

**Johan van der Vyver****LRC Oral History Project****24<sup>th</sup> February 2009**

Int This is an interview for the Legal Resources Centre Oral History Project with Professor Johan van der Vyver at the Emory Law School and it's the 24<sup>th</sup> of February 2009. Johan, thank you so much for agreeing to be part of the LRC Oral History Project. On behalf of SALS Foundation we really appreciate it.

JV This is really my pleasure.

Int I wondered if we could start the interview if you would mind talking about early childhood memories, growing up in South Africa, what your sense of apartheid was, and where you think your sense of social justice and injustice developed?

JV Well, I was born in the 1930s, grew up in Durban, and at a time when there was a great cultural revival in the Afrikaans speaking community. So since very childhood we were brought up to be proud of being Afrikaner, participating in cultural events, developing all kinds of skills like debating, music, reciting, drama, because that was part of a concerted effort for the cultural educational and upliftment of the Afrikaners who were plunged into absolute poverty following the Anglo-Boer War and all kinds of catastrophes and finally the Depression, and so that concerted effort was particularly strong in Natal where we were a minority group. And if you are a minority group, Afrikaners within a predominantly English speaking community, then that draws the people closer to one another. So I think in those days something that stuck in my mind was that there was something wrong with us because we were looked down upon by our English compatriots. And so I grew up in an atmosphere of almost being expected to feel inferior. But there were, as I said, concerted efforts within the community to counteract that and to show that we were people in our own right with a wonderful history and tradition and that this is something to be proud of. And just as an aside, as part of that strategy there were secret organisations that established a stake for the Afrikaans speaking people in industry and commerce, founding of Afrikaans supported business enterprises, like Volkskas Bank, Saambou, the Building Society, Rembrandt Tobacco Corporation, etc., which provided employment to Afrikaans people in commerce and industry, because commerce and industry up till that point was almost a hundred percent dominated by our English speaking compatriots, and they didn't care much for the socio-economic upliftment of the Afrikaners. And I regard the socio-economic upliftment of the Afrikaners as the biggest economic success story of the twentieth century. Now there were certain things that helped that to be so successful. Now for example we did have cheap black labour. There was the Second World War that opened opportunities for those who did not care to participate in the war, and the Afrikaners were not keen on participating because the Anglo-Boer War was still fresh in our memories, and our people didn't want to fight a war for England, you know, just to put it quite bluntly. But I think the...when I was a child for example, any Afrikaans speaking kid who wanted to go to university, and who had enough brains to go to university, could do so, it didn't matter how poor his parents were, because funding would come from somewhere. And that program was tremendously successful. Now we can elaborate on that, but let me jump...I finished my primary and high school training in Durban at the only

Afrikaans medium high school in Durban, which was Port Natal High School. And then when I was ready to matriculate the question came up what am I going to do in future. And I had a father who was quite a domineering character, and he asked me one day when I was sort of standard nine, which is now the eleventh grade, what I want to do. I said, I want to go to Stellenbosch University. What do you want to do there? I want to take a Science degree. Why do you want to do that? What are you going to do with that? I want to become a teacher. So he said, in that case you can find your own money and your own resources, I'm not going to support that. If you want me to pay for your education then you go to Potchefstroom University, you take an undergrad commerce degree, and after that you take a law degree.

Int Really?

JV And I had not much choice in that. And today I'm grateful to my father because those choices were very well chosen for me. And I might just say that my father comes...for he was a schoolteacher...but he came from a generation where they didn't have these opportunities, and for him to become a schoolteacher was really very high up in the Afrikaans community at that time because they didn't have the opportunities. And he projected on me the ambitions that he had for himself. So I ended up in Potchefstroom University and I went happily because it's far from Durban, and with a very domineering father I also wanted to get out from under that protective wing so to speak. And so I enjoyed Potchefstroom tremendously.

Int If I could take you back, Johan, you mentioned your father and making those choices that he made really for you, what about your mother and also in terms of growing up, where you grew up in Durban, you mentioned that the community was much stronger and closely knit, what were the kind of discourses about what was going on in the country and particularly around, closer to 1948, I'm wondering what was happening at the time or what your sense was as a young person?

JV Well let me first of all say my mother came from a town called Kakamas, which is a settlement up in the north-western parts on the banks of the Orange River, and my father was a schoolteacher, that was his first school job, and so that's where he met my mother, and they got married and then decided to go to Natal. First to Pietermaritzburg where I was born – we are four children, all four of us were born in Pietermaritzburg – but when I was still a baby they moved to Escombe and then eventually to Durban, and so my first memories was living in Durban. My mother was one of the most likable persons I've ever known. That's the one person I knew in my whole life that had no enemies whatsoever, because she was just such a likable person. And she was the opposite of my father, so she was also kind of under his domineering command, but it worked out well for them. And so she was always quiet and complacent and want to please, and so on. Now we grew up, as I said, when I was a child and came to my memory...my senses...was during the Second World War. And in our family and in the Afrikaner community, there was not great sympathy with the British cause, for which we should be ashamed today, but I must say that it wasn't a matter of pro-Nazism, it was a matter of anti-English because of the Anglo-Boer War which was fresh in our memory. And so during the war my father was actually put in an internment camp and he was there for eleven months before they released

him, and then eventually would not readmit him to the Education Department in Natal. But following petitions by the community they eventually reappointed him and appointed him in a town in the southern part of Natal, which was far from Durban.

Int That must have been extremely traumatic for you as a child...?

JV Ya, that's right, you know, that's right. And I think I was in the second grade when he was in the internment camp and he came back eleven months later. I didn't know him before then. My first memories of him was after he came back from the internment camp. And so...he petitioned the authorities to transfer him to Durban, and then they gave him a post at a coloured school at Umbilo. And if my father was here today he would have immediately have interrupted to say, those were his happiest teaching days and also most successful. So much for he taught Afrikaans as a second language, that DHS, Durban boy's High School, which was the top school in Durban, asked the authorities to transfer him to DHS so that he could teach, and then he went from...and later on he applied to become principal of that coloured school and got that job. So I'm just mentioning this because I think putting him in a coloured school, I think was done a bit facetiously. But that's where he found happiness.

Int Interesting...

JV So the whole thing was in those days, you didn't speak of politics or political issues, even to your best friends at school because that might bring your parents into trouble, with the authorities, who were very suspicious of the Afrikaans people because they didn't support the war effort. And so if there was any suspicion of someone to be...who were active in their opposition, which my father never was. My father never belonged to any of these secret organisations like the Broederbond or so on, but he was a cultural leader in the Afrikaans community in Natal, and so they thought that at a certain stage that it might be comfortable just to lock him up. And he went to Koffiefontein, is the place. So, you know, I grew up with that idea of almost being expected religiously to hate the English. At the same time you also felt that the English people of Durban didn't like us very much, that there was something the matter. That was sort of instilled on my youth. And then with the elections of 1948 it was absolute jubilation in the Afrikaans community because nobody, not even the leadership of the National Party, expected even remotely that they would win that election. And so it came out of the blue. And I remember when I went to school that day when the elections, when the final results were out, I didn't know whether I was permitted to show that I'm glad, and whether that would bring my father into trouble. Because, you know, that was sort of how we grew up. And so I can summarise by saying that I grew up in a house that was very supportive of the National Party...and shared those views, and went to a university that was a hundred percent supportive of the government and its policies. And something that you must just understand was that the National Party was not founded as an apartheid party. The National Party was founded in 1914 to promote the interest of the Afrikaners vis-à-vis our English compatriots. But when the National Party came into power in 1948, our English compatriots were no longer a political threat to us. And then the National Party sat down and said, you know, we've talked about the English all the time, but what about the blacks? And so they appointed the Tomlinson Commission in the early 1950s to

see what can be done about Africans, because there was a strong revival of political consciousness within the African community, which we always tended to ignore in the white community...and this is on all spectrums of the white community...but was very strong in the early 1950s. And what Dr Verwoerd had in mind...he was then the Minister of Native Affairs, as it was then called...what he had in mind was to let the blacks go back to where they were in 1910 when the Union was founded, and to do that with economic incentive. So Professor Tomlinson was appointed to work out the details of building universities, establishing industries, etc, to get the blacks to go back to, away from the so-called white areas. And the Tomlinson Commission Report was a big disappointment to the government because what Professor Tomlinson said to the government in essence was we haven't got the money for it, it's going to cost too much. And then Dr Verwoerd decided that if we cannot draw the blacks away from the white communities through economic incentives, we'll just have to do it by legal coercion. And that's where things went wrong. Now at that time I was a student at Potchefstroom University, so let me tell you a little bit about that. The Dutch Reformed Church in South Africa is split into three different denominations. And now I won't go into that history. But the theologically very conservative was the Gereformeerde Kerk, and I must apologise for using the Afrikaans word because the word *gereformeerde* and *gereformed*, which both mean reformed, if you translate it into English it's the same word, but it's actually in Afrikaans two different words. You had that same kind of split of the Dutch Reformed churches in America and the Potchefstroom group, which was the Gereformeerde Kerk, they were commonly referred to as '*doppers*'. And that's something to do with the little cap that you wear on your head. So I went to a *dopper* university even though I was not a member of the *Dopper* church. The equivalent of the *Dopper* church in South Africa is the Christian Reformed Church in America, and the Reformed Church to which I belonged and still belong is the Reformed Church. So it's the Reformed Church or the Christian Reformed Church. So the Christian Reformed Church was a group that broke away in the Netherlands from the Reformed Church because they thought that the church was becoming too liberal and so they were theologically very conservative. And although I was not a member of their group, their theology and philosophy made a great influence on me. Even so that I say in humility that I am today regarded as an international expert on that philosophy even though I don't come from that religious community. So in those early days in the 1950s when I was a student, what I also appreciated of the *doppers* was a tremendous commitment to principle. If something is in principle wrong then there's no justification for it. And the principles that they advocated were very biblically based. And so I used to mock these guys, the theologians of the *Dopper* church, and say to them more or less that, you know what, you guys preach from the pulpit on Sundays and what you do on the political platform on Mondays are incompatible.

