

Int This is an interview with Denis Kuny and its Wednesday the 30th of July (2008). Denis, on behalf of SALS Foundation Washington DC, we'd really like to thank you for agreeing to participate in the LRC Oral History Project. I wondered whether we could start the interview by... if you could talk about your early childhood memories, growing up in South Africa, your experiences of apartheid and your sense of social justice and injustice and where that developed?

DK Well, I was born in South Africa, I was born in what was then the Orange Free State in Kroonstad. My father was a general practitioner, doctor, and we lived the first four years of my life in a tiny little Free State village about thirty miles, as it then was, from Kroonstad, which is in the southern Free State. It was a dorp; it was a one horse town. And I still have quite good recollections of it. I mean, as a child, it was very nice being in a little place like that. Everything seemed very grand to me. And my father was a country doctor, he used to practise in the town and on the farms in the area, and...my recollections really don't go much further than that. I, you know...I can remember some things about that time very clearly but in terms of how this influenced my future life, I don't think that it has much relevance. We moved to Johannesburg when I was about four. My father came to practise in Johannesburg and then we moved, after a year or so, to a place called Springs, about thirty miles east of Johannesburg, where I grew up. Went to school and lived there until I was finished university. And that was when I was about 22. Springs was a bustling mining town. Gold mines and coal mines all around - very active in those days. And it was a lovely place to grow up in; it was relatively big but not huge town. Obviously I grew up in white suburbs, in white South Africa. There was a large Jewish community in Springs and I was part of that, although not exclusively so. I think that in fact I mixed more with non-Jews than Jews. Not with blacks because blacks were the working class, discriminated against and separated. That was my background; there was no "political" aspect to it at all, you know, that was the way it was. You went to white schools, you grew up in a white environment, you had black servants, labourers, mine workers and so on but as far as we, as children growing up were concerned, it wasn't a politically orientated background at all. We were of course conscious of the difference in status and treatment of the black community, and I can remember being aware of a strong and growing sense of Afrikaner nationalism. The year that I was in matric, 1948, the Nationalist Party unexpectedly came into power in the general election and that came, as quite a shock to everybody in my environment particularly since Springs was a strong United Party seat. So I became more politically aware but not in any way involved obviously. There was no politics at all at school. And I went to university the next year and that was the first time that I became much more politically and socially aware. There were no black students or lecturers at university. There was in our class an Indian boy with whom I became quite friendly but this was the exception. A degree of political awareness crept into my thinking and my reading and my associations. But I've never been politically active, I've never belonged to a political party, I've never wanted to, I'm just don't function that way. And basically, I'm totally mistrustful of politics and politicians. Whoever they are and whatever their associations may be

Int That's a good thing to be...

DK I actually find the whole world of politics quite disgusting, and I've never been able to or tempted to participate actively in politics. But, as you know, I have "participated" in other ways through my profession - the only way I know how too. And when I went to high school I had no idea what profession I would enter. I had no particular ambition. My father was a doctor and I had at some stage thought about medicine. Had a thing about wanting to be a surgeon. But seeing the way my father worked and he worked day and night and weekends and holidays, he was one of these old time general practitioners who would be called out any time of the day or night and made dozens and dozens of house calls a day, and particularly, and this was the interesting thing, particularly amongst the black community, because he was a doctor who worked for the mines as well as privately. He was on what was called a "mine panel"; the mines had their own hospitals and panel doctors, and all the mine employees, black or white, had access to the doctors. And my father spent much of his time going to the various mine hospitals, which were hospitals essentially for the black employees. And there was a lot of illness and, of course, injury, which was work related (gold and coal mines). And quite regularly he also used to be called out at all hours of the night to the local black township (or, as those townships were called, the "location") known as Payneville, which was a few miles outside of Springs. He would receive a telephone call to come and attend to a sick patient and he would get out of bed, put on his coat over his pyjamas and he would go...and sometimes I would go with him, sit in the car waiting while he would tend to his patient ...and in those days he might if he was lucky be paid five shillings (one rand!) for the visit. So, you know, that was the sort of environment that I grew up in but again it was non political. The status quo was established; it wasn't a question of discrimination, I just...it was the life I had. And that was the way all the people around me grew up. I should perhaps mention that my father had an aptitude for languages and, in addition to English, he spoke quite good Afrikaans, basic Sotho (I think it was Sotho but it may have been mixed with Zulu!), and while he was "up North" serving in the S A army during world war 2 he learnt some Swahili as well. He also had a working knowledge of Yiddish. All these languages were integral to and were very important in the diverse medical practice, which he had and the wide range of patients whom he treated.

Int I'm wondering, Denis, if I could take you right back...you mentioned that your father being a physician, had contact with black people. In terms of family discourse around the political situation or apartheid, what were some of the discourses, particularly...?

DK Well there really wasn't any. I mean, there was just no political discourse at all. My parents were supporters of the United Party, which meant simply that they voted U P. In those days it was the United Party versus the Nationalist Party, and the United Party was Smuts and the Nationalist Party was, at that time, headed by Malan, I think. And it came as a great shock when the Nationalists came in, in the 1948 general election. The English speaking whites never expected this to happen and it was sheer neglect, overconfidence and poor organisation which resulted in the Nats winning and that was the beginning of the adoption and implementation of Apartheid as we came to know it. Of course the United Party was also a party of whites, and would have perpetuated a policy similar to, but not the same as the Nats. Anyway they didn't

come in. But my real awareness of the world of politics and what was happening in the world at large, only really started when I went to university. Where I started to mix with a wider range of people and to read newspapers and other things. You must realise that in those days one wasn't exposed to the media as one is today. Things were, by comparison to today, pretty primitive. There was no television of course and as for the radio one had very limited access to short wave and overseas news channels. Radios consisted of the old cumbersome "valve" sets and it was quite an achievement to be able to tune into anything other than the local channels in English or Afrikaans. Remember also that my formative years were during the war and for some time after 1945 and a very different atmosphere prevailed at that time. So one has to look at my life as I grew up in that environment. Very different from the world of today. But I always tell the story about...did you interview Joel Joffe?

Int Yes, I did.

DK Joel (Joffe) and I, go back to when we were twelve years old, We first met when we both went to the Reform Synagogue holiday camp in Margate in July every year. In fact I've got photographs I can show you of Joel (Joffe) and myself at this camp from the age of about twelve. He lived in Jo'burg and I lived in Springs, and we became firm friends and would communicate with one another, and then when we left school, we both went to Wits university in Johannesburg where we both studied for our B.Comm degree together - we were in the same class doing the same course. And one day we were in a lecture and a question of general interest came up for discussion, (I can't recall what it was) and it became clear (to Joel Joffe) that I had no idea what was going on. And Joel (Joffe) turned to me and said: don't you ever read newspapers? And I got such a shock and was so upset by his comment (which, incidentally, he doesn't recall at all at this stage) that, it kind of turned my life. I suddenly became aware of the fact that I actually didn't read much and was quite ignorant about what was happening in the "real world". And I always tell this story because, in a way, Joel (Joffe) was responsible for my enlightenment and my becoming a newspaper junkie and beginning to read anything I could lay my hands on..

Int .At what age was...that turning point?

DK We were 16...both of us 16 in first year university. And Joel (Joffe) and I continued at university together and we were associated in various ways over the years, in our studies, in law, played tennis together for many years and remained close personal friends. And it was at that time, with the advent of the Nationalist government in 1948 that things in S A started to get ugly, started to hot up. I still wasn't involved in politics however. I dabbled a little in student politics but that was very parochial, I mean, it had nothing to do with the wider context., NUSAS existed of course but I never participated in anything to do with it (apart from going on an overseas NUSAS holiday tour with about 100 other students at the end of my B.Com degree in 1951/2). I did a B.Com because I wasn't sure at that time of my life whether I wanted to go into law or into accountancy and so a B Comm. gave me the option of doing the one or the other. Now a number of us who were doing B Com together went into law thereafter. Arthur Chaskalson, Joel (Joffe) and I went through B.Com and then LL.B

together. Arthur (Chaskalson) and I became very friendly. I used to come in from Springs and stay at Arthur (Chaskalson)'s house from time to time while we were at university. And Arthur (Chaskalson) also came on the NUSAS tour of Europe. It was the first time I'd ever set foot outside the country. Never been outside the borders of South Africa until I was 18 and we went on this trip to Europe, which was an eye opener, you know, because it was also a kind of critical point in my life. And then we came back and we did LLB together. And the reason why I ended up doing law rather than accountancy was because during one of the vacations, holiday vacations, at the end of the year, I went and worked for three months, as a holiday job, for my uncle who was an accountant in Benoni, and I hated it and I knew then that I wasn't going to be an accountant. So law was the obvious thing. I had previously decided that I wouldn't do medicine because I didn't want to live the kind of life that my father lived. You know, it was just relentless and I thought that law would be a much better profession for me and besides it had begun to interest and fascinate me. So I decided on law but I decided to do my LL.B full time whilst all my friends, who lived in Johannesburg, did the course part-time; they worked during the day in attorneys' offices (lectures were held in the early morning and late afternoons and evenings, so that law students were able to combine studying with doing their articles over a period of 3 years). I did the course full-time, because I continued to live at home in Springs and travelled each day to Johannesburg to lectures but I wanted to be able to do other things at the same time. So that's what happened. And then when I finished doing that, I was thinking of going straight to the Bar to become an advocate. Fortunately I didn't; someone offered me a job at a firm of attorneys to do my articles. Which I then accepted and I completed my articles and was admitted as an attorney and stayed on at that firm for two years. Again, my work was totally non political but I learned an enormous amount about the practice of law generally – both in and out of the courts - and the experience I had during those 4 years formed the basis upon which I was able to start practising at the Bar as an advocate in 1960. It was tough going at that firm, they weren't very nice people but they had a good practice and it was good for me as a lawyer and in my personal development. I think I really grew up during those formative years as an attorney. In 1957 Hillary (Hamburger) and I were married and Neil (Kuny) was born in 1958. When he was about 10 months old we packed up and went overseas. We went to live in London for a year thinking that we might emigrate. But I don't think that there was ever a chance of that happening. We had no money and no resources and so we simply took time off living in London and having a wonderful year there. It was really a critical point in our lives. I taught in London as a so-called "supply teacher" and so did Hillary (Hamburger) for a while. I was a sports master and also taught music, and whilst it was nice while it lasted, I knew that this was just a stopgap to earn enough to live on while we were there. I really didn't want to do that any longer than a year. I wanted to return to S A and practise law as an advocate. And so, at the beginning of 1960 we returned home and this was when my life as a lawyer really started in earnest. I was admitted to the Bar early in February 1960, and I'd no sooner started practice at the Bar than all hell broke loose in S A. Here was I, a rookie advocate but fortunately having had the experience of practising as an attorney, when in March 1960 the massacre at Sharpeville occurred and there was an attempt on the life of (Hendrik) Verwoerd. A State of Emergency was declared on the 1st of April, organisations were banned, many people were detained, charged, tried and imprisoned. At that time a massive Treason Trial got underway but I wasn't involved in that at all. But, almost from the moment I set foot in practice at the Bar I was thrown into the deep end. The Bar was small in

