

Int

CN

Int

CN

Int

CN

Int

Charles, thanks very much for doing this interview. It's Tuesday (27" November 2007). As I mentioned I've heard so much about you from people such as Jamie Kilbreth and also Reuben Clark. So it's really a pleasure to finally meet you. I was wondering whether we could really start this oral history by talking a little bit about yourself and your early childhood formative influences, what led you down the path towards becoming a lawyer?

Wow! I grew up in Durban, pretty much my hometown and I went to school there, and to university there. I had a pretty traditional middle class upbringing. I can remember my parents speaking in animated tones and terms about the prospects of the United Party, (laughs) as election after election it had continued to lose ground to the National Party. But that was the political paradigm in which I and many of my friends were brought up. I mean, we were not particularly conscientized about the wider political issues. And that really only began to happen when I went to university. And I think there were probably two single influences. The one was, I had a cousin by the name of Michael Nupen, who at that stage was a political scientist and he was a teacher, a wonderful teacher. And he introduced us to Hegel and to Marx and to Heidegger and various other German political philosophers, and that was a real eye opener. And then we had, coming in shortly thereafter to teach us, Rick Turner. And Rick Turner was also a philosopher, but a political activist as well. Very clear thinker. And very persuasive. And...I mean, he had a huge influence on my thinking and probably was the key to persuading me to go into student politics and become a student political activist. Is this the kind of thing you want me to talk about?

Absolutely, absolutely. What age was this when Rick Turner was teaching you? I was probably about nineteen. Right, so undergraduate.

Yeah, yeah, he taught me political science. Very much undergraduate, 18, 19. And then I, with some colleagues, started an organisation on the Natal University campus called the Wages Commission. And what we wanted to do there was to look into the circumstances of African workers, particularly, in various sectors in the Durban area. And we would then make representations to the Statutory Wage Boards about their conditions of service. But I mean, these were times when the ceilings of political tolerance were very low, and any kind of contact or engagement with black workers was seen as a threat, if not revolutionary, even if we were operating formally within the political paradigm.

This was the seventies?

CN

Int

CN

This was the early seventies. *70, â\200\23171.â\200\23171 in fact. And we then started a workerâ\200\231s newspaper. We discovered in the bowels of the studentsâ\200\231 union in Durban, an old printing press that had been derelict and lain there for years, and we got it going, and we started a newspaper called â\200\231Isisebenziâ\200\231, the Worker. And I remember time s...god, we had some amazing times. ...I had a motorbike, I was a biker, and my friend Halton Cheadle and I used to get on this bike and weâ\200\231d go down to the docks and to various places and weâ\200\231d distribute this paper. But the bike was great, it was a 750 Honda, so youâ\200\231d (make a)quick getaway...if we needed to. And I remember we got arrested a couple of times; I remember being charged once for being in a black township without a permit, because you know, you had to have permits in those days. But we always found willing lawyers who would come along and defend us...and...so that kind of engagement kind of really took me out of the student political arena, you know, where we were debating things about NUSAS and SASO, and you know, whether whites should be supportive of black initiatives and how, you know, how the white, essentially white campuses would deal with the withdrawal from student organisations, of black students. I mean that was the...those were sort of key debates within the student movement at that time. So what the Wages Commission did was took me and a few other activists out of that realm and introduced us to the real world of political engagement. I then...most of my friends who were involved in that project went on to become trade unionists. And guys like Halton Cheadle were very involved in the 1973 Durban strikes. But I took a different trajectory, I went into student politics on a national basis and I served as NUSAS president. A 1 year term.

What years were those?

It was â\200\23173, â\200\23174. And it was the time when the student leadership had been banned as a result of a commission of enquiry called the Schlebusch Commission. Basically what the Nationalist government had done is systematically wiped out institutional opposition to apartheid. I mean, it had done the political organisations in the sixties. And then, you know, there were student organisations and Christian organisations and church organisations in the seventies, and instead of banning NUSAS outright they thought theyâ\200\231d just weaken it and destroy it by banning its leadership. Anyway, so that happened and there was a kind of void...and I was the SRC President at Natal University and I was elected NUSAS President, so I went in there, but I went in, in the context of a quite a fierce and focused attack on the student movement by the National Party at the time. Us being students and being young was wonderful then because youâ\200\231re less cautious, youâ\200\231re kind of...when we decided as a National Union that we needed to do something about bringing a focused attention back on political leaders whoâ\200\231d been banned, so we decided that our campaign for 1974 would be a campaign for the release of political prisoners. And you know, we focused on personalities like (Nelson) Mandela, (Walter) Sisulu, (Govan) Mbeki, and others. And it was quite interesting because the context in which we were operating in that time was a context of quite profound political change in countries around us. Certainly not in Zimbabwe yet but in Mozambique and Angola, you know, the Portuguese had now come to terms with the fact that, you know, the colonial era was coming to an end and they needed to negotiate, and they needed to negotiate with people who were seen as authentic leaders by the people. So we used that comparison to focus. We said, look, you know, this is a society which is...has abused human rights, itâ\200\231s a society that in its current political form and trajectory is simply unsustainable. And itâ\200\231s a society

Int

CN

Int

CN

thatâ\200\231s going to lead us into turmoil and...well, not a society, but a political philosophy and direction thatâ\200\231s going to lead us into conflict and turmoil, and what we need to do is to arrest that and to change direction by promoting the idea of a negotiated settlement with what we called, the real leaders of the country. And that was the context in which this campaign for the release of political prisoners was undertaken. And I remember...we heard that the leadership on the island was really taken by this in a sense that, you know, theyâ\200\231d been in jail for just over ten years now, and you know, some people were wondering just to what extent there was a focus and a remembrance of the struggle and that leadership and so forth. And when a sort of band of essentially white students came up and did this, it was I think, quite surprising to them.

And just reflecting on the fact that it is quite progressive because this is really early on that youâ\200\231re already thinking about that, it happened so much later in a way, and after so much of turmoil, but the idea probably germinated at that point.

Yes, thereâ\200\231s a reason why Iâ\200\231m telling you this story, because there is a connection into the LRC. So that happened and (laughs)...(Rick) Turner was really involved. I mean, I was consulting with him very closely. I was also, by the way, consulting with (Steve) Biko. I was travelling down to Eastern Cape and seeing him and talking to him. He was confined to King Williams Town, he was banned to King Williams Town. But, you know, I was sharing ideas with him, getting the benefit of his wisdom around these issues. So there was quite a contact with an important sector of thinkers and leaders at that time. And then...what happened...well, my term came to an end, I went back to finish my law degree at Natal University in 1975 and then at the end of 1975, towards the end of 1975, I was arrested along with a group of other people, for work that we had done during the time that we were in NUSAS. And the major focus was the...that by calling for the release of political prisoners and the unbanning of the ANC, we were promoting the aims and the objectives of the ANC, and we were ultimately charged under the Suppression of Communism Act and the Unlawful Organisations Act. And we commenced in 1976, a trial, up in Johannesburg for a year. And our legal team...well Raymond Tucker was the attorney, and he was assisted by Geoff Budlender. And the leader of our team was Arthur Chaskalson. And George Bizos and a guy called Denis Kuny. So, thatâ\200\231s how I got introduced to that group of people. I mean, I knew Geoff (Budlender) from the student movement, and Iâ\200\231d kind of met Raymond Tucker, but I hadnâ\200\231t met any of the others. And so for a year, essentially, I worked with these people. I mean, I sat in the dock and watched them operate and I watched (Arthur) Chaskalsonâ\200\231s leadership right during the course of this trial. Because as you might imagine, there are a lot of strategic decisions that one has to make about what...how one wants to...approach the trial. Apart from just the court craft, which was really interesting, because Arthur is (Chaskalson) ...you know Arthur (Chaskalson) ?