Int And this was as a student?

JV This was as a student. And the more they became angry the more I began to realise that I'm actually right. And so I've always thought that if I were to write my biography I'll give the title of the book 'Blame it on the Doppers', because they instilled in my whole mind a perception of being not compromise (?comprising) principles. And so this did not endear me to the university authorities, so to speak, but I had a tremendous influence on my students and I deliberately indoctrinated them, to



tell them that this and that is wrong. And for example I taught legal philosophy and so acquainted myself with the concept of justice. And when it comes to justice I'm a great Aristotelian. And if you analyse what justice means, justice does not prohibit differentiation, but the basis of differentiation must be rational to the purpose of the differentiation. So if I can make a simple argument, if you pick members of a rugby team then you pick the person because he's the best player in that position, not because he's white or because he's the son of the president of the university. That would be unjust. So if I give to all my students an A grade, that will not be justice. I have to differentiate, but the basis of the differentiation is their academic capabilities and not their race or their gender or their friendship with me, etc, etc. And so I remember in 1965 I gave a talk at a big Calvinist conference in Potchefstroom on the concept of justice and showing that apartheid was a violation of the basic principles of justice. Also basing it biblically. And that by the way had the consequence that members of Parliament in Pretoria summoned the authorities of Potchefstroom for a discussion about this kind of evil thought that is now being cultivated in the Afrikaner community at the Potchefstroom University, which is one of their big supporters. And I was part of that delegation. And then I met for the first time Andries Treurnicht, who later became a sort of right wing politician. And he was so pathetic. And the more I began to read and write and speak about what we were doing in the Afrikaans community politically and how that is incompatible with the basic principles of Calvinism, the more I ran into trouble. And to make a long story short, eventually in 1978 the university authorities put me in a position that forced me to resign from the university. Which was very traumatic to me. My wife jubilated because she hated Potchefstroom, but for me it was very traumatic because that was my alma mater where I studied – I started my teaching career there fifty years ago, by the way, in 1958, a temporary post, a full-time post in 1959. I'd spent 28 years of my life there and they let me go without a farewell or a goodbye. And then Wits University offered me a position and then I went to Johannesburg. So let me just pause here if you want to know something more about Potchefstroom and that era. But that is how my political mindset changed, is largely as I said, blame it on the *doppers* because they taught me principles and a commitment to principle, and I don't think one had to be very intellectual to know that what our government was doing on the political platform, the policies that we were advocating politically, was incompatible with those basic principles of justice.

Int Johan, thanks for outlining that trajectory, it's very helpful. What I would like to do is take you a little bit back, when you entered Potchefstroom, you come from a background where, as you said, your family was supporters of the National Party, and you'd gone to university that was essentially a bastion of National Party supporters. But I wondered as a student, in terms of political development, did your sense of justice, was it due to a kind of more religious framework or do you think that it was also in terms of youthful politics that may have emerged on the campus or that you became part of?

JV Well let me say, religion had lots to do with it because the Potchefstroom University's name was for Christian Higher Education. So religion played a very strong part in the whole educational process at Potchefstroom University. What I found bothering, is in Natal the Afrikaans speaking community was a very tight group and what mattered to us was whether you were Afrikaans or English. When I went to Potchefstroom, what

was a very strong element of discourse, was what branch of the Dutch Reformed Church do you belong to? And that almost animosity between the A and the B and the C branch of the Dutch Reformed Church, I never experienced in Durban, because as a minority group they were all your brethren. And then I go to Potchefstroom where you have this Calvinist university with big tension between people based on not being Catholic or Protestant, not being Muslim or Christian, but on being of this or that branch of the Dutch Reformed Church, which all have the same basic confession of faith. It was just on other little issues that they kind of caused a schism. And I didn't find that good. But my position was, in a sense, beneficial because the church to which I belonged was a very minority group. You know, there were just a handful of us on the whole campus. So the big fight was between the two other factions of the Dutch Reformed Church and I could sort of pose as being the ally of both groups because I didn't fall in them. And so that also gave me a little bit of perspective and I can tell you lots of stories about this, you know, how this, what we call, catechism, churchism applied in the lives there. How elections of school committees, the candidates were put forward on the basis of the church to which they belonged and not their interest in education of the children. And there was actually an agreement at one stage between the different Dutch Reformed Churches, that each church will have a certain percentage of representation in the school boards of the main schools, and that's by the way how I ended up in one of the school boards because there weren't many of us from this third branch of the Dutch Reformed Church and so I got this school board job. And was also disgusted on how your membership of a particular branch of the church was...influenced the education authorities in Pretoria as to who are appointed in senior positions in a primary or a secondary school. And I didn't like that because again my concept of justice was to find the principal who is best suited for the job, who's the most best qualified for the job, and not one that belongs particularly to this church or that church. And so in that sense I was a rebel right from day one. But my criticism of the...it would be wrong to say, my turning my back on the National Party, because I never did that, they turned their back on me. But my criticism of the National Party and government policies was based on principle. And then in 1974 there was a conference in Cape Town where the NICRO (*National Institute for Crime Prevention and the Reintegration of Offenders*) was founded, and that's a big criminology...National Institute for Crime and...

Int Prevention and Reintegration...?

JV That's right. Of prisoners. And I had to respond to a talk of a Professor Norval Morris who was from Chicago. And that was, by the way, the first public speech I ever had to make in English, and I was...it was a tremendous ordeal. But nevertheless, Norval Morris, more or less, very polite, being a visitor to our country, was talking about the overreach of the criminal law that is using criminal law for purposes for which it was not destined. And he doesn't know of course but maybe if we look at the apartheid laws, you know, he doesn't know of course, but maybe overreach, and then when I had to respond to that I went to town. And at the end of my talk I got a standing ovation. But in the audience in the second/third row, there were three people that remained sitting, and those were my three colleagues from Potchefstroom University. I'll never forget that. But one of the members of that audience was Dennis Davis. And he then subsequently organised for me to come and give a series of lectures at Cape Town University on human rights. That was in consequence of my talk on the 1974

conference. And those lectures, my Cape Town lectures, is published in a book called Seven Lectures on Human Rights. So those are my Cape Town lectures, published in 1976, I think the lectures were given in '75.

Int I'd like to read those at some point. Johan, I'm also wondering what it meant to you to be in a situation where you were a minority voice in Potchefstroom and the kind of impact it must have had on you those years, because as your thinking and your position on justice developed I wondered whether you may have found yourself increasingly isolated?

JV Oh, yes, you know, that is indeed the case. But thinking back I didn't care that much because I was so convinced that I was right. And, you know, something that just sticks in my mind, so often when I made a speech or wrote an article, some of my senior colleagues will come to me, not only from the law faculty but from other faculties, and say, you know, Johan, that point you made the other day is very interesting but I'd like to talk to you about that. That talk never came. It was always...there was never a clear answer to say what was wrong, it was clear that they didn't agree with me, but that conversation that they promised never took place. And that again strengthened my conviction that I was actually right, that my...and writing a PhD thesis on human rights at a time when the word human rights was a kind of a swear word in South Africa, overall, even in the English speaking community, there were not really scholars of human rights except one or two odd people. But in the Afrikaans community I was absolute first, and just as a point of interest, at more or less the same time a course on human rights was introduced at Potchefstroom University and at Wits by John Dugard. I called the course that I introduced in Potchefstroom, Human Rights, Menseregte, and it was a compulsory course for law students. It wasn't an option. John (Dugard) mentioned the course that he taught, Aspects of Public Law. And I often said to John (Dugard), why didn't you call it Human Rights? And he said, he was afraid that the Senate would then not approve it. So he avoided the word human rights at Wits, the liberal university, and here was I teaching a course in human rights at Potchefstroom University. And so that is just a bit of a irony. And when I went to Wits in 1979, John Dugard passed Aspects of Public Law onto me, so I did the teaching of that course when I went to Wits; I took it over and changed its name to Human Rights...at Wits when I was there, I changed the name to Human Rights from Aspects of Public Law.

Int You also mentioned to me that you didn't turn your back on the National Party but the National Party turned its back on you. I'm wondering, in relation to that how you felt about the policies of the National Party and did that not really conflict with what you felt were very sort of strong principles of social justice?

JV You see, the National Party was actually...ended up in a tremendous conflict within itself. You see, you must remember that the National Party, as I said, was founded to promote the interest of the Afrikaans people, because when the Union of South Africa was founded in 1910 the policy of the United Party...it was then called the South African Party, and its leadership were Afrikaners. But it was, put the past behind us, forgive and forget, was the slogan, and let's build a new nation. But part of that policy was also sponsored very strongly by Jan Smuts to counteract industrial development

in South Africa because we will provide the raw materials, it will be manufactured in England, we will purchase it back and use it, consume it, and we'll be one big happy family. Whereas the Afrikaans people didn't care for England that much. You remember this is eight years after the Anglo-Boer War. And so, as I'd like to say, the Afrikaners wanted to hate the English a little bit longer before they could forgive and forget. Today, in retrospect, I can see that the Smuts policy was a wise policy, and is by the way the same policy that Nelson Mandela advocated in 1994, is to look to the future and to bury the old grievances. But it is as difficult for Africans today to bury those grievances as it were to the Afrikaners in the 1940s. And so the whole National Party history was to promote the interest of South Africa first, was their slogan, and you'll see that all the major industrial development sponsored by government occurred during National Party rule, not United Party rule. Because they did not believe in industrial development in South Africa. And so, in that sense, being an Afrikaans people personally, and having a party that has our primary interest at heart, that appealed to me. But at the same time sort of on the sideline, in the 1950s, slipped in the black/white relationship, because segregation was always a tradition in South Africa. And just, while you are Indian, I might just mention to you that the Indians were disenfranchised in 1896, not by the Afrikaners but by the British colonial authority. But that's just as an aside. But when the National Party then started developing this philosophy of segregation, when that became a vital part of the political divide, well that, it also not correct, because the opposition party also believed in apartheid. It was only Helen Suzman who didn't. She was sort of a lone voice in the 1950s in Parliament. But the opposition parties also believed in segregation of some kind. So segregation was not an issue in white politics at that time. But I became sensitive to the injustices to people based on the colour of their skin, without taking into consideration their individuality and their individual merit. And that I think was the big injustice in the apartheid policy. Just because you are black, or because you are Indian, or because you are coloured, you are given a certain status in the community, irrespective of your abilities and your talents and your capabilities and your history, and that is just...was just absolutely wrong. And I could see this ending up in a disaster. And so I spoke out very strongly against that. What caused the Potchefstroom University to really discipline me was my criticism of the Security Legislation.

