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LRC Oral History Project

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Int Thank you very much for taking the time to do this interview for the Oral History Project of the LRC.

KT It's a pleasure.

Int I was wondering whether we could start this interview by talking a bit...as much as you want in fact...about your early formative influences and how that might have led you to becoming a lawyer, and growing up in South Africa of course.

KT Yes, some early childhood and adolescent memories you would like?

Int Sure.

KT Well I grew up in Durban, as coincidentally did a number of my colleagues in the LRC. It was a fairly typical Durban upbringing. Durban being, in those days, a very colonial kind of place. A very much white environment, white schools, white friends largely, and an essentially white view of how society should be organised, and as with most young white people in this country at that time, those were givens. There was no call to question, there was no conscious decision making, school was organised in a particular way and we went to a particular school and other people went to other schools and we had very little contact with them. We went to school on white buses and other kids went to school in black buses. We didn't really get to spend much time together. So apart from some... *interruption*. This is the kind of thing that you're interested to hear is it?

Int Absolutely.

KT I went to a fairly multi-racial primary school as it happens, but that's only because I grew up in an area that was on the cusp of various residential zones and some people of colour were at the school and I suppose that that tended to soften the lines a little for me. It was quite important. But nevertheless by the time I'd got through high school I was very much a young white person living in apartheid South Africa and without any sense of there being anything very much wrong with the way society was working. Entry into university was fairly straight forward as it was for people in my position, and it was really at the University of Natal in Durban that I started to understand a few more things, a few fundamental and very vital things about what it was to live in South Africa and actually what apartheid meant. If I had to single out the largest single...the most particular influence by way of reference to one individual, it was Rick Turner who was a Political Science lecturer, and I drifted into Political Science having started university as an engineering student, because I had done well in technical things at high school, Physics, Chemistry, Maths and so on. I discovered as I went along that I didn't really have a great deal of empathy with my fellow engineering students. There was something lacking and I suppose really that

was the beginnings of a sense that one had to look at what one did in a broader context. It was a very unformed understanding at that time but I think nevertheless it was beginning to prime me for a proper concerted deliberate study of what it meant. And hence Political Science, and then the impact of Rick Turner. Rick Turner, of course you'll be familiar with the name, he was a person who was eventually assassinated. He had a very challenging approach to the teaching of Political Science, so it wasn't a matter of going through various disciplines and outlining what this political philosophy comprised and what the other consisted of and so on. It was challenging. And from the first sessions he would say: right, what is a State? What defines a State? And things that one, you know, thought that's fairly simple to answer. But he had a dialectical approach to teaching. It was very much a dialogue rather than a transmission. Through his whole life and studies he had developed a very keen critical position in respect of apartheid. An exceptionally keen and well-formed one. His manner of teaching was engaging and provocative and challenging, and very quickly a number of inarticulate premises about my life as a young person at university started to be confronted by more important things. And that led fairly swiftly to a position where I became very opposed to apartheid and very involved in student activities, which were directed towards promoting programs against apartheid in the best way that we could. And also quite quickly involved...becoming engaged in an incipient trade union movement in Durban, which at that time was very dormant, had been for a few decades. A number of students at the university became involved in what we called the Benefit Society, which was ostensibly a funeral society, but it was a way of convening meetings with black workers in Durban, at which we spent very little time talking about funeral benefits, and the workers came to those meetings with very little interest in benefits of that kind. There were old trade unionists who we were able to enlist to come and assist with their experience and so on, and that became actually a fairly strong movement in Durban in the early seventies. That engagement formed part of an organised student structural involvement. We set up something called the Wages Commission in Durban. And that spawned something we called the Community Commission, which was involved in community activities and running things like literacy programs, which also were ultimately directed towards some form of mobilisation. Those structures then became integrated into NUSAS, the National Union of South African Students, and were taken up as national projects by NUSAS. I and others who were later involved in the LRC, like Charles Nupen, like Paul Pretorius, were very involved with student affairs in that way. And ours was a fairly radical position in those...in relative terms at that time. I think it's important to add to that, that the engagement in that sort of activity came at the same time as a very important development in student political circles, which was the formation of the Black Consciousness movement and particularly the tutelage and guidance of Steve Biko, who was an absolutely remarkable individual. He was at that time a student at the Medical College in Durban and we were able to form some very useful contact with him and others similarly placed. The philosophy of that in short was that because of our relatively better access to resources as white students, an important consideration was that we should find ways of directing those resources into black run activities, which represented a very important departure point from what had previously been the case, which was more of a semi-paternalistic gratuitous hand out philosophy. I say that, it's important, because those were ideas that I think were fairly close to my thinking in relation to the role of a white lawyer and also particularly the decision to get involved in a body like the Legal Resources Centre in the early eighties. It was something that one did because of that philosophical strand, which

was that we were able to qualify ourselves in ways that were easier and at that time more effective than many black people were able to qualify themselves. And hence we were able to avail a resource, and hence Legal Resources Centre, through the medium and the vocabulary of the law as a supportive component of the broader struggle against apartheid. So that is in a sense, a fairly lengthy answer, I hope not too lengthy, to the important formative issues in my life that played a role ultimately in the time that I spent at the LRC.

Int I just want to go back to a few things: growing up in Natal, going to what you said was a multi-racial school and then going to the University of Natal and becoming quite involved...you mentioned Rick Turner as a particularly important influence...I'm just wondering in terms of those were particularly turbulent times, the early seventies... ideologically was there a problem with being part of NUSAS and then engaging with Black Consciousness?

KT No, there wasn't for me, but I think it might be useful just to recount very briefly what the essence was of the structural aspects of student politics at that time. The advent of Black Consciousness as a philosophy and its expression through the formation of black student organisations, particularly SASO, South African Students Organisation, of course prompted a good deal of debate within NUSAS. NUSAS had, as is implicit in the name, it had functioned as a national student organisation, it had developed to the point where it had deliberately set about having black campuses within its fold, even although that had prompted the withdrawal of Afrikaner students. That was a choice that had been made before the early seventies. So that the Afrikaner 'Studentebond' had been formed as an Afrikaner body, a pro apartheid body, as a breakaway from NUSAS, because of the decision to embrace black students and black campuses within NUSAS. So that had produced a, what I suppose one would call, a liberal non-racialism within NUSAS. And when Steve Biko and his colleagues presented SASO, it of course presented a fairly keen debate as to how NUSAS should respond to that, and there was a very strong view that it was unacceptable and that it should be resisted and that NUSAS stood for a non-racial community of students and that this represented racial division and should be opposed. As it happens I was one of the key speakers perhaps, in the early seventies, '71, '72, at NUSAS congresses, where I spoke in favour of a constructive engagement with SASO, and that it was something that should be welcomed, and rather than opposing it we should find ways to work together and to give meaning to the formula that as whites we had resources and that we should find ways to support black student movements, but that the philosophy of Black Consciousness, the self-respect that it involved for black people was essential for the future of the country. And that was accepted, so that by '72, '73, NUSAS had really a very positive relationship with SASO and the Black Consciousness movement organisations generally.

Int So in terms of your involvement in NUSAS, it must have been...in terms of police harassment, I'm wondering whether you ran into any trouble?

KT Well I did, yes.

Int Could you talk a little bit about that?