I have yet to meet him. I shall hopefully meet him this week.

Well, you asked about formative influences and I mean, he no doubt, has been a formative influence in my life, because heâ\200\231s a very measured man, a very thoughtful man, extremely bright, and heâ\200\231s quite cautious but heâ\200\231s very principled, and when he

Int

CN

Int

CN

Int

CN

believes in something, heâ\200\231ll drive for it without fear. And so we had this engagement.

And I was able to see lawyers in action, you know, very fine lawyers in action.

George (Bizos) being more of the...more theatrical, letâ\200\231s put it that way, in court. But

a very powerful man in court. A very, very skilled cross examiner. Not the same intellect as Arthur (Chaskalson), but as a team they worked extremely well, and Denis (Kuny) also, he worked extremely hard. Very, very thorough and capable. So I had that experience. Am I going into too much detail?

Not at all, not at all. This is exactly what we have to talk about.

So...and amongst my colleagues in that trial with me were Karel Tip, who worked at the LRC with us, a guy called Glenn Moss, who was a student at Wits, Cedric de Beer, whoâ\200\231s become a major contributor to housing development in South Africa in the post apartheid era, and a lecturer called Eddie Webster, whoâ\200\231s just a lovely man.

And so there was that dimension.

Iâ\200\231m struck by the names youâ\200\231ve mentioned...I mean, youâ\200\231ve mentioned people like

Rick Turner, Raymond Tucker, Eddie Webster, Steve Biko, all people who lost their lives during that period. And I'm just wondering whether some of that had an influence on you and how you were going to take your...what direction you were going to take thereafter?

Well, um...yeah...look, I think that I always felt that I wanted to make a contribution to assisting those who were victims of apartheid in some way or another. I never saw myself as a revolutionary. You know, that was never...I never thought of myself as leaving home and going underground and going to train as a soldier. That was not in my line of thinking. I think I always thought that I would try and find some professional pursuit that would enable me to engage. And in fact thatâ\200\231s what happened. Yeah...I remember...I remember...speaking out...I spoke at both...well, I spoke at (Rick) Turnerâ\200\231s funeral and I didnâ\200\231t speak at (Steve) Bikoâ\200\231s funeral in King

Williams Town although I went to it, but I did speak around the...I went on a tour with Donald Woods around the campuses at that time in â\200\23176, talking about the...about

Steve Biko and his death and his contribution and stuff. So, those were interesting times.

And itâ\200\231s also around the period of the 1976 student uprisings as well, when you were arrested.

We were on trial here in 1976 when that happened. And it was amazing...and interestingly enough, SASO students were on trial in Pretoria in the High Court at the time we were here, so it was a very, very eventful time. A time of great political importance I think. And the beginnings of the turning, you know, the real turning here, from 76 onwards. Anyway, I went off to...after the trial, we were acquitted on all charges. Great legal team (laughs). And I had got married in 1975 and my wife was studying at UCT, and so I went to live off at UCT and I remember trying to...I remember finding it very difficult to get a job. Not many law firms wanted to take me...but I found a little firm in the suburbs of Cape Town, called Buchanans. Very

Int

CN

Int

CN

Int

CN

Int

CN

Int

interesting guy who ran a firm, a guy called Tony White, who now runs the Brass Bell Restaurant in Kalk Bay. If you ever go there, itâ\200\231s a great restaurant and itâ\200\231s a great pub in Kalk Bay and they have jazz on Sunday afternoons. So heâ\200\231s really changed his take in life. But he was a...I think he was a Trotskyite and he just sort of thought heâ\200\231d help this fellow so he took me in. Interestingly enough his partner was a guy called Peter Collins. Now Peter Collins is one of the guys who with Rob Petersen and Paula Ensor and...was it Raphie Kaplinsky...no it wasnâ\200\231t, it was somebody else. They went overseas and they started the Marxist Workers Tendency and they all got expelled from the ANC (laughter). So yeah, they were pretty left leaning this group of people. And I did my articles there and...and I was just...I was going to practise law in Cape Town. I spent time on Saturdays going in and giving advice to workers at the Western Province Workers Advice Bureau, which like the Durban thing was the forerunner of what became the General Workers Union. So...my interest was in serving the interests of the working class. Thatâ\200\231s essentially what I wanted to do. And...anyway, at the end of â\200\23179, the LRC started, and Arthur (Chaskalson) phoned me and said: do you want a job? I said: Iâ\200\231d love to come and work for you, what a great, great idea. So being young we moved up to Joâ\200\231sburg, came to live here and I went to work for the LRC.

So you really were in right from the beginning of the LRC?

Yeah, I think it had been going about 6 months. I think, Geoff (Budlender) was there, Felicia (Kentridge) was there, Arthur (Chaskalson) was there. But then I think I came in with the very first wave of people who came in after that. Debbie Dison, me, canâ\200\231t think who else...

Was Karel Tip...?

He came in a little later. Paul Pretorius came in later, Steve Kahanovitz came in later. A guy called Graham Dyson worked for the LRC. Donâ\200\231t know if youâ\200\231ve heard of that name?

No, Iâ\200\231ve heard of Debbie Dison but not Graham Dyson...

Debbie Dison, I worked with. But Graham Dyson was a different Dyson. DY S O N. And he ran Hoek Street Law Clinic. Have people spoken to you about the Hoek Street Law...Jesus itâ\200\231s an amazing place.

Iâ\200\231ve heard of someone called Morris Zimmerman...

Morris Zimmerman. What a wonderful man!

Tell me about him?

CN

Int

CN

He was a stunning man. He was...heâ\200\231d been an attorney through his life. but just, you know, quite understated, but a man who had a very strong feeling for...for the poor. And the exploited. And he would work in that clinic day after day, phoning people, and of course he had a stature in circles that none of us really enjoyed because heâ\200\231d

played rugby for South Africa. And he was...you know, people even used to talk about, you know, maybe 10, 20 years ago, if you mentioned you worked with Morris Zimmerman, they would say, the 1937 tour to New Zealand, which was the only tour where weâ\200\231d beaten New Zealand on New Zealand soil, so he had kind of iconic status. Certainly amongst Afrikaners and others. But what a lovely guy, man. I remember one story where we were running a campaign against a company called â\200\230Springbok Patrolsâ\200\231, because they would go into the rural areas and theyâ\200\231d recruit people to come

into the urban areas as security guards. And theyâ\200\231d pay them absolute peanuts, you know. And they really, their living conditions were poor and bad and so forth. And the company was run by a group called the Bartmans. Now Mickey Bartman was the father; he was very involved in Transvaal rugby at the time. And the son, Val Bartman was a Springbok rugby player at the time. So, you know, we arranged a meeting, and we tried to be...we were suing them regularly, just targeting them, getting them in court, tying them up, getting the newspapers, getting publicity, so we tried to highlight the plight of security guards. And so eventually...I canâ\200\231t think ...it

may even be me, I said: look, why donâ\200\231t we call them in letâ\200\231s have a meeting, and see

whether we can have a discussion? So we called in Mickey Bartman, and he was a big imposing, very forceful man. And he saw Morris Zimmerman, he just couldnâ\200\231t...I mean, the whole tone of the meeting changed. This guy that had been pretty domineering, pretty arrogant, suddenly became deeply respectful (laughter). And we talked to him; Iâ\200\231m not sure that we...I think we might have got them to change their

labour practices to some extent, but I mean...I mean, that was the measure of Morris (Zimmerman). And he had the most unbelievable energy. He would day after day after day, young people...I think people less than half his age, would not have been able to endure...because itâ\200\231s tough work, itâ\200\231s stressful work. Youâ\200\231re constantly having

to deal with, engage people, who are antagonistic to you. Because they donâ\200\231t want to

be confronted by, you know, issues and things and practices which, where theyâ\200\231re being accused of unfairness...and unlawful conduct. Anyway...