those days, probably about 100 - 120 members in Johannesburg. And there weren't all that many who were prepared to or in a position to accept briefs for all the so-called "political matters". I mean, I can count on fingers of one hand basically the number of us at the Bar who were able or prepared to take on that work. And, you know, it was desperate situation because there was no state funded or properly functioning system of "legal aid". There was a privately run "legal aid bureau". It was run by a woman called Pauline Lipson, who had no money (laughs), no resources, not much assistance and she would scramble around looking for advocates to appear in all sorts of matters which arose daily in Johannesburg, the West and East Rand and even further afield. I had all sorts of cases to start with: pass burning, demonstrations and riotous assemblies, assaults and a whole host of other matters. And in that way I became involved in political work and I should point out that there was very little money available for the lawyers at that time, I mean, fees were either non-existent and you worked for nothing, or you were paid very little. And much of the work was urgent and would come up on the spur of the moment with little time for preparation. But you just did what you had to do. And of course with the State of Emergency there was a hell of a lot more happening than the smaller day-to-day cases in which we were involved. It's hard to remember it now in any sort of sequence; it was all so hectic and frantic at the time and I can't at this stage recall and recount with any accuracy precisely what was happening and when where and to whom! But the cases started to get more and more serious and I think it was towards the end of 1960 I became involved in a rather large and more serious riotous assemblies case relating to a gathering in Soweto where there was a confrontation with police, rioting took place and a number of people were charged. I appeared at the "preparatory examination" (in those days there was what was called a preparatory examination which was a preliminary hearing to establish whether there was a case to take to trial and if there was then it might be tried in the High Court). So I appeared at the preliminary hearing and it was referred to the High Court for trial where I was junior counsel to Joe Slovo who had been at the Bar for a number of years and was politically very active. I think that was my first big case and this then led to various others as I became enmeshed in the whole political momentum which had developed. It became very dodgy because although it was happening ostensibly outside and independently of the ANC and the other banned political parties, much of the political activity at that time had gone "underground" and was per se illegal. There were many members of the ANC, the PAC, the Communist Party, the Congress of Democrats, the Liberal Party (which was not banned) who were still politically active and were functioning underground or secretly and, although I was never a member of any of these organisations, there were various ways in which one got sucked in to doing various things, both as a lawyer and personally. I resisted all the attempts that were made to recruit me into various organisations like the Congress of Democrats, CP, ANC.

Int I'm wondering...ideologically...I know that politically you didn't want to become active, but ideologically, where do you think you stood?

DK Well, one thing I know and I've always known and I always will know and that is that I was totally opposed to the Communist Party in whatever shape or form. I wasn't in the least bit impressed or enamoured with the Communist Party and I'd become very aware of the...I don't know, to me it was just a total distortion. It wasn't something that ever attracted me. But a number of people with whom I was friendly and with

whom I associated and who were, I suppose “Communists”, were simply people who were fighting for better and democratic South Africa, you know, whatever their ideological background may have been. It wasn’t really a question of Communism vs. Capitalism ...etc. It was a fight against oppression and injustice and, as far as I and many of us were concerned, it had nothing to do with communism or any other ideological standpoint. I know where I would have ended up if I had become involved politically. By being involved in various trials and seeing and hearing the evidence which emerged and getting to know the modus operandi of the security police it became very clear to me that I would have made myself a target for detention, banning, and possibly as an accused. For example when I appeared in the (Bram) Fischer trial in 1964/5, a number of the people with whom I’d been friendly such as Ivan Schermbrucker, Ann Nicholson, Jean Middleton, Lewis Baker (an attorney who used to brief me), Bram Fischer (a senior advocate at the Bar with whom I had worked and knew as a friend) all people whom I had known and socialised with, were amongst the accused who were charged in that trial. A key witness in that trial was a man by the name of Gerald Ludi (whom I had also come across from time to time as part of the “crowd”). He had, as it turned out, all along been a police spy within the ranks of the Communist party and a large part of his evidence consisted of his reports to the police relating to the meetings he had attended and the activities of which he had been part. And he testified, inter alia, about meetings, which I had been asked to attend, but which I had declined to attend. It turned out that (Gerald) Ludi had been reporting all those years to the police about who had been present at meetings, what people had said, who had said what, and who had done what. So I was kind of skirting with danger, I was on the edge of it all but I was never part of it and did not want to be drawn in. And certainly, ideologically, I didn’t make common cause with the party. But in terms of the struggle, yes, and I was prepared to do whatever I could without exposing myself to arrest and prosecution; sometimes taking risks and skating on thin ice. Maybe I was lucky, when I think back on it now. I certainly did some dubious things, which I am not prepared to talk about even now but which, at the time, didn’t seem dangerous. Had I been found out then it would certainly ended my career as a lawyer and my life in S A. And you know, I made very deliberate choices. I was not prepared to sacrifice my family and my life and my profession for something that I couldn’t become involved in. So, the sort of demarcation between being involved directly politically, and on the other hand being sympathetic and doing what you could within your own sphere, was quite, ...well at times blurred. And I’m at the moment, interestingly, I’m reading part of a manuscript of a book written by Norman Levy. He was one of the accused in the Fischer Trial. And that’s when I came to know him and I haven’t seen or spoken to him since then. But he is friendly with Hillary (Hamburger) and he’s writing a book relating inter alia to the trial and his imprisonment. It is a fascinating insight seeing through his eyes what was happening in those days, and realising just how much I was involved with it all but only from the outside.

Int I’m wondering how you managed that because socially you obviously knew these people...?

DK Oh ya, very much so.

Int And in terms of the pressure to...in some ways become part of a grouping. That must have been enormous?

DK There was a lot of...there was pressure put on me by some people but fortunately I resisted, I was prepared to do things but I wasn't prepared to become part of any organisation. I just can't function like that, it's not me. You know, whether it's a social club or whether it's a political organisation, I don't function on that level. And I certainly couldn't have given my life for that. But it was very weird being friendly with people, you know, pretty close friends, and then finding myself going to jail to consult with them and prepare to defend them. And then defending them and going home each night while they went back to their prison cells. Relating to them in a completely different context – socially, professionally and legally. You know, it's been a remarkable transition over the years. For example, take the NUSAS trial. Before the trial I knew only one of the people who was on trial, Eddie Webster, but I didn't know any of the others. The trial ran for about 6 months during which all the accused were out on bail and there was a great camaraderie between the accused, their families and the lawyers. They were all acquitted at the end of a long, tense and arduous trial, which should never have been brought by the prosecution in the first place. But it was a trial, which left me with indelible memories and one, which I would not have wanted to miss. And since then I have remained friends with Charles Unpin, Eddie Webster and for a time with Karle Tip. But you know, it's the journey that is so strange; the transition from friendship to client, accused, trial, aftermath of the trial, sometimes, but fortunately not always, imprisonment, and thereafter the resumption of a normal friendship in a new society in which many of ones clients have become important and prominent people or are doing remarkable work and have gone on to become very successful functionaries in the new society. Its always astounds me to see the way our society and the roles which many of the people whom we defended over the years, have changed. All in all it's been a remarkable ride.

Int An interesting one no doubt...

DK Well, it's been...I wouldn't have...I always say I actually feel privileged to have been able to be part of the whole process but of course not to have been in jail and not to have faced the consequences of political activity, which many other people faced and endured. But, I mean, nowhere else in the world would I have been exposed to and been able to do the kind of legal work that many of us were required to and were able to do here during the years from 1960 to about 1990. It was quite remarkable actually.

Int You also went to university and did your LLB with some very interesting people... with Arthur (Chaskalson), I presume, and Joel Joffe...

DK Arthur (Chaskalson) and I right throughout. Sid(ne) Lipchitz and Mark Weinberg who are now Sir Sydney Lipworth and Sir Mark Weinberg and Joel Joffe is now Lord Joffe. Arthur (Chaskalson), became the Chief Justice. A guy called Claude Franks who was a very brilliant student. He had been at Oxford and then came to Wits to do his LLB with us. His father was a very prominent advocate in Johannesburg and

Claude (Franks) had a scintillating career ahead of him but he was killed in a car crash shortly after he qualified and had gone into practice. We were all together doing our LL.B for 3 years and it was a class of students, which was quite outstanding with regard to the academic results achieved and in what was achieved by a number of them thereafter. I doubt that there has ever been a more remarkable class of law students at Wits.

Int I'm wondering whether in that grouping, political conscientisation really happened then or was it later do you think?

DK No, it wasn't political at all. Absolutely not. I mean, Joel (Joffe) grew up in Houghton in Johannesburg, the son of immigrant Jewish parents living in the usual strictly white community. He went to Marist Brothers College, which was a strictly Catholic . There was no political orientation. Joel (Joffe) actually only became involved in political matters through Hillary (Hamburger) when she was, for a short period, the Secretary of Defence and Aid. And she needed counsel for various matters and Joel (Joffe), who was at the Bar at the time, was one of the people whom she approached and she got him involved in dealing with some political matters. But until then Joel (Joffe) wasn't involved. Sid(ne) Lipchitz was in no way politically involved while he practised as an advocate and then he left (in about 1963 I think) and emigrated to England where he made his mark and was knighted there. Same with Mark Weinberg – practised for a few years, emigrated to England , made his mark (with Sid(ne) Lipchitz) in Insurance and was also knighted. Arthur (Chaskalson) became involved in the legal political arena in the same way that I did, But he had started practising as an advocate immediately after leaving university because he had done his articles in an attorneys offices while he was doing his LLB (part time) while I didn't do mine until after we had graduated. And then of course Arthur (Chaskalson) rapidly made his mark as an outstanding advocate in all fields, not just political. But it is difficult now, so many years later to think about one's political life and orientation at that time, It was all so inextricably part of one's life and work and play. When Hillary (Hamburger) and I got married in 1957 it was a time when there were various kinds of lawful political protests. For example, there was the Alexandra bus boycott. People from Alex boycotted the busses and started walking from Alexandra into town to work every day. And there would be hundreds of people walking the long road to town and sympathetic whites would often go and pick up people and give them a lift into town . You know, at random. There was a political orientation to that. And Hillary (Hamburger) got a job teaching at the Central Indian High, which was a Congress school. And there she had amongst her pupils people like Essop Pahad and various other young Indians who were later involved in the struggle and sometimes became my clients when they were charged with various offences. Quite a lot of them in fact. The Naidoo brothers, the Nanabhai brothers, Essop Pahad. I can't recall all the others at this stage Hillary (Hamburger) can tell you more about her time at that school which was later closed down by the Government. She has stories to tell about people with whom she taught and students that she taught. I always think of that period as an important part of Hillary (Hamburger's) political orientation and introduction into the world of struggle politics.

Int I was also wondering, Denis...you mentioned the early sixties and then you mentioned the Fischer Trial, I wondered whether you could talk a bit more about that.

DK Well, the Fischer Trial came immediately after the Rivonia Trial. As you will know from Joel (Joffe's) book, I was involved at the beginning of the Rivonia Trial.

Int Yes, I wonder whether you could talk about that a bit, as well?

DK Well, it was a very...I was involved only peripherally in the sense that I was junior counsel to John Coaker, representing Jimmy Kantor who was Harold Wolpe's brother-in-law. And Harold (Wolpe) of course had at that stage...that's another whole story about Harold (Wolpe's), escape from the Marshall Square and his undercover flight from S Africa.

Int As I understand it, Harold (Wolpe) came to you for help during his escape.?