KT Well...there was...I mean, as a full-time NUSAS office bearer and before that, at the Wages Commission in Durban, that had excited a good deal of interest on the part of the Security Branch. I think that they understood that this was a fairly significant development and that particularly the Wages Commission work and the resuscitation of the trade union movement was something that had to be taken seriously, this was not a few hundred students with placards going down to the city gardens in the middle of Durban to protest an issue which really required nothing more from the Security Branch than some photographs and some videos. There was harassment, for instance, they would make a point of...of course they read correspondence and they made a point of letting us know that, so that I would open a letter the envelope addressed to me and inside would be a letter addressed to a friend of mine, a fellow student activist. And he in turn would find the letter intended for me in an envelope addressed to him. Our telephones were bugged routinely and they would do the same now and then, a Security Policeman who was listening would interject and say: aagh, what rubbish, what do you think you're doing? So there was that sort of level of harassment and intimidation. I was detained for some time, not because of student political activities really, although it arose out of it, but Breyten Breytenbach had been involved in some ANC connected activity and I had seen him and I was detained for some time. More directly, I think, was the NUSAS trial, as it was called, which was also important for me in relation to my attitude to legal work. That was from the end of 1975 through virtually the whole of 1976, and five of us were charged in that. Charles Nupen was one of them. There were other students and a very closely connected lecturer, Eddie Webster was another one, Glen Moss, Cedric de Beer, and we spent a year on trial facing various charges under the Suppression of Communism Act, which was since repealed. Those charges related to campaigns that we had run, and I think to single out the more important ones, that was the Wages Commission activity, which the state had taken seriously. But the one that had really inflamed them was a campaign for the release of political prisoners which we had run around about 1974, and in particular we had called for the release of Nelson Mandela and other top ranking ANC leaders, who were then on Robben Island, on the basis that apartheid would go and that it was essential for the long term future of the country that individuals like (Nelson) Mandela should play a constructive role immediately in bringing about a proper non-racial society. So that was '74, that was 30 years ago. And he wasn't released, although I think he, of course, got to hear about the campaign and was very pleased that it did happen. That was a campaign that was run in conjunction with a variety of political people in and out of South Africa at the time. So that was part of the charge as something that was intended to promote the objects of the African National Congress and that we were promoting their leadership, although these were people who had been, as far as the state was concerned, correctly sentenced for life imprisonment because of their treasonable activities. That was a long trial and it was an interesting trial and all sorts of important political matters passed the threshold of the court. But for me personally it was a year of exposure to the legal process and I had the good fortune of having Arthur Chaskalson as the leader of the defence team, with George Bizos, who of course is now rightly famous as a human rights advocate throughout the world, and Denis Kuny who also played an enormously important role in conducting cases of this kind at that time. Raymond Tucker was the attorney, Geoff Budlender was a candidate attorney with him, and

Geoff of course became involved in the Legal Resources Centre from the very start. Myself and Charles Nupen found our way into it also at an early time. But, you know, I had the perspective of someone sitting in the dock, the accused dock, and having what was of course a frankly political set of charges thrown at us, and seeing people like Arthur Chaskalson and George Bizos and Denis Kuny in action defending us, untangling the evidence of state witnesses, decimating the evidence of Security Police spies who had been colleagues of ours in the student political movement, which spying was extensive. I had, in the year that I was the president of NUSAS, which was 1975, I had six people on my Executive and two of them were Security Police Officers. One being the notorious Craig Williamson. So one third of my Executive was routinely filing reports on what we were doing. They were not produced at that trial. Craig Williamson was held in reserve. He still purported to be a very keen, closely involved, concerned friend. But there were others who *were* produced. The vice president of the SRC at Wits University was a lieutenant in the Security Police and he was produced. I speak of the role of lawyers. We were in the dock, Lieutenant Bruno was his name, was produced. The head of the Security Branch, who ultimately became the National Commissioner of the police, Johan Coetzee, and a number of high ranking Security Police Officers came specially to court that morning to see the end of us, because they had no doubt that Lieutenant Bruno was going to sink the lot of us with his inside information. Arthur Chaskalson cross-examined him and methodically carved him into pieces until Bruno really was very unhappy to be in the witness box, and slowly but surely these high ranking officers found other things to do in the course of the day. And by the next morning none of them came back. So their anticipated success was annulled and that was the skill of highly able lawyers, and it was clear to me even then, without the benefit of training myself, that I was witnessing legal craft of a very high order. And that I suppose advanced my own sense that the law was an important medium for important things to be done. Had we had a lesser defence I think we would have been convicted because, ultimately, there's no doubt that we ran these campaigns for the very purposes that the State had charged us with. It didn't immediately convert me into the legal world, because I was at that time studying for a Master's degree in Political Science, and actually a very interesting topic, which was the relationship between the Inkatha Freedom Party of that time, which was a somewhat different body from what it became, and the Black Consciousness Movement. For that purpose I had conducted interviews similar to the one that you're conducting now, with a number of Black Consciousness leaders. And then in 1977 as I was making strides towards completing this thesis, a couple of things happened. The one was that there was a wholesale banning of a number of leaders, both whites and blacks, and the other was the murder of Steve Biko in September 1977. So that I found myself more or less at the stroke of a pen in a position where I had to approach Jimmy Kruger, the then Minister of Justice, for permission to quote banned people. Because that was the thesis. It quoted people and this was their attitude to that aspect of political development, etc, etc. And of course I was not going to do that. So the thesis, my Masters studies came to an abrupt stop. I was then very friendly with Shun Chetty who was the...he had been the attorney in a number of Black Consciousness trials, the SASO trials of '76 etc, Saths Cooper and others...and he was the family attorney for Biko. So he was the attorney in the inquest into the death of Steve Biko. Just socially along the way we'd been having dinner and I'd explained to Shun that my thesis had just come to a crunching stop because I couldn't write to Jimmy Kruger to say, would you allow me please to quote these people? I was on the persona non grata list anyway. And Shun said: well, I'll tell you

what, why don't you just come along and help me in this inquest as a sort of kind of paralegal as it were. I did that, not because of any great interest in the law but because of my very keen desire to have the death of Biko be fully dealt with. It was a remarkable experience because of the team that was involved, Sydney Kentridge, George Bizos, Ernie Wentzel, and the preparation for the inquest was extraordinary. To find myself albeit as an entirely unqualified paralegal - I mean I wasn't even studying law in 1977 - was an absolutely remarkable opportunity to be involved in something about which I felt very passionately. And well of course that inquest itself came also to a shuddering stop with a sort of three line verdict saying that nobody was to blame for the death, notwithstanding absolutely clear evidence of assault and neglect and so forth. We got to the end of that inquest and Shun said: well, now what are you going to do? I said: well, I don't know. I've still got the problem of this Masters thesis, which is 95% done and not publishable. He said: I'll tell you what, come and just work for me, because he was now running all sorts of political trials and finding himself...as a sole practitioner then...and finding himself very frequently asked to go off to places on the borders of South Africa to consult with ANC cadres and others who'd been picked up by the Security Police and worked over and were now coming up to court and needed to be seen. So I went along still as someone without any formal connection with the law whatsoever to work with him, and I suppose kind of misrepresenting myself to prisons and police stations around the place as...I would just say: I'm working for Shun Chetty the attorney. I would never actually say, look, I'm studying law or I'm a candidate attorney or I'm an attorney. But they just, I suppose, assumed that I was. And for a long period of time I did precisely that, going around seeing people, taking initial statements, finding out what had happened to them, being involved in the running of political trials as a kind of paralegal assistant, to put it at its best. After a year of that I thought well I might as well study some criminal procedure. Again not yet with any view to becoming a lawyer but simply so that I would know a bit about the procedures and be able to do this work that I was doing, this informal work a bit more effectively, which I then started to do as a part-time student at Wits University. Shun Chetty then left the country, also quite abruptly. My passage into the legal world is punctuated with these abrupt transitions. I then converted into finishing an LLB degree on a full time basis and that then put me on the threshold of the Legal Resources Centre in 1981.

Int How did you come to get to the Legal Resources Centre?