Int Could you talk a bit about that?

JV The South African Terrorism Act, to summarise it in a nutshell, is by the way not much different from the Security Legislation that you have in the United States today. Which means that the executive government puts a label around your neck and that deprives you of all your protection. And that is just wrong, and I wrote an article in the Sunday Times newspaper, at their request, on the Security Legislation, and that was...I was seen by a journalist of the newspaper at a conference of Andrew Young, who was visiting, and so he asked me to write something about that. And then I wrote this article criticising the South African Security Legislation. And our member of Parliament, who was later also a cabinet minister, Louis le Grange, he wrote a letter to the president of Potchefstroom University, and I saw that telegram: must professors of this university be allowed to publish such irresponsible critique? Please put this on the agenda of the next council meeting. And this coincided, which I again say with humility, I wrote a book on the protection of human rights in South Africa, and I got



the prize of the South African Academy of Science and Arts for that book. And I'd been down to Port Elizabeth to receive my prize, I actually had to borrow suitable dress for the occasion and came back so full of myself, I just thought I was the most wonderful and cleverest guy in the whole world for having gotten this Toon van den Heever prize...you see the diploma somewhere on the wall there...and when I came back in Potchefstroom, I just passed by my office just to see what messages there were, and my telephone rang, and that was the President of the university to say that I must appear before a forum of the university council on that Tuesday. So I asked him, for what purpose? So he said, it concerns my Sunday Times article. At that stage he and I had already spoken about this. So I said, I thought we talked about this. He said, yes, but you'll have to tell your story to the council as well. So I said, for what purpose? He said, some people will call it censorship. So I said, in that case, take notice of my resignation. And then he laughed, you know, because I was so part of Potchefstroom that they couldn't think that I could ever leave the university. And then there was a crisis between me and the council that lasted for about a whole semester. And in the end they wanted to know whether I was going to resign or not, and so I handed in my resignation. Because the part of what the council decided was that before I would be permitted to write or to speak on a contentious political issue, I must first get the consent of a forum of the university council. And my response was I don't mind being censored by my colleagues, I'll actually appreciate the input of my fellow professors on what I write and say, because we are of the same subject, but I'm not going to be censored by a bunch of retired theologians, I said to them. And so then I left Potchefstroom and...I didn't have a job, but I was at that time a member of an organisation called Synthesis.

Int Yes, you mentioned that to me. I wondered if you could talk a bit about that.

JV Yes, that was a...there was a doctor von Odehorf and he was in Belgium, and after Sharpeville he was...he taught medicine at Stellenbosch and later in Cape Town University, and he brought together a group of people from different shades of life, different races, different political persuasions, just to get them to talk to each other. And I became a member of Synthesis much later. It was then Anglo Vaal Gold Mining Company was sort of chairing it and the president of that company, the managing director, and so we had meetings about once in two months, sometimes in Cape Town and in Johannesburg, alternating, in which we just got together and talked about contentious issues of the day. And I found that very stimulating. I also saw how people who were, for example, from the National Party, changed their views just by this discussion, because if you talk face to face with persons about an issue that involves government policy, you see that it's wrong. And it was not a secret organisation but we had a sort of gentleman's agreement that what was said in those meetings would not be published, so people could speak their minds freely and express their views freely. And it was a great exchange and very valuable to bring people together, to make people see the point of view of others, instead of each one living in their own little enclave, political enclave, and not communicating much with people from other persuasions. And so that was very educational to me too. I did sometimes cause...stir trouble, I remember once Mr. van der Merwe, who was the head of the Security Police, was invited, and I suppose it wouldn't matter that I today say what he said then, you know, at that time it was sort of confidential. And he was talking about the implementation of the Group Areas Act. And how they used the

Group Areas Act to resolve crime. So what they would do is to round up Africans on a Friday afternoon, ask for their reference book, and if they haven't got the right stamp in their books or they don't have the books on them then they will lock them up for the weekend, you know, maybe twenty thousand of them, and then over the weekend they will run their fingerprints through the system, and on Monday morning they will arrest two hundred of them that committed some offence. And that's how they combat crimes. So in question time I said to him, now what about the 19,800 people that were innocent? He said, what's your point? I said, you locked up for a weekend twenty thousand people of whom two hundred were criminals, according to you, what about the others? And he then left the meeting, said he had a plane to catch, so I felt a bit awkward about him because I said something that he was insulted by, but you know, that again showed me that I was right because he didn't have an answer to that. And so that kind of things, which the government did, was something that I spoke out very strongly against. And as I said, you know, I don't conceal my thoughts very well, so...

Int You mentioned being part of Synthesis and then how did you actually end up at Wits, what were the sort of...?

JV Well the guy who was the head of Synthesis, heard of my resignation at Potchefstroom. I didn't talk to any newspaper about this, up till today, but somehow the news leaked and he heard about it. And he then phoned up John Dugard to ask if they could do something about it. And John (Dugard) then thought it was a good idea for them to offer me a post at Wits. And that stage I already had an offer from UNISA, the University of South Africa, which I had accepted, but Professor Sas Strauss who orchestrated it at that end, when he discussed this with the President of the university, the President of the university said, before he affirms my appointment he first wants to speak to Charles van der Walt who was the rector of Potchefstroom University to see if he will be offended if they appoint me. And so this thing was pending, so I said...Ellison Kahn was actually the one who called me up and offered me the position...so I said to him, you know, I have an offer from UNISA which hasn't been finalised, if that doesn't work then I would love to come to Wits. And then in early December he phoned me, or it was late November, to say, you know, I have to make up my mind, because if they have to appoint me they have to go through all kinds of procedures, and else I will lose pension benefits if there's a lap between the appointment from the one university to the other because my term came to an end on the 31<sup>st</sup> of December in Potchefstroom. And then I said, give me ten minutes and I phoned up Sas Strauss, told him that I have an offer at Wits, I really need to now. So he said he'd talk to the president and he called me back to say the president said that he had already spoken to Charles van der Walt on the telephone, or had written him a letter, but he would like to talk to him personally again before he makes up his mind. And then I phoned Ellison Kahn and said, I accept your appointment. And later I did get the UNISA appointment but I was then no longer available for them. Because Sas Strauss said...he was so angry, he said, don't withdraw your interest in UNISA, I just want to see what the end result is going to be in their council. So they did offer me an appointment but that is...

Int Too late by then.

JV Ya, I was at that time a kind of embarrassment to people within the establishment. Even, you know, I...perhaps shouldn't say there's a good friend of mine from university days, was FW de Klerk. I also found that if there's some other people in the audience, he was not as friendly, you know, because my reputation became an embarrassment. And I don't like that sort of thing, you know, you're either my friend or you're not. And we can be friends if we differ politically. And I criticised his government very strongly and...so, you know, he didn't take kindly to that.

Int You also mentioned to me that going to Wits was somehow a huge disillusionment to you in the end because of what you experienced there politically as well, and I wondered whether you could talk about that in terms of it being regarded as sort of a liberal university.

JV Ya, you know, I just found that...many of my colleagues who were English liberals were not so strongly committed in their criticism of the South African government. You know if you want to put it cynically, I had the impression that they talked against apartheid but thank god for it, because it secured very comfortable living. And quite often when we were in a conversation they would say, well, you know, we are academics, we're not politicians. That did change over years, especially when we ended up in a financial crisis in the 1980s, mid 1980s, when Citi Bank wouldn't turn over short term South African loans, so they had to be repaid, overstocked the international market, the rand plunged down, and then suddenly people sat back when it hit their pockets to say, what the hell is going on this country? And then you had much more outspoken criticism from a much broader field. But even in the university Senate there was not always as strong a stand as I think they should have. I know that the government at one stage threatened to withdraw university subsidies, or limit the subsidies if we do not discipline all these outspoken critics of the South African government. From some universities there was a strong reaction, from Natal University for example, to say that we'll take you to court and this will be illegal, etc, and the Wits Senate didn't really want to take a decision on it. And my impression was that before (F.W.) de Klerk made the statement, he had a conversation with the rector or the president of Wits University, and he was sort of quashing the debate in the Senate. And I thought, you know, that that was the time when the university should really have stood up and made its voice heard, as Natal University did, but Wits would not. And so...you know, many South Africans had turned a blind eye to what was going on in the rest of the world, you know, they live in this little secure environment and they know we don't support the government, largely because it's predominantly Afrikaans speaking, but the policies of the government was not always confronted with that kind of vigour that I thought it should have been, on the part of faculty. Students were always...there was always a very strong politicised student body that didn't take kindly to government policies.

Int Johan, you also mentioned, when you arrived at Wits you started teaching aspects of public interest law, and around 1978 the LRC, the Legal Resources Centre, had started. I'm wondering what your association was with the Legal Resources Centre at the time when you were at Wits, if any, because from what I can understand Felicia Kentridge was also responsible for the clinic that was run.

