make a decision not to prosecute people, perpetrators, even when there is evidence, and on the basis of criteria that are similar to the TRC criteria, and in circumstances where those people either didn't apply for amnesty or did apply and didn't get it. Basically it's a...the worry is that it's a way to sweep under the carpet this whole problem. It creates a...it seems to be a rerun of the TRC, it seems...and in the hands of the prosecution authorities. The NDPP himself will decide himself whether the person shows a willing...agh I can't remember the wording but it's something like, shows a willingness to engage with the new South Africa and a willingness to reconcile an understanding of the new constitutional project. These are of course really important things and reconciliation is undoubtedly a really important thing in South Africa, it's a part of who we are, but the TRC was premised on that deal, which was if you told the truth and if you got amnesty we wouldn't prosecute you. And that was the whole way it worked, if there was no threat of prosecutions at the end of the day then there was no need for the TRC. And to have a situation like this developing actually dishonours the whole thing. It dishonours who we are as a country frankly. And it makes one incredibly, incredibly angry, and I feel

that also in an environment where the rule of law is under threat by all kinds of things, including crime, to have scenario where people get away with crimes, these are murders and torture and disappearances and those kinds of things. People get away with those crimes, then you know, people might think they can get away with any crimes. And if people say well, those were political crimes then violence is regarded as an acceptable political tool. And in the current political environment that we're in where for example violence has been used as a political tool against foreigners in the xenophobic scenario, it's exactly, it's exactly what we're about and who we are in this country at the moment, is about protecting the rule of law by saying that we need to engage with crime of the past and of the future. And I really think that that's going to be...it's going to be a case that's going to be important. There are technical issues as with any case that have to be, will be, ironed out, but I'm certain that when we finally get to facing the other side with a proper dispute, it's going to be important.

Int Absolutely, absolutely...I've asked you a range of questions and I'm wondering whether I've neglected to ask you something which you think really ought to be included in your Oral History interview?

RM Well I mean, I suppose that the thing is whether the LRC will survive, and I first of all hope it does. It needs to, it's a critical organisation. What you were saying about us as middle class white lawyers or neo liberal, or whatever that means, whoever we are, as people, the institution needs to exist. Because **inaudible** and whatever we may think or, you know, those cases are important cases and they don't get done if we don't do them. So the organisation needs to survive. Will it survive? Well, I think it can, I think that there are...there seems to be renewed vigour, with Janet particularly. I mean, Janet is an astonishingly effective person. I've never met a person like her. She's got an ability to change a roomful of people from thinking, you know, that there are countless obstacles to thinking that there are many solutions, within the course of five minutes. And that ability is...could potentially, you know, really change the LRC. And so, you know, obviously I hope that she remains for as long as possible with us...and 'us'. I think that the organisation needs to continue to utilise its alumni in a really effective way, and we must get away from this ridiculous over false modesty, frankly. We've got to trumpet our successes, both past and current. We need to recognise Arthur (Chaskalson) and George (Bizos) and Geoff (Budlender), Wim (Tregrove) and Bongani (Majola) and, you know, Vincent (Saldanha), and William (Kerfoot) and...you know, all of these guys who...and women, Sarah (Sephtho)...they need to be celebrated.

Int Absolutely. I wondered whether we could end the interview, if you could share a memory, whether it's a particular person, whether it's a George (Bizos), or a client, or, just something that you treasure about the LRC?

RM Um...let me think of a good one...I mean, there are many...there's one particular one about George (Bizos), but I...it's...it's just about George (Bizos), so that's a bit unfortunate but...

Int That's fine. (laughter) George (Bizos) is larger than life, so...do you want to relate it?