KT Well, because I knew the people who were setting it up. Not particularly Felicia Kentridge. I'd had of course very little to do with Sydney Kentridge, apart from the interaction during the time of the Biko inquest, but otherwise there'd been no call for me to have anything to do with him. He wasn't directly involved in the sort of work that Shun Chetty was doing. And Felicia (Kentridge) I hadn't really met at all significantly. But I knew...I was very, very friendly with people like Charles Nupen and Geoff Budlender, who was then an attorney, and I had spoken about my conversion into becoming a lawyer and had, just illustratively, spent some time talking to Geoff (Budlender) about whether I should become an attorney or an advocate because those of course were, in this country, very different avenues of involvement. And in the course of all of that the imminent formation of the Legal Resources Centre came to be discussed. This was around about 1980 and I think the first steps towards the formation of the LRC had been in the course of '79 when

Felicia (Kentrige) and Sydney (Kentrige) and Arthur (Chaskalson) and others had started discussing it quite seriously. So that by the time I was finishing the LLB degree in 1980 and being in a position to move into practice in 1981, it had already been arranged that I would do that...that I would become an advocate on the staff of the LRC immediately. So when I did the formal pupillage at the Johannesburg Bar that coincided with involvement in the Legal Resources Centre. So I started working there more or less immediately in '81.

Int I wonder whether you could talk a bit about those early experiences of being at the LRC when it was really a fledgling organisation. What were some of the issues you dealt with? What were your areas of interest?

KT My early involvement with the Legal Resources Centre: I think the cardinal principle of it was the one that I've outlined in the run up to this sort of commitment through particularly the notion that one could provide a resource to support other activities, other programs, and to use the openings within the legal framework, which still existed, in order to bring to bear a legal lever which otherwise was only being done episodically in respect of cases on an ad hoc basis here and there. Legal points were taken by eminent people in practice, advocates and attorneys, including Sydney Kentridge and others, who in the normal course of their work would occasionally find themselves dealing with the kind of case where an important principle of public law had to be protected or advanced. But that, as I said, was episodic because normal practice involves cases arising and being dealt with in the normal way. What the Legal Resources Centre set out to do was to be more proactive, and to take up in a fairly deliberate and concerted way particular areas of involvement where some more enduring result could be achieved than was typically possible through dealing with legal issues in the ordinary way in the context of a particular case. So I think the work of the Legal Resources Centre was concerted and deliberate in that way. Of course it wasn't set up to become a kind of internal legal wing of the ANC. I mean, there was...it simply wasn't an issue and couldn't be an issue notwithstanding whatever the personal predilections may have been of the various people who were involved. A great deal of care had to be taken in order to ensure that there was a clear division between frankly political activities and enterprise within the legal world. And that was partly because there was of course from the point of view of the government a great deal of suspicion and hostility. They were not at all keen on the idea of people of this sort setting up a body of that kind. To some extent that percolated through the professional bodies at the time. It was of course a hybrid institution from the perspective of purely formal legal criteria, professional criteria, because one had within the institution, called the Legal Resources Centre, you had on the staff advocates and attorneys which immediately intruded a bit into the otherwise fairly strict division between attorneys as a profession and advocates as a referral profession. I remember, by way of illustration, going to represent people in cases on behalf of the Legal Resources Centre and announcing myself to the court as Advocate Tip instructed by the Legal Resources Centre, and most magistrates and judges would accept that, but those who weren't inclined to be supportive of the LRC and its work would say, well what's that? What's the Legal Resources Centre? How can it instruct you? You're an advocate. And I would then say: well, alright, I'm instructed by Mr (Geoff) Budlender who's an attorney. And reluctantly they would let me carry on with my work. But it took a good deal of fairly delicate negotiation, I think, on the part of

particularly Arthur Chaskalson and Felicia Kentridge, with the legal bodies at the time, to have the LRC function the way that it did. The Johannesburg Bar quickly gave it its support and hence I was able formally and properly to spend time working as an advocate at the Legal Resources Centre whilst doing pupillage at the Johannesburg Bar, and that was of course all done explicitly and with direct endorsement and approval. But that approval and recognition had to be obtained. That was one of the sorts of pressures that the LRC was under at the time and this goes back to explaining why a great deal of care had to be taken about the boundaries of the LRC, not only in respect of professional relationships but also in respect of the particular work that it was doing. So it initially defined itself as providing a resource to people who would otherwise not be able to have their cases taken up, with the important proviso that the case should involve an issue of principle that would have repercussions for persons more broadly than a particular individual. And you will see in the annual reports of the time where descriptions were given of the sorts of cases that were being done. There would be a focus on consumer issues for example. But again of...it may sound as though that's a fairly low key thing to be involved with in the early eighties in the context of apartheid South Africa, but its impact went beyond merely taking up the case of someone who had bought a dud second hand car, or a black person whose trousers had been destroyed by some dry cleaner who just refused to compensate and that sort of thing. It wasn't merely a matter of saying, right, here's a bad second hand car which I only drove 200 metres before it stopped in a puff of smoke. It was taking up...it was the assertion of rights that was important, at whatever level, for people who were otherwise really just in a hapless position of living in a society where their most fundamental rights had been removed through political engineering, and who were prevented from engaging and enjoying ordinary freedoms of life that one would expect in a proper democracy. Whose lives were saturated with demonstrations of impoverishment literally, and also impoverishment at the level of dignity, of self respect, of capacity to stand up and achieve anything. So, taking up consumer kinds of issues really was part of a program of saying, well, you're not without rights, there are rights and they can be exercised and they can be enforced and they were enforced, and the spill over of that, together with all the other sorts of cases that were taken on, was really very important. There were of course other cases that more directly impacted on the political framework, but the philosophy was the same. It was the assertion of rights in a programmatic way. Because cases of that kind were not done in an ad hoc unstructured way, there was impact because they would be taken up, those issues would be pursued, that kind of case would be taken up, it would be run until there was actually a body of jurisprudence upon which other people could then build. There were other cases and perhaps the case that I consider the most important that I was involved with in my time there, was that of Rikhoto and the East Rand Administration Board. You obviously would have heard a good deal about that and stop me if you've heard all this before, but my perspective on it might not be precisely the same as everyone else's. That case struck in a sense at a pillar of apartheid and it was also done in a very careful way and a programmatic way. which was the hallmark of the Legal Resources Centre. It didn't take on cases unless there was a fair degree of certainty that there would be success, or if not a success, that it would at least advance the broad principle of public interest law. This again is interesting if I can digress for a moment, in that it represents a difference between the work of a body like the LRC and what happens in private practice. What happens in private practice is that one gets a disgruntled individual client and you take up that client's case. That's how the law works and you can't turn away somebody and say:

well, I don't think I want to do your case. You do it and you do the best you can. But you may lose it and if you lose it you are very likely to pick up an adverse judicial comment or interpretation of a statute or principle of the law which would be to the disadvantage of others who have a similar complaint. Although their particular facts may be a little better, they're hamstrung by what has happened before. That's a shortcoming in private practice. In the LRC the philosophy was quite the converse, which was not to take on particular cases unless there was a good prospect of meaningful success. Now Rikhoto I think illustrated that in a very fundamental way. Just to recap very briefly, to put a context on what I'm going to say about it: there was at the time under the Urban Areas Act a situation where black people could qualify to live in residential areas if amongst other possibilities they had worked in the area for ten consecutive years. And of course, very often what one found was that there were people working in domestic positions, mainly women, who lived in the area. They lived in rooms at their employer's places of residence, and the husband worked somewhere else and would visit only very occasionally. That was all that was possible. So family life was a miserable shadow of what it should have been. Precisely because of that, or at least partly because of that, it was really a very important thing for a great many people to be able to secure residential tenure within the city. That is what the Act provided but as was very often the case with apartheid social engineering, the prospect of people actually gaining residential rights through ten years of consecutive work, was defeated through the stratagem of saying, well, you've worked here for one year and you come from Gazankulu, go back to Gazankulu and get your contract of employment renewed. The administration there was the Bantu Affairs Commissioner who had the power to say right here's a stamp, you're allowed to go back to Johannesburg now and work for another year for the company that you've been working with for all these years. Then when people said, right, well here are my ten certificates, the officials would say, oh but you've only worked here for one year ten times, you haven't worked here for ten years. This was something that the Black Sash had been dealing with for a great many years, trying to intervene and to get rights of tenure for people. The Black Sash was a marvellous organisation. Sheena Duncan, in particular, headed the Black Sash at the time. And the prospect then arose that the Legal Resources Centre would take up a case in this field. And again this, I think, represents the sort of programmatic nature of the body and the manner in which the law as a resource could be sought to be deployed to secure some advantage in society. I recall very well that Sheena Duncan would arrive often at the Legal Resources Centre offices and she would...she was a formidable person, I don't know if you know Sheena?