JV Ya, that's right, ya. You know, it's always difficult to...because there were so many organisations that were functioning at the time, and we'll talk about Lawyers for Human Rights in a little while. I was well aware and there was a kind of an overlap of the personnel of the people that were in this organisation or that organisation. So you had the Centre for Advanced Legal Studies of John Dugard. You had the Legal Resources Centre that was really initiated by Arthur Chaskalson. You had the Lawyers for Human Rights in which I played a more important role or part, a more influential part. And all of us were doing things...the one that distinctly comes to mind and I think this was an initiative of the Legal Resources Centre, was at a certain stage we provided legal defence for Africans that were arrested under the Pass Laws. And that caused the whole system to break down. The whole influx control legislation broke down because our strategy was simply to waste time in court. So if people are arrested on the Friday and brought to court on a Monday, they dealt with so many of these cases per minute, to exaggerate slightly. But if you are a good counsel and you defend those guys, you can draw the case out for three days. And so we disrupted the entire criminal justice system in the Magistrate's Court of Johannesburg. And I think these defences were initiated by the Legal Resources Centre but we made ourselves available and I acted in some of those cases for indigent...we don't do it for money, and the main purpose was just to drag the case out so that the system cannot handle it. And so the government then decided in consequence of that to no longer prosecute people for the violation of the influx control laws. And so the whole system of segregation in the cities collapsed as in consequence of that.

Int And you're talking about quite the early eighties that was the Rikhoto case and the Komani case, they were those key test cases.

JV Ya, you see, Arthur Chaskalson's philosophy was to take on a case entirely because a principle need to be established, a precedent need to be set. And so they would select the cases on the basis of litigating it, and did that very successfully in order to get a principle become part of our law precedent, of our judgment law. And something that I must also just mention is that the judiciary on the whole in South Africa, with a few exceptions, whether Afrikaans or English, whether government supporting or not, always tended to give judgment in favour of liberty, in *favorem libertatis*. So if there's any scope in any legislation, however harsh the wording might be, in which you could give it a more humane slant, then our judges would prefer that humane slant. Something that goes far back into history in 1926, there was a judgment of our courts that decided that a black woman was not a person. And that sounds horrible, doesn't it? But it was a judgment based on justice. Because up till that time the influx control legislation only applied to black males. And the government decided they're also going to extend it to black women. And so the word that they used in the law was every black person has to carry a reference book. And when the matter was tested in the court, the court decided that extending this rule, which is so absolutely unjust, to also now include another category of people using a word like person, is not good enough. The government if they wanted to impose this injustice on a further section of the community they should use more clearer language. So this is just an interesting example of what on the face of it seems to be a male chauvinist bad judgment, was actually one based on justice. And so I think the obligation of women to carry the passbook, the reference book, was only enacted in the 1950s, many years...but this



was in the 1920s, which was the first rule of the National Party. And so the courts were always finding the more just solution. And Judge Didcott of Natal, who was also on the Constitutional Court but passed away relatively early, he never ever gave a judgment in favour of the government. Doesn't matter what the law said, he would always find a loophole. And that's why he was actually, in a sense, compensated for that by being appointed to the Constitutional Court to reward him for that very strong stand that he took in the Natal Supreme Court. You know, it doesn't matter what the law says, he would find a way of just not giving the government what they wanted. So that kind of judges were perhaps...Didcott was an extreme example of this, but even amongst Afrikaans judges, you know, they would always try to soften up these harsh laws as much as the language used would permit them to do so, and sometimes even ignoring the language. And so South Africa always had a strong legal tradition and again I want to say there are exceptions to what I'm now saying, but by and large the general trend was to uphold the principles of justice because the South African common law, Roman Dutch law, is notorious for its basic justice. And so when you started imposing legislation that was so clearly unjust that was also...brought a conflict within the legal system as such. And so in any case Arthur Chaskalson, then through the legal Resources Centre, picked the cases in order to get judgments of this kind on the statute book that would take away some of the harshnesses of the laws as intended by the legislature. But the courts could always find a way of getting past that to some extent.

Int Just to piggyback on that and you've sort of pre-empted some of this, I'm wondering if, as they say, Parliament was supreme, why do you think that these legal victories that the LRC actually garnered quite early on during the eighties in terms of the Pass Laws, why weren't they overturned? They could have easily been overturned by Parliament, but they weren't.

JV You know, I think at that stage maybe...I believe that the National Party decided already in 1974 that apartheid is not going to work and must be replaced. And what changed the mind within the National Party behind the scenes official thinking was the Erika Theron Commission Report. Erika Theron was a professor at Stellenbosch appointed to look into the position of the Cape Coloureds. And she was chosen, of course, because she was also brought up in an apartheid kind of mindset. But when she began to investigate, she developed a tremendous compassion to that community. And she eventually decided that the coloured community must be absorbed into the white community, that the differentiation between coloured and white must be scrapped. By then the government had already, in 1971, allowed the first, in sport, toned down the segregation in sport. They had the first track meeting where blacks and whites were competing against each other. So the sports boycott was very effective in making the National Party think twice about what they were doing, and their self-righteousness was challenged because sports, as you know, especially with rugby, is a religion in South Africa. And so when the sports boycott culminated in the late 1960s, there were two events that really gave that international movement great stimulus. There was an Indian guy in Natal, "Papwa" (Sewsunker) Sewgolum, who won golf championship, and when he was receiving his trophy, he wasn't allowed in the club building – and by the way, that had nothing to do with apartheid, that had a bit of British snobbery, because the Durban country club didn't even allow Jews in their club-room. And then so, "Papwa" (Sewsunker) Sewgolum was given the trophy

through a window, and at that time there was a downpour of rain, and he stood there soaking wet receiving his trophy. And that picture didn't look well in the newspapers of the world. But more or less the same time there was a guy with the name of Basil D'Oliveira, who was a great cricket player, he was a Cape Coloured. And because he couldn't play cricket for South Africa because he was coloured, he went to England. And he played for the MCC, for the British cricket club. But at that time it was kind of a gentleman's agreement of foreign countries when they send teams to South Africa, not to include people of colour. You know, that was just a kind of comity gesture. I think New Zealand at some times had Maoris in their team but they could have been mistaken for white from a distance, you know, sort of thing. So Basil D'Oliveira, there was a cricket tour for South Africa, of the MCC, and they omitted Basil D'Oliveira from their team because he was coloured, even though he was a regular player for the MCC. And so one of the other players in the team objected to this, and he then withdrew from the team so that Basil D'Oliveira can be included. When this hit the headlines, the South African government cancelled that tour of the MCC. So if you are going to use your tour for political purposes they said...but what they were really saying, if you are going to include a coloured man in your team, you are not welcome in South Africa. And those two incidents which occurred for the first time gave the sports boycott against South Africa clout. And after that, you know, then the government started in a very 'feebish' kind of way to try to regain international recognition for our international teams by making this little concession and that little concession, and those were the first cracks in the wall of complete segregation. I always say it says something of the South African mentality that what brought the cracks in South Africa was sport. What brought the cracks in the United States was education. And then the government gave trade union rights to Africans. And from a government perspective that was very stupid because if you give people who don't have the right to vote, trade union rights, they are going to strike for political purposes and not labour related issues. And even today the ANC government has great problems with trade unions to teach them that things have changed, you don't need to use labour action, industrial action, for political purposes. But that has become so part of the mindset of the trade unionist that to break that down is very difficult. So this is a long story, to say that the government had decided, I think, that apartheid is not going to work. So they began to make concessions, little step by step, and every bit of concession did not please the repressed population but made them more active. So from the government perspective that set a wheel rolling which they couldn't stop. So why did the government then not just abandon it? And I think the answer to that is they didn't have the leadership because if you had advocated from the pulpit that apartheid is God's will, how are you suddenly going to back to the people and say, well God has now changed his mind. And they didn't know how to do it, until FW de Klerk, on the 20<sup>th</sup> of February of 1990, took the bold step of saying, this is it, we're going to free all political prisoners, we're abandoning apartheid, etc. And that leadership, PW Botha didn't have that guts. And, you know, he sort of set it in motion, started talking about freeing (Nelson) Mandela, but he put it all under all kinds of conditions, he said to (Nelson) Mandela, we will release you on condition that you renounce violence, and (Nelson) Mandela said to him, but we're not the violent persons, you are, you have to denounce it, and then you can release me. And so, you know, (P.W.) Botha just didn't have the guts for it. He didn't have the intellect for it, and so that is perhaps why the government didn't respond because these court judgments were also part of dismantling a system which they had themselves began to realise is not going to work. And in that sense these judgments

were conducive to what was going on in the inner circles. Remember there was a big split in the National Party in the late 1960s, beginning of 1970s, because of these concessions. You know, when Andries Treurnicht broke away and founded a right wing white party in protest against the dismantling of...it was actually Albert Hertzog who broke away and was later succeeded by Andries Treurnicht. And so they reacted against these concessions that started at those times, in consequence mainly of the sudden escalation and success of the international sports boycott.

Int Right, interesting.

JV And so...this might not be the correct answer but this is how I perceive might be why the government did not respond to these judgments that sort of tried to restore justice within the system and do away with some of the harsh laws.

Int That's certainly an interesting perspective. I'm wondering, in terms of the Lawyers for Human Rights, at what point did that start and how did you become involved?

JV Ya, well, I must tell you a long fairytale about this. What I'm telling you now is not commonly known but this is really the truth. I went to the International Institute of Human Rights in Strasbourg in 1974. And the Director there was a guy, Karel Vasak, who I admired tremendously and he liked me because he invited me back to teach there, actually in '75 but I couldn't go, but I eventually went back in 1976. So that's sort of my contact. And by the way, my post at Emory was meeting on that occasion Tom Buergenthal, who was my predecessor, and invited me to Emory and I eventually succeeded him in the I.T. Cohen chair, that's another story. Karel Vasak, at those occasions, used to tell us about the intra-American system of human rights protection, which was a sort of new evolving thing after the European system had been in operation for so many years. And one of the things that he said to me, was that what he admired of the American system is that they sometimes hold sessions within the country that is under investigation. And the mere fact that the commission or the court would sit...or the commission would sit in that country, has a certain reformatory effect on whatever was the violation of human rights that recurred, because if you have the commission right there on your territory, that has a better influence than giving a judgment from countries away. And so I said to him, well then in that case maybe we should have a conference in South Africa on apartheid, on the whole thing of human rights...a human rights conference in South Africa. And he then just laughed. So after I taught in Strasbourg, I also went in 1976, came to the United States, as a guest of the State Department by the way. That was the Bicentennial year. And so I was one of those people that were invited and travelled through the country for such a period at the American taxpayer's expense. And one day I was in New York and I was walking down 43 and 3<sup>rd</sup> Avenue...Street, and it was a bit chilly, and I walked past a building and I saw it was the Ford Foundation.