Well, Felicia (Kentridge) mentioned this wonderful story about how Morris (Zimmerman) would make sure that people got to the Hoek Street Clinic and heâ\200\231d go to the extent of actually waiting by the trains for people to come in. So that sort of speaks to his energy as such.

Yeah, he was an incredible man. I just learned a lot from him. And...we started out in Innes Chambers, which was downtown Pritchard Street, where...just across the way from the High Court. And at that time all the advocates were there. Of course now most of them have moved down to Sandton and chambers in Sandton and that...but that was the locus of the Johannesburg Bar, and I think Arthur (Chaskalson) was quite strategic in locating the LRC there, so that we were not seen as a marginalised group out there. We were very integrated, both, you know, physically and otherwise, into the legal profession. Arthur (Chaskalson) was very concerned and I understand him, and sometimes we thought he was a little bit too conservative, but now with the benefit and the wisdom of hindsight we understand...well I certainly understand his (inaudible), he just said: look, weâ\200\231re going to be doing some pretty contentious things

Int

CN

Int

CN

Int

CN

here and weâ\200\231re going to be ruffling feathers. So we need to be protected, we need to have the protection of the legal profession. And...of course he was right. So we started out with Innes chambers and we practised from there, but after a while we had to move, and we moved down, a little bit further down Pritchard Street to the corner of Pritchard and Sauer, into the Queen Elizabeth building. There was a man who worked the lift in the Queen Elizabeth building, and he called everybody by their surname. And for some reason he called me Charlie (laughs). He was a wonderful old man. You know, you just had these little experiences where ordinary people...and I guess when you work in the realm of ordinary people, you begin to see them differently. You begin to see them as individuals with qualities, with senses of humour, with a real humanity. Theyâ\200\231re just not another number. And...I was interested in...when I first got to the LRC, Arthur (Chaskalson) got me involved in working on Pass Law cases, and he used to send me down to the pass courts and I spent many days there defending people who were charged with pass law offences. It was...it was depressing work actually. Because you can just see individuals being rounded up because they didnâ\200\231t have papers to be in an area...shades of Nazism actually. And then just being funnelled into...and the court room where this took place was extremely...you know, it fitted the whole sort of culture of this terrible practice because it was cold and uninviting, and people would get herded through and...we worked in those days very closely with the Black Sash Advice Office run by Sheena Duncan. Thereâ\200\231s a woman you should talk to.

Yes, sheâ\200\231s been mentioned by people such as Bill Carmichael...

Yes, speak to Sheena (Duncan). Jesus, she was an amazing woman. Tough, but also just worked unbelievably hard. And there was a kind of a link between the advice office and the LRC, you know, referring cases into LRC, when we were looking for test cases they would constantly be suggesting this or that, as a being a possible test case.

So when you were working in the Pass Laws did you then become involved in the test case that was to change the Pass Law legislation?

I became involved in one of them. There were two. There was a case called Komani. Do you know much about the Urban Areas Act?

I do know about it but... for the record...

Well, basically what happened was, there was the Urban Areas Act, which restricted the rights of Africans in so-called white areas. And it was what we called, the infamous Section 10. If you had rights under Section 10, they could either be absolute or qualified right to be in an urban area. And Section 10 1a, gave you a right to be in an urban area if you were born there. Section 10 1b, gave you the right to be an urban area if you had contracted to come in to work. And Iâ\200\231ll talk more about that. Because that was with the test case that I worked on. And in Section 10 1c, allowed the wives and the children of people who had rights to be in the area, to join them. And I think, Section 10 1c, went with 10 1la. Sec 10 1 d allowed the employment of migrant

workers in white urban areas on one year contracts People like Geoff Budlender will be able to tell you more about this. And so basically...and the rights to be in the urban area if you had them, were stamped in your pass book, the green pass book . So, you know, the police would go around and they would stop randomly people in the streets and theyâ\200\231d demand to see the pass and theyâ\200\231d open up and if the stamp wasnâ\200\231t there youâ\200\231d be arrested and funnelled through the pass court system. And I think the strategy was, letâ\200\231s slow this system down. Letâ\200\231s get in there and just...you know, because the efficacy of the system depended upon being able to just channel people through the courts and, you know, send them to jail for 30 days and then out. But theyâ\200\231d have to process people, hundreds at a time every day. Now if we could detain the system in a way that...you know, we could deal a whole day with a case, or two days on a case. You know, it just clogged the system. Jails filled up; you canâ\200\231t continue to fill the jails. So that was a strategy, you know...I think. Although I donâ\200\231t think it was ever articulated by Arthur, Iâ\200\231m sure that he understood the implications of what we were doing. And then...and then Arthur (Chaskalson) said: right, what weâ\200\231re going to start doing is now challenging the regulations that govern this practice. Because under Section 10 1d, gave you a limited right to be in the area for a period of one year Section 10 1b said that if you had been lawfully in an area for a period of ten years you can then acquire the right to be...live in the area permanently. And you get what was called a 10 1b right. And what was happening was that literally hundreds of thousands, if not millions, of contract workers were being brought in from the rural areas to work on construction sites in industry, manufacturing and so forth, and they would be brought in on one year contracts under sec 10 1 d. And the idea was...and not very clear in my mind, this was an ideologically driven practice, whereby under those circumstances the State thought that no person in that category could ever qualify to live permanently in an urban area because they were only allowed to be there for one year at a time. They then had to go back to the rural area, re-sign a contract and then come back. So it was a series of ten separate one year experiences, if somebody did that. So we thought weâ\200\231d challenge that, but Arthur (Chaskalson) wanted the perfect case and I was assigned to do it. And we would...and the big thing was that we had to track back and find the contracts of people who...so that over a ten year period we had proof that theyâ\200\231d been in the area. And so we found one...our first candidate was somebody referred by Sheena Duncan, a man, I canâ\200\231t remember his surname, but I remember him as Sam. And he worked as a gardener in...just along the road here. In fact just right here, literally, about a kilometre from here...for a man who was a company secretary of some mining house. And this guy had employed this man on contract for 10 years. He had all his papers, and this was going to be our test case. So the first, the strategy is you write to what were then called the Administration Boards, and in this instance the West Rand Administration, and youâ\200\231d say: it is our contention that this man now qualifies under Section 10 1b, so please give him a stamp. And we were expecting them to say no, you canâ\200\231t have it, and then we would mount a legal challenge. And to our complete surprise they gave him a stamp. So boom went our test case, and I must tell you we had sifted through literally scores of potential applicants to try and find the perfect case. When we found it, the guy behind who was obviously smart...so we started the search all over again. And I think it was again the Black Sash that referred us out to a little engineering company out in the East Rand called Hargramâ\200\231s Engineering in Germiston. And they had an employee by the name of Tom Rikhoto, who was an engineering assistant. A lovely man actually. And...he had worked there for ten years on contract, going backwards and forwards â\200\224 I think he came from Sekukhuneland â\200\224 and the problem was that they couldnâ\200\231t find

Int

CN

Int

CN

his contracts. He didn't keep his contracts. So I said: well, what do you normally do with these pieces of paper? Oh, no we probably put them...they're probably up in the attic somewhere. So I remember over a period of about 3 days, scratching through papers up in the attic of this engineering firm, boxes and boxes and boxes of paper, and we found every single contract. And it was just amazing, it was kind of investigative lawyering of a different kind, you know. And we got these contracts and we had Tom (Rikhoto) and the engineering firm was very supportive and they gave us an affidavit that they'd employed him, here were the contracts, EST confirmed it and so forth. And so we went off to the East Rand Administration Board, who were less sophisticated and they said: not on your Nellie can he have a Section 10 lb. So we then mounted an application to the Witwatersrand Local Division of the High Court, and Arthur (Chaskalson) argued it, Felicia (Kentridge) was his junior and we won.