Int I'm going to meet her this week.

KT (laughs) I'm glad I'm speaking well of her. She was a very...well, she still is, that was when she was an absolutely champion activist on a full-time basis. And she would arrive with a file from the Black Sash of someone who had ten contracts and say: right...we'd hear her coming down the passage...Arthur! She would call. I've got the case. And Arthur (Chaskalson) would look at it and would identify a problem. Again this very, very clearly illuminates a particular feature of public interest law, as opposed to dealing with a private client who would otherwise be a deserving client. Arthur (Chaskalson) would look at Sheena (Duncan)'s file and would find that in the sixth year this chap decided that he'd had enough of work and he...or his family or

someone was ill, or the crops were suffering, and he would just push off for six months. Or he might himself have been ill for some time and be gone for three months. And that sort of fact Arthur (Chaskalson) would identify, we'd discuss it and inevitably the outcome was that that was an unfortunate factual crinkle that could upset the principle and that if we were to take on the case, that could influence the court and we might find that we were unsuccessful because of that particular fact and along the way we would attract some unfortunate commentary in respect of the law and the application of the law. Then when we finally got a person without that sort of difficulty we would have accumulated not a positive precedent but a problematic precedent. So Sheena (Duncan) would be sent away time and time again with her file, grumbling because there was some little impediment. There would be a deficiency with one of these annual contracts. One couldn't actually quite clearly say this was properly stamped by the correct person or whatever. Finally Rikhoto came along and Rikhoto was a person who had absolutely diligently and impeccably gone through ten years of this process and had his ten year contracts of otherwise unbroken service and we took it on. And ultimately successfully so that the law was then declared, this provision of the Act was declared to accommodate ten separate contracts of this kind that nevertheless amounted to consecutive years of employment within the area for the purposes of the Act. Hence Rikhoto got his right to live there. Then the result had to be defended, and again this is the sort of thing that can only happen through a body like the Legal Resources Centre. It was a tremendously important success, which immediately had huge fallout for uncountable people around the country. Administration Board personnel had to, much against their will, to endorse people's passes, to say, well you are now allowed to live in Johannesburg or Port Elizabeth or whatever, stamp. Of course the government was inflamed by it and very soon after the decision of the then Appellate Division came down, we started to hear rumbles about how the government was going to simply rewrite that section to make it perfectly clear that if you had no better than ten annual contracts, you were not going to be allowed to live in the residential area because it was of course an anathema to apartheid to now have an influx of people living there, living in Johannesburg, living in the place where they worked! And going home every night just to be with their wives and children if they were around. So an intention to amend the Act started to surface as a response of the government. Arthur (Chaskalson) and Felicia (Kentrige) and others then mobilised the diplomatic network, which likewise would usually never happen in private practice. Being in private practice as an advocate now, when I complete a case, I return the papers, finished. Very often I don't hear what happened after that. Whether the advice was good or the case had the desired result, it's simply off my desk and out my chambers. Not so at the Legal Resources Centre. Arthur spoke to several of the ambassadorial people in the country, particularly the more influential ones, the United Kingdom and America and others, Scandinavians, Germans and so on, and there was then diplomatic pressure put on the government, as I understand it. I personally was not involved in any of the discussions with ambassadors but we did hear that this was happening. Because of that intercession, a public interest case of that kind stood. And it was important for quite a long time. Then, you know, there were follow up cases, Komani, etc, etc. and Felicia (Kentrige) was very much involved in that, where that principle was then built up and formed a sub-stratum for further developments along the same line, of entrenching what in any normal society would be an every day entitlement. Hence I say the Rikhoto case for me during those years...I mean, there've been of course a great many others

subsequent to my being part of the staff at the Legal Resources Centre ... but that exemplified for me what it was doing in those early years, because that was 1982/83.

Int I think you've alluded to this...the idea that in South Africa at the time, Parliament was supreme, so a law could be easily overturned. What do you think actually subverted that and prevented that from happening in terms of the LRC legal victories?

KT I think that...you know, one of the curious features of the apartheid system was a deference to the law. There always had been, notwithstanding the various gross machinations within the legal field, there was a respect for legal process. Although political cadres would be tortured and beaten up, they would be brought to court. They weren't, generally speaking, taken around the corner and shot. And when judgements were given they would generally be respected. When people who were apartheid supporters were appointed to be judges by the apartheid state, a good many of them transcended the nature of their appointments and became good judges, because the law does have a momentum and a dynamic of its own. If you touch the law you touch the interface of rights. And so I think that the apartheid state had always been quite sensitive to the legal process, hence it generally didn't operate through decree. Sometimes there would be regulations that were promulgated that had the effect of being decrees, and they would be challenged, and they would be challenged on the basis that the enabling act didn't provide for them and very often they would be struck down as *ultra vires*. So that sort of thing was happening and although of course it was within the power of Parliament just to rewrite the Rikhotso section and to say, well it doesn't apply to people who've had ten successive individual contracts, full stop, it didn't. The fact that it didn't do that was ultimately a political decision, and the political decision was doubtless influenced by the interest that had been taken in the case by other nations through the ambassadorial interface. And I think the government of the day would have seen that to cynically now reverse something that had been declared by the courts - which was in itself morally indefensible, I mean, they understood that perfectly well, that to keep people out of residence in an urban area on this basis that they'd had to go off to a homeland every December to get a new stamp - wasn't going to go down well. So that was a political choice really, that there would be more fallout if they were to legislate against what the Appellate Division had ruled, than if they had simply let it stand and absorb it. But it was nevertheless essential that that interface, what I call the ambassadorial interface, was there. Had it not been I think they would have felt that the space for them to legislate and over-ride the decision would have been broad enough for them to do it.

Int I'm wondering as a sort of sub strata of that, the LRC could have simply been closed, they could have been threatened with closure. It was well within the power of the State to do that. I'm wondering what you think were the reasons for that not happening throughout the eighties?

KT I think the reasons are similar, that for a body of that sort to be established, which is there to provide representation and advice to people who otherwise weren't able to get it effectively, and to have a body acting for a lot of people in the field of consumerism, etc, etc, which was recognised by the professions, headed by people

with the stature of (Arthur) Chaskalson and Felicia Kentridge and of course a very formidable array of prominent people on the trust. The Trust was an important shield, you know. It would have been impossible to set up the Legal Resources Centre without a Trust. So that was done, I think also deliberately in order to provide some additional protection for it, and of course to extend the contact base through the Trustees in respect of funding and general support. So it would have been, I think, extremely difficult for the government at the time to close down a body of that sort. It would have provoked outrage that it would rather not have wished to encounter. I've no doubt that there would have been plenty of people in government who discussed whether or not it should be done.

Int I'm wondering 1982 strikes me as a particularly important year, you had the Rikhoto victory...I'm wondering also in conjunction with setting up the LRC, SALSLEP was also set up in United States, and in 1982 you had visitors, as I mentioned to you before the interview started – Reuben Clark (Snr), Reuben Clark (III), Jamie Kilbreth came out and they met with you etc. What are the parallels do you think between public interest law in America and South Africa and what was the influence of American public interest law and South African public interest law?