DK Well, not quite, it happened in a more indirect way. What happened was that Harold (Wolpe) had been arrested. Jimmy (Kantor) was on trial...but the two of them really had nothing to do with one another politically. Harold (Wolpe) was Jimmy (Kantor's) brother in law and his partner in Jimmy (Kantor's) law firm. Jimmy (Kantor) came to be arrested primarily because the police suspected that funds which had come into the country from overseas and which ended up in the firm's bank (Trust !) account were intended for the ANC / MK and they believed that Jimmy (Kantor) may have been involved in this activity – which in fact he wasn't. There was also the fact that Jimmy (Kantor), being the sort of person he was, very extrovert and sort of cocky, decided that he would go out to Rivonia at some stage after the arrests had taken place, to see according to him whether that the “chickens were being fed”!! (or some such rather fatuous explanation). Anyway, that was another reason why they believed that he was in some way involved – he was seen to have been associating himself with had been happening at Rivonia and he was arrested and charged together with all the other Rivonia accused. In the meantime Harold (Wolpe) had also been detained. AnneMarie (Wolpe), Harold (Wolpe's) wife and Jimmy (Kantor's) sister, had, I believe, been trying to work something to get him out of Marshall Square and she was busy trying to secrete hacksaw blades concealed in French loaves to get to Harold (Wolpe) so that he could hack his way out of the cells at Marshall Square. Fortunately that was unsuccessful but in the meantime, he and Arthur Goldreich managed to bribe a prison guard to let them out (I don't know the whole story about that), and late one night, Barney Simon whom you have probably heard of,....

Int I've heard of him, yes...

DK Barney Simon was a friend of ours and very much part of the community in which we all lived and he of course knew Harold (Wolpe) and Arthur Goldreich. Barney (Simon) was a writer and was involved in the theatre world as a writer and director; he wasn't a politician or directly involved in politics. But we all knew one another. Anyway, late one night Barney (Simon) came knocking at our window to say, he's

got Harold (Wolpe) and Arthur Goldreich in his flat! They had escaped from Marshall Square and he had found them in a park near to where he lived late that night. It appeared that they had managed to escape from Marshall Square and they'd simply walked out of the city into the Hillbrow/Berea area without any specific idea as to where they were heading. They came to this park, not far from Barney (Simon's) flat. And then occurred the most remarkable co-incidence. Barney (Simon), who never slept much, and who lived much of his life at night happened to be driving home and I think he stopped at the park to have a pee. And there he came across Harold (Wolpe) and Arthur (Goldreich) It was truly an amazing stroke of luck. And of course they had nowhere to go and Barney (Simon) took them to his flat, which was in Westminster Mansions where my son Neil (Kuny) lives now (in a flat right next to the one which Barney Simon then occupied). And Barney (Simon) didn't know what to do with them and so he came to our house in the middle of the night, woke us up and told us that he had Harold (Wolpe) and Arthur (Goldreich) at his flat. So I followed him to his flat and found them there. Both looked like criminals at large, which of course they were. So I went down to Ivan Schermbrucker's house, which was not far away and I woke Ivan (Schermbrucker) because being the organiser that he was we knew that Ivan (Schermbrucker) was the person who would be able to deal with this situation. And I told Ivan (Schermbrucker) what had happened and I took him to the flat where he found Harold (Wolpe) and Arthur (Goldreich) and he took over from there. I left and had nothing further to do with them and their eventual escape from SA. Ivan (Schermbrucker) took over and he then organised a place for them to hide and later to fly out of SA to Swaziland disguised as nuns I believe. Their ultimate escape from SA is, in itself, a story worth a novel but the details of what happened are hearsay as far as I am concerned and should be written up and recorded by those who were involved (although most of those people have since died or are no longer around). But in the meantime you asked about the Rivonia Trial. As you know, I was involved at the initial and early stages of it - the two exceptions to the indictment and then, on behalf of Jimmy Kantor only, up to the stage when the trial was about to begin. Then I became involved in an incident where I overheard a conversation, which took place in the tearoom over the road from court during a court adjournment. The special branch and Percy Yutar, the prosecutor, were opposing bail for Jimmy Kantor and I heard some members of the Special Branch talking about this at a table near to where I was sitting having tea with various people (including Coen Stork the Dutch ambassador I think he was). What I overheard caused me to comment to the effect that they would stop at nothing to ensure that Jimmy (Kantor) would not get bail or words to that effect - I have no clear recollection of what I said but it arose directly from what I had heard the Branch members saying. Apparently they then heard my comment and immediately went to report this to (Percy) Yutar. Instead of (Percy)Yutar coming to me out of court and confronting me with this "accusation", when court resumed he simply stood up and in open court in the full glare of the press, the spectators in court and the accused, he accused me of spreading stories about the police- he accused me of saying (which I might have said) that they would stop at nothing to keep Jimmy in jail. And there was a whole to do in court and the court adjourned and there was a confrontation between me and Percy (Yutar))and it got ugly and Percy (Yutar), in front of everybody in the well of the court said, pointing at me (and I can to this day recall his words very clearly). "and I'm not on the mailing list of the Communist Party" I had in fact from time to time been receiving through the post at home,(not at my instance or request), occasional copies of "The African Communist" and my mail must have been monitored since he

appeared to know about this. Although the comment was quite irrelevant to what had taken place, the whole atmosphere was so fraught that the defence team decided that it would be better if I was debriefed, and that John Coaker would continue defending Jimmy (Kantor) without a junior. And that was my last contact with the Rivonia Trial as such. But, after the trial ended in about May/June '64 Bram Fischer, who had been the leader of the defence team at Rivonia was detained/ arrested together with various other people (all white) alleged to be members and carrying on the activities of the Communist Party. (Norman Levy's manuscript deals with all this very well). When it came to the trial of (Bram) Fischer and 12 others late in 1964 in the Johannesburg Regional Court there were three counsel. Vernon Berrange was leading, (although very reluctantly because he'd been in the Rivonia Trial and had at the end of the Rivonia Trial gone into retirement. He had in fact tried to retire even before the Rivonia trial and they were able to persuade him to postpone his retirement for that trial and then he was about to retire again and he was again persuaded to deal with this "one last big trial" (the Fischer trial) which he agreed to do. Vernon (Berrange) remained in the trial until the end of the State case, where after Ismail Mohamed and I, who were the two junior counsel, continued on our own to the end and later, in 1986, handled the appeal. This trial was held in the Regional court and not the Supreme Court, because the charges related to membership and carrying on the activities of the Communist Party but there were no allegations of violence nor of any attempt or intention to overthrow the state. It was simply a trial of persons who were alleged to be members of the Communist Party and carrying on its activities. And it was not simply fortuitous that it didn't involve any allegations of violence. I've been at odds with many people about this over the years. The disagreement had to do with the fact that Piet Byleveld, who was one of the senior people in the Party and a member of the Central Committee, had been detained, had broken under interrogation and made an incriminating statement and was prepared to testify against all his co-comrades. It was widely known before the trial that there was a "possibility" that Piet (Byleveld) would testify for the state and this, of course, created tremendous political dissension and personal criticism of (Piet) Byleveld in the ranks of people who were involved in the struggle. And when it came to the crunch, (Piet) Byleveld did testify at the trial. But to my mind, the most important aspect about his evidence, and why I believe he had found a way to save himself by testifying and at the same time to minimise the charges, the guilt and the sentences of the accused, was to steadfastly stand by his insistence that they (the accused and he himself) were only carrying out (unlawfully of course) political activity of the Party but we were never associated with violence or with MK. He maintained that stance throughout, and as a result of that evidence, the state had been unable to allege violence and any link with Mk, which, if provable in a High Court trial may have meant life sentences for some of the accused. Ultimately they ended up with maximum sentences of five years. Some got 4 years, some 3 and the rank and file younger people got 2 or 1 year/s. If there'd been any proof of association with or perpetration of violence, they would have been much worse off. This is why I believed, and still do so to this day, that (Piet) Byleveld, although regarded as a traitor to be "excommunicated from the political scene for the rest of his days and who traded his freedom for his (watered down !) evidence, was trying to save and did in fact save, his comrades from a much worse fate. I never ever met or knew (Piet) Byleveld or had any contact with him directly or otherwise but I believe that after his release from detention at the end of the trial, he continued to live in Joburg, a lonely and isolated figure who died many years later.

Anyway, to return to the trial, Bram (Fischer) who the first accused, had been behaving strangely in the weeks leading up to the trial. He was being defended by a very prominent and formidable advocate by the name of Harold Hanson – he and Bram (Fischer) were colleagues and members of the same group and occupied chambers almost next to one another. And Harold (Hanson) continually tried to consult with Bram (Fischer) in preparation for the trial and of course, to prepare the cross examination of (Piet) Byleveld. Bram (Fischer) simply wouldn't consult with Harold (Hanson) or give him a statement. He would not co-operate with him. And so Harold (Hanson) was obviously very frustrated about this and as he (Harold) was a rather bombastic and an extrovert sort of character' he was really furious at not getting any instructions from his friend and close colleague. It later became clear as to why Bram (Fischer) had adopted this stance; it seems that from the outset of the trial Bram (Fischer) had intended, at an appropriate stage, to estreat his bail, to disappear and go underground to continue the struggle from inside the country. It must be remembered that Bram (Fischer) had, been arrested prior to and pending the trial but he had been granted bail to enable him to go to London to appear and argue an appeal before the Privy Council arising from a matter in which he had been involved prior to his arrest and trial. It was an ordinary commercial matter and Bram (Fischer), being a man of honour and of his word, returned to SA after the appeal to face trial before ultimately absconding. The trial had been running for several weeks (I can't recall precisely when it was) when we all arrived at court one morning only to find that Bram (Fischer) simply wasn't there. He had left a note saying that he was going, that he wasn't leaving the country but he was going to continue with the struggle but not in court. (Norman Levy deals with this in his book). And so Bram (Fischer), the number one accused, ceased to be part of the trial. Ivan Schermbrucker then became the first accused. And it was a trial of members of the Communist Party -- The Central Committee, which comprised Bram (Fischer), (Piet) Byleveld, Ivan (Schermbrucker), Eli Weinberg; the Area Committee; the Regional Committee and the members of the cells. The problem which confronted us in this trial was fact that the allegations were largely true and could be proved. There was the evidence of police spy Gerald Ludi who had become a "member"! and was part of the whole scene: sleeping with some of the younger women, going to meetings, carrying on various activities, and even going to a Congress in Russia. He was in fact right in the thick of it all and although some people had suspected him, and he was investigated (very superficially I think), he was cleared and continued his spying and continued to send reports to his handlers. These were the reports with which we were confronted when he gave his evidence in court. His reports covered, inter alia, meetings which I had been invited to attend on occasions, and they showed that the Branch had inside knowledge of everything that was going on and that people in the movement had totally underestimated the Special Branch at that time. The Branch was generally regarded as a bunch of idiots who wore conspicuous brown shoes, gaudy ties and who drove Volkswagen Beetles. (laughter). And that was what identified them. They were thought of as being rather inept, and clumsy. But as it turned out and as emerged at the trial, they were very clued up and on the ball. And what they had in fact done was to bug Jean Middleton's flat in Hillbrow. They'd rented the flat next door and they'd installed a policeman by the name of Schroeder there. He lived there, and they'd wired Jean (Middleton's) flat, so they knew and recorded almost everything of importance that was going in that flat for about a year. And her flat was a thoroughfare. I mean, talk about secrecy in the cell system of the Communist Party ! That was a joke. Everybody came to that flat. And everything happened in that flat.