This is the early eighties?

This is the early eighties. This was about 1984. This came after the Komani case, which Geoff (Budlender) will tell you about. And...and the State immediately went on appeal to the Appellate Division. Because they realised the implications of this thing. I mean, at that stage there were political challenges and there was a big debate about the inhumanity of the Influx Control laws. So there was political pressure mounting. And so, if they couldn't sustain a legal defence it may be difficult for them to change the law, to shut people out, to tighten the influx control laws, because on the political stage, internationally with threats of sanctions and stuff the idea was, you know, we're a humane regime and so on and so forth. Anyway...so we went to the Appellate Division and Arthur (Chaskalson) argued it again, and the State didn't have a very competent counsel I recall. Bumbled around a bit. Got a very hard time. And we succeeded. And literally, by that act, 2-3 million contract workers in South Africa were legalised overnight. And there were huge pourings of...and that together with the Komani case, that the LRC had run the previous year, I think made a huge impact on the disintegration of the influx control system. And we'd done it essentially through a legal challenge. So...and I think it did give...it did give support to the notion that you could work within the system and challenge it, you know. Because the regime in a way, always for some strange reason, always wanted to suggest that it stood by the rule of law. But the rule of law meant for them we have laws and we will apply them. And there was a kind of a strange respect for the courts almost, and a lot of the human rights cases, you know, with judges like (John) Didcott and others who were so profound in their criticism. And Ismail Mahomed and others, you know, were able to operate quite effectively in defence of activists and others. So it was a strange anomaly in that respect. I mean, it wasn't...

But I do know what you're talking about. But I did want to ask you... this has come out quite a bit about the fact that in South Africa parliament was supreme. And so how do you actually get...to ensure that whatever you get passed through doesn't get overturned by parliament?

Well, that...the cynics and the sceptics argued that, you know, what we were doing was essentially, at best, a temporary reprieve. Because the State could always go to parliament and...you know, change the law and re-institute the repressive system.

Int

CN

Int

CN

Int

CN

10

So...yes, and they could have. But understand...I mean, the point I was trying to make was, there were all sorts of pressures that were beginning to mount during the 1980s. You know, the threat of sanctions, international attention and focus on the country...some emerging splits on policy within the regime itself. So...Helen Suzman in parliament (laughs) just willing to latch onto anything that further entrenched an erosion of civil liberties. All of these factors a rising challenge by the black working class through a massive trade union movement. Pressurising, demonstrations, the UDF emerging. So it wasnâ\200\231t that easy, I think, simply to go and by legislative process just change the law. And there was a big debate around...issues around petty apartheid and...you know, the grand apartheid scheme, in order to be defended in their terms, couldnâ\200\231t really...I mean, their talk...the separate nation of states, couldnâ\200\231t really justify even in their sort of muddled and crazy thinking, the notion of excluding somebody from an area simply because they were black. So...yeah...as it happened, they lived with the consequences...the regime lived with the consequences of these legal decisions. And I donâ\200\231t know about other...I mean, there were cases later on, like Grootboom housing in the post apartheid era that the LRC has done, but I would have thought that Komani and Rikhoto were the two really significant test cases of the LRC era. Certainly in the apartheid era. In the pre democratic era.

Iâ\200\231m wondering, in terms of the actual operation of the LRC, what do you think actually prevented the State from clamping down against the LRC in terms of bannings and closure?

Well, I suppose itâ\200\231s because we were strongly institutionalised within the legal profession. I think we got dispensation from the law societies to operate in the way that we did. We had some quite powerful people on our board. (Sydney) Kentridge, other...there was a guy who had been the senior partner of Bowman Gilfillan, which is the biggest law firm in the country. He then became chair: Charl Cilliers. And he was a man who was director of about 60/70 companies, so it was those sort of relatively conservative people who had come in and declared their support for this institute and what it was doing. So...they could have closed the LRC down, but I think there would have been consequences for that. They would have had to take on...there would have been a significant response from the legal profession. And Kriegler was on it. Judge Johann Kriegler.

Iâ\200\231m going to be interviewing him.

Heâ\200\231s an amazing guy. He was the chair of the IEC in 94 and I was with him on that...Jesus, we went through some times together. Heâ\200\231s a strong man, strong guy. Stubborn but strong. What else...so that was Rikhoto. I started...after that case, I started basically providing legal services to workers and...

Within the LRC?

Within the LRC. And there was always a debate about that around whether the LRC should be doing that sort of work. But Arthur (Chaskalson) to his credit, we had one or two major cases...I remember the Marieval case which arose out of the 87 mine

Int

CN

Int

CN

11

workers strike, where lots of people had been fired, and Arthur (Chaskalson) took that case on and he took on Anglo American. So...those who had levelled criticism against the LRC that there were certain areas that wouldn't be touched because they...infringed upon important relationships with business, I think that case and others that were to follow, indicated that that wasn't the case, that this was really truly an independent institution that would take up a case if it was just and right to do so.

I was wondering whether you'd talk a little bit about the legal work that you did in terms of workers' rights.

A lot of it was around establishing the principles of unfair dismissal. You know, what had happened was, you'd had a reforms to...the introduction in fact to the Labour Relations Act, as a result of the work of a commission called the Wiehahn Commission in the late seventies. And they had basically said, look, you need to create a system of equity, and they introduced into the law the notion of unfair labour practice. But it was open texture in the extreme in the sense that the definition of an unfair labour practice was any practice that the Labour Court deemed to be an unfair labour practice. So what we had to do was to give content to what would constitute unfair practice in the workplace. So we started taking up cases and I was working on...I remember I worked on the very first case, a case called Stobar, with Halton Cheadle, who had by now had qualified in law and had come to work up and had started his own law firm up in Johannesburg, which is now Cheadle Thompson & Haysom. And we collaborated on that case in which we sought to define the basis and the principles upon which a court might declare a practice to be unfair...a dismissal to be unfair. And we introduced...and the court accepted the notion of substantive unfairness and procedural unfairness. And we drove that particular understanding into the law. And then a lot of the cases...I mean, the law developed substantially, and the legal principles developed substantially as case after case emerged. And of course the trade union movement was becoming increasingly an important factor in the challenge against apartheid, so they needed effective legal services to deal with the consequences of what they were doing. So it was around...I guess that was probably the most important contribution that we made from the LRC along with other very important labour lawyers like (Halton) Cheadle, and John Brand, Martin Brassey.

So what was different from the work you did within the LRC to that of the Centre for Applied Legal Studies under John Dugard?