KT I think it was considerable. Although I wasn't party to the initial discussions in '79 and '80, certainly what percolated through to me was that that had been done very much in conjunction with the people in the States. And that the experience in the States more than any other country had served as a paradigm for the manner in which the LRC could be set up and the sort of work that it should do and, I would imagine, the importance of being disciplined about the kind of case that should be taken on. The importance of incremental jurisprudential advancement rather than sentimental attempts to win a case with a hard line story behind it. So that was important and the people who came out reinforced that and there was discussion about the kinds of cases that we were doing and direct dialogue about what the American experience had been in respect of that sort of case, and what one should be aware of and be careful of and so on. It was very much a mutual engagement because although, of course, the NAACP in the States had taken up a number of equivalent issues, there was always the particular dimension of an apartheid state that was, come the early eighties, a good deal more ruthless and anxious than was the position in the States, even in the southern states. What was mutual about it was a recognition, I think, of mutual respect and that the sorts of cases and sorts of decisions that we had to make about what was possible, the relatively greater delicacy with which the LRC had to move was respected I think. It was institutionally easier to do that sort of work in the States than it was here. I don't think anyone in the States ever appeared and had a magistrate or a judge saying, well, what's this Legal Resources Centre? How can it instruct you? Just straight forward hostility. Go away. Not interested in hearing cases from the sorts of people that you want to represent. So we were on a different cutting edge from that of the people in the States, but they were also on a cutting edge and I think that that interaction was really very important, certainly for the LRC, but I also think that our experience in the LRC and the source of work that we were doing, the cases that we were doing, the experiences that we had, were enriching also for the people from the States who were involved with us.

Int I'm wondering, you were in the LRC in a very important year, and you left in 1984, what was the reason/s behind your decision to leave?

KT I think that there were a couple of reasons. There were also of course huge regrets because I had...I mean, those years at the LRC had been very important years for me. I had, I think, through my recital of my own experiences, come into the law without any great interest in being a practitioner of the law for its own sake, but to be part of a group of people who applied the law in a way calculated generally to being against apartheid. I mean, really it, you know...apartheid was a bigger motivator for me than to be a practitioner of the law. So that those years, those three and a half years that I spent in the LRC were enormously satisfying from that point of view, that it had everything that I wanted...well, everything that I wanted in that broad sense, and I'll qualify it now. And one could not have wished for a better group of people to be involved with. I mean, every one of them without exception, the professional staff, the administrative staff and the people we'd dealt with, the visitors who came out, Jamie (Kibreth), etc, etc. I mean, it was just fantastic to have that kind of connection. The LRC organised conferences and events that were tremendous gatherings of people. It slowly expanded its base from Johannesburg to other centres. Other people came to be involved, other terrific people. So that was all...that really was tremendous. And also the sense, you know, the particular aspect of being able to spend time on a particular case, not having to worry about fees, not having to worry about whether the client could pay you. We were all of course all on a salary basis, and I could spend days and days and days and days preparing an appeal, which I did sometimes, if there was a principle of procedure. Again, just to illustrate: I appeared in an appeal for someone who had snatched a handbag. Now one might say, well, what on earth is the Legal Resources Centre doing for that kind of individual? But the reason for it was...the process that had been involved in the conviction of this individual where there had been disregard for what again now we would consider common place elements of the criminal procedure system, but which in those days were often ignored. Warnings about the right to silence, issues of having competent interpretation, matters of that sort. So that kind of case would be taken up in order to illustrate a point about a deficient process in trials in the Magistrates court, which otherwise would also just not in the normal course of practice happen, because that individual, that little bag snatcher, would never be able to afford representation of the kind that could make those submissions. That individual would have appeared and did appear unrepresented, bewildered and oppressed. And after a short trial, the women saying well my handbag was stolen, that looks like him, and that would be the end of the case for years. So you know, it was also important to do that sort of thing and to actually create a body of jurisprudence that said, well, you...unrepresented accused particularly have the following rights, and magistrates have to be careful about ensuring that they understand what's happening, that they have the opportunity to consider, they understand what cross examination is about, that there is proper interpretation, because the interpretation particularly then, in those sorts of courts, was absolutely dismal, one tenth of it would be interpreted and the interpreter would just give his own version of what he thought should be said. So I was able to in that...for the purpose of that appeal, to spend days on research and building up heads of argument which otherwise couldn't have been done. So that's something that, generally speaking, in private practice, you don't have the facility for, because people in that position aren't able to engage you. To some extent one can say, right, well I

take this on, on a *pro amico* basis and that is done, but there are limitations to that. You know, at the LRC there was funding and the rent was paid and salaries were paid and the staff was paid, and now I have to find the money to pay the rent and the staff, etc, etc, etc. So all of those things were quite special about being involved in the LRC. The two aspects that finally moved me to move into private practice, first of all that the amount of court exposure was fairly limited from the point of view of an advocate, and of course I was keen to be in court every day on something or other. And I think partly because of the programmatic nature of the work that had to be done, what was ultimately taken into court was a relatively small fraction of the total case volume. A lot of work involved advice, following up on particular cases, correspondence, important correspondence because there was correspondence for people about whom or on whose behalf there would otherwise have been no correspondence at all. But the number of cases that crystallised into litigation, putting on robes, going into court to argue was relatively small and that was of concern to me because I was quite keen to develop my advocacy skills, in the particular forum of a court. The other aspect is that there was in the early eighties, the mid eighties, a fairly acute development in respect of political work. Although there had been ongoing trials, the mid eighties just seemed to be a particular culmination of pressures. It was at the time of PW Botha and the philosophy of the Total Onslaught and there was really a major attempt to quench liberation movements on the basis that it was just a handful of agitators and that if these agitators could be dealt with through the process of the law the rest of the populace was actually very happy with the apartheid...with the separate development regime. And I felt a desire to be involved in that, and for the reasons that I've already outlined of course, that was entirely impossible through the LRC. It couldn't cross that particular threshold. So for those reasons I moved. It was a gradual move because I still...I retained connection with the LRC of a more diffuse sort for some time and remained involved in some of its work for some time. And rather infrequently have done so since then. I have appeared in a couple of things for them. Not many, but that's...I mean, the LRC has grown in different ways since then. But those are essentially I think, casting my mind back now, the principle reasons why I decided to move into private practice more fully.

Int So in 1985 you moved into private practice and what was the nature of the work you took on?

KT Well, it was kind of mid...the latter bit of '84. I immediately took on a battery of political cases. The very first case that I did was a lengthy trial for a dozen young people who'd thrown stones at a principal's house and a couple of police vans in Pretoria during some protest and so on. So I moved into that sort of case. I did a few ordinary commercial things but those were fairly few and far between. And by mid 1985 I had become involved in the Delmas Treason Trial, which ran till...one way or another ran until the end of 1989.

Int I wonder whether you could talk a bit about that?

KT (laughs) About that. Well, yes, I mean that of course is...

Int You worked with George Bizos?