Int Third Avenue, yes.

JV So I walked into the building, walked up the stairs, and there was a gentleman that came to me and said, can I help you? And I said to him, yes, I want money to hold a

human rights conference in South Africa. He looked at me, he said, I think we can arrange that. And he called me to his office. And so we talked about this, and I told him that, you know, I think it would be wonderful for eventual reform if we could have such a conference, an international conference on human rights in South Africa. And he then said to me a few things that they will sponsor that on a few conditions. First of all they want a co-sponsor. Secondly they would want to have some say in the people that we invite. And thirdly they can't give me the money, I have to get some organisation to sponsor this. And so I said, well, I could get the South African Society of Law Teachers, of which I was the president. And he said, but they would like some professional bodies as well. So I said, this can all be arranged, but where do I find a co-sponsor? So he said, you know, the offices of the Carnegie Corporation is just around the corner here in 5<sup>th</sup> Avenue, why don't you go and talk to them. And I'm sure that in those few minutes that I walked around the corner, he had already called them because I could see that I was actually expected there. And so within a matter of an hour I got the money...the promise of the money. And then I had to act, so I came to the Society of Law Teachers...South African Society of Teachers of Law, and asked them if they would sponsor them. And they kind of grumpily said yes. But, you know, I could see there was no great enthusiasm. And then I had to get the Law Society, so I contacted the four law societies of Natal, Free State, Cape, Transvaal. And the Natal and the Cape law societies said they want to be involved. Free State and Transvaal said they want nothing to do with it. So the conference was then sponsored by the South African Society of Law Teachers, the Law Society of Natal, and the Law Society of the Cape of Good Hope. But then we had to do the organisation and so then I went to John Dugard because I didn't know the people, because I was sitting in Potchefstroom. And so John put together a list of names and we set up an organising committee, which included George Bizos, Arthur Chaskalson, Ismail Mohammed, you name them, all those big guns in Johannesburg whom John (Dugard) had known. And I must immediately say, without his help I would not have been able to do that, so I chaired that committee. And what I also insisted on was that the conference be held in Cape Town. Because I always believed if you want to show off South Africa to foreigners you take them to Cape Town. And Barry Dean, who I think was the Dean at the time, whom I knew, and so we organised with Cape Town that they will do the local organisation, and our committee, which is that kind of largely Johannesburg based group, will look at the agenda and who to invite. And lots of the participants from overseas were selected by me in consultation with the people at Ford Foundation. For example, I had been to Columbia University, and so Professor Lou Henkin was a clear choice. I'm always very bad in remembering names very quickly but the guy who later became...who was...a big shot with Brown versus the Board of Education, he was leader of the legal team...

Int Jack Greenberg?

JV Jack Greenberg. And Professor Walter Gellhorn, whom I got to know very well, they were all on the agenda. And I also tried to include...there were at one stage, to my mind, too many Americans, so I was looking for some people from other countries, and I had a colleague who had done studies in Germany, so we invited Professor Dury of the University of Heidelberg, and so in any case we got together a bunch of very supreme international participants. And the way in which the conference was conducted was that the main talk will be given by a foreign professor and then there



will be a group of South Africans who would then have a round table discussion based on the speech of the international participant. And the purpose of that was largely to apply what the international speaker had said to the South African scenario. And it was a wonderful, great, great success. And at that time, you know, the word human rights was not very familiar in South Africa.

Int So this was nineteen seventy...?

JV This was in 1979 the conference was eventually held. My initial getting the funding and so on, my discussion with the guy in the Ford Foundation was '76...when I was, you know...at that time. And then it took some time of course to get all these things that I...to get the sponsors in South Africa. Because they made it quite clear they can't give me the money. And so I had to go to the Society of Law Teachers and the different law societies and eventually got those three to co-host it, and the University of Cape Town did all the local authorities, and you know, there was lots of drama because our overseas participants, about a few weeks before the conference was due to start, still couldn't get visas. And then Barry Dean once came to me and said, we'll have to cancel this. And I said, let's call their bluff. And we called their bluff and at the last minute they did get their visas and they could come but...it was part of the government tactic to try to get us to cancel it by doing that. And I can again tell you long stories: the guy who was head of the Law Society in the Free State, invited me down to Bloemfontein, and he offered me a very influential job, which he didn't specify, if I would cancel this conference. I said to him, you know, no longer in my hands. And I wasn't interested in his job in any case. So they even went to that trouble of trying to get this thing cancelled. And they approached Pik Botha, who was at that time the Foreign Minister, to get him to cancel it. And I had a discussion with Pik Botha in which he hummed and hawed about this whole thing but he didn't want to stick his neck out and cancel it. So there was lots of efforts to try to prevent this thing from happening. And which was also a big drama is we had this conference there up in the hills of Cape Town, Bishops Court, and we lived in a wonderful residence that belonged to one of the oil companies, and that was their contribution to make this facility available. And some of the participants then asked, they wanted to go into the townships. And I then organised this trip for those who were interested, to go into the townships to see the other part of South Africa. And the next day a colleague of mine from Potchefstroom, and his wife, in Afrikaans, made a tremendous outburst about the insensitivity of me taking these people to the coloured townships to make them think this is what South Africa looked like. And these foreign professors, they didn't understand a word he was saying, but I remember Arthur Chaskalson at the time, saying it's good that Fanie Jacobs had spoken out, because of course this was relayed to our foreign visitors what he and his wife had been saying. And so that they can also see that there's also tension within the academic community of South Africa. And that was just one kind of negative part of it. And otherwise I think it was a great...and then the idea of having an organisation was not my idea. But people like Arthur Chaskalson then said, you know, this wonderful work that we've done have to be perpetuated. And so it was decided to establish an organisation, and Arthur Chaskalson also said, and I didn't take offence to this, that they should get someone who is in legal practice to chair it rather than an academic. And so they decided on Johann Kriegler. And the question was what to call this organisation. And the name Lawyers for Human Rights was then...Johann Kriegler's suggestion. And so the

organisation was then established. I was on the board but I wasn't the president of it, Johann Kriegler was. I found that it wasn't functioning as I would have liked it to function, you know, because people who were on the board, they all had other things to do, you know, they're busy in practice and so on. I think it might have been more successful in the beginning if they'd put it in academic hands because we professors have more time on our hands than practitioners. But be that as it might, the organisation was established and it functioned...

Int So this was 1980 ...?

JV Ya, 1980 more or less, because the conference was in '79. And then I strongly believed that we should...if we could get a publication out...but the board did decide that we must not accept any international funding for it, outside funding, because then the government could say, whatever criticism is in this publication would be sponsored by outside influences.

Int But Lawyers for Human Rights itself was funded internationally.

JV It was funded internationally. From Ford Foundation and Carnegie Corporation were the funders of that. And so...but I always thought a publication keeps an organisation going because at least then you do something and you write and so on. And then one day by coincidence I was talking to a member of the American Consulate in Pretoria, whom I happen to know, it was a woman and I was visiting in her apartment, and she was saying that they are coming to the end of their financial year...Johann Kriegler had then already been succeeded as president of Lawyers for Human Rights by...what's his name...his wife was a medical professor at Wits...these names haven't been in my mind for quite a long time...I'll think of his name just now...but in any case so, she said that they are coming to the end of the financial year and they have money to spend and they haven't spent it all, if I have any ideas, you know, to whom they can give the money. I said, why don't you give me the money to start a journal on human rights? And so she said, that's a good idea. So I said, just before we confirm it...so I phoned the President and I said to him, I can get money from the American government for a journal on human rights, must I accept it? And he said, accept it, I will take full responsibility. That was in view of the earlier decision not to take international funding. And so I went back to her and said, yes, we'll love to have the money. And so they provided the seed money, and the journal was a journal of Lawyers for Human Rights. But then John Dugard hijacked it (*laughs*) for the Centre for Applied Legal Studies, and it became an official journal of the Centre. And I didn't mind that because again, Lawyers for Human Rights didn't have the infrastructure to administer a journal as an academic institution could. And I was overseas at the time and when I came back John (Dugard) just told me that they have taken over the South African Journal on Human Rights. And so, you know, I think he was chairman of the editorial board and I was on the editorial board and so on. And I didn't mind that because the success of the journal...and the journal soon could pay for itself. So the seed money that we got from the United States government lasted for a few years and then...I can't tell you exactly how long, but eventually we didn't need that anymore, because the journal could pay for itself. And so the journal today is still

a good journal, very Wits based, but it became a journal of the Centre for Applied Legal Studies.

Int Johan, in terms of the fact that CALS started 1978, or thereabouts, Legal Resources Centre started in early 1979, and then of course Lawyers for Human Rights in 1980 thereabouts, and I'm wondering, given the political and the legal landscape, how did these three organisations somehow function together? Were there clear mandates? Was the relationship overlapping? Were people overlapping, it seems?