And Schroeder had it all on tape and he knew who was coming and going because he had a one way glass window above his door to enable him to see out and to know who was coming and going, but of course he couldn't be seen from outside. So he was able to identify people and their voices, with things that were happening and being said inside her flat. And when it came to the trial, we were confronted with volumes of transcripts of things that had happened in that flat involving everybody. (Piet) Byleveld, Bram (Fischer), people who shouldn't have been there at all, who shouldn't have had any kind of political or social contact with one another, you know, because there was supposed to be strict hierarchy in the Party. But it was happening in Jean (Middleton's) flat and it was all there on tape, and we were actually pretty well trapped by the tapes because the prosecution were threatening to put them all in. And to have put all that stuff before the court would have been very embarrassing for a lot of people. And so we spent days with the prosecution (out of court) going through the transcripts, listening to tapes and agreeing as to what they could put in and what they should exclude. I'm still sitting with some of those volumes, but they are too personal, to show to anybody; yet I can't destroy them. But as a result of the evidence of (Gerald) Ludi and the tapes and (Piet) Byleveld and a few other witnesses, a conviction was pretty well assured notwithstanding the evidence given by some of the accused in their own defence. What happened was that Vernon Berrange stayed in the case until the end of (Gerald) Ludi's evidence, he cross examined (Gerald) Ludi and then he stepped out of the trial leaving the rest to Ismail (Mohamed) and myself to continue with the trial until conviction and sentence and thereafter take it on appeal. We did that but inevitably we lost the appeal, and that was the end of that trial. Everybody served their sentences. Today Bram (Fischer), Eli (Weinberg), dead, Ivan Schermbrucker, Lewis Baker, and very recently Esther Barsel (since this interview was held) have all died. Jean Middleton, I think, is still alive and lives in London. Ann Nicholson - I don't know what happened to her. Sylvia Neame, Flo Duncan, are still around, as is Costa Gazides. He is a doctor; calls himself Costa Gaza, and he's very much an outsider, very vocal and outspoken in the press and very critical of the ruling party. Paul Trewhela lives in London. Hymie Barsel who was Esther (Barsel's) husband, was acquitted at the end of the trial. He died some years after 1965. Vernon (Berrange) is dead, Ismail (Mohamed) is dead. Joel Joffe who was our attorney at the beginning of the trial as you know left the country and his role was taken over by an attorney by the name of Ruth Hayman who had had some experience of political trials. Some time after the conclusion of the trial Ruth (Hayman) left for London where she lived for a number of years before she died there. So I'm one of the few survivors of that trial. I'm in fact the only survivor as far as the defence team is concerned save for Joel (Joffe) whose involvement was temporary. But that trial, I suppose identified me as a lawyer for the Communist Party although I was never a communist or a member of the party. I am not sure, to this day whether the Special Branch really appreciated the difference.

Int Subsequent to that trial, what did you do, given that you were...

DK Well there were just so many other things that were happening. A lot. I had various matters involving people who had left the country for military training, come back and been arrested and were charged. At that stage there were a lot of trials involving banning orders and house arrest orders. People were regularly being charged for breaking their bans. their house arrest, attending gatherings, communicating with

people with whom they were prohibited from communicating, publishing material that they were not permitted to publish. There sprung up a whole new area of law to be dealt with. There was the case of Mary Turok, for example, who was charged with or breaking her ban (and here I was actually briefed by Harold Wolpe; it was before Harold (Wolpe) was arrested). Mary (Turok) was banned from attending gatherings. One day there was a political gathering in the streets of central Johannesburg, (I think it was in Simmonds Street.) The gathering took place on the sidewalk on one side of the road while Mary (Turok), conscious of the fact that she couldn't attend gatherings, stood on the other side of the road watching and listening. She was charged with "attending" that gathering. As far as I can recall she was convicted. Her presence across the road was held to constitute attendance ! Then there was the case against Father Cos Desmond who was charged with having attended a gathering of several people with whom he was seen having a meal with very public restaurant in the Johannesburg railway station. That was, by definition, a gathering and he was charged accordingly with attending it. The content and subject matter of the "gathering" was irrelevant. Father Desmond refused to plead to the charge because he said he did not recognise such a law. I can't recall the outcome save that he was convicted but, as far as I can recall, jailed. So this was typical of the sort of case that one would regularly be dealing with. I can't even recall all of them at this stage. And that took me to about 1966. There were also a whole lot of Pan African trials around the country, particularly in rural areas and particularly in the Eastern Cape. I defended a group of PAC people in the high Court in Johannesburg in a fairly long trial. It involved membership and carrying on its activities of the PAC. I can't recall the result but I know that one or two of the accused were acquitted and that those who were convicted were sentenced to moderate periods of imprisonment. In 1967 I became involved in the South West African Treason Trial, which was held in the Old Synagogue in Pretoria. Unbeknown to the general public, the SA army/police had picked up about forty or more people early in the war in what was then South West Africa, (mainly in Ovamboland), detained them, brought them to South Africa and held them in illegal custody without trial or access for about two years before disclosing this and bringing them to trial in SA. Their illegal detention was sanitised and justified on the basis on the basis of a statute which had been passed with retrospective effect while they were in illegal custody in SA. They were charged with common law treason as well as what was, in effect, statutory treason. The old Synagogue had originally been converted into a court for the big treason trial in the 1950s an early 1960's, and this was the venue for our trial. Counsel were George Bizos, Ernie Wentzel, myself, and our leader was a senior counsel from the Joburg Bar by the name of Nami Phillips. Joel Carlson was our attorney. Joel (Joffe?) had managed to raise money for the defence from sources in England. I understand that it was basically funded by Defence and Aid, which was a banned organisation and therefore could not be seen to be funding the trial. So the funding came ostensibly from someone who I think was called Lord Campbell who was the "very generous benefactor" to have donated money for the trial. The trial was a very lengthy one involving about 40 accused. There was of course a terrible bush war going on there at the time and this was early on in that war which ran for several years. One of the accused was the well-known political figure of Herman Toivo Ja Toivo who was convicted and sentenced to about 15 years in jail. After his release from prison and with Namibian independence in 1990, Ja Toivo became a Minister in the SWAPO government. I saw him there about 15 years ago in his Ministerial office but I don't know what's happened to him since. It was quite an historic trial because there were

all sorts of issues involved: e.g. did a SA court have jurisdiction to try SW Africans in SA for offences committed in SW Africa? Was their detention lawful having regard to the retrospective statute? Could they be charged with Treason against SA when they were not SA citizens or residents. (i.e. did they owe allegiance to SA?). After the conviction of most but not all the accused, the question of Treason and, as far as I can recall, Jurisdiction, went on appeal to the Appellate Division; I wasn't involved in the appeal process or hearing. The question of a possible death sentence, in the event of conviction, loomed very large in respect of some of the accused. We managed to avoid the death sentence by appeals to the international community. Joel Carlson went overseas, to England and the States raising interest and concern for the fate of the accused. He managed to obtain Petitions from various groups, and he raised the matter at the United Nations in New York who were very sympathetic to the cause. In this way and thanks largely to the wonderful efforts of Joel Carlson, the death penalty was avoided. That trial lasted for about a year I suppose. Since the trial Ernie Wentzel, Nami Phillips and Joel Carlson have died, and there are only George Bizos and I who are still alive. And I don't know what happened to all the accused after those who were convicted and sentenced were released. They had been very badly treated while in detention for two years and, in fact, one or two of them died during the course of the trial. And that trial was, I think, the only trial which involved SWAPO which was held in S Africa. There were a number of such trials held in SWA but I wasn't involved in any of those trials although I subsequently did do quite a bit of work there both prior to and after independence. From 1967 I became involved in working in Lesotho. This came about because some years before I had appeared at a prison called Groenpunt which was beyond Vereeniging, just across the Vaal in the Free State. It was an ordinary prison but there was a special section for shorter term political prisoners. And a number of them were at that time being charged with disciplinary offences in the prison, and I went, with Ernie Wentzel to defend them. There I met a number of prominent ANC people who had been jailed for shorter periods and hence were in Groenpunt One of them was a man by the name of Khalaki Sello who was an attorney from Durban and who had been charged with ANC activity. He had been sentenced to 3 years in prison. When Khalaki (Sello), was released from Groenpunt prison and went back to Lesotho which was his original home and he went into practice as an attorney in Maseru. He would brief me from time to time. But more importantly, we became and remained very close friends for about 40 years. He died last year (2008). In 1970 there was a general election in Lesotho which was at that time ruled by Leabua Jonathan the head of the Basutoland National Party. The election was seen to be going badly for Jonathan (Leabua)...who was not prepared to give up his political power (a forerunner of Robert Mugabe ???) and so he simply cancelled the election, declared a state of emergency, suspended the Constitution and remained in power by force of arms. The leader of the opposition, Mokehle! (not sure how it is spelt) and a number of members of the Congress Party were detained and the courts were suspended. Raymond Tucker and I drove overnight to Lesotho to move a habeas corpus application for the leader of the opposition. We tried to move that application urgently that morning. With the help of Khalaki (Sello) we had managed to prepare a set of papers and we went to court but found the court closed the Chief Justice wasn't there. He was a Judge by the name of Jacobs who had been seconded from SA and who was their acting Chief Justice at the time. So we went to his house to see him and told him that we wanted to move a habeas corpus application on behalf of the leader of the opposition. He told us that he was not prepared to hear us as the Constitution has been suspended, and since he derived his

authority as a judge from the constitution his position as Chief Justice had been suspended, He said that he had no power to hear us, no jurisdiction and no locus standi and would accordingly not entertain our application. We tried to argue convince him that he had the authority to decide whether the Constitution had been properly and lawfully suspended but he simply refused to hear us. We then went the house of another judge hoping for a better response but he also refused to hear us. So the leader of the opposition remained in detention or under house arrest for some time but was never charged with any offence. This situation led to political turmoil in Lesotho, which lasted for a long time during and all the courts in the country remained closed for about 3 months. Arising from these events and my presence in Lesotho at that time, I seemed to gain a foothold in Lesotho and I appeared there quite regularly. When there was an attempted coup in 1974 I was then briefed (by Raymond Tucker) to appear for the accused at the treason trials which followed, About 200 people had been detained, and ultimately about 80 of these detainees were charged with treason in 2 huge trials. My junior in both trials which ensued during 1974/1975 was Lionel Bowman also from the Joburg Bar. We became almost permanent residents in Lesotho for months on end. We appeared in the first treason trial before the then Chief Justice who was a wonderful man by name of Mapetla. And there were about 40 accused in that trial and 40 accused in the subsequent trial,, all charged with treason. And the interesting thing is that the prosecutor in the first trial was Jules Browde a good friend and colleague from the Joburg Bar, Jules Browde who had been involved in various political trials in SA. His willingness to handle the case for the prosecution drew a lot of criticism from the liberal establishment in SA but we were delighted to have Jules (Browde) there because his handling of the case ensured that we had a good, competent, and honest prosecutor and. It made for a much more satisfactory trial than might otherwise have been the case with a local prosecutor. Again the problem was the possibility of a death sentence, but Mapetla was a very humane, decent and sympathetic person who was fully au fait with the political situation in Lesotho and he delivered a wonderful judgment in which although he convicted most of the accused, his understanding of the forces at work in Lesotho and the motivation of the accused motivated him to pass moderate sentences. Thereafter, after a break, we went into the next treason trial in front of the new Chief Justice, Cotran. Mapetla had tragically become seriously ill with cancer and he had to leave the bench. He died shortly after he retired which was a great loss for Lesotho. Cotran, the new Chief Justice, was a British educated Palestinian who came to Lesotho as part of the colonial judicial structure but he didn't have the quality or the insight of Mapetla and the second trial was not as satisfactorily dealt with as the first trial. Most, if not all, of the accused were convicted and both those matters, which had been very lengthy went on appeal to the Lesotho Appeal Court without much success. So that took several years of my life. Thereafter I was involved in many other matters in Lesotho –political and non-political. Civil as well as criminal matters. It became my own legal territory for a several years. I had however also been admitted to practice in Botswana (in 1963) and in Swaziland (in 1960) and I had built up practice in both those countries as well. The work that I did there was varied - political and non political. Political in that there was a lot of political activity going on in Botswana and Swaziland because of people moving across the contiguous borders, and the fact that it was possible for S Africans to carry on political activity in those countries which would have been impossible and/or dangerous to carry on in SA. There was however co-operation between the Swaziland and he South African police and sometimes activists were detained and charged in

Swaziland and, less frequently, in Botswana. There were cross border raids, bombings, assassinations and other kinds of overt political and military activity going on all the time. It was a very fluid and sometimes dangerous state of affairs . So the result of my being admitted in those countries as well was that I was busily engaged in all thereof them although mainly in Lesotho.