KT I worked with George Bizos. There are several volumes to be said about the Delmas Treason Trial. It...well, let me just plunge in and say a few things about it...you know, it...George Bizos was involved on a full-time basis. George and I were in court probably more than anyone else on the team on an on going basis, but there were other really important people involved. Arthur Chaskalson was involved, not on a daily basis, but in a sort of an advisory consultative way, which was really important because he has the keenest, finest sense of tactics of anyone that I've worked with. And he would come into court for particularly important arguments of a legal sort. He was very involved in the concluding phases, he was very involved in the critical moment of disruption in that case, which you might...whether you know anything about it at all but...this was a long, long, long, long trial and there were two assessors involved and the one assessor was named as having been a member of the Broederbond, which was involved in the development of the Tri-cameral Parliament, which was the very thrust of the UDF in its formation. And the other assessor was a more liberal Afrikaans academic professor and at some stage he had said to the judge in chambers: you know, what's the big fuss about this one million signature campaign which the UDF had run. I signed it. And on the strength of that the judge came in and announced that he was sacking this assessor, which of course led to an enormous eruption of various kinds, and Arthur (Chaskalson) was then brought in to deal with this, whilst the accused wanted to basically boycott the rest of the case. The Broederbond assessor was retained and the one who was marginally apparently in favour of some of the issues was now fired and ultimately that led to the entire case being set aside, all the convictions being set aside because that had been done irregularly said the Appellate Division. But that is, you know, that was a kind of hallmark feature of the case and the kind of thing that Arthur was involved in. Zac Yacoob was involved throughout, Gilbert Marcus was involved, not throughout but from time to time as well. What was important about the Delmas Treason Trial was that it represented, I think, the epitome of the Total Onslaught philosophy, and one now knows, although it wasn't clear at the time, that PW Botha had called in the prosecutorial staff and the senior police people, This was now mid eighties, the UDF was gaining ground, there was an enormous amount of protest against the Tri-cameral Parliament system. People simply didn't want to have their own little Parliament, they wanted to be part of THE Parliament, and the response of the State was to try and identify "the ringleaders", to prosecute them, to prosecute them successfully and then to be able to say to the world...and swiftly, this was intended to be a short, sharp trial...to say to the world, well you see, it's not the people, it's these two dozen individuals and a few others like them who go around fermenting dissatisfaction and inciting people to violence and protest activity, etc., etc., and if you take them away,, there's nothing wrong with South Africa. So it really was intended to achieve that and hence it included a range of people from the UDF which was ANC aligned to individuals who were on the PAC side of things, some church people - same philosophy, these are not really priests, these are agitators wearing the robes of a priest and standing in the house of God and preaching what amounts to revolutionary doctrines - so there were some of those. And a representative, kind of, of the South African Council of Churches. And then various student leaders, COSAS people, and ordinary souls who just got involved, and community organisations, especially in the Vaal Triangle, which was where early September 1984 there had been a huge eruption

which just continued and continued and continued. So it was a very long trial because the purpose of it had been to demonstrate that the entire country's political issues and these protests were the result of inflammatory activities and agitation. It embraced 22 different areas around the country, from north to south and east to west, with the same purpose in mind, which was to say, well here's another area, and look what happened. The same people come along and they make a speech and then, you know, some of the councillors' houses get torched. And so we had a multitude of trials really within one grand trial. So it went on and on.

Int Well you certainly got what you wanted, which was court appearances, and you worked closely with the LRC, it seems to me like a good combination.

KT Yes. It was a very happy combination. I really...I think that it all worked for me personally extremely well. I like to think that I made a real contribution to the LRC, particularly during the time that I was there full-time. I'm sure I did. All of us did. And I've spoken briefly about the passage into the LRC of people through student political circles. And that was really a very important part of it. So that Geoff Budlender, Paul Pretorius, Charles Nupen, myself, had really come from a particular epoch, a couple of years of being at the forefront of student political activity. Again just to step aside for a moment, the early seventies were...and into the mid seventies...were really very important years for a great many white people, white students, because they had had to deal inter alia with the articulation of Black Consciousness, they'd had to re-orient themselves quite deliberately in respect of their role, that you couldn't simply say, well, I don't like apartheid so I'll do something about it. You actually had to take up a position and that position involved engagement with SASO and other organisations of that kind. And the real process of personal definition in respect of what was important to you and how you would set about trying to achieve it. It was in a sense a kind of logical outflow of those who were engaged in the law. Charles (Nupen) of course, and Paul (Pretorius), were law students at the time. They had gone straight through this. I came into it for different reasons that I've described. Geoff (Budlender) was a law student. But we had to move forward from being involved in the Wages Commission. I mean, you couldn't remain a student indefinitely. And the law really did provide a very rich environment in which one could try and make a contribution, really make use of your training and the skills that you had and the commitment that you had. So there was this very, very strong unit of comrades there at the Legal Resources Centre, which extended up to Arthur Chaskalson and Felicia Kentridge. They didn't agree with everything that we were interested to do but there was an incredible sense of mutuality and camaraderie there, a sense of really all wanting to achieve the same thing. I've spoken about...I've just said, you know, not everything that we put forward was adopted. We were quite keen...when I talk about we, I talk about Geoff (Budlender) and Charles (Nupen) and Paul (Pretorius) and me...on getting involved in labour law issues at the time, in the early eighties. That never really got off the ground, not everybody saw that as an important thing to do. We'd floated the idea of environmental law issues. That also never really got anywhere at the time. Understandably so, not because anybody thought that those were not important issues but I think from a strategic planning point of view there had to be concentration. And once a body like the LRC got involved in an important way with labour law issues, you got involved with unions, and unions of course were political creatures and it just, it wasn't always going to be

easy to manage, I think. So although there was...some work was done, and some important work and I remember that Arthur Chaskalson himself went out to, I think, to Springs Court to deal with an inquest in respect of a worker who had died in an accident and the LRC had been asked to assist, and he said, yes we would. And went out to deal with safety systems and what have you. So some of it was done but not in a concerted sort of way that was possible in respect of other fields. And I mean, ultimately the LRC was a resource, it was a limited resource, although a substantial one and it couldn't diffuse its areas of interest too broadly either.

Int So subsequent to the Delmas Trial which ended in 1989, has your private practice continued in terms of political cases, or public interest law cases?

KT Yes, to some extent. You know, obviously the political cases continued through into the first couple of years, the nineties, but by '90, '92, things were ineluctably changing. The wave of political prosecutions came to an end and that sort of work came to an end. I still do a fair amount of work that involves...well, a good deal of work that involves the question of rights and interpretation of statutes, and now constitutional principles, that is fairly comparable to the sorts of things that were being done in the LRC. And that will never change. It hasn't changed here. The introduction of a constitutional democracy in 1994 hasn't introduced a government which is in all respects generous in respect of the real implementation of rights, as tends to happen, I think, with all governments, they become fairly jealous of their own territory and that doesn't always include the population as a whole. So that's why the Constitutional Court is there. It's why it is such an important body and it's why it is so often continually called on to make really important decisions about the interface between the State and other groups in society. I think that, yes, I've been very fortunate because all my work has been interesting. I've never done uninteresting work. I've from day one turned away all offers of matrimonial work for example. I've always been able to find an excuse until people stopped offering. And I don't do corporate work at all. I don't appear for companies. I've done a lot of work for trade unions. So all of it has been interesting and I've learned an enormous amount from my time at the Legal Resources Centre. And from time to time I share some of that wisdom with my colleagues. Just in terms of the depth in preparation that I experienced working with Arthur Chaskalson, in particularly, the Rikhoto case. The levels of sophistication with which he approached the preparation of the argument and the management of that case was a rare opportunity, and I learned a good many things from it and I literally mean it, it was a couple of days ago, I related to some of my colleagues here anecdotally a story about how we had prepared and how we had managed aspects of the heads of argument, which left them hugely impressed with...so it has remained in many ways a very live part of my practice in the last 25 years.

Int I'm wondering, certainly from what you've told me, the LRC is really such an important body and it's had such influences on other people's lives as well, other people who have worked there, but within South Africa...and I should preface this by saying, from the people I've interviewed abroad, I consistently get the argument that the LRC is the greatest public interest law organisation in the world, and I'm wondering whether in South Africa there's that level of appreciation especially in the

legal fraternity, the recognition of the LRC as this...the oldest and probably the best public interest law organisation here?

KT Um...look, I share that view. I think that you would have gathered that really I consider myself very privileged, and I use that word really with content, to have had that exposure, to have had that opportunity, to have had that learning phase in my life, to have had that as an introduction to practice. There are others who have gone into the Legal Resources Centre after having practised privately for a great many years - one notable person who I was involved with at the time was Morris Zimmerman, who was just a tremendous person, and he had spent a lifetime working as an attorney, I think doing a lot of corporate work, and had got to a point where he wanted meaning in what he did as a lawyer, and there was the Legal Resources Centre, and Morris (Zimmerman) came in with huge passion. Morris (Zimmerman) and Arthur (Chaskalson) didn't always agree on the cases that had to be taken up, because Morris (Zimmerman) was ready to fight the cause for absolutely everyone who came into his...who knocked on his door, and of course Arthur (Chaskalson) has always been the strategic and disciplined head for why he was there. And he would in his quiet Arthur (Chaskalson) way say: Morris, why are we taking on that case? Aren't we going to lose that case? Well, Arthur, Morris would say, I don't mind if I lose but this poor person, who's going to look after him if I don't? I mean, it was just a fantastic place to be.