I thought that they...I mean, ours was essentially legal work, ok. They were more of a research and a public advocacy organisation, where they would go out and they would...champion unpopular causes, and they would articulate and lobby against...unfair and unjust practices. So they would take up issues around resettlement and the banning of institutions and newspapers and so forth. John always wanted for the Centre for Applied Legal Studies to have an interest and to pursue legal practice. And in fact he himself, I think, argued two or three quite important cases, but generally speaking if there was a division between the approach of the two institutions that was it. I mean, they had...the Centre for Applied Legal Studies when John was there, had some really excellent people there. Fink Haysom was there. Edwin Cameron was there. Halton Cheadle was there. David Unterhalter was there. I

Int

CN

Int

CN

Int

CN

Int

CN

Int

12

mean...some really profound legal minds actually. So there you go...what happened then? So that was the kind of work that we were doing. Mass dismissals. We would take up through the LRC. People being fired because they went on strike and so forth. And then, around about 1984 I started becoming involved in mediating disputes. Thereâ\200\231s an organisation which you probably know in the States called the Federal Mediation Conciliation Service, FMCS. Statutory institution which mainly mediates collective disputes, and theyâ\200\231d sent somebody out here, an organisation had been started by some people up in Joâ\200\231burg called IMSSA, Independent Mediation Services of South Africa. And theyâ\200\231d brought people out in a small group, including Cyril Ramaphosa, and others, were trained as mediators. And I was among that group and I started doing work for IMSSA on the side and mediating disputes, and I was fascinated by the process and the possibilities for creative settlement, which you canâ\200\231t get through the evidence of a serial court process. And so I became increasingly fascinated in becoming involved in that kind of work. And that ultimately led to my leaving the LRC in â\200\23187 because I then went on to become national director of IMSSA. And then I worked for them for 7 years. And then...before I started working for ILO. So thatâ\200\231s really about some of the personalities, I think Iâ\200\231ve spoken about Arthur (Chaskalson). Geoff (Budlender)...extremely bright. Intellectually astute. Dedicated, hard working, huge degree of admiration for him. Karel Tip, very thoughtful, very, very bright. Now senior counsel at the Bar here. Heâ\200\231s a man worth talking to actually.

I will be speaking to him this week.

Give him my regards. And Paul Pretorius you should talk to as well. He was also a very competent man. He was a student leader who was banned when I went into NUSAS. And Karel Tip was on my NUSAS executive. So thereâ\200\231s quite a kind of early historical set of associations which kind of carried through into this institution. I mean, Geoff (Budlender) was in the student movement with us.

What about Margie Marshall? Do you know her?

I know Margie (Marshall). She was president of NUSAS, but that was a little earlier, in the sixties. And she left quite soon after that. Of course, isnâ\200\231t she the Chief Justice of Massachusetts. I know Margie (Marshall). Iâ\200\231ve seen her...

Sheâ\200\231s on the board of SALS.

Is she. Great. Is her man still alive? Is her husband still alive?

Tony Lewis. Yes, he is.

Nice people.

I'm just curious..., youâ\200\231ve mentioned that in a way it is a small world, and Iâ\200\231m

wondering what you think is the...of the fact that so many people involved in the

CN

Int

CN

Int

CN

Int

13

LRC actually came through NUSAS? And what influence that might have had on people taking that legal trajectory? Do you think there's any association with that?

I think that those who decided not to become underground revolutionaries, decided that the way that they would make a contribution would be through the law, you know, and through assisting people. Because the...you know, that was the one area where the regime, as we've spoken about...seemed to have some semblance of respect for, and the decisions of the court. So if you could win positive decisions out of that, you would be making a contribution. I actually started studying medicine. My father was a doctor. Didn't last very long and I then went off to study law. Geoffrey

Budlender studied three years of medicine before he gave up medicine and started to study law. Karel Tip studied engineering and then gave up engineering to do law. Halton Cheadle studied politics and was, you know...and then got banned and was in the trade union movement, and while he was banned decided to study law. Exactly the same with Paul Pretorius. He was banned and then decided to study law. So I just think...it's a very...it's an interesting insight you have on that issue, because I hadn't

really thought about it but...yeah. Everybody kind of came together and said this was an area where some...and I think we were largely influenced by...you know, there were quite a lot of...there were ongoing sets of political trials going on. And so you were seeing political activists, champions of the marginalised and poor, and the victims of apartheid, you know, on trial, under the Terrorism Act, Suppression of Communism Act and you saw defence lawyers, you know, profoundly acting in the defence of these people. So it was always in the public eye and it was something that was held up as somebody who wanted to make a contribution. There was a sense that...it was something that one might aspire to actually. And then when this institutional framework emerged which said that, you know, your involvement doesn't simply depend upon a brief or somebody's client coming in but we will create an institutional framework and an approach which is dedicated to this kind of work, public interest work. You know, it was a further development and a very, very important development. I think the American influence was quite important there as well.

Yes, and that's what I wanted to talk about. I wondered what...the fact that public interest law was really, came into its own with the LRC in South Africa, I'm wondering how you would actually link it to the American influence?

Well, I think Arthur (Chaskalson) had quite strong contacts, you know. He...there were two people I know. There was a guy called (Jack) Greenberg, I think.

Jack Greenberg.

Jack Greenberg. Is he still alive?

Yes, I've just interviewed him.

CN

Int

CN

Int

CN

Int

CN

Int

CN

Int

CN

Int

CN

14

Really. I think he and Arthur (Chaskalson) were good friends. And he of course, the American Civil Liberties Union and...

The NAACP.

The NAACP and all of that, I think that had a powerful...and there was a guy called Jack Bamberger.

Clinton Bamberger.

Clinton Bamberger.

Yes. I interviewed him recently as well.

Really. What a fabulous guy, hey. Very...a kind of Morris Zimmerman type character.

Absolutely. Absolutely. He's still like that.

And I remember going...you know, I didn't have a passport for about 15 years and my first trip out of the country was in 1982 after I'd been working for the...Arthur

(Chaskalson) sent me to the States...and that's when I met people like Clinton (Bamberger) and he took me...he was in Boston, you know, now Boston to the tourist can be quite a glitzy city. But he took me into the back streets of Boston and he showed me where his client base came from and the kinds of problems, and particularly housing problems and drug problems and, you know, police harassment and so forth. I just saw a different side of America and the kind of...you know, the supportive services that he would...and then I met the son of Reuben Clark, (Reuben Clark), the Third. And he was involved in some housing project...

In Philadelphia.

In Philadelphia. And then I met Jamie Kilbreth who I really liked very, very much, and he was working in quite a glitzy law firm in...Wilmer, Cutler & Pickering. But he was also, you know, they had a notion of doing public interest law as well. He always wanted to go into politics. And I think he would have got there except for some incident that they kept on dragging up every time he stood for election.

He's also had similar background to you in that he was a political prisoner (laughs).

That's right. So that always was dragged up. He was very opposed to the Vietnam War and I think he punched some dean of some faculty (laughs). So he had that experience, but, what a lovely guy. I've actually been up to...did you go to his house?

Int

CN

Int

CN

Int

CN

Int

CN

Int

15

No, but I went to Portland Maine to interview him.

Iâ\200\231'm looking forward to re-establishing contact with him. Youâ\200\231ve really taken me down memory lane here. (laughter) Weâ\200\231re just so focused on the present, this is quite something. So the American connection was an important one. And also again, just an indication...I think Felicia (Kentrige) played a very important role there as well, because sheâ\200\231d had, I think established through setting up the Wits Law Clinic and so forth, established connections with the Americans, and Sydney (Kentrige) because of his international reputation as well was able to sort of enter those circles quite easily. And so, again, and they...also strategically at that point in time in the eighties, to have that kind of institution in the States, aware of you, supporting you, speaking up for you, giving you money, very important in terms of underpinning the sustainability of the institution, both politically and financially. And apparently something similar started in the UK as well.

Yes, itâ\200\231s called the LAT, the Legal Association Trust.

Ok. The other issue that I thought was...now most of the characters Iâ\200\231ve spoken to you about have been white. Ok. And of course that was just how it was at that time. But, early processes of transformation, which began to grow during the 1980s, and of course I think the LRC today would be a very different place in terms of race and gender from what it was when we were there. But two things, there was a guy by the name of Mohamed Navsa who you will meet, heâ\200\231s on the Supreme Court of Appeals. What an impressive man. And he came in as a young graduate I think on...we had a program at the LRC...

Fellows program?

Fellowship program. And he came in on that. Guys like Peter Harris and Paul Benjamin, who you should speak to. Although...they are also like us white males, but theyâ\200\231ve gone on to play quite important roles in...and I think if you were to track the number of Fellows who came into the LRC and where they are today, I'd be fascinated to find out, because I think youâ\200\231d probably find, you know, the crucible of an experiment that just helped people and trained people and gave them a foundation and an orientation that they carried through into whatever sphere of life they went into.