Int And I'm wondering at some point you then became involved in the NUSAS trial?

DK Oh, that was only in 1974...'75. Before that I was involved in a several student trials - Wits students charged with unlawful gatherings and marches and that sort of thing. And there was one very long one involving about 50 students charged with failing to disperse. They had taken part in a large gathering on the Wits campus which was physically very different from what it is now. There was, at the time, a large grassed area bordering on Jan Smuts Avenue where the students gathered. And there were about 50 of them...no, there were a lot more but 50 were ultimately charged with failing to disperse in response to a lawful police order to disperse. And the police were determined to smash the Wits students and there was a confrontation along Jan Smuts Avenue. The Security Branch police in plain clothes lined up on the island in Jan Smuts and the students were on the grassed area and the pavement facing the police. I don't remember what the protest was about...I think it may have been a "Release Mandela" campaign but I am not certain. Anyway the police ordered them to disperse and they didn't disperse immediately with the result that the police, wielding batons, charged the students and they really beat the hell out of them, arrested a whole lot of them, took them off to jail, and subsequently charged 50. I was involved in defending the students together with a junior from the Bar. The trial lasted for several months in the Johannesburg Magistrate's Court at the end of which the Magistrate was inclined to convict everybody. But at the same time as our trial was being heard there was similar trial taking place in Cape Town in which it emerged that the police after giving an order to the students to disperse, had not observed the proper procedure by waiting for the statutorily required period of 3 minutes for the gathering to disperse as a result of which the order was unlawful. They should have given them a full three minutes to disperse, but didn't wait for the full 3 minutes to expire before baton charging the gathering..

Int So how did you determine that, Denis?

DK Well we did; we were always aware of the point in our matter and when the Cape Town decision was given we were able to argue that the Joburg court should come to the same result based upon similar facts in our case. And the magistrate did and they were all acquitted. Amongst those charged and acquitted was Craig Williamson who was one of our clients. We were very wary of him during the trial. We knew that he had been a policeman but we were not aware of the fact that, in reality, he had, all along been a Branch spy on Campus. Anyway the students were all acquitted and then a number of them sued for damages for wrongful arrest and for the injuries sustained, and they recovered damages. Later I was involved in another trial relating to a street march of Wits students in Braamfontein. And they were all acquitted. My attorney in both those cases was Raymond Tucker who regularly acted for Wits and Wits students. Raymond (Tucker) and I were very closely associated in a number of trials,

particularly from the 1970s onwards and, of course, Raymond (Tucker) was our attorney in the NUSAS trial, and thereafter we handled several other political matters together (e.g. we defended Guy Berger in Port Elizabeth in the early 1980's). But to come back to the NUSAS trial in 1976. Just prior thereto I'd been almost fully involved in Lesotho, and when the NUSAS trial came up at the end of 1976, I was still involved in the appeals in both Lesotho treason trials, so they overlapped. But while we were on holiday in December 1995 (this should read 1975) in Plettenburg Bay I received a phone call from Raymond Tucker to say the security police had arrested various NUSAS people and it looked like there was going to be a big trial. Immediately we returned from Plett, work began on the NUSAS matter. Bail was arranged and preparation started. Fortunately Geoff Budlender had become articled to Raymond (Tucker) and, being the person he was, he was invaluable and was able to serve as a second attorney as well as giving us the benefit of his knowledge as a student activist who could so easily have been one of the accused rather than a member of the legal team. And that trial lasted for, I suppose, about six months. And it was a fascinating trial because the State didn't really have a case against the accused but they'd constructed a weird indictment which looked and sounded viable but which, ultimately was without substance. The charges revolved around NUSAS activity, a release Mandela campaign, associating with the ANC and so on. Counsel in the trial were Arthur (Chaskalson), George Bizos and myself. Raymond Tucker and Geoff (Budlender) were the attorneys. At some stage during the trial, Geoff (Budlender) and I went together to Natal to consult with Rick Turner who had been a sort of guru of many students at the time. This visit took place not long before (Rick) Turner was assassinated by the Special branch. At the conclusion of the NUSAS trial all the accused were acquitted and then shortly after the student trial finished, Raymond (Tucker) Geoff (Budlender), Arthur (Chaskalson) and I became involved in the trial of Tokyo Sexwale and 11 others in Pretoria. Lionel Bowman who had been my junior in Lesotho was also brought in as a second junior to Arthur (Chaskalson) in this trial. The trial was quite dramatic and fascinating for a number of reasons. There were 12 accused. (Tokyo) Sexwale was the first accused. And a man by the name of Joe Gqabi was one of the accused who had previously, been jailed for about ten years, for leaving the country for military training.(I seem to think that I appeared for him at his earlier trial but I am not certain about that). By including Joe (Gqabi) as an accused in the (Tokyo) Sexwale trial they were, in effect recharging him on the same offence for which he'd already been convicted thus placing him in double jeopardy. And he was acquitted at the end of this trial for that very reason. Not long after his release, Joe (Gqabi) went into exile in Zimbabwe where he was later assassinated by the SA security police. The Sexwale trial started in about June 1977. But speaking at random and somewhat disjointedly and out of sequence as I am now, I had forgotten to mention that earlier in 1976 I had defended a group of young schoolchildren in Grahamstown charged with having set a classroom alight as a form of protest. They were all about 14/15 years old, and they were charged before the High Court in Grahamstown. My attorney was Griffiths Mxenge, (who was also subsequently brutally assassinated by members of the security police one of whom was Almond Nofemela for whom I later, in 1991, appeared before Harms Commission). Anyway, in Grahamstown, in order to prove the case against the pupils, the State had to rely upon the evidence of a group of their fellow pupils. But one by one, everyone of these students went into the box and denied knowing anything about the incident and who was responsible for the burning. As a result all the accused were acquitted. No sooner had they been acquitted than the police arrested and charged Steve Biko with

having subverted the course of justice, because they alleged that he had advised the witnesses to refuse to testify and had thereby prevented the pupils whom I had defended from being convicted. He was charged in the Regional Court in East London and I was briefed to appear for him as junior to Wilfred Cooper, a senior counsel from the Cape Bar. In quite a lengthy case the State was unable to prove that (Steve) Biko had in fact interfered with the witnesses in my Grahamstown trial and ultimately he was acquitted. Months later whilst (Steve) Biko was driving to Cape Town, he was detained and while in police custody he was interrogated and assaulted and tortured very badly as a result of which he died. You know, had he been convicted in our trial he'd probably have gone to jail and might never have been killed. I then became involved in the Sexwale trial and one day, prior to the start of that trial, Geoff Budlender and I went to Pretoria to consult with the accused at the Pretoria local prison. While we were sitting in the local prison waiting room, which was near to the entrance, we heard a commotion just outside. The door opened and in walked a Special Branch man whom I knew from Port Elizabeth. I'd recently had contact with that particular person because I'd appeared, also with Wilfred Cooper, in an inquest of a trade unionist called Botha...

Telephone interruption

(Interview resumes)

So the door opened and there was a land-rover right outside the door, and in walked these Special Branch men from Port Elizabeth. As I said, I had previously been involved in an inquest in Port Elizabeth, again with Wilfred Cooper as my leader, in which we were dealing with the death of a trade unionist in Port Elizabeth called Botha, who had supposedly fallen down the stairwell at the Sanlam building where the Special Branch had their offices on the sixth floor. The issue at the Inquest had been whether Botha had committed suicide by throwing himself down the stairwell or whether he had been pushed or thrown down by the police, We had no evidence to establish that he had in fact been killed. Again Griffiths Mxenge was our attorney there (and you are probably aware that, ironically, he was himself murdered by the CCB/Special Branch). Anyway, as I said, I knew this Special Branch man from Port Elizabeth and he had a pretty bad reputation. He walked in and we recognised one another and I sort of greeted him, and I said: what are you doing here? Or something like that. And he said: "busy, very busy", and he walked through and I never saw him again. It subsequently emerged that he and his associate had just arrived with (Steve) Biko or his dead body after driving him up from Port Elizabeth in the vehicle parked outside the prison. We didn't know that at the time but were able to piece it all together when the news was released that (Steve) Biko had died in the Pretoria local prison. So that was my last association with the (Steve) Biko saga. We were at that time involved in preparing for the Sexwale trial. Which we did and we ran that trial for about six months, nearly six months, at the end of which we applied for the discharge of some of the accused, which was refused. Our judge was a man called Douglas Davidson, whom we all knew from the Bar, he'd been a colleague, but he was now a judge. We adjourned the trial at the beginning of December for him to go on his vacation, the trial to be continued the following year, because he had refused the discharge. But (Douglas) Davidson was ill and during the recess he'd died. So we had to start the trial all over again before a new judge by the name of (John) Myburgh which turned out it was quite fortunate. We had thought that Douglas Davidson would have been a better judge for this trial but in fact he wasn't. (John) Myburgh was a very understanding and sympathetic judge and although he convicted a number, he

acquitted a number, and the sentences he imposed were not as bad as they could have been. That trial lasted until, I suppose, about mid 1978. (Tokyo) Sexwale got 18 years of which he eventually served about 14. Joe Gqabi as I said was acquitted. After he came out, I saw him a few times but he then went (fled?) Zimbabwe and where he lived for a while until he was assassinated by at the instance of the SA security police. It was a very sad and a great loss because Joe (Gqabi) was a wonderful guy. And it was Joe Gqabi who really kept that group together in prison. I mean he was a much older, more experienced, very level headed, very rational sort of man, and he really was the anchor of that group of prisoners. So in that trial Arthur (Chaskalson) was the leader, Lionel Bowman and I were the juniors and Raymond Tucker was the attorney together with Geoff Budlender. That takes us to about....., towards the end of 1978. And thereafter there were a whole lot of other trials

Int Sure...and that's really the point at which the LRC started, 1979?

DK That's correct, ya.

Int And I wondered whether you were privy to any of those discussions?

DK Not at all although I knew that it was going to happen because I'd spoken to Arthur (Chaskalson) about it. Arthur (Chaskalson) at that stage was already talking about leaving practice and starting some sort of public interest law body. Which was completely outside of my experience. I had no idea what this would involve. But it so happened that in 1978, I went to the United States for the first time and Arthur (Chaskalson) was in New York at the time because he was consulting with Jack Greenberg about this initiative. And that's when I learnt about what was going to happen and Arthur (Chaskalson) was talking about what he would be doing once he got back to South Africa. And then he started the LRC, I didn't know about Felicia (Kentridge's) involvement at that stage. The LRC started in offices in Innes Chambers, the building in which the Johannesburg Bar was situated at that time. Advocates Chambers were situated from the 3rd floor upwards while the LRC was on the 2nd floor. And it was remarkable to see the people whom Arthur (Chaskalson) was able to attract into the LRC. Charles Nupen, who had been an accused in the NUSAS Trial, Geoff Budlender, much later Karel Tip, Mahomed Navsa (now a judge of appeal) and many others joined and worked there from time to time. I saw it developing down below, and I had a lot of contact with the people there but I was never part of the LRC as such. From time to time I did some work for the LRC as an advocate but I can't be specific about what work it was. Ultimately I worked a bit with Karel (Tip) but that was when he came to the Bar. and Mahomed Navsa, did he pupillage with me when he came to the Bar so I got to know Mahomed (Navsa) well. Also Arthur (Chaskalson) and I worked together on the Boipatong inquiry in about 1991 and the LRC was our base during that time

Int In those early days, the whole idea of public interest law was a very...relatively new undertaking...there had been the Legal Aid Board, I think it was...