JV Ya, people were overlapping. And, you know, I think...I don't think there was any tension between them because they were doing the same sort of thing, each one in a different kind of way. Arthur Chaskalson was more the Legal Resources Centre, more in getting precedents on the judgments of the South African supreme courts that deals with...that could undue some of the harshnesses of the apartheid system. Lawyers for Human Rights was largely an organisation that sensitised people within the legal profession of human rights values at a time when this was not done...and let me just tell you, Judge (Michael) Corbett who later became Chief Justice of South Africa, spoke at the Cape Town conference, and in his speech said that maybe South Africa should think of getting a Bill of Rights. He was reprimanded, they said, how can the judge...he was then not Chief Justice...how could a judge of this court say something so irresponsible! So it just shows you how things have changed. At that time there was a tremendous negative view. And coming back to Potchefstroom, you know, the idea of human rights was regarded by the Calvinist movement, and also by the Roman Catholic Church by the way, as an invention of the devil himself. Because it glorifies the human being and doesn't recognise the glory of God sort of thing. And my thesis was largely focused upon showing that the principle of human rights is compatible with basic Calvinistic principles. And there was a guy in the Netherlands with the name of de Gaay Fortman at the Free University, which is sort of the equivalent university of Potchefstroom in the Netherlands, and he at that more or less same time also became a champion of the human rights ideology. He's now a professor in Utrecht. And I was sort of the lone voice, at least in the Calvinist community in South Africa. The only one that advocated the idea, taught it to my students at a Calvinist University, and showing them that there's not an incompatibility, that the basic norms...and the Roman Catholic Church only began to find peace with human rights after the second Vatican of 1965. Before that they were also a bit uncomfortable with the idea because it came from liberal philosophy which was not favourably disposed. You know, it's also an interesting theme in its own right, how religions oppose new ideas. They sort of get onto the bandwagon after the event. When I first came to Emory, the first time I visited here, we had a conference on Christianity and democracy. And the purpose of that conference I think was to show them that Christians discovered democracy. And my contribution always being the odd man out, was to say more or less that democracy developed not because of Christianity but in spite of it. Because when it was something new they opposed it. And the same with the human rights ideology. And then the interesting thing that you find, after the event, when it becomes more universally recognised, the church will get onto the bandwagon and try to persuade you that they actually fathered the idea. So even, with respect, in your Muslim community, there is a body of opinion that says, well if you want to know about human rights, read the Koran. That's where that all started. And John Witte, my colleague, wrote a book to say it all comes from John Calvin. And I

say that's all a bunch of crap. It came from John Locke. And so...there were certain premises of the human rights ideology that you can find way, way back in Greek philosophy, I'm sure you'll find passages in the bible and the Koran, but the whole philosophy of those early writers on religion was not human rights. And so...you know, that is just an interesting phenomenon that always interests me is that new ideas are opposed by the mainstream religions up to a point, then they begin to adopt it and try to persuade you they actually invented it. Which is not always true. But my big contribution, and I was frontline news in South Africa for at least three Sundays in a row when my thesis was published. And I must also just tell you this little personal anecdote: A woman who was an acquaintance of my parents-in-law in Pretoria – her husband was an ophthalmic surgeon, my father-in-law was an ophthalmic surgeon – she phoned me up and asked if she could get a copy of my thesis. And I felt so flattered, although I only printed twenty-five, to send her a copy. And then I learnt that she got it for the Security Police.

Int      Interesting...

JV      And then I went back to her and said, I want it back. Now I'm always amused by this because...especially the introductory chapters are written in very highbrow, philosophical language, which the man in the street won't just digest, and I often wondered what these policemen thought when they started paging through this document, not understanding a word they were reading. And that's why they also just gave it back to her and said, well, give it back. And that's also part of it. And then, you know, it was for someone in the Afrikaans community, from Potchefstroom University, to write a PhD thesis, you know, supportive of human rights. And maybe I might just also mention this to you, when I chose this subject as a theme for my PhD thesis, I did it with the purpose of showing that it's all wrong, that this is all bad. And then...

Int      Do you mean human rights as being all bad?

JV      Human rights, ya, that's right, because that was sort of how I was indoctrinated in those early days in Potchefstroom that this is a humanistic thing, and this is incompatible with Calvinistic teaching, and so I thought this might be a good theme to show the world that you have it all wrong. And then I came to the United States in 1971 to do part of my research. And after a week at Columbia University, I threw everything that I'd written in the wastepaper basket. Because when I became acquainted with the American system where they put the philosophy into practice, I became a convert just like this, and Professor Lou Henkin of Columbia had a great influence on me in this regard. He doesn't know this, but it's true. And because we had long discussions...do you know Professor Lou Henkin?

Int      I've heard of him.

JV      He's now already a very elderly man but he was a very highly respected, and a great human rights scholar. There's some of his books on my shelf here. And so we had long discussions, and I realised that I was just totally on the wrong track. And so the



first volume of my thesis deals with the theory, the philosophical development through the ages, and then the second volume looks at the implementation of that philosophy in the United States, the United Kingdom and in South Africa. Of course being very critical of South Africa by not complying with the demands. And another thing which just might be of interest to you, one of my findings were that in the United States where you are legally compelled by the Constitution to uphold human right principle, in England where there's no such statute on the books, the maintaining human right principles in the United Kingdom has a much better record than in the United States. So here where the law tries to force you to do it, the whole history of human rights in America is attempts to kind of sidestep it. And in the United Kingdom, and my diagnosis that that what makes the difference is that the sense of propriety in the English mind is based on a very deep tradition. It's not imposed by a statute or by a Constitution, it's a tradition. And there's certain things that an Englishman just won't do because it won't be cricket. It won't be proper. Whereas in the United States you don't have that sense of propriety, although you have a legal system that tries to force you into that mindset, and so this is just one of the themes that I explored in my thesis way back in early 1970s. But coming to the United States had a great influence in also cultivating at that time when I was already a strong critic of what was happening in South Africa, but then to also then become a convert to the human rights ideology, and I've since then been a scholar of human rights.

Int Johan, in terms of your association with the Lawyers for Human Rights, how long did that continue and what were some of the possible difficulties that were encountered along the way, particularly during the 1980s? I mean, you were operating in a very harsh environment, intense repression, also intense resistance, I'm wondering if you could talk a bit about that. (If you'd like to take a break we could do that).

JV No, it's fine. I was mostly, in my own mind, slightly critical of Lawyers for Human Rights because of its inaction. I think there was so much more that they could do. I know later some branches were set up in different parts of the country, you know, in Pietermaritzburg and some other places, where I'm sure they are doing good work, but in those initial years when I was sort of involved with it, it was always a bit of frustration, we have these meetings and we talk, and that's why I worked towards getting a publication out then at least we've got something to show the world. And it's not because of lack of goodwill or commitment. It's just that the people that were in charge were mostly legal practitioners. They had other things on their minds. So that we had meetings and discussions and there was a conference that was held, also on my proposal, in ten years after the first conference, and that was also held in Stellenbosch, and I also participated in that. But that was not a patch on the Cape Town conference, the Stellenbosch conference. Because again it was organised by people who are in legal practice and they brought together a bunch of people and there were a few international participants, but it wasn't the big deal that we had in 1979, and I'd actually hoped that we could repeat the 1979 thing. And I think that's largely because of the leadership which was partly...or exclusively because those people had other things, you know, it's something that is more...can be better dealt with from an academic platform. And that's why the taking over of the journal by John's (Dugard) institute at Wits I didn't oppose because that really made something of the journal. While it was in the hands of people that were full-time in practice it was kind of not so good. But John (Dugard) had the infrastructure to set up a proper

editorial board, mostly Wits based, that could bring out a journal that did really offer very high standing quality. And so it's largely a question of...and those days, today I've lost a bit of contact now and I don't know how Lawyers for Human Rights are doing now but I know that when they started having different branches in different parts of the world, I think some of those branches did better work in dealing with the issues...

Int From what I can understand, the Legal Resources Centre during the 1980s had quite a close relationship with Black Sash, for example...

JV Ya.

Int I'm wondering whether the Lawyers for Human Rights had a close relationship with Legal Resources Centre in terms of whether there were referrals, whether there were issues, that if one felt that could actually be taken further in terms of litigation, how that may have played itself out?

JV Ya, it sounds as though I'd like to say yes, but I'm not sure that that would be an accurate answer. I don't think that...each one did what it thought was the right thing to do and there was overlap, as I said, of personnel and interests, so that they weren't in opposition to one another. But the achievement of the Legal Resources Centre stands out because that was a well structured organisation of lawyers that were very dedicated and were giving up lucrative practices in order to work for a cause, to become...and for which you must admire them tremendously. And they drew some...Arthur Chaskalson drew some of the top Johannesburg advocates to work for the Legal Resources Centre. To give up their private practice and work for the Legal Resources Centre. And I always had great admiration for those people.

Int Do you know any of them?

JV One name that always comes to mind is...I'm very bad, if you ask me somebody's name very quickly, it will come back when I don't think of it...he was recently overlooked for promotion to become a judge.

Int Geoff Budlender?

JV Geoff Budlender, exactly. Geoff Budlender worked very, very hard in the Legal Resources Centre. He's a top, top scholar and brain and a good advocate. I don't think Gilbert Marcus was ever in the Legal Resources Centre...

Int He was at CALS.

JV Ya, I know he was at CALS but...and then he went into full-time practice and I see his name quite often in big cases.

Int Yes, exactly, I have interviewed him. I'm wondering Johan...so when change was on the cusp, the late 1980s, early 1990s, as a law professor at Wits, what did you think would be the core issues that public interest law organisations would have to start to deal with, for example, Legal Resources Centre had sort of spent its time during the eighties fighting apartheid legislation, now that that was dying out, what did you think were going to be the kind of core areas at that point?

JV Ya, let me just sidestep your question slightly just to tell you something else that you might not know. In 1986 (Frederick) van Zyl Slabbert, who had established IDASA, got a group of young, white South Africans to go to the Ivory Coast to meet with the ANC in exile. Do you know about that?

Int I've heard of this.