I think youâ\200\231re quite right, yes.

And another guy...he is now a judge in the High Court...no, heâ\200\231s actually...

Fikile Bam?

CN

Int

CN

Int

CN

Int

CN

Int

CN

Int

CN

Int

CN

16

Not Fikile (Bam). Fiksâ\200\231 (Fikile Bam) a lovely guy. But I think he went into the...i
s he
on the High Court now? He went into the Labour Court. No, not the labour court...

The Land Court.

The Lands Claim Court. Thatâ\200\231s right, he was around in those days. Iâ\200\231m think
ing of
somebody else. Heâ\200\231s on the Supreme Court of Appeals and heâ\200\231s a good friend
of
mine. See what happens when you get to my age, you canâ\200\231t remember peopleâ\200\231s
names
(laughter). But he comes from a very well known Indian family and heâ\200\231s...

Azhar Cachalia?

Azhar Cachalia. Will you talk to him? Because he came through the Fellowship
program as well. And...will you speak to Thandi Orleyn?

Sheâ\200\231s on the list, I think.

Sheâ\200\231s a good person to talk to. And, whoâ\200\231s sustained? Whoâ\200\231s still t
here that was there
from...? I know Steve Kahanovitz is still there.

Richard Rosenthal, Iâ\200\231m not sure how involved he is. Geoff (Budlender) of course.

Geoff (Budlender)â\200\231s at the Bar now. But I donâ\200\231t know whether he has an asso
ciation.
Thereâ\200\231s a guy called William Kerfoot. Steve Kahanovitz. And others who still...and
of course George (Bizos) has now had an association with the LRC for quite some
time.

And I think Arthur (Chaskalson) is back on the Board if I'm not mistaken. Iâ\200\231'll che
ck
that. I'm wondering, you brought up the issue of the fact that the LRC was
predominantly white, you know, and then there was this attempt in terms of the
Fellowship program. In terms of funding, the funding was largely initially obtained
through the American sources, Ford, Carnegie, Rockefeller...

Correct.

And at some point, when I was reading the Ford archives in New York, there was some sort of rumblings about the fact that the LRC was probably perceived as being too white as such. Was that an issue really during the 1980s?

It became much more of an issue towards the...end of the eighties and the nineties. I canâ\200\231t remember it being an issue when I was there. I simply canâ\200\231t remember it being an issue.

Int

CN

Int

CN

Int

CN

Int

CN

Int

17

What about gender, was that an issue at all?

Uh...as an issue around which we were conscientized and sensitive to? Around the demographics and...no, no. If Iâ\200\231'm to be honest. I think these issues became much more focused in our minds through the period of political transition, late eighties, early nineties, you know.

You left at a time when, you know, it was almost heading towards...well it was heading towards change, in 1987. You left at that time. Did you maintain an association with the LRC or the people associated?

I maintained an association with the people, but, you know, the institution...after I left the LRC I hadnâ\200\231t had a formal institutional link with the LRC at all. I mean, Arthur

(Chaskalson) remains a friend. I had dinner with him the other night, and...Raymond Tucker before he died, was a friend. So the relationships continue. And, you know, the friendships have continued. But institutionally I havenâ\200\231t had much to do with t

he LRC since I left. I just went on a different kind of focus, you know. IMSSA was all consuming in a sense, because we were building up a very small institution and it became a national institution. And with the transition at the end of the eighties and early nineties, we started doing political mediation, and we were mediating between Inkatha and the ANC. We set up a number of those peace committees after the peace accord was...and we were managing the peace committee process in a number of places around the country. And then after transition I went into the ILO and I got a brief to build the CCMA. And I was part of a program that established that institution. And I think it is the...I mean, I do speak subject to correction, but I think itâ\200\231s the largest national social institution thatâ\200\231s been built in the post apartheid era. And I was its first director.

This is CCMA?

Yes, the CCMA, so I went in that direction, you know. But still kept an association just informally with a lot of the personalities. I mean, even people from the Durban...Chris Nicholson is a good buddy of mine. Richard Lyster and people like that. I assume youâ\200\231re going to be talking...

Iâ\200\231'm hoping to speak to Chris (Nicholson) and Richard (Lyster), as well. Youâ\200\231re going to have a busy time. How long are you going to spend?

Well, â\200\231'm here until the 29" of December, so Iâ\200\231'm hoping that I can at least get to do the 4 regional centres: Grahamstown included, as Sarah Sephton is there. And definitely speak to Richard Rosenthal as well in Cape Town. Itâ\200\231s going to be a busy time but the real dilemma is peopleâ\200\231s schedules and the logistics of it, you know. But Iâ\200\231'm hoping that we can actually get this done, because the idea really is to then create

CN

Int

CN

Int

CN

Int

CN

Int

CN

18

the archive and have it lodged at the Cullen Library. So it would be nice to have this body of US interviews, UK interviews, and South African interviews together.

How are you going to put this together, in some sort of publication?

Well, you know, hopefully. I think it would make a marvellous book, the history of the LRC and the different people involved, I think it would be just wonderful. I mean, it really is the oldest and public interest law firms... one of the things that...just to give you a sense, now that weâ\200\231re talking about it...the thing that comes up consistently in the interviews that Iâ\200\231ve done abroad, is that they think that...the people that Iâ\200\231ve interviewed in SALSLEP now SALS Foundation, and even in the UK, consistently people say that itâ\200\231s the best public interest law organisation in the world.

Is that right?

Yes. Just thought Iâ\200\231d let you know that.

Well, Iâ\200\231m proud to have been associated with it.

Absolutely. So I'm wondering, one of the things I want to come back to is really that American connection because there were very fond memories of the trip that was made by SALSLEP members. Reuben Clark senior, Reuben Clark the Third, and Jamie Kilbreth in 1982. And your name came up quite a bit as one of the very energetic people that they met, etc.

A lot of energy in those days (laughter).

I wonder whether you could talk a bit about that trip and what that meant for you within the LRC, meeting people who were so supportive and the links that were forged.

Well, first of all I mean, amongst the group of people you mentioned, thereâ\200\231s some outstanding personalities. You know, empathetic real characters. I mean, a man like Reuben Clark (Snr), larger than life almost. And...but with a good heart and a focus and a commitment. [mean, why would this group of lawyers want to take an interest, and such an intense and focused interest in what was happening in a country so far away. [think itâ\200\231s testament to their...because I donâ\200\231t think...my sense about their interest and their commitment was...that it was not simply: oh, weâ\200\231ve been asked to sit on a board and weâ\200\231ll be there, and weâ\200\231ll lend our name to this thing. I think they really got involved! And they took a deep personal interest and...one of the things that they wanted to do was to get people from here to go there to talk to their colleagues about the...I remember going there and I remember a house party, which Reuben Clark (Snr) organised where all these hugely...I mean, I was like a...I felt like I was a country boy from the sticks, you know. Walking into this environment, which was pretty intimidating because they were all these big legal luminaries from

Int

CN

Int

CN

Int

CN

19

Washington in this room. And I just told a simple story, you know, about the work that we were doing at the LRC. And people...you know, we had a conversation for about 2 or 3 hours. So what they were doing, quite apart from raising money, was that they took a personal interest in facilitating a wider appreciation of the predicaments of people in this country and some of the efforts that were being taken to try and assist, and help and support them. And so, that was...I remember Jamie Kilbreth coming out in the later eighties.

Yes, he was here in 1988, I think.

