

Reagan Jacobus**LRC Oral History Project****10th September 2008**

Int This is an interview with Reagan Jacobus and its...the 10th of September (2008). Thank you.

RJ And you're in Durban. (Laughs.)

Int I'm discombobulated, clearly! Reagan, on behalf of SALS Foundation, we really want to thank you for agreeing to participate in the LRC Oral History Project. I wondered whether we could start the interview, if you could talk about early childhood memories, growing up in South Africa under apartheid, and where you think your sense of social justice and injustice developed?

RJ That's...that's an easy one. You know, growing up under apartheid it was...everything was political. Later, when I got to university, there was a man who taught us, who is quite a big man now, Jakes Gerwel, he was a professor of mine in Afrikaans and Dutch, and he used to say, in this country when you wake up in the morning and there's no toothpaste, that's a political statement (laughs) and you can drag it all the way back down to the economy and the situation of the family and all that, and yes, in one sentence, he...he put it together. But I was born in Marabastad, which no longer exists either, it's a little township...well, not even a township, it was part of the greater Pretoria CBD and it was in fact a mixed...a racially mixed township. There's a very nice book written by a man called Eskia Mphahlele, the title of which is 'Down Seventh Avenue'. It's a great little book, and it captures the social environment of...of that township. It was...it was very mixed, Indian, African, white, Indian...I mean Chinese, gosh; we had all sorts of people living there. That was in '58. I went to a Muslim school to begin with, down the road, until we were moved out of that area to a coloured township or township that was proclaimed for coloured persons in Pretoria, that place is called Eersterus, outside the city.

Int And you were forcibly removed?

RJ We were.

Int Right.

RJ We were...there was no choice about it. It wasn't...it was just after 1960s, I think about '63, '64, and I remember going to my first school which was now a coloured school, and the people who were normally going to school with me, my cousins Appy and Nadia, that we were going to school with, had to go to an Indian school, which was now in Laudium, and they were moved to Laudium and we were moved...so Laudium was moved to the west, we were moved to the east, closer towards Mamelodi. Didn't understand it obviously, it was just about getting to school. So I grew up in a coloured township, schooled there, primary school, high school, and it was really through the schooling system, and I must say this too, the schooling system

was very effective. The separateness of it was very effective. The...the...keeping the so-called racial groups neat and tidy and separated was very, very effective. So if you didn't go out of the township, life was all right and you wouldn't have a second thought about, wait a minute, there are other people who are either lighter or darker than I am, and who are either better off or worse off in this country. Mummy and daddy were both working folk. Mummy worked as a meat packer at...for OK Bazaars, and daddy worked in metal factories, and both of them would make sure that I have a job in the vacation. So working...working was always part of it. Mummy...mummy was, I think, unknowing; she probably was the clearer political influence if there was ever, unknowing to her and unconsciously to me, but looking back on it, very, very clearly. And it has to do with where she came from. She was the...she was the daughter of a white woman, the daughter...who was the daughter of a farmer from the Free State, and her father, my grandfather on my mother's side, was an African man, quite literally a Basotho African man. And they were...they grew up in Ficksburg, right on the border between Lesotho and South Africa and at a very early age was removed from her mother, very, very early because there were just problems, they...it seems to me that my mother's mother wouldn't possibly, couldn't possibly exist in the Free State in a situation where she had combined with an African man and had produced, but she was one of three, so clearly there was a family there. But it was a separate family, it was a separated family, it was a dysfunctional family, so mummy grew up with her grandmother and her father was out in Pretoria that was the link. And he was a black man, classified as an African black man who lived in Atteridgeville, which is the African township on the west side of Pretoria. So life was like that, visiting people was like that, but consciousness really only came much later. What I remember clearly about school and about being at school, is yes, it was...it was a coloured school with coloured pride and coloured uniforms and competing with coloured schools across the country for sports and academics and music prizes and all that, but it was, hey, like with...with like. And it seemed normal except mummy comes home from work and is dreadfully tired, like, really tired, and driving us to work harder at school because the one thing that she swore, like I think most people of her generation, was that even if she...even if the work kills her, she will work hard enough to make sure that everybody in the family goes to school. She was very smart. Mummy was very bright, but she regretted personally not being able to go to school, she had to drop out early and started working and all that. That is a story on its own. It's a wonderful life. And I just remember with...with deep pain, mummy being tired all the time from work, tired all the time. I liked the idea of going to university. I was fortunate enough to go through my schooling system, schooling career, did well enough, got what in those days was called a Matric exemption, and got into the university. Initially in the old thinking, was going to become a doctor, because I...I liked that, I liked working with people, I liked working with my hands, but the University of the Western Cape didn't really offer that, they offered a dentistry thing, and I'm not really taken in by it.