DK Well, you see, I subsequently, and this was now in the early 2000s, I became involved in the Legal Aid Board, because I was appointed the representative of the General Council of the Bar of South Africa on the Legal Aid Board. And Mahomed Navsa, who was already a judge at that time, became the chairman of the Legal Aid Board. And he and I worked very closely together. Mahomed (Navsa) was appalled by what he found to exist when he took over the Legal Aid Board, I mean, it was an absolute nightmare. It was an organisation from the past which had no real concern for undertaking the representation of accused persons. Certainly not those charged with crimes which had anything of a political taint to them. I mean, it was so badly organised and run, it was a (and still is) totally financed by the State but when we started on the Board we found that it was a financial disaster and, in fact it was effectively insolvent. There was a man by the name of Pretorius had run it for years with the assistance of a Board which comprised people who had little or no real interest in legal aid. But from the moment that our new board started to function, Mahomed (Navsa) threw himself into cleaning up and reorganising the legal aid system into what it is today, some 10 years later. His dedication and vision and the passion which he exhibited was unbelievable and he virtually, one-handedly, reconstructed that Board. For a few months he was able to take leave of the Bench and work full time at the Board's offices in Pretoria. Although he and I worked closely together in certain respects and he relied a lot on me in the sense that we were friends and I'd been his master when he was a pupil I can claim no credit for what was achieved to make it an institution which was necessary in terms of the Constitution to provide legal representation, where possible, to any accused person who needed it but was unable to afford it. The whole structure of Legal Aid in SA has now changed and it is no longer simply a provider of fees to the legal profession. There were advocates and attorneys who virtually earned their whole living off the Legal Aid Board but it didn't really provide the legal aid required of it. Today it has offices all over the country staffed by full time lawyers and managers and the in house lawyers, who are salaried, perform the work (and much more work) that outside lawyers used to provide at tremendous cost to the board and often less satisfactory representation than they receive today. I should say however that the old Legal Aid Board did start a system of Public Defenders (as in the USA) prior to our advent and this was a forerunner of what was to come. My son, Steven (Kuny), who had been admitted as an attorney but who intended coming to the Bar to practice as an advocate, in fact he spent eighteen months as one of the first group of public defenders, but at that stage the whole system of public defenders was only in its infancy. Nevertheless, it proved to be invaluable training and experience for him in court work and in the world of criminal defence which stood him in good stead when he started practice at the Bar. It wasn't easy for me to persuade the profession (i.e. the General Council of the Bar) that they were going to give up this relatively lucrative source of income for their members. They were, for some time, very resistant to the changes in the system but ultimately had to accede to the reorganisation. Notwithstanding the work which it would take away from the Bar. Obviously it was the best thing that could happen, and it had to and did happen. Since that time (i.e. the three years that I spent on the board) I have lost touch with how it is progressing. There have obviously been problems along the way but it is much better funded today and seems to be functioning fairly well and certainly attempts to provide the service envisioned by the Constitution. I was also, for a while, on the original committee of Lawyers for Human Rights. But that was sometime in the 1980's and it was more of a "talking shop" at that time than a functioning organisation providing representation or

advice to the public. It was only when it was reorganised as a full-time, properly organised and funded body run from offices in Pretoria under the leadership of Brian Currin (an attorney from Pretoria) that it jelled into an organisation of some note and did a lot of very important and valuable work. I was briefed on occasions by the LHR and was involved in a number of significant cases through the LHR and Brian Currin. I was briefed by LHR to appear before the Harms Commission on behalf of Dirk Coetzee (the CCB operative who had been the handler of Almond Nofemela and three other CCB “killers” who, on Coetzee’s orders had killed my former attorney Griffiths Mxenge). You may recall that it was (Dirk) Coetzee who broke the story and told all about the activities of the CCB and which broke the whole thing wide open in about 1990/91. I also acted for (Almond) Nofemela himself in relation to the death sentence which had been imposed on him in respect of the murder of a farmer (non police/CCB work) and thereafter represented him as well at the Harms commission. The commission heard the evidence of (Dirk) Coetzee and some of the other witnesses, like Tshikalanga who was one of the four who killed (Griffiths) Mxenge, in London (not sure that this is correct). You can read about that part of the commission’s hearings in Peter Harris’ book “ *In a Different Time*”.

Int This is the Bheki from Peter’s book?

DK Ya, well I was briefed there by Lawyers for Human Rights. And...they, you know, they took on a lot of work which other people wouldn’t or couldn’t do. And it became a very effective organisation for a while. I don’t know today whether it still exists. Brian (Currin) left it many years ago when, after 1994 and some work that he did here in furtherance of the whole process of reconstruction, he went to Northern Ireland from time to time as some sort of Peace Monitor, I think although I am not certain precisely what he did there.

Int It exists...

Int If I take you back to 1979, you had been doing a lot of political cases and...the conviction rate is quite high in those cases, given the apartheid system...

DK Not incorrectly so, I may say. This is something I argue with people about. Some said “how could can you appear and obtain justice in those biased apartheid courts, what’s the point?”. In fact there was an enormous point to it. I think that without people (and I’m not patting myself on the back in this regard), but without people who were prepared to do these trials, and do them properly where we were afforded every opportunity and facility to prepare, to consult, to find and call witnesses and to conduct trials in open court and have the press report on them, the accused would have been far worse off. We were able, by and large, to present our cases in court, cross examine witnesses, argue questions of law, call factual and expert witnesses both regarding the merits and sentence without interference. People with a lot more severe sentences, a lot more convictions. Had we not been there, I have little doubt that there would have been many more convictions and much heavier sentences. That said however, I don’t know of any case in which the evidence was completely contrived and where there was no substance at all in the allegations made against the

accused, Yes, there were many times when evidence was tinkered with or exaggerated or distorted every now and again. Statutes which created new offences or which altered the position regarding the onus of proof, or which allowed certain types of evidence to be admitted which would otherwise not have been admissible often made our task more difficult. That sort of thing was happening and it did make it difficult, but the fact is that we had trials. That fact is that we were heard. The fact is that people were able in court to say what they wanted to say, to express their disapproval and complaints, to explain their motives to express their political viewpoints; in fact the courts became a pulpit and a platform for political accused where they could say things which otherwise they couldn't, and would be heard in court and in the press. So yes, there were a lot of convictions, sure, but there were also a lot of acquittals and there were a lot of successes on appeals. So, yes, there was a point to all that we were doing.

Int But...given that under apartheid Parliament was supreme, do you think that the LRC's victories, when they garnered the early victories against the pass laws, the Rikhotso and Komani cases...looking at those judgments, did you think that they would actually be sustained and not overturned?

DK They were in fact confirmed on appeal, not overturned and I do think they were very important, and in fact this is the distinction between this country under apartheid as compared to say Zimbabwe. I mean, this was not a Zimbabwe – where (Robert) Mugabe has been able with absolute impunity and no shame to say, “fuck the court. I'm not interested in what the judges say, I will do what I want to do”. There have been several judgments in the Zimbabwe where the court held against him, and yet he simply ignored them. It wasn't happening here, no. In fact there was this strange sort of dichotomy in SA. The Nationalists had a strange kind of attitude towards and an adherence to the “Law”. In their own distorted way of thinking they always able to say, we have courts, we have a system that works, it's a system which allows for representation, open hearings, appeals ...etc and there were always “laws” to back them up – statutory provisions which allowed for detentions, bannings, other types of restrictions on peoples' freedoms. But they could say, and they did, that these laws were enacted and implemented in order to contain revolutionary or illegal political activity, to quell violence and to ensure the safety of the population ...etc. So on the one hand there was this kind of respect for the law and somewhere they didn't regard themselves as acting unlawfully or unfairly. And of course with Parliament being supreme in those days, not subject to the constitution, whatever parliament enacted was law which had to be observed. But with all this, there was still a strong respect for lawyers, a respect for courts, a respect for judgments. And sometimes a judge would find a way of interpreting a particularly objectionable provision in a statute or a regulation or a banning order in favour of an offender. For example I appeared in the first case concerning a particularly restrictive provision in Emergency Regulations in which Richard Goldstone upheld our application for the release of our client who had been detained, on the basis that the police, in acting against our client, had not observed the provisions of the regulations and his conduct against our client was wrongful and was set aside. I refer to a reported case of Radebe vs The Minister of Police in 1987. At the time a State of Emergency had just been declared and they were simply detaining and arresting people willy nilly. and we went to court with Radebe on an urgent application and Richard (Goldstone) found a way of invalidating

that arrest, even though the police appeared to have absolute carte blanche to do as they pleased. There was something about the way in which that detention was effected, which (Richard) Goldstone held to be unlawful and Radebe was released. And that judgment became a precedent for various other matters that followed. You know, in those days the level of activity was hectic, there were people being detained, there were people being charged; I appeared in many of these matters which often came from Raymond (Tucker) or Kathy Satchwell or Priscilla Jana or Bell Dewar and Hall and a few other attorneys whom I can't recall at this stage. I think of the application on behalf of the Reverend Bild who was alleged to have carried on some sort of political activity – I can't recall now what it was. We brought an application on his behalf which was unsuccessful. The matter went on appeal to the then Appellate Division; I didn't argue the appeal but I believe it was successful. and then he left the country. That was a successful outcome.. I appeared in an application for the release from detention of Azhar Cachalia who was detained by the security police. I can't recall the exact circumstances but we were unsuccessful in the application; he was later released and wasn't charged with any offence. Today he's a judge in the Supreme Court of Appeal. The point that I am trying to make here is that there were so many cases where our ability to represent put a brake on a lot of things that were happening. I think that it was a constant battle and the odds were stacked against us, but you know, things were already beginning to change at that time and I think somewhere, at the back of their minds, they knew that they could not simply ride roughshod over the lawyers and our clients and the courts. And, seen in retrospect, a lot of things were happening of the record on a political level that we didn't then know about. Also of course there were many horrible killings and other acts of violence being perpetrated by the security police and the so called CCB which we subsequently heard about partly through the evidence at the Harms commission, and later at the Truth and Reconciliation Commission. Things which we I learnt about from (Dirk) Coetzee and from his statement. From (Almond) Nofemela, from the evidence that was given at Harms. From what Richard Goldstone turned up in his raids that he instituted. From what happened at Boipatong. And yet, shocking as the massacre at Boipatong was, a full scale enquiry into those events took place which revealed the complicity of certain Inkhata members who acted in conjunction with and with the assistance of, the police. After a lengthy hearing it was established without any doubt that the police had been complicit; although they never admitted was never admitted it. The inquest which was held before Richard Goldstone who sat with the ex Chief Justice of India and a local assessor ensured an exceptionally good and revealing hearing although, strangely (Richard) Goldstone never delivered a ruling at any time thereafter. I think that events in SA were happening so fast at that time and things were beginning to change so drastically that they just overtook the verdict. But no one hearing the evidence at the Boipatong Inquest could have been left with any doubt as to what happened that night and the complicity of the SA police.

Int Was it post 1990?

DK Well, to be exact it was just in 1990. Because it was in 1990 that the...let's see...ya, it would have been in 1990. Tokyo Sexwale had just been released from prison then. And I can recall that because he was at that time the local ANC representative, with whom we consulted. We also consulted with Cyril Ramaphosa who was running things at Shell House, which by then had already become the ANC headquarters.