Was it â\200\23188? He wanted to meet Cyril Ramaphosa. You know, Cyril (Ramaphosa) was at that stage the General Secretary of the National Union of Mineworkers. A very busy guy, theyâ\200\231d just come out of this 87 mineworker strike and so forth, and...I remember taking Cyril (Ramaphosa) and Jamie (Kilbreth) to dinner, you know. A very different Cyril Ramaphosa from the one that heâ\200\231s today, but you know, and just they having a real engagement around what was happening here and what Cyril (Ramaphosa)â\200\231s vision for the future was and how he saw the political process unfolding and that. So mean, it was just little observations that one could make about those interactions, which indicated that there was a genuine interest in what was going down here. And also a...you got a sense that there was a...it was almost...they felt proud to have the opportunity to be associated, you know. Now for us, we were just like really very grateful that they had done this, but there was a kind of humility about what they were doing, you know. And that was also extremely nice and made them more attractive to us as a group of supporters. So yeah...

In terms of conversations about the Civil Rights Movement and laws that had been passed there in terms of Jim Crow, etc, did you find convergence that was going on in South Africa under apartheid at that point?

Well, I mean the work of the ACLU and also, I mean, Brown versus the Board of Education and similar cases like that, gave us a sense, a real sense of possibility of how you used the law and how you can use the law. And so, yeah, there were important influences in thinking about possibility and about what might be achieved through carefully thought out legal strategies. So that was also an important dimension I think. And of course the exposure to the personalities who were involved in some of those cases and, you know, visiting the institutions themselves, also was all grist to the, you know, to the mill of deepening an understanding. It also, I think, gave us a sense that we were not on our own here. That there was an international community of civil rights lawyers that we could feel part of and draw strength from. And I think that...yeah, that was another important dimension.

So when you left, Charles, in 1987, in 1994, around that period...so between 1987 and 1994, do you have a sense of how the LRC...how they would deal with transition?

No, no. I canâ\200\231t speak to that because I just was simply not involved. But I would imagine that there would have been some quite reflective debates because the political

Int

CN

Int

CN

Int

20

terrain and the environment was changing, and how do you transform an institution that has been so focused on fighting the injustices of apartheid into an institution that can make a relevant and important contribution in a new democratic order? And, you know, confronting the possibility that the very people whom you've been fighting to bring into a new order in South Africa, might well become the people who are on the opposite side of you in a range of important civil rights cases going forward. I mean, that must have taken a lot of discussion and thought and...consideration.

Well, I mean, the interesting thing is that the LRC has adapted very well, seemingly, in that it has actually challenged the ANC on quite a few key issues. Like the Treatment Action Campaign for example. And I'm just wondering what your sense is of that kind of adaptation...what makes the LRC somehow so readily adaptable?

Simply this. I think the cardinal principle is that this is an institution that is committed to serving the poor, the marginalised, the disaffected, and individuals who have been treated unfairly. And simply because you have a new democratic order, you know, doesn't change the social circumstances of people overnight. And doesn't mean that however broadly well intentioned the new order is, that there are not abuses that take place. And I think the reality of our experience over the last 15 years has been very, you know, that these things do take place and that you need in a democracy, particularly in a young democracy, strong civil society institutions that can keep the democracy and the growth of democracy on track. That can act as a brake on abuse. That can almost act as a conscience of...I mean, I think Arthur (Chaskalson), just the work that he did in forging the new constitutional arrangement, I'm only really beginning to now understand how important an instrument that Constitution is.

Well, speaking to people like Jack Greenberg in the US, they think that it's the most advanced Constitution in the world.

And boy do we need that Constitution now. Because the society is going through stress. There are deep divisions in the major political movement as you know, and there's widespread corruption, and all the stuff about police abuse and, you know, we...we can thank...even that we can have the debate about a political leader who has swept the boards in terms of grassroots popularity, still a debate and the notion that nevertheless the law...he is not above the law. That he can be subject to legal process and if he had...of course, this is not the subject of the interview, but there are very strong debates that the law in itself can be manipulated by politicians to achieve certain political objectives, so...but what an interesting country, hey? (laughter)

Certainly very dynamic, I'll say that. The other thing that interests me is that during...right from the beginning, Felicia (Kentridge) was really quite incredible at actually fundraising and getting huge sources of funding for the LRC from major foundations. And then when you left, I'm wondering, by 1994, the crisis it seems, seems to have set in, where one of the key obstacles facing the LRC is that South Africa is no longer the darling of the funding world as such. And the LRC is of course affected. One of the things that comes up in my interviews is that people say their concern is that South Africans themselves, whether it's corporations or the legal

CN

Int

CN

Int

CN

Int

CN

Int

21

fraternity, havenâ\200\231t really supported the LRC in terms of monetary support. And Iâ\200\231m wondering what your thoughts are about that?

I think itâ\200\231s true. I think itâ\200\231s correct. And I think that there hasnâ\200\231t...the notion of embracing the concept of public...you know, using the law in the public interest hasnâ\200\231t been deeply imbedded in our legal fraternity. The reasons for that, I donâ\200\231t know. I mean, when Arthur (Chaskalson) was there, because he was such a respected figure...when Felicia (Kentridge) was there and so forth, I think...it was different. But Iâ\200\231m not even sure how much money were able to raise internally as a result of that. But itâ\200\231s not only the LRC, a lot of civil society institutions have found difficulty in raising funds, because, you know...in a lot of democratic societies government itself provides funding to such institutions. I donâ\200\231t know if the LRC gets any government funding?

No, one of the things about the LRC is that itâ\200\231s quite independent of any government funding. I mean, the funding issue is certainly a concern. I'm wondering whether when you were there the LRC seemed to have expanded quite a bit and had quite a number of regional centres.

Yes, thatâ\200\231s right. We were big. We went big quite quickly. We established an office in Grahamstown, in Pretoria, in...was there an office in the Western Cape? Yes, there was an office in the Western Cape, there was an office in KZN.

And was there an office in either PE or East London? Iâ\200\231m not sure.

That one was Grahamstown. I think it was in Grahamstown. A guy called Clive Plasket went to work there, and there was a guy who became a judge eventually...Jeremy...Jeremy somebody (Reference to Jeremy Pickering). Clive Plasket, have you got his name?

No.

Heâ\200\231s a man to talk to. Because heâ\200\231ll give you a particularly Eastern Cape sort of perspective...and the judge...Arthur (Chaskalson) will tell you, I canâ\200\231t remember his name. Jeremy somebody (reference to Jeremy Pickering). No, no, I canâ\200\231t answer that question, as to why we havenâ\200\231t been able to raise significant amounts of money to support the sustainability of the LRC.

Iâ\200\231m wondering, youâ\200\231ve mentioned that from your perspective SALSLEP was quite important in that you had the sense that there was this external support. And I'm wondering during the 1980s given that SALSLEP was really...it started soon after the LRC started and Iâ\200\231m wondering how that relationship unfolded until your departure

that was the period from since 1979/1980 to 1987? What was your sense of that relationship? Was there constant discussion? How did it work?

CN

Int

CN

Int

CN

22

Look, I was a staffer, I was an attorney, so that kind of engage...the discussions around funding and other sorts of...would have gone on at the level of either the Board or at Arthur (Chaskalson)'s or Felicia (Kentridge's) level. But, I mean, from what...my experience was of ongoing engagement, of people going to the States, people from the States coming out here, of an interest in the work being done. I mean, even after the I left the LRC I maintained contact with some of...I remember in the 1990s going and spending time with Jamie Kilbreth in Portland and going to visit Reuben Clark on his farm in Virginia. So those, I mean, obviously...that says something about the kind of relationships that were forged at that stage. They endured beyond simply a working relationship. But I think you'll get more about that, and a more considered and substantial view from people like Arthur (Chaskalson).

In terms of winding up I was just wondering...you know, would you have been able to project that the LRC, when you started, that the LRC would have become such a formidable and established public interest law organisation?