Int (Laughs.) And clearly you couldn't go to any other university...?

RJ Not without permission.

Int Right...

RJ Not without permission from the then Minister of Education and it was a formal application. One of the ironies about that particular system is when I was in the final here of the BA at UWC, and had this...determined now I'm going to go to Rhodes to complete the LLB, I had to write off and fill out one of these forms and send it. And I had gone to Rhodes long...not knowing whatever the outcome of that application was, and about three years after I had left UWC, and having graduated from Rhodes University, there was a piece of...communication in the mail that says I have the authority to go to Rhodes University (laughter), so that's how that system worked. But let me not, let me get back to...

Int You were also at university at a very crucial time in the country's history...

RJ It was a critical time, it was...and there was a foreboding, or rather foretelling of that at school when I was in standard nine and ten, because there were some big strikes going on at the University of the Western Cape in '73 and '74, and the issues at that time seemed to be innocuous but obviously they had much deeper significance. At the university at that time, the students like at UDW or UDW was still at Salisbury Island here, were compelled to wear ties and jackets and that became the issue, because the boys said, we don't...why are we doing this and there was a protest around that. But it coincided nationally with Frelimo and there's a big history in this town about people demonstrating and marching from Curries Fountain to...in support of the Frelimo and Samora Machel's coming to power there. And that roll over cascaded onto the universities. But I was at school. I didn't quite grasp the significance of that. There was one or two teachers who would make noises in that direction. I must also say, we were...certainly I was at this stage, totally oblivious to...to the network, what we discovered later was a real network of security apparatus that operated within schools, within all schools, white schools, black schools, Indian schools, it doesn't really matter. They were there, they were ever present. And there were boys who were recruited as so-called police reservists, but who were really recruited as *impimpis* if you will, or people who would spy on others, and tell the stories about who reads what, who is political, who says what in class, our essays were often examined, and I discovered this only much later, and had a big fight with someone who was discovered as one of those folks. Anyway, got to the university in 1976. It was a tumultuous year, not at the beginning, because at the beginning it was a very normal campus, and we were all getting ready to study and do our thing, we were working hard, inaudible fight causes, again, (Mahomed) Navsa was there too, it was really only at the beginning of the second term after the Easter break when we came back, and there was just such a stirring in the country that you couldn't avoid but feel it, you couldn't ignore it. In the Western Cape, what triggered my own political awareness was the Fatti's and Moni's strike, which was really the initiation into...into the world of politics and strikes and trade unionism and that was great. We...they...there was a support group formed on campus and I found myself naturally aligned in my thinking and in my empathy with this, because the memory was quite simply working people, my mother is a working person, my father is a working person and I know they don't earn enough money and I know they have to fight because nobody's going to give them anything, so that was a natural. I...I...ja, I became almost naturally affiliated to that...to that strike and worked very hard for it, and in the course of it of course, you're now outside campus, and you begin to associate and meet with working people

and there was a man who is now...who is now late, who was known in those parts simply as Mr Bush. I discovered later that yes, he was actually a very deeply political man, a deeply committed person and he had...he was leading a group of...of the strike, a committee, and he lived not far from where I was boarding, and I found that, oh, this is someone that I want to know more about and learn from, so the activity there was...was excellent. The strikes in Fatti's and Moni's in Bellville, down Modderdam Road, spilled over onto campus. The SRC leadership on the campus at that time were people like Leonard Appies, Ben Langa, and these boys naturally took this on. The mass meetings were...were there. So with this thing from then on became just a year of rolling action, quite simply, because it then cascaded into the Soweto uprisings. In Iran and Iraq at the time, the Ayatollah (Khomeini) had come to power, the very first Ayatollah (Khomeini) and that disturbance in that part of the world, because of the very large concentration of Muslims on that campus where we were, it was something to be concerned about, so all these impressions, and I'm afraid we came...I certainly came out of 1976, wow, it was not the same, life was never going to be the same after that. It also meant I didn't, for example, go home during the June vacation because I threw my weight into this strike and support committees and soup kitchens and all that stuff, but when I did get home in December for a short time, Eersterus and Pretoria was a very different place, because the scales had now come off. And just looking at life there, just looking at the universal acceptance of 'colouredness' and no one...no one questions it, everybody embraces it and everybody lives it as though it's a natural thing, when of course, I've now learned this is totally unnatural. And there is in fact an imposed political identity that we're living out in terms of a political system, that really is at the root of most of the...the evil in this country. So I became very political and there were tensions in the house because now I'm fighting with my brothers and my sisters and my parents about this wholesale embracing of being a coloured and don't...don't talk to me about this being a coloured and all that, but of course it's been going on for generations and generations, they didn't understand what the hell was going on. And I...I visited home less frequently (laughs) because I became at once bitter and very critical but at the same time also very sharp about what is right and what is wrong and where the lines of division, if there are any, really should be drawn. On campus, and if I can maybe link onto a story we touched on...