Int He was at the Hoek Street Clinic?

KT He was at the Hoek Street Clinic, absolutely. And we all went down from time to time, particularly on Saturday mornings, to help out and consult in Hoek Street Law Clinic and saw Morris (Zimmerman) in action. I mean, the Hoek Street Law Clinic...yes, I haven't said anything about that, it was such an effervescent place where people could come, who had nowhere else to go, and actually sit down and have professional people listen to them and deal with them and give them advice or write letters on their behalf and sort things out, and truly the cutting edge of the LRC in many ways. Cutting edge in the sense that one doesn't use a phrase like sort of bulk trading casually, but that's really where a great volume of people got assistance. Out of the Hoek Street Clinic milieu there would crystallise a pattern, very often, of the sorts of things where people were routinely being abused, either commercially or administratively or in employment circles, and those would then get through into the LRC and perhaps be taken up in a more concerted way. But yes, you know, it was a place where for me to have had that as a portal into practice, was, I think, defining for me. It established for me a set of...a framework within which I had seen what the law could do and that has remained part of it. Hence no interest in matrimonial work, no interest in helping companies. In my practice I've had people who have come to me to say, look we want to set up an arrangement and we want to use homeland structures...this is some time back of course...in order to achieve better savings in respect of our wage bill and how can we do that legally? If I'd gone straight into practice, who knows, I might have said, well, this is the sort of thing that can be done. I think because of my time at the Legal Resources Centre and the purity of the objectives that are possible in an environment where you actually are at liberty to define a cause and then to propel everything that you have into it without the

constraints of private practice, instructions and so on just led me to the position immediately in those instances of saying I'm not prepared to assist you. There's the door, go. Much to their consternation, but so...you know, it in a sense has definitely contributed to that sort of regulatory environment for myself. So I've luckily, in one way or another, been able to do cases only where I felt that I really wanted to win, and that the person that I was appearing for deserved to win. Which is a tremendous thing for a lawyer because by definition, 50 percent of people in cases usually don't deserve to win. So that...there has been a thread for me through all this time of those years at the LRC.

Int So within the legal fraternity do you think that people, do they know about the LRC, do they realise...does it have the same recognition as such? People who have not necessarily worked there.

KT You know it's very difficult to say. Um...but...from the perspective of someone like myself now, and having been in private practice for some time, there is within...amongst practising lawyers, I think that the LRC is not as prominent as it was in its early years, and that is...that doesn't imply that its work is less important at all. I think that the early years of the LRC involved the introduction of a body that hadn't been there and it came onto the scene as a fresh actor doing things that hadn't been done before. And important things. And you know, there was, I think, a greater level of awareness amongst practitioners generally of what the Legal Resources Centre was doing then for those reasons. That there was a kind of uniqueness and newness. And that, you know, over time, although it continues to be what I think is a correct description, my understanding is that there's nothing comparable to it really anywhere else, that I have any knowledge of. That it's part of the legal firmament in a sense now, and it does that work and it doesn't excite the same level of commentary. But really that doesn't mean that because of that the work is less important.

Int One of the things that is of interest is that during the 1980s the LRC really took on cases that dovetailed quite closely with the ANC's own strategy and interest. And then in the 1990s the LRC then has to then do a turn-around and really take cases that are against the ANC's interest...the ANC as government now...and I'm wondering what you attribute, and not having been part of the staff, what you attribute that kind of ability... to?

KT It's um...I think that what you describe is...is reflective of a core value of public interest law. And that... the concern with public interest law is...in the last analysis, a concern with the use of law to advance the public interest. And the public interest is not the interest of the State necessarily. It may be. It may be where there is a congruence between the State and its populace, but usually the State can look after itself. Well, certainly our State can look after itself, and the apartheid State could look after itself. Which is not to say there's (laughs) anything latent in that. But the unrepresented public is still an unrepresented public. And the concerns that part of the population had 25 years ago, are in many ways still concerns that it has today. It's, I suppose, a matter of the definition of rights that are not fully subscribed or played into real time conviction, or with real time conviction, into the lives of people and their entitlement to have those rights and to have people who will take up in a legally

defined manner the pursuit of those rights. So there's that common core, I think, to a body like the Legal Resources Centre. And although in the early eighties and through the eighties and into the beginning of the nineties, the absence of those rights had the particular quality of being fallout from the apartheid structure and the great body of apartheid generated legislation, the essential character of it remained that there were rights that people ought to have had that they didn't have. And now it's different. There's a constitutional democracy and that great body of apartheid legislation has now almost entirely been repealed and replaced by other legislative instruments that are calculated and are intended to promote rights whether they are procedural or substantive, whether it's the Promotion of Administrative Justice Act or the Promotion of Access to Information Act, they're now on the statute books. But they're there for a purpose and that is that they are part of the instrumentality that the public ought to now be able to wield. Previously under the apartheid regime, a body like the Legal Resources Centre in a case such as that of Rikhoto, had to devise the levers from the common law. Now there are statutory adjuncts to it, but the process is still essentially the same. And it would be a rare governmental creature indeed, which in the course of 13, 14 years had been able to disseminate rights everywhere, it would be a rare governmental creature which ever achieves that. So there are always going to be issues where certain interests are in conflict with others. One need think only of people in areas that are disputed in respect of which province a particular community has to fall into. And, you know, there are governmental decisions that are made. You will go there and you will go there. And that impacts on the lives of people. In a crude sort of way one may say, well, in the years of apartheid, there were Acts of Parliament that said you can't go there. And in a sense now inevitably government involves some degree of prescription. So I think that the transition from one sort of phase to another in respect of the manner in which society is organised remains constant. Are there people amongst the populace whose rights are not recognised? Yes, there are. There always will be. Should there be somebody who can stand up and look after them? Yes, there should be and there always will be. And the Legal Resources Centre, I think, is it.

Int One of the things that's also different is that...when you were working at the LRC, and you alluded to this as well, is the fact that salaries were paid, funding was there, and that's... largely because of Felicia Kentridge going after large scale funding especially from abroad. But since transition, as is the case, South Africa is no longer the darling of the funding world. I'm wondering, the LRC certainly seems to be in some sort of funding crisis and I'm wondering what your thoughts are about that because the constant feedback I get is that while there is the SALS...now it's known as SALS Foundation in America, really funding ought to be coming from within South Africa in terms of the legal fraternity as well as corporations.

KT Yes. Well, I agree with that. You know, it...apartheid was always a very ready label to draw in funding and support. I mean, it simply was grotesque and one merely had to refer to apartheid to win support and to win funding. What I was describing five minutes ago about the continuity of the role of something like the Legal Resources Centre is a less unique...there's less unique function for it now. It's not a less important function but it's the same kind of function that one can find in areas of South Africa as you can find in areas of the United States, whether it's the Bronx or South Carolina. And similarly in Europe and even in Scandinavia. I mean, the

churches...the Scandinavian and German churches that would have been very keen to make donations to something that was part of the tilt against apartheid, won't now have the same motivation. It's I think absolutely correct that the organised legal professions and corporate structures and the State ought to fund a body like the Legal Resources Centre. And I refer very deliberately to the State because it seems to me to be a niche organisation which performs an invaluable role and one that is absolutely compatible with the spirit and purpose of the Constitution of this country, which is to advance the position of those who were repressed during the apartheid years. It's a preamble to the Constitution. And the Legal Resources Centre does that and the state should recognise that and frankly should be quite generous with its funding to the Legal Resources Centre.

Int Do you think that...?