No. Because there was no precedent. And because the environment was pretty hostile and the future was uncertain across many terrains. I mean, it was, you know, I don't think we had any sense of a long term future for the institution or an institution that would grow to have the degree of influence and impact that it did. But, I think you had some good minds and you had a lot of commitment and I think those two things were brought to bear...those two factors were brought to bear, and helped the LRC to ground itself and to grow. I mean, leadership is everything in these situations. Leadership takes you through the hard times, takes you through the rough times and it's also able to capitalise where it can, you know, in terms of providing a basis for growth and development. And the LRC, you know, through the eighties, at the beginning and through the eighties, always had excellent leadership. And we always felt confident that this institution would be around, and we'd be able to make a contribution. But as to its...I mean, if you'd asked me in 1980, would the LRC be around in 2007, I would have said: you're joking (laughter)?

Even though you've left the LRC so you're not as engaged with what they're dealing with currently, you are still quite politically engaged with your work, and I'm wondering what you see as the real kind of core issues that you feel that the LRC would...or the challenges the LRC will be facing in this new dispensation?

Um...I think that all the issues...I mean, we live in a very, very unequal society, and even though we have...it's a factor that the government and (Thabo) Mbeki and others are very sensitive about. I don't know whether you've read his most recent ANC letter where the Institute of Race Relations, which is a liberal institution, came out and said that South Africans are poorer today than they were in 2000..and (Thabo) Mbeki got hugely upset, you know, and basically went on a very direct and pretty strong political attack, so it's an area of sensitivity. But the consequences of poverty are profound. I mean, in terms of basic services, medical care, housing, and so forth. And those are factors that are going to be with us for the next 50 years. And there will be victims as a result and victims of abuse as a result. People who do not have access to...so there will always be a need for access to legal assistance and legal help and there will be a need for legal recourse. So I don't have any sense that the LRC, or the

Int

CN

Int

CN

Int

CN

Int

23

context in which the LRC operates will ultimately render it...whatâ\200\231s the word Iâ\200\231m looking for? Will render it...obsolete. I mean, I think thereâ\200\231ll always be work to be done, and people to be helped and assisted. And I think it will be a demonstration of the maturity of our democratic process and those who run it, that they recognise the important value of this institution to the country.

Speaking as a lawyer, do you think that lawyers have recognised the importance of the LRC?

I think most people would recognise the importance of the LRC. Most people in the legal profession recognise its importance. Whether they actually actively embrace it, is another question, and I think there are questions around that as weâ\200\231ve spoken about previously. I mean, I think they know about the LRC, they recognise that it does important work and so forth, but they donâ\200\231t embrace...I would...I raise questions about whether the legal profession as a whole embraces it as â\200\230our institutionâ\200\231 providing important work that the legal fraternity ought to be doing.

Do you think that the LRC, just from your sense, do you think it has the notion of public interest law...or public interest work as such, has that taken deep root in South Africa stemming from the LRCâ\200\231s work?

I have no doubt in my mind. There are...I think there would probably be very few, if any, law firms who would not recognise the importance of having some kind of public interest or pro bono work that ought to be undertaken. I think there was...and I think the LRC has had a lot to do with that...with establishing that broader culture of a notion of service within the legal profession.

Looking back on your involvement with the LRC, and probably going back a bit earlier as well, your involvement with NUSAS and political trials and then LRC, how do you think itâ\200\231s shaped you...not just as a person, but also in the types of work that you engage in now?

Look, when I came in to the LRC I had some pretty unstructured ideas about what ought to be done, you know, and I was quite emotional. And I think what the LRC taught me to do was to be thoughtful, considered, strategic, and to pick my battles. And I think itâ\200\231s helped me to survive, you know, through this whole process and to...what weâ\200\231ve been through in this country in the last 30 years...it certainly, I think enabled me not to burn out, but to...has given me a sense of where to choose to make a contribution. And quite frankly Iâ\200\231ve got to thank Arthur (Chaskalson) for that, because I think I might have been quite insufferable at times in the early days at the LRC. But thereâ\200\231s not doubt that he was the person who helped me to understand the value of careful thought and careful planning and...taking on challenges where you were relatively confident of the prospects of success.

Is there anything that youâ\200\231d like to add to this Oral History that you feel Iâ\200\231ve neglected in touching on?

CN

Int

CN

24

Gee, I didnâ\200\231t think that Iâ\200\231d be talking for this long. What is the time? We
â\200\231ve been
talking for 2 hours. I didnâ\200\231t think...so I think Iâ\200\231ve pretty much said what
I...I've said
a lot more than I anticipated saying!

Thank you very much for a wonderful interview, Charles and thank you for your time.

Itâ\200\231s been a great pleasure and good luck with your endeavours.

Charles Nupenâ\200\224Name Index

Bam, Fikile, 15, 16

Bamberger, Clinton, 14

Bartman, Mickey, 6

Bartman, Val, 6

Biko, Steve, 3, 4

Bizos, George, 3, 4, 16

Brand, John, 11

Brassey, Martin, 11

Budlender, Geoff, 3,5, 8,9, 12, 13, 16

Cachalia, Azhar, 16

Cameron, Edwin, 11

Carmichael, Bill, 7

Chaskalson, Arthur, 3, 4, 5,6, 7,9, 11, 12, 13, 14, 16, 17, 20, 21, 22, 23

Cheadle, Halton, 2, 11, 13

Cilliers, Charl, 10

Clark, Reuben (Snr), 1, 14, 18, 22

Clark, Reuben (III), 14, 18

Collins, Peter, 5

De Beer, Cedric, 4

Didcott, John, 9

Dison, Debbie, 5

Duncan, Sheena, 7

Dyson, Graham, 5

Ensor, Paula, 5

Greenberg, Jack, 13, 20

Harris, Peter, 15

Haysom, Fink, 11

Kahanovitz, Steve, 5, 16,

Kaplinsky, Raphie 5

Kentridge, Felicia, 5, 6, 9, 15, 20, 22

Kentridge, Sydney, 10, 15

Kerfoot, William, 16

Kilbreth, Jamie, 1, 14, 18, 19, 22

Kriegler, Johann, 10

Kuny, Denis, 3, 4

Lewis, Tony, 12

Lyster, Richard, 17

Mandela, Nelson, 2

Marshall Margie, 12

Mbeki, Govan, 2

Mbeki, Thabo, 22

Mohamed, Ismail, 9

Moss, Glenn, 4

Navsa, Mahomed, 15

Nicholson, Chris, 17

Nupen, Michael, 1

Orleyn, Thandi, 16

Petersen, Rob, 5

25

Pickering, Jeremy, 20
Plasket, Clive, 21
Pretorius, Paul, 5, 12, 13
Ramaphosa, Cyril, 12, 19
Rikhoto, Tom, 8
Rosenthal, Richard, 16
Sephton, Sarah, 17

Sisulu, Walter, 2

Suzman, Helen, 10

Tip, Karel, 4, 5, 12, 13
Tucker, Raymond, 3, 4, 17
Turner, Rick, 1, 3, 4
Unterhalter, David, 11
Webster, Eddie, 4

White, Tony, 5

Woods, Donald, 4
Zimmerman, Morris, 5, 6, 14
Sam, 7

Cases:

NUSAS trial, 3-
Grootboom, 10
Komani, 7, 9, 10
Marievale, 10-11
Pass Law cases, 7-9
Rikhoto, 8-9, 10

Springbok Patrols and Bartmans, 6

Legal Resources Centre Oral History Project

PUBLISHER:

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

Â©2012

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:- AG3298-1-138

Document Title:- Charles Nupen Interview

Author:- Legal Resources Centre South Africa (LRC)

Document Date:- 2007