JV (Frederick) Van Zyl Slabbert had left politics knowing that you're not going to solve South Africa's problem through the democratic process. And so he established IDASA. And he then took this group of people just to meet with the ANC and talk to them. Now I was not part of that group because I was in the United States in 1986. I had a sabbatical and was here. But the lawyers that were in that group that went to the Ivory Coast, decided that the lawyers within the group, and the lawyers influence in the law in the ANC should set up a little sub committee to talk about the Constitution. And I was then involved in that group. So we met with the ANC in exile, and that in itself was a wonderful experience. Not once but several times. We mostly met in Harare, but once it was in New York, once it was in Washington DC, that we had sort of joint functions. And the participants from the South African side of the lawyers were largely Afrikaans speaking, but including Edwin Cameron, who is also, you might know, Afrikaans speaking, but he's perfectly bilingual. He's almost better in English now than in Afrikaans, but still very perfect in Afrikaans. And so it was...I think, (Frederick) van Zyl Slabbert's thinking was that the people in the white community that needs conversion are the Afrikaans speaking people, so he took from the academic world, people like myself and people from Pretoria University and so on. So we met with the ANC and it was an interesting experience because in the first period of these meetings there was a kind of tension that people tried to hide by being over nice, you know, hugging and being a bit too soppy. Because they looked upon us as a bunch of white racists and we looked upon them as a bunch of black terrorists. Although Albie Sachs was also part of them, they were not all black. And so...but then we had a few heated arguments about terrorism, for example. You know, the Pretoria car bomb that had occurred and this or that, and we had some very heated encounters. And that normalised the relationship, once you have really shown what you really think. And what else was very conducive to creating a very tight relationship...by the way that's where I got to know Thabo Mbeki very well because he was also part of that group. And so...we were mostly entertained by the Cuban ambassador, who served a brew that sometimes made us slightly drunk. That too was very useful. That too created confidence and friendships. So much so that one of those participants, Penuell Maduna, who later became Minister of Justice, asked me if he can do a Master's degree under my leadership. And Penuell's (Maduna's) thesis is also on my shelf here. And it took some doing because we had a resident requirement

but he was then still in exile, but Wits then decided to permit it in the circumstances and he did his Master's degree under me. And that is through the friendships that we created at those meetings. And I think that those meetings had a great impact even on the government deciding that it's now time for negotiations. Because I knew that my telephone was tapped. I made a point in every telephone conversation that I had, was that I think I met with the ANC guys this past weekend in Harare and I think they're right for negotiations. I made that point.

Int And were you not concerned about repercussions?

JV Well, at that time, of course, meeting with the ANC was illegal, it was a punishable offence. But I had the impression, and quite correctly, that the government couldn't afford to prosecute us. So the best they could do was just to ignore it. But I made a point of getting some information through the telephone that I hoped would fall upon the right ears in government circles. And so...I can tell you again long stories about that: when we started our discussions the ANC was dead opposed against the Bill of Rights.

Int On what basis?

JV Their argument was, why would you white guys govern us without those constraints and now that you're going to get a black government you want those constraints? And then it didn't take much convincing to convince the ANC that it's actually a good idea. And I might tell you that Albie Sachs actually wrote a little piece in which he said that the Bill of Rights is okay, but should be overridden by the will of the people, so if the will of the people want something...and I don't think Albie (Sachs) wants that to be published these days but that was his view at the time. Bill of Rights is okay, but the will of the people is supreme. And if the will of the people goes against the Bill of Rights then that law would be lawful. I think he changed his views since then. Then the question arose, well, how do you go about it? And I take a bit of personal credit of saying to the ANC guys, why don't you do what you did with the Freedom Charter of 1955, and that is, go to the people and ask them what makes them unhappy, and then you guarantee the absence of that cause of grievance in the new South Africa. And the ANC did that. They drafted the best Bill of Rights that I've ever seen but never, ever presented their own draft to the Constitutional Assembly. I asked Penuell Maduna, why didn't you do that? And he said, well, the Interim Constitution will still be enacted by the apartheid government and we don't want it to look too good. But wait for the final Constitution. And I said to him, Penuell (Maduna), the final Constitution is going to be patchwork of the Interim Constitution. And that's exactly what happened. So that the ANC's Bill of Rights, which was so South African...you know, my big complaint about Bills of Rights, is that it's not sufficiently domesticated, it doesn't deal sufficiently with the problems...you know, the whole Bill of Rights history of Africa was superimposed Constitutions on a pre-colonised...and so that's why, as the saying goes, those Constitutions were not worth the paper it was written on because it was the European Convention on Human Rights informs the Bills of Rights that the British put in their colonies. The first African Constitution that was negotiated by the people themselves is the one of Namibia. And the second one was the one of South Africa. And part of my criticism of the South



African Constitution was that it's not sufficiently indigenised. It could have also been the Constitution of any country. But the Constitutional Court remedied that defect by saying, if you want to know what is an open and democratic society based on human dignity, equality and freedom, you look at the phrase but you also look over your shoulder to what happened in the past. And everything that is past of the apartheid system is incompatible with such a society. And so in that way, in their interpretation of the Bill of Rights provisions, they gave it a South African flavour, if you understand what I'm saying. And so now the implementation of the Constitution is pretty good. If you talk about where are we going from here, just talking on the Bill of Rights issues as such, we have one of the best Constitutional Courts with one of the best records of jurisprudence in the world today. But how does that filter through to the people on the ground? We have traditions within some tribal communities in South Africa, that are highly inappropriate from a perspective of the Bill of Rights. The Constitutional Court may give judgments to say that this particular practice is unconstitutional. And those communities say, who the hell are you to tell me? You can make as many laws and many judgments, these are our ways of doing it. And I had a student who wrote an essay, which is now going to be published, on the new Children's Act in South Africa, which addresses things like male circumcision, female proof of virginity, and some of those practices, to try to bring them into conformity with principles of the Constitution. The African communities, some of them have been defiant of that new law. And so...I also wrote a piece that will be published soon on comparing the juvenile criminal justice system of South Africa with that of the United States. And the South African system is absolutely, if you look at the judgments of the court, is supreme in conformity with international law standards. The American system of juvenile justice is absolutely disgusting. You know that in the United States they send a fourteen year old kid to prison for a hundred years. We don't do that. But the bottom line is, if you now ask these wonderful judgments of our court, dealing with juvenile justice, how does that filter through to the rank and file of people on the ground? It's not such a good picture. And the, in theory, the Bills of Rights can be classified into two categories from a certain perspective. The one that grows from the bottom up, where you include in your Bill of Rights what is already the ethos of the people, and others that are imposed from the top down. That is where you have clever professors who draft a wise document that has great international esteem but with little sensitivity to the practices that are happening. And so for the top down Bill of Rights, which applies to all post colonial African Constitutions, and to the South African scenario, it is still a long, long way before these principles are going to filter through to the day to day living of large sections of the South African community. And the big question that we address at the Carter Centre...you know, Jimmy Carter has a programme in Africa, and he has one in Liberia on promoting the rule of law...and so they had a little meeting with us, with a small group of us: how can we influence some of these tribal practices in Liberia, which are also very unbecoming? And my answer is: you cannot, it must grow from within. If you come from the United States and say I'm a former president of the United States and you must stop this or that, they say, who are you to tell me? And so...then the question is, how do you plant the seed in these communities? And that is a thing that's going to take a lot of time. You know, Justice (Yvonne) Mokgoro, the black woman on the South African Constitution, she in one of her early judgments said that in applying these principles to tribal laws, will have to be done with compassion, and it's going to take a time and...instead of just trying to force it upon

the communities, which will cause a catastrophic reaction. And I agree with her assessment that we must just have a bit of patience.

Int How does that then translate in terms of public interest issues? The Legal Resources Centre, when apartheid ended, it found itself in a very curious position where it had sort of really, kind of, been against apartheid legislation but now it was going to have to then take cases against an ANC government, and it's done so, if you think of the TAC case, for example, Grootboom, and those cases.

JV Mrs Grootboom died recently.

Int Yes, she did...

JV From my interest perspective, and this might not be appropriate for the Legal Resources Centre, but I would like to see much more done in order to try to bring this ethos of human rights within the mindset of the South African people. And I'm not talking only of tribal communities. I'm also talking of white communities. Remember that under the apartheid system, human rights was the enemy of the apartheid government because they denied the human rights. Our privileged position as white South Africans, were secured by a violation of human rights. So when people talk about human rights, there's also a certain antipathy within the white community which is traditionally in the mindset of people. What I always say to the racist, white South Africans, you know, the Bill of Rights is there for your protection. It's no longer...in the past it was for the protection of the black majority but now it's for your protection, you should be all in favour of it. But they find it difficult to change their preconceived idea that this is a bad thing. So the idea of promoting human rights is not only in communities that have a different cultural tradition, that with practices that are incompatible with Bill of Right provisions, it's also within the white community, there's still this antipathy that the Bill of Rights is a bad thing. Not realising that this is really for the protection of all people, including yourself. It puts a limitation on what the government can do to you, as well as to others. And to bring that to bear, you know, the Carter Centre is busy with a big programme, as I said, in Liberia, and I hope that there are human rights organisations in South Africa that would try to find a way of installing this ethos in the mindset of a greater part of the South African population, you know, on both sides of the colour divide.

Int Sure. Johan, this is just purely from your perspective, I realise that it's not something that does have to be set in stone, but I'm wondering, given that in the current context, there are smaller public law organisations that have mushroomed, Aids Legal Project, Women's rights projects, Family Law Centre, I'm wondering, what you think could be the role of the Legal Resources Centre, which continues to practise and is based in the major regional centres? They do very good work and refugee work, for example...

JV They can also continue to mould the South African legal system, because remember that some of these practices need adjudication of the Constitutional Court eventually, to show that it's wrong. And there are such cases that have come before the court, for example, there was one recently where a black woman was the senior person in a

particular tribe there somewhere in the Eastern Transvaal, and because she was a woman she couldn't get it. The Constitutional Court said that's gender discrimination, she must get this job.

Int I think it's the Shilubana case.