KT ...unfortunately the State has shown itself to be less than generous in respect of a great number of deserving bodies that should be getting funding and have been getting less or none over time. As far as the corporate world goes, and the organised professions, I don't think that the Legal Resources Centre, or the Trust, does an enormous amount to actually mobilise that. I get occasional communications from the Legal Resources Centre of a dinner fundraising event of some sort, and I always have the sense that I get that because I'm on the mailing list because I was on the staff. And, you know, there's very little apart from that. There's no significant effort as far as I can tell to broadcast its ongoing relevance within the professions. I can't speak about what happens in the corporate world but, you know, it's my sense that you have a couple of corporate bodies who have always thought it politic to make a bit of a donation to the LRC. Initially I think those that did deserve praise because it wasn't necessarily easy in the years of apartheid to be seen to be a supporter of the LRC. Now it should be easy and I don't know whether the call is sufficiently made with sufficient energy.

Int Right. I'm just wondering, going back to your point about the State, isn't...and, correct me if I'm wrong...isn't one of the unique and defining characteristics of the LRC is that it's independent of the State so that it can actually take on cases against the ANC government, and I'm wondering whether funding would then create a conflict of interest?

KT I think that with the State, I mean, it's certainly an issue one has to be alive to and I fully appreciate what you're saying. I think that with...you know, it's a question...let me put it this way, from the very first years of the Legal Resources Centre, when corporate support was important to us, and was solicited, it was never entirely dependent on foreign funding. One had the same sorts of debates. Here we are approaching Anglo American for funding but we may well find ourselves actually having to represent an individual against it, or against the general bank of interest, commercial interests, that Anglo American would form part of. That was resolved because it was, it was understood by everybody that funding into the LRC coffers didn't buy you any immunity. And I think that it's actually easier for that to be done in respect of state funding. That, you know, it's simply recognition by the State that the Legal Resources Centre, broadly speaking, is doing precisely what it should be

doing - namely to promote the interests of the people of this country. And for the State to say, but you might promote that against us, I think in the milieu of a constitutional democracy would be unacceptable actually for it to say. It can say, here's a cheque and we understand absolutely that there will be times when you litigate against us and go for it. So yes...I think it should be a major funder of the LRC.

Int Ok, fair enough. I'm wondering...the Constitutional Litigation Unit, does that in some way dovetail with your work and is there a close association at all?

KT There's some association. It...I mean, to some extent it dovetails with my work. I don't do as much litigation in the Constitutional Court as others do. But, you know, the CLU, I think, has been deliberately set up to have its own staffing and to be able to run its own litigation, you know, initially with George (Budlender), with Wim Trengove, who of course is a major star in the Constitutional Litigation environment. It does call on people occasionally for assistance and I think always when that is done people are happy to assist. So although there's...it's a kind of work that of course I absolutely admire and endorse, but...the LRC set that up, I think, deliberately, so that, because of the scale of most constitutional litigation, so that it wouldn't be in a position of having to go to private practitioners to say, look, we've got a major case and, you know, can you do it for free or can you do it at a reduced rate, which of course people would do, but it's easier when you have your own dedicated staff and it has also the virtue of allowing a more programmatic dimension to the work if you have people of that kind of stature and skill who are able to monitor and select.

Int Quite apart from the funding dilemma, the other dilemma that I seem to hear often is the fact that the LRC seems to have lost its specific focus and areas of interest and now when referrals come through it's not always clear what the LRC dabbles in, and I'm wondering whether that's your sense as well?

KT I truly don't have enough information. I would really need to have a far greater understanding of the work that it does. Partly, I suppose, it's an echo of what I said a little while back that when the LRC first broke into the legal scene, it did have a very defined focus and everybody understood precisely what it was. And there was that higher level of understanding and interest in it. On a very uninformed basis I would tend to agree with you, but that's largely a default position, not an informed position. And I think it's because I generally don't see that much or hear that much about the LRC.

Int I'm wondering whether...now in a post transition phase, what are some of the key areas of concern you think will come up for the LRC to deal with as a public interest law organisation, in terms of rule of law?

KT I think that the shortcomings in the interface between government and the populace present a number of areas of real concern, and certainly scope for the LRC to be very focused and purposeful about it. There's no reason for it to be diffuse about anything that it does. And those areas directly translate into classical public interest law issues,

in my analysis, where individuals are not meaningfully given what they are entitled to receive. And those areas are principally, I think, service delivery and corruption. And the LRC has been involved in specially service delivery issues. You know, people not being paid their pensions, not getting houses in a regular fashion. In a way it's redolent of what was happening at the time that the LRC was established. You know, housing issues, we did a great many cases in respect of housing within the milieu of Administration Board run townships. And how things were managed, and you know, people would be kicked out of their houses because of some minor defect in their rent payments or because someone was being favoured for occupation. And similar things, unfortunately, are happening now. There is favouritism and corruption in respect of allocation of housing. Corruption in the sense that it impacts directly on what is actually delivered by way of service in a large number of areas. So the scope and the need for it is certainly there.

Int It's been 26 years hence since you were associated with the LRC, and I'm wondering, at the time, in 1981 when you joined, did you have the sense that the LRC would become such an established institution in South Africa?

KT I can't say that I reflected on that question at the time really. It was very much a kind of struggle milieu and we went into it because there was the ogre, the great ogre of apartheid, and I suppose partly because of our...certainly my background in student politics and running campaigns, there was always the sense that, you know, you would kick off a campaign, the campaign for release of political prisoners, and who knows how long you would be able to run it before some sort of guillotine dropped. I was involved in NUSAS at the time that an Act was passed to cut the political funding from overseas. Deliberately so, because bodies like NUSAS depended 90 percent on funding from overseas. And that without that funding it became very, very difficult to run campaigns, to run literacy campaigns, to print things. And so we had that sense that, you know, you took the line and you held it for so long as you could. And I guess maybe in the backdrop of one's mind there was that sort of sense also of transience being part of what we were doing, rather than permanence. And so, to see people like Arthur Chaskalson and Felicia (Kentrige) and Johann Kriegler and others, fighting to protect the space of the Legal Resources Centre in those years, was part of that understanding. You know, you had that space, you had to fight for it, there was always the possibility that the state would take a different decision from the one that it had, and that it would pass an Act, which it could, to say, well these bodies will only operate if they have the approval of the state. Because then, they'd say, well, we're all for human rights, but it has to be regulated and unfortunately this one has ulterior political motives and so we're going to close it down. So we had that space and within that space you worked away and you did what you could. So to ask the question whether at that time I envisaged this becoming an ongoing decades long institution into the future? No, it wasn't important. But looking back of course, it's easier to answer that question, to say, with the benefit of retrospect there's absolutely no doubt that that body is as important for the people in this country as it ever has been.

Int I'm wondering, what are the stories that remain to be told?

- KT (laughs) Well, I suppose there always are stories that remain to be told.
- Int What do you think are some of the stories about the LRC that remain to be told ?
- KT I really wouldn't...wouldn't venture into that without thinking about it. You know, I think there are important stories and there are less important stories. And I've tried to speak about the important stories. Those really are the ones that define what was being done, why the people that I was involved with at the time were doing it, and...yes, why we did it, and the enormous satisfaction of having achieved positive results during that time. And we did. There's no doubt about that.
- Int Karel, I've asked you lots of questions, I'm wondering whether I've neglected to ask you something and whether you'd like it to be included in this Oral History interview?
- KT Nothing that springs to mind. You've given me a great deal of licence with relatively few questions, which has been a pleasure. And I have found it enjoyable just to cast my mind back over that time and to think about what we were doing and why and how and, you know, some of the notable events, some of the enduring lessons. I hope that this is the sort of thing that you had hoped to capture.
- Int Absolutely, absolutely. Thank you very much for your time and moreover for a very, remarkable and thoughtful interview.
- KT It really has been a pleasure. I'm delighted that this is being done and I really do hope that it will find its way into something creative and important and live, and that it will add to what the LRC is doing. If it's not doing what it should be doing then it must be encouraged to change gear.

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