Int Earlier...

RJ ...touched on earlier; on campus the divisions were very, very vicious. But they were viciously drawn. If you had gone to class when a general boycott was called, you were identified as a collaborator, and that was a label that you didn't want on your back, because it meant, it could mean death, but it certainly mean...meant that you were being ostracized, you were not going to be associated with and you dare not talk to anybody, whether it was in the local cafeteria or in the sports field or...you were just not going to be...so people were very careful. But there were people who collaborated with what we call the system at that time, in different ways. Some by going to class and making the system work, when the intention was not to let the system work, and break it down. Others by being...by being spies and who would...who would give secret information to secret police and business and all that. And we had both of that sorts on our campus and we had unmasked both of those on our...on our campus. And I...I know from our class, if I think back to my Private Law

I class the following year to the Roman Law class, these are very bloody difficult subjects, there were people who went to school, who went to receive lectures in the offices because the lecturers made it available. They said, I'm not compelling anyone to come to class, which was the façade, however, if you believe that you need to...my office is open, and yes, lectures were given in the office for six and seven people at a time, and those who attended it wrote the exams. Those of us who did not, didn't write the exams, so you failed. And yes, 1976, we failed. A great many of us failed, certainly in the Law subjects. In the Arts subjects, where the attitude was different, and I can only talk for example of Afrikaans, Nederlands and Dutch and perhaps the English subjects, the leadership of those faculties had a different...a different political sense that they brought to it, and class work counted as an exam mark because exams couldn't be written, under circumstance where it's unnatural, so that's the attitude that they took. And so that was a credit that you could gain. This of course created an enormous bitterness within the Law Faculty itself, and it wasn't long, it really wasn't long and the entire Law building was burnt down.

Int Gosh.

RJ I'm talking about a building that houses the offices of all the lecturers...the staff, the library section thereof, and nobody was sorry about that. We came onto campus one morning, there was a train that used to run through there like...which...which I used, walked from the station onto the campus grounds, and the smoke was billowing, and the building had burnt, it was the Law building, because it was seen as the most conservative and it was seen as the most collaborative. The other aspect of this collaboration was that also the staff who taught us were people who were employed by the University of either Cape Town or Maties at...Stellenbosch, and they would come and teach at UDW after hours or as additional teaching loads. We discovered that for that effort, they would get paid their normal pay, but they would get paid a protection or a danger pay, which we called danger pay, but they were given risk pay, because it was a risk to come and teach, and so, bloody hell (laughs), it was highly offensive. And I can tell you that certain of these people, the most hated of...of them, had perhaps their personal cars vandalised and things like that, and ja, made it quite impossible for them to come and teach, so that was part of the offensive...offensive features of being on campus. So the University of the Western Cape, certainly, certainly, for me was...was coming into life...was coming into political awareness, it was coming into what really this country was about and it forced me in a big way to consider my place in the world, my place in my family, and all of...and yes, it went like that, it went as large as that. I then decided that, yes, I'm...it's really not going to be useful for me to get killed early, it's not going to be useful to...to join the ANC, I didn't quite like what they were doing, I thought that they were much too conservative, we were very radical, Geraldine was on my campus at the same time...Geraldine...Moeleketsi.

Int ...Moeleketsi...?

RJ ...Fraser, she was there, and we had these debates. The campus, after...certainly after (Steve) Biko, Biko's death in '77 and '78, became a very different place. There was general repression, a very deep repression. Many of the radicalised students left the

country and joined the ANC. People were spirited across...across the country, and certainly '78 and '79 and 1980 was business as usual, but under the cold climate. It was an unnatural place to be. We played soccer, we went to school, we studied, we read, we did what we needed to do, but all the time forming different organisations that will...that will do what we think would do, which was really just to conscientise and I must say to you, this word 'conscientise' is quite a...quite a...it's a very typically South African word, it doesn't exist anywhere else.

Int It doesn't exist in a dictionary, I've discovered. (Laughs.)

RJ No it doesn't, it doesn't. I got marked up for it when I was...I did post-graduate work at UCLA and I used this word in an essay that I wrote, and my law professor: what is this? I said, well it's a verb and it says what it does. He said: but what is this word, and what is the activity behind it? And then we talked about...he liked the word, he liked the activity but he said: you've got to find another word for it, it's not allowed...so you understand, well that's the contribution of South Africa to the lexicon, there'll be lots of others too. And I wanted then...I said, look let me get out of this, do the BA. I had become involved personally with a...in a personal relationship with a wonderful woman who was Muslim and the continuation of that relationship would have meant ripping her family apart, because she was very close to her family, and our relationship was getting more and more intense, and we decided obviously this is not on, we'll separate, if it's meant to be it will be, very naively I think, but we did. I went off to Rhodes and I applied for a permit, the university accepted me provisionally that the permit comes through. I went to do Forensic Law because they were offering it, and I...that was where I was going to go.