Int Denis...when change arrived in 1990, did you have a sense that things were changing? You'd had a sense that influx control and...the State...

DK ...But it was changing even before that, you know. Just on a day to day level it was already changing. Yes, the law was there. There was the crack down in 1985 by Botha, and it was a very ugly time in certain areas and between certain people. But there was no doubt that change was in the air. I couldn't at that stage have predicted that what happened was going to happen when it happened, but one heard all sorts of things about change and knew about what some people were doing or advocating. I am not sure when we became aware of what had happened overseas or, for instance, at Dakar and what other initiatives were being followed or who was talking to whom. So, ya, things were happening. But the way in which it suddenly broke was, I think, quite unexpected. But clearly it was changing. Just the whole thing of (PW) Botha and the sort of internal revolt against him. And I think I also had a sense of change because I had been involved in 1989 in the Bophuthatswana Treason Trial where I appeared for about 200 people who were charged with treason arising from a revolt against (Lucas) Mangope in Mmabatho. And in preparation for that trial I had to go to Harare to consult with the man who was supposedly the leader of the revolt but who had managed to flee the country and was sitting in Zimbabwe too afraid to come back lest he would also have been arrested and charged with the others. So we had to go and see him in order to consult with him because there was the possibility of the main accused being sentenced to death for treason and his evidence might be vital in this regard in extenuation. He ultimately did give evidence, but he was only prepared to testify in London and so we went to London on commission i.e. the court simply shifted to London – Judge, prosecutors, defence lawyers and witness. But the reason why I am telling you all this, and have digressed somewhat from my point, is that while we were in Harare to consult with our witness, I met and found myself having dinner with the Cuban representative (consul or ambassador !! – am not sure what his rank was in Zimbabwe). And he had previously been stationed in Angola and he was talking and telling us then already (in 1989) about the terrible beating that SA had undergone in the battlefields in Angola and how with the intervention of the Cuban forces, the South African forces had been routed in Angola.

Int Cuito Cuanavale?

DK And in Namibia. And remember that was just about the time of the Namibian independence. And it was very clear then that things of a very radical nature were happening. And here was it coming from someone who'd been in Angola and I hadn't heard the details of what had happened in Angola prior to that save that one had a general idea that SA was up against it there. And this was very important in relation to the Nats beginning to lose control all round.

Int So quite early on...Arthur (Chaskalson) went on to help with the Constitution, and the LRC...

DK In Namibia...oh, here?

Int Here, in South Africa...

DK Well, a lot of people did. I mean, people like Dennis Davis and Arthur (Chaskalson) and a whole lot of people were involved almost full-time...

Int And the LRC, to some extent, was involved in the Charter?

DK I think they were, I don't know to what extent...I don't know the details of all that.

Int Sure, sure...

DK Sorry...before that, I mean, you've got to remember that at the beginning of the 1980s, this is now the end of the Sexwale trial, the end of the student trial, that had all been disposed of, and now a whole new era came in, because the government...the Special Branch became convinced that there was a whole new movement...to overthrow the government. A conspiracy. And it was a conspiracy of the left. And it all arose out of Barbara Hogan's list called close comrades. They discovered that Barbara Hogan, who's now a member of parliament, Barbara (Hogan) had been arrested and charged with having been...carrying on ANC activities and part of the...I'm not...of this whole conspiracy they found she had a dead letter box somewhere in Houghton. And when Barbara (Hogan) was arrested she was found to have a list called close comrades, on which the names of a whole lot of people appeared, and they went and picked up all these people. Neil Aggett, Aurret van Heerden, a whole lot of people. I mean, there must have been...Alan Fine...anyway...and this led to a great deal of detention, torturing, statements, and the government...the Branch made an announcement that there was going to be this huge new treason trial with all these people involved in this treasonable conspiracy. In fact it was nonsense; there wasn't any conspiracy and ultimately there there was no big treason trial. There were however a number of individual trials such as Barbara Hogan, Alan Fine, the Aggett inquest. I was involved in the Aggett inquest., the Hogan trial, Alan Fine's trial in the Regional Court. I also defended Helene Pastoors, and Carl Niehaus. (Helene) Pastoors was convicted. Alan Fine was acquitted. (Neil) Aggett committed suicide, and we had this long inquest about his suicide. (Carl) Niehaus was convicted. After the Biko inquest. Ernie Wentzel was involved in a number of matters; he appeared for Roland Hunter and Cedric Mason who were charged with ANC activities. And then there was a group of people who were carrying on some activities for whom Ernie (Wentzel) also appeared. I can't remember their names. So you can see that there was a lot happening at that critical stage during the first half of the 1980's and then after (PW) Botha's Rubicon speech in 1985.

Int In the 1980s?

DK 1980 to about 1985. I also defended Guy Berger down in the Eastern Cape, Raymond Tucker and I. Guy Berger who was then a student at Rhodes University was charged

with ANC activity. That trial took place in Port Elizabeth. Guy (Berger) was convicted and sentenced to 4 years imprisonment which was reduced to 2 years on appeal I had other matters in Grahamstown concerning detentions. It became clear from all these cases in the E Cape, that people had been pretty badly roughed up by the Security Police down in the Eastern Cape.

Int Did you work on the Timol inquest?

DK No, I didn't have anything to do with (Ahmed) Timol. No. I can think of other matters then, I can't offhand...

Int Sure. Denis you've been in a very good position because you started the interview by telling me that you weren't very politically involved. But if you look at the kind of work you've done, the particular law you've done, it's all been political cases...

DK No, that's true, but it's never been as a politician. Ever. And in fact, I mean, I was often quite opposed, within myself, to some of the things that were done by some of the people who I defended. people doing...

Int Would that have been with particular regard to violence?

DK Ja. In this regard, I forgot to mention to you, that I was brought in to defend Andrew Zondo, the youngster who was charged with the Amanzimtoti bomb?

Int Oh, yes, Andrew Zondo?

DK (Andrew) Zondo. Ismail Mohamed had started that trial, and I think Ismail (Mohamed) saw a death sentence sticking out a mile and he didn't want to go on with it. That's my impression and I was simply brought in, in the middle, and we really started again. And I appeared for him throughout the trial. He was convicted and we wanted to appeal against the death sentences which had been imposed but he didn't want us to appeal.

Int He didn't?

DK No. But we in fact put in a petition, which was refused and he was executed. He was so full of remorse for about what he had done that he didn't want to challenge the sentence. He had such self-loathing that he wanted to die, I mean, that was his basic reaction. But ask Hillary (Hamburger) about the sequel to that because someone came from England and made a film about the meeting that subsequently took place between his parents and the parents of one of the children who was killed. And it was a very moving and dramatic encounter between the families.

So I appeared for (Andrew) Zondo in about 1986 And I was also asked to appear for Robert McBride. I didn't want to appear for him and fortunately I was busy with some other matter at that time and I couldn't accept the brief.

Int What do you think actually helped in you and other people not really getting arrested, detained?

DK Well, again, I've often been asked about that, did I feel as if I was under any pressure, was I ever threatened and so on? I never felt that. I mean, I suppose I treaded a fairly narrow line but I didn't feel...I wasn't doing anything that was illegal. I was doing my job, I dealt...I co-operated very well with...when I went into that Bophuthatswana Treason trial to defend 200 people who were being charged. I mean, 200...to handle a trial for 200 accused is not easy. And there had been something like 8 or 9 junior counsel, with a Senior from Cape Town who was drunk half the time, and they brought me in, in the middle of all this. And one of the counsel, who's name I'm not going to mention, had been appearing on behalf of the accused and he had a very aggressive, non-co-operative attitude, and he had rubbed the prosecution up the wrong way, and there was such hostility on account of this. And I came in and I sat down with a guy called Smit, who was leading the prosecution, he was very decent, he was very competent, he was very hands-on, he knew exactly what he was doing. And between us we sat down and we actually worked through it, and we worked through what evidence they had against certain people and what evidence they didn't have, and what people should be convicted and acquitted, and where they could proceed and where they shouldn't proceed, and by the time we got to trial – and it was quite a lengthy trial at the end of the day, you can imagine, starting with 200 accused – we had managed to shed almost all the juniors who'd been in the matter and who really weren't getting anywhere, and there was myself, and two counsel, and three sets of attorneys. And the whole trial...because of the fact that we were able to co-operate and talk and reason the thing out, it went like clockwork, and it was a pleasure. And it was a very highly charged situation but if you don't make yourself the enemy, you know, and you're prepared to sit down and talk to the other side and they see that you're not there as the persecutors of the prosecution, you know, it was possible to achieve a great deal, and it happened in various other cases. I had that in Lesotho as well, where the prosecutor at one point in the trial...the Attorney General, not the prosecutor, was a man called Geldenhuys, who was the Attorney General in Lesotho at the time and had been a regional magistrate in South Africa, and he thought that every counsel who came from Johannesburg was out to skin him and to do the dirty on him. And he didn't trust anybody. And we were able to establish a good working relationship. And I think it depends upon who you were and how you did it and...I mean, someone like Shun Chetty, who we worked with...again, I forgot to mention the cases I had with Shun Chetty. Shun (Chetty) was doing a very good job but at the same time Shun (Chetty) was a thorn in their flesh, and he was the...as the attorney the recipient of money. And one of the things they were determined to do was to try and cut off the flow of funds to stop people from being defended because they realised that if we were there to defend them it made it much more difficult for the state. So they tried to cut off the flow of funds and they fabricated a whole thing against Shun (Chetty) and ultimately they drove him out of the country. (Griffiths) Mxenge who was assassinated, and his wife (Victoria Mxenge) assassinated, they weren't simply assassinated because they were attorneys, they were assassinated

because they were politically involved. And the same with (Anton) Lubowski in Namibia. I don't know what his involvement was but they decided that he was a thorn in their flesh and they should get rid of him. And that was a unilateral act on the part of the Branch. So I didn't feel that I was personally under threat. It was difficult at times, you know, and one was looked askance. I had a trial in 1985/86 in Estcourt in Natal, defending a whole bunch of young ANC people who'd come in to the country, militarily trained, from Swaziland into Ingwavuma, north of Zululand, where they were then hunted down by the police and brought to trial and were charged in Estcourt, and I was instructed...my junior was Pius Langa, first time I'd ever met...had anything to do with Pius (Langa). And we defended him in Estcourt. And Estcourt, they chose Estcourt as a venue because it was out of the way and, you know, they could handle it better than if it were in Pietermaritzburg, where there was another big trial going on at the time. But Estcourt was turned into a kind of military encampment. I mean, there were armoured vehicles and there were police vehicles and there were Special Branch all over. You know, this little town Estcourt suddenly became the focal point of a political trial. And one day I...I used to fly in sometimes to Pietermaritzburg and then take a car from there and drive to Estcourt. And I'd taken a hired car from Pietermaritzburg and drove to Estcourt straight to court. And I was in court and there was a commotion going on outside, and we adjourned and I went outside to see what was happening. The police were there with sniffer dogs, and they were sniffing this hired car that I had because they suspected that there was some sort of contraband, either explosives or drugs or something in my car. Of course they found nothing but the fact is that that was the kind of atmosphere, you know. But no, I...you know, I didn't ever feel under threat. We always, when we consulted in prisons, we would make a point of writing down a lot, having code words and so on, so that if the conversations were recorded, and one always assumed if they were, it wouldn't be very intelligible to someone listening to a recording, because a lot of it would have been written down. So, you know, one took precautions on telephone calls up to a point, took precautions. Although I don't believe my phone was ever tapped. But some people's phones were. I subsequent...I defended some ANC people charged with murder of an informer in Botswana. And I can't remember when this would have been...it would have been in the early 1980s, maybe late '70s, I can't remember. And I was going backwards and forwards to Botswana. They were ultimately acquitted...but I subsequently discovered, Geoff Budlender found something amongst some official documents that (Dirk) Coetzee, my client (Dirk) Coetzee, had somehow been involved in some sort of instruction that I should be taken out going to Botswana. Nothing ever happened obviously; I never knew anything about it, and subsequently Geoff (Budlender) showed me this, and I then...