JV Ya, that's right, ya. And so that kind of...to sniff out those kind of issues. And I can mention another example, which is now before the Constitutional Court, where the Centre for Child Law of the University of Pretoria, took a matter to the court, not for a client but for a potential client, someone that could be prejudiced by a law that does not take the interest of the child seriously. Because that was a law that imposes...that makes the mandatory sentences for certain crimes applicable to children between the age of sixteen and eighteen. So between sixteen and eighteen, they are still juveniles. And the general principle is that juveniles are not subject to mandatory sentencing. So the University of Pretoria Centre took that to court and the judge, whom I also happen to know as an acting judge, Sulette Potterill, I worked with her in the Department of Justice at one stage, she gave the judgment in which she held that this law is unconstitutional and that now must be confirmed by the Constitutional Court. So there are organisations such as that, you know, they specialise on the rights of the children and I somehow know that they have been litigating different aspects where they find that child law is still not up to the standard of the best interest of the child criterion. And so they are sniffing out these cases and bringing it before the courts to get judgments. And I'm sure that the Legal Resources Centre with its long standing history and very successful achievements could also begin to look at such institutions in South Africa that persisted, which are incompatible with the Bill of Rights, and to bring cases in order to get a court judgment that will direct it away from those practices. Again I want to say that might not change what's happening on the ground but at least it sets a precedent, it makes people think, it makes them talk about it and could then also infiltrate the mindset of people who violate these laws. And so I don't have any particular examples off the cuff but I'm sure that if you...people that work in different branches of the law will always know there's a law on the statute book which ought not to be there from the perspective of human rights principles, and we should change that. And what is interesting of the Pretoria University case is that I said, they did not act for a particular client, they acted for a potential victim of this, and in the public interest. So they had those two...and then they were given standing to bring the case in the court, proceeded with it, that was also quite novel.

Int That's incredible.

JV What is that other young judge's name? The Afrikaans, male judge. He also gave a judgment, on a very good...on children...Judge Bertelsmann. He's also very, very good. So if you can bring cases before his court, you'll get a very, very good judgment.

Int I'm wondering, Johan, I was in South Africa last year and at the time...well, it's been going on for quite a while, but there were some key crises in the judiciary: the Constitutional Court was in a lot of problems, it had been approached by the Judge

President of the Cape Town Court allegedly, and there were other issues about how the judiciary in different parts of the country were in crises and at the time there was also the Zuma case and there were people chanting in the streets, we'll kill for Zuma, as such. I'm wondering, looking at that and your long standing kind of involvement in human rights law, I'm wondering what your concerns are for that kind of...or the lack of a human rights discourse in South Africa.

JV I've got great concerns about that and I think South Africa is going through dark days, and which is going to become darker. I'm not a big Zuma fan. But I can understand why the people love him because he's one of them, he's not as aloof as Thabo Mbeki was. So he toyi-toyi with them in the streets and so they love that. I don't think he has the commitment to Bill of Rights principles that I would like to see of a president of my country. So the Constitutional Court will have to keep a very close watch on legislation that might be forthcoming, and challenge those in a court of law at the earliest opportunity. Because I think the Constitutional Court is powerful and can withstand government pressures if they should go against the government. You know, there are some countries where courts of law don't like to do that. There was a time in South Africa's history where even some liberal judgments in the 1950s, you know, with the coloured vote issue, sided with the government because they feared of what the government might do to the court system if they were going to continue to declare Acts of Parliament unconstitutional. And so that might also emerge in South Africa today, but I think the Constitutional Court is pretty strong. We have a very strong judicial tradition in South Africa, that I think we should exploit to the maximum, and just keep a very close eye on acts that the government might take, you know, so that we don't end up the Robert Mugabe style who whenever there's a judgment of the court that he doesn't like, he gets the Constitution amended. And so I hope we don't fall into that pattern. And so one just has to keep your eyes on the ground of what's happening.

Int Well, I'm sort of winding down, but I did want to ask you, one of the things that emerges, even with interviews that I've done, were people...lawyers in the US, is this kind of sense that there was a strange anomaly during apartheid where there was this absolute reverence for the rule of law, and you know, you've alluded to that in terms of the doctrines of Roman Dutch Law, and I wondered how you think that juxtaposes with current rule of law issues in South Africa, for example, the Eastern Cape government, you know, regional government doesn't really comply with court orders and judgments, and what are your concerns about that?

JV Ya, I've got great concerns about that. I can say lots more about it but you know, I think it very unfortunate. And that is again because the ethos is not part of the mindset even of people in high places. When human rights was not part of the mindset of the apartheid government they violated it with a smile and sat in church and felt that they were good Christians for doing that. So a great effort throughout Africa, but in South Africa included, is to get the backing of the people for the ethos of the Constitution, to put it in simple terms. Because again our Bill of Rights provision was superimposed from the top down, and one thing that I'm terribly proud of the South African system, is that it's not based on the will of the people, like the United States, where we the people proclaim, so the courts in the United States, the US Supreme Court, will



reinterpret the Constitution to coincide with what the people want. In the very first case, Arthur Chaskalson said, that was the death penalty case, when evidence was produced to the court that about in excess of eighty percent of South Africans are in favour of the death penalty, he said, we are not here to appease what eighty percent of the population want, we are here to enforce the Constitution. So even the Constitutional Court realises that what the people want and what the law requires, are not in harmony. And if we want to survive, sooner or later you must get the people to think the way the Constitution is thinking. And if...in Africa, if any political leader or groups' position becomes vulnerable, I will not want to vouch for what they will do to regain popularity. And we know Robert Mugabe is a prime example of that. The ANC did not have to be nasty to the people or to the white people or to this section of the population because they were solidly in power. Now that there's a schism in the ANC that might change. And although I think it's good that the ANC will not be so powerful after the next elections, that they will have to think twice before they do things, there's horrible things that you can do in South Africa to gain popularity. One is, for example, to reimpose the death penalty. To be more strict on free choice or pro-life kind of issues. And so I think we will have to keep a very clear view on making sure that the South African public lives up to the standards of the Constitution. That this becomes part of the South African mindset, that people think of a South Africa as one based on a human rights structure, as our Constitution requires, but which not many people in South Africa on the ground appreciate. And so when people's own position becomes a bit vulnerable, always have to find a scapegoat, and I don't know whether (Jacob) Zuma has the intellect or the will to withstand popular pressures. And trying to change the law in order to comply with what the people want. And I hope that we don't go that way and I think we need a very strong judiciary to tell the government that. And you know, this Chief Justice of Cape Town said, that if (Jacob) Zuma becomes President he's going to become Chief Justice sort of thing. I don't know whether that was just a rumour or whether he really said that. So he's presumably in cahoots with (Jacob) Zuma. He's a (Jacob) Zuma favourite. Is he a Zulu, (John) Hlophe?

Int I'm not sure...

JV So these are just things that I have great concerns with. I've always said that South Africa is going through difficult times and going to become worse before it's becoming better. But I've got great optimism for the long term future.

Int That's fantastic.

JV You know, part of our problems are the population escalation, influx of illegal immigrants, which we have to accommodate, you know, there's no way you can keep them out. And so you have high unemployment which becomes worse. You have lack of proper housing, which is becoming worse, even though the government has a wonderful housing programme, it doesn't solve the problem yet, and the end of the problem is not yet in sight. And so people tend to have smaller families if they are more sophisticated and educated, and I think that is important in South Africa that people who are already impoverished should not have such big families, I believe. But

that's something that you're not allowed to say in South Africa because that sounds...big families is part of the tradition of certain people, so...

Int Johan, I've asked you a range of questions, perhaps exhaustingly so, which you've answered with great aplomb. I wondered whether I've perhaps neglected to ask you something which you think really ought to be part of your oral history interview?

JV Well, let me think (laughs)...I think we've covered the grounds pretty well...so, just perhaps a personal remark is that something that I think people have not always appreciated, is, it was easy for someone who is not an Afrikaans speaking person to oppose government policies. Because the government which was predominated by Afrikaans culture and people, was, well, he's not one of us in any case. But when people from within the community began to become critical of the government, the government was very, very intolerant, and that was no easy thing. It was easy just to make it...just to explain, and not to make it personal, for John Dugard to be against the government, you know, because he was John Dugard, he's not one of us. But it was not so easy for me.

Int As an Afrikaner.?

JV That's right, because I'm one of them, these are my people. I feel a certain sentimental bond to this group of people that did all these horrible things in South Africa. And therefore also bore a certain responsibility for that, of being a voice from within. And I wasn't the only one. But in places like Potchefstroom they were terribly intolerant with people who rocked the boat too much. And there were always professors at Potchefstroom that were sort of moderately critical of the government, but very moderately so. And so today I'm almost frustrated by seeing how everybody is now suddenly become big human rights protagonists and, you know, follow the winds as the wind blows, and I sometimes doubt the integrity of all that. It was more difficult to be...to take that view when it was not fashionable. And so today it's fashionable to pretend to be a human right protagonist sort of thing. And you find that all over the place. Potchefstroom University forced me away in 1978, they gave me an honorary doctorate in 2003, citing as part of the reasons for the honour, the position that I took in 1978. And so, you know, that is encouraging...

Int As a vindication...

JV It also shows how the wheels have turned, how things have changed. And so...so I'm looking at South Africa from a distance but also close by because I'm still South African, I still regard Pretoria as home, but...sometimes with big concerns. The tremendous crime rate in the country I think is a big problem. That's also something that cannot be resolved by just policing. It also has to do with social upliftment and the people and getting rid of the causes of crime. But from...I'm mainly concerned by the absence of leadership for the future, because you need in South Africa very strong leadership. And the leadership are there as far as the court system is concerned...not all the judges...I might just also mention something in passing: When we were talking about a Constitution for South Africa, there was a strong lobby which included John

Dugard, who was in favour of following what was known as the American option. And that was to have a Bill of Rights that's not particularly precise in its language, leaving it up to the judiciary to mould it over time in view of the new experiences and changing circumstances. I opposed that view. I was very...I wanted a Constitution that is very precisely defined, and people often asked me, why did I adopt that view? And my simple answer is, I knew that in the new South Africa there are going to be affirmative action appointees to the judiciary. And I did not want to see affirmative action appointees, those are people with the lack of the experience, having too much power for judicial activism in their hands. So I would rather bind them to the letter of the law. Now my fears have been proven wrong because I think the judiciary has lived up to the expectations overall, quite magnificently. There are some exceptions, but they are exceptions. And especially the judgments that comes from the Constitutional Court and the Supreme Court of Appeals, are very good overall. Did you know Ms Pillay, who's now the High Commissioner?

Int     Navi Pillay...

JV     We also got to know each other quite well.

Int     Johan, thank you ever so much for your time.

JV     Thank you.

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