RM Ya, um...George (Bizos) and I were working on a case and we were looking for a...we'd been working on it for some time and the defendant ran away out of the country. And it was a case for money, and...but we...so we needed to make sure that the assets didn't disappear so we discussed the case and we needed to get what's called an anti-dissipation interdict or a Mareva Injunction. And George (Bizos) said: no, we need to stop, we can bring an application that will, you know, stop these guys taking the money out the country before the case is up. And I said: yes, an anti-dissipation interdict or a Mareva Injunction. And he looked at me and he kind of said, ya whatever. And as we started working on the case, I said to him, but George (Bizos) there are going to be some technical difficulties with this case, you know, we've got some problems. For one thing, the assets that we're trying to interdict belong to the person's wife, they don't belong to him. And George (Bizos) said: no, no, no, it will be absolutely fine. And I was...and I kind of realised just before we went into court that George (Bizos) hadn't engaged with the law on this question at all, he had just decided that we were going to win. So I went and fetched the law report of the leading case on Mareva Injunctions which is called *Knox D'Arcy*. And I opened the Appellate Division report to the page and I left it on his desk the night before we were going to go into court. And in the morning, he walked into my office and he was so excited, he said: Richard, there's a case on this, this thing's got an actual name, it's called an anti-dissipation interdict! And I said: ya, I know George (Bizos) that's what I've been telling you all along. And he said: no, but look at this it's partly in our favour! And I said: but don't you think we have a few problems in relation to this case? And he said: no, no, it'll be fine. But look it's all here, this is brilliant, brilliant! So buoyed up we went into court (laughs) and George (Bizos) stands up in front of a new, recently appointed judge, a guy called Colin Lamont from the Bar, and George (Bizos) says: Lord this is an application for a Mareva Injunction or an anti-dissipation interdict. And the judge says, yes, I see Mr. Bizos, I suppose that you're relying on the case of *Knox D'Arcy*. My lord there is a case, it's called *Knox D'Arcy* and it covers the matter perfectly. I suppose Mr Bizos that you are referring to page 1149 C-E of the report. Lord the relevant part of the report is contained at page 1149 C-E. Yes, Mr Bizos, but don't you have a problem with the intention in this case? Lord I think it's important that I read to the court from the law report what it says here. George (Bizos) takes out the law report, puts on his glasses, holds the law report out, reads the whole...it's a long report but, you know, like a whole long passage from it. Yes, Mr Bizos, but don't you have a problem with intention...anyway, this kind of went on, and George (Bizos) totally dominated the guy. And I think that the judge had come in thinking he wouldn't give the order, but George (Bizos) beat him into submission, totally. And eventually he said, alright Mr Bizos, I'll give you your order, and you know, ultimately it turned out to be the right thing, but...I'll give you the order. And George (Bizos) said: thank you, as the court pleases, and he gives the order and then the judges said: Mr Bizos I just wanted to say what an absolute privilege it is to have you in my court today, and George (Bizos) said: thank you my lord, but I must say, that without my learned junior, this court would never have heard of this case of *Knox D'Arcy* (laughter). And I just put my head in my hands and I thought, oh no, the judge thinks that I've never heard of it either (laughter).

Int Richard, thank you very much for a very thought provoking interview, and you're a perfect example of someone working from outside on behalf of the LRC...

RM Thank you...

Richard Moultrie–Name Index

Biko, Steve (Stephen Bantu), 1
 Bizos, George, 3, 4, 11, 12, 18, 19
 Budlender, Geoff, 19
 Burchill, Jason, 16
 Chaskalson, Arthur, 5, 18, 19
 Classens, Aninka, 13
 Dodson, Alan, 9
 Friedman, Adrian, 16
 Gilfillan, Durkje, 10
 Kerfoot, William, 19
 Lamont, Colin, 20
 Love, Janet, 9
 Majola, Bongani, 18, 19
 Mayet, Achmed, 9
 Mbeki, Thabo, 1
 Navsa, Mahomed, 18
 Sephton, Sarah, 10, 19
 Saldanha, Vincent, 19
 Sooka, Yasmin, 13
 Terreblanche, Eugene, 3
 Trengove, Wim, 19

Cases:

CLRA, 13
 Knox D'Arcy, 20
 Mareva Injunction, 20
 Silicosis case, 9, 18
 Shilubana case, 13

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