Int Geoff Budlender?

DK Yes, and I then, at a hearing of the Truth and Reconciliation Commission, which took place in Johannesburg and I knew that (Dirk) Coetzee was going to be there. I went there, deliberately, and I went and confronted him with this. And he just kind of dismissed it as nonsense, it wasn't so. But the fact is that there was that. I don't know where it emanated from, but it wasn't something I ever took seriously.

Int Denis, you could have had a very lucrative practice in another area of law, and I'm assuming that a lot of this work wasn't exactly very lucrative...

DK No.

Int I'm wondering what your sense is of the choices you made, because it sounds to me like you made deliberate choices?

DK Ya, in a way, I mean, I know that there were many attorneys in Johannesburg who didn't brief me because I was involved with political work, but I always had a smattering of other work. I mean, I didn't do political work exclusively. And, look, at the beginning it was pretty tough because, you know, there wasn't money around and what you got paid when you did get paid was not a hell of a lot, and political work was never as lucrative as other work. But...I don't know, somehow, I got by. Because...I've never ever questioned that, you know. I'd rather have been doing that than been getting involved in...in any event I just will often have a feeling that Bar advocates just skin the clients. I mean, they charge...the fees charged are just so astronomical, I just feel embarrassed by it, I really do. And so I kind of detached myself from the mainstream of the Bar. Although, when I appear with some juniors in matters now, I have to charge high fees because it affects what fees they get and they tell me this is what people are charging **inaudible**. Ya, so ya, I could have been earning more.

Int I'm also wondering...you've worked very closely with Arthur (Chaskalson), you've worked closely with George Bizos, you've worked closely with Geoff Budlender and Mahomed Navsa, I wondered whether you could reflect on the different types of lawyers they are and...especially with regard to the kind of work they did at the LRC.

DK I wouldn't like to be commenting on my colleagues...

Int Sure. No, but in terms of the type of work...

DK ...I mean, you know what sort of people they are and you know that each one in his own way, or her own way, were absolutely dedicated, conscientious people of tremendous integrity and concern. But...

Int ...Sure, but what was their particular style...?

DK ...each one is very different, you know, it's difficult for me to really comment on them individually. I mean, I've known Arthur (Chaskalson) as a friend, as a colleague, as an opponent, as a leader, as a...you know, in so many ways, so...you know, it's difficult for me to actually comment. And the same with George (Bizos). George (Bizos) was ahead of me at university, so I've known him since university days. Geoff Budlender, I only met when he was articled to Raymond (Tucker) from

the mid 1970s. I mean, one can't talk too highly about his ability and his integrity and his dedication. Mahomed (Navsa), in his own way, he's quite a revelation.

Int In terms of the LRC as a public interest law organisation...currently there are debates about the Constitution, there are threats against the Constitution, Constitutional Court, the judiciary, so there seems to be lots of crisis in the judiciary...

DK Ya.

Int What's your sense of where a public interest law organisation like the LRC can function effectively in the current...?

DK Well, we've seen what it's done. We've seen how it's functioned, for example, just to take one example, this recent application that George (Bizos) did in respect of the Chinese community. That's one example. The fact that when it came at the time to Boipatong, Arthur (Chaskalson) was able to use the resources of the LRC, because he was still at the LRC at the time. And so the LRC became the instructing attorney basically. And over the years the LRC has got involved in all sorts of matters, particularly since the sort of amicus curia principle has come into the courts. So, you know, the LRC has been able to do that. But then there are other organisations now that do the same thing, like: Tshwaranang has under Liesl, do you know Liesl? Did you ever meet Liesl Gernholtz? She's now with Legal Watch Organisation in London. Only recently did she go there. She really built up Tshwaranang into what it is. So there's that and there is...there was, I mean, I was on the board for a while at CALS in the earlier days. And that's been very effective although it's more of an academic than a function in an organisation. But I mean, each one of these organisations in its own ways played a tremendously important role. In John Dugard for example, it's the first person who really wrote about this in his original book that he wrote originally about it. The legal system and lawyers, basically lawyers acting with a conscience I suppose. So I don't know exactly where organisations like Lawyers for Human Rights and Legal Aid...well, Legal Aid Board ya, but, LRC, fit into the picture. But I think that there certainly is still very much a need.

Int When Arthur (Chaskalson) left the LRC to take up his position as Chief Justice, in his farewell speech he said... that under any government, the LRC's duty as a public interest law organisation is to take it on, even if it is an ANC government, as it turned out to be. I'm wondering what your sense is... whether, as a lawyer you've come across whether the LRC has taken on sufficiently the government and cases against government?

DK I can't tell you that. As I sit here now, I can't think of specific cases where LRC has done it. I mean, it doesn't have to be directly in constitutional issues. There are all sorts of issues that have arisen where the LRC has played an important role. Which ordinary law firms wouldn't have done, although some of them now report to have human rights departments, you know, they're token human rights departments, I think, some of the bigger firms, because they're so concerned with their vast fortunes, you know. But conscious of the fact that they, A: have to try and implement BEE, and

B: show willing when it comes to people's rights. But, frankly I wouldn't trust any of those organisations, if it were a question of having to deal with somebody's constitutional rights or issues which really need to be taken up, I would much rather go to one of the NGOs or, you know, private organisations like the LRC.

Int You said the LRC has taken on cases other than constitutional ones. What do you think are the main areas of concern in South Africa that a public interest law organisation could be most effective?

DK I don't know, I'm thinking, for example, of this whole vigilante expatriate...

Int Xenophobia?

DK Xenophobic thing, you know, that kind of thing. And there are all sorts of other issues. I mean, the kind of issues that I've been involved recently in matters concerning the diamond industry. Now, I mean, what they've done in re-legislating the whole diamond industry, it's awful! I mean, it's impractical, it's not designed to, I think, further the industry, it only has brought tremendous confusion and at the moment dissatisfaction, and it's the kind of issue that has to be taken up. Now of course the diamond industry people think it's very capable of doing it itself because everybody's so wealthy, but it's not really so. But it's a complete screw-up in their legislation and then their perception of how to bring black empowerment into the diamond industry. And it's an issue which is of tremendous importance. I mean, both from an individual point of view, from the point of view of a huge industry for the country. Things like that, but that's not the kind of thing that Lawyers for Human Rights would get involved in, but it involves fundamental constitutional issues, you know? I suppose the whole thing of AIDS, but there again you have...they have their own organisations which have done enormously good work, which has not, as I understand it, included the LRC.

Int Well, the LRC has taken on the TAC case/

DK Has it? Ok, well then that's good, you know, then I think that that's right.

Int When I interviewed Jack Greenberg, he said that the South African Constitution is the most advanced document in the world. I'm wondering what your concerns are, if any, about the current crisis and the judiciary...?

DK I, you know, one can only look at it in political terms. I...I think the judiciary is in a mess at the moment, frankly. And that's got to do not just with the recent whole thing of (John) Hlophe and so on, but generally with the manner, with a lot of the people who are appointed to the Bench. You know, and I say this with the greatest of respect, I've got no problem about transformation. But I think that this thing of transformation willy-nilly to put a black face there instead of a white face because you've got to transform the Bench...putting people on the Bench who have no idea as to what it is

to practise law! Or to practise certain kinds of...I've got a case coming on in October, which is a purely commercial case, it involves money, it involves insolvency, it involves bank, my client is trying to recover money from an insolvent estate. It involves questions of ethics, it involves questions of principle, it involves questions of law and fact. And I am terrified about what sort of judge is going to be appointed to this case. Because if I get one of these judges who has got no experience of commercial law, and hasn't had any kind of background in practical law, I shudder to think what's going to happen in this case, I really do! And if you have a judge who knows what he's doing and he's had experience in this, it should be an absolute...an easy ride for him and for us. And it's the kind of thing that one has to deal with all the time, and it's not an anti black thing, it's just a...it's...it's what happened with Eskom. Eskom, the moment Eskom took over, they got rid of every white face in their organisation, doesn't matter how good, how experienced, how qualified, and put people there who didn't have the background and the experience, and look at the result! And I think that that's what's been happening in the courts. I mean, the chaos, the disorganisation, the lack of...sighs I don't know what one calls it, in the Johannesburg High Court, is just legend. Talk to anybody, about trying to get a case heard, about looking for papers, about lost files, about papers disappearing, about...you saw...I don't know if you read the paper on Tuesday about the disorganisation in the court on Monday, the first day of term?

Int No...

DK Total, total chaos. Not enough judges, papers disappearing, nor the accused or the witnesses, nothing was organised. Now, you can't run a judicial system like that. On the other hand, you know, you put someone like (Brigitte Sylvia) Mabandla in as a...as the Minister of Justice, what background and experience does she have of the legal system? So it's been run by the Deputy Minister, Johnny de Lange, who's got it in for the legal system in some ways. I don't know why...he's been really trying to reign in the judges and bring in this new legislation which in itself would be disastrous.

Int Which is the new legislation?

DK Well, there was a few years ago, they were about to bring in new legislation, which brought tremendous opposition from the profession and from the Bench. As a result in which they suspended it and they didn't go through with it. Now they're going to do that without the control of the judges! You know...I mean, making judges like civil servants basically. And whilst I think that in a way, I suppose, it's necessary to be answerable, when it becomes answerable to politicians, I think that it's the beginning of the end of the legal system. And I'm afraid that that looks like...whether the ANC will ultimately succumb to that, I don't know, but this whole (John) Hlophe thing, I see it as part of a wider conspiracy to undermine the Bench, to bring it into...to make it a much more conformist body for the politicians. Doing away with the Scorpions, I think is the worst thing that could happen. And one knows why it's happening and they're not honest enough to admit it. So, you know, I don't know, I'm very apprehensive about the whole legal system, quite frankly.

Int Denis, I've asked you range of questions, perhaps exhaustingly so, I wondered whether there's something I've neglected to ask you, which you feel ought to be included in your LRC Oral History interview?

DK What...?

Int Is there anything that I've neglected to ask you?

DK No, I don't know, ask me anything that you may want to ask. I've...actually I haven't dealt with all the cases I've been in because it's just not possible to deal with them in...

Int Sure. I wondered whether we could end the interview if you could talk about a memory you might have...whether it's working with Arthur (Chaskalson), George (Bizos), Mahomed (Navsa), anyone associated with the LRC, a memory that you might treasure? Or even a client in relation to the LRC?

DK I...you know...I read these interviews in the paper, these sort of ten minute interviews with people with all these questions and what is your favourite this and...I can't really...I mean, I'm just so full of memories, but what happens is that the more I talk, the more it pulls out of my memory, and...so, I end up saying, ask me questions and then I end up talking for two hours without being asked a question. So I don't know if what I've given you is of any use...

Int Of course...

DK It's so diverse and it covers such a wide field, and in a way it's a lot but there's each recollection is capable of expansion on its own.

Int Absolutely.

DK And that's actually what I've done with Piers Pigou, we've sat for hours talking like this over a period of probably 3 or 4 or 5 days, I don't know how long, and just spoken and spoken, so I've really spoken about all this in much more detail.

Int Sure, well, Denis, for the time being I want to thank you for your time.

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