Int So at UWC you'd done a...?

RJ BA Law, with...with legal subjects the credits for which you carry through to the LLB, there's a number of them, and the LLB was a post-graduate work, post-graduate...

Int And you did that at Rhodes?

RJ The LLB I did at Rhodes, ja.

Int And the practical legal studies at UWC did you...were you involved in the clinic at all?

RJ I...ja, there was no...there was no course called practical legal but what we did, we linked up with SHAWCO and we ran a Legal Aid Clinic...Legal Aid Clinic...that's what...what it was called, we ran a Legal Aid Clinic, and on the Thursday and on a Saturday we would go to different places. Dullah (Omar) would...Dullah (Omar) in fact would supervise those as the supervising attorney.

Int Gosh.

RJ Dullah (Omar), and there were a couple of...a couple of attorneys but Dullah (Omar) was the leader of that and I remember going into places like Athlone and Manenburg on a Thursday night, from six to ten, they would run a clinic and they would see people, and the Saturday SHAWCO, which was at UCT, we would get onto that bus and go out into places like Eersterivier and those places, where we would do the same...the same thing and rush back to play soccer at three o'clock or something. That was...that was nice, that was the legal side of...but there wasn't quite a link with the formal courses that you were registered for and what you were doing outside, it seemed like they were separate things and they weren't quite linked. They became linked much later. For me certainly at...at Rhodes when we could now give more structure to the Legal Aid clinics and you were a little bit smarter, a little bit older, a little bit wiser, and I think a lot more committed because choices became obvious, that they were almost defined in the absence of choice, you know, so you would go through. Rhodes was very intense. It was a white campus to begin with. The black section, we were a small group of people, very highly mobilised, very alert and very alive to the world, and we would quite literally export politics from Rhodes. (Laughs.) One of my...one of my lasting friendships and comradeships that we formed there was with a guy called Ashwin Desai. Ash (Ashwin Desai) is around here now and you'll see him and you'll meet him in different places. We...we became very, very involved with each...each other and learnt a great deal from each other and he was a radicalising influence on me and I think vice versa. We sort of deepened and just became far more radical, to the point that years later, when we met up again at the University of Durban-Westville, where I was teaching and he was teaching, that initial radical contact had in fact become quite consolidated and we found ourselves way out on the left of even what the world thought the university was, because UDW was seen as a left campus, but it was only...it was pulled, it was pulled and pulled more to the left and we had great work there, that's another story. So...so Rhodes was there and Rhodes was very clear, Rhodes was difficult because it was infested with spies, every second person, and I became quite personally paranoid. That was...that was hard. While at Rhodes, it also became clear that, oopsy, I was twenty-one years old when I graduated with an LLB. I wasn't quite ready for the world of work, wanted to learn and learn and learn a lot more. I applied for...oh, by the way, the movement from UDW to Rhodes...I mean UWC to Rhodes, was made possible financially simply through this...and I should probably tell you a little bit about the financial aspects. I come from a big family, I...I'm one of seven kids, I'm the first son. My sister, Hannah, was three years older than I and I graduated from school three years sooner. She had become...she attended nursing college and by the time I graduated from school, was a qualified nurse and was doing her fourth year in midwifery, in the Western Cape at a place called the Peninsula Maternity Home, which no longer exists because it was located right in the heart of District Six. (Laughs.) There's another thing there...and Hannah would pay my school fees and my tuition fees from her nursing...

Int Salary...?

RJ ...stipend, quite literally. It wasn't even a salary. And we...I remember, she would...I would take a bus, go into the city because I lived in Bishop...Bishop Lavis, collect thirty rand from her: twenty-four rand goes to the boarding and six rand is for the...(Laughter)...it is impossible to even imagine it, but yes, that's...that's how that...that worked. Because at home, the earnings from mummy and daddy would only be sufficient to keep alive five other mouths, and that's quite literally how it...how it worked. So as soon as I could, obviously I worked throughout the university vacations doing...doing work at different places, sometimes with daddy, but sometimes in...in the Western Cape itself. It sounds a cliché, but yes, waiting on tables, cleaning out bars, that's really what it...what it was. Post-graduate work...when I...mummy then said, Reagan, I can no longer give you any money, Hannah said I can't give you any more money, you have the BA, you have now graduated, you must either go and work or you have to do something else, because money has to go home. There were five other kids, and I said, fine. The Institute for Race Relations, my other good friends, in the other part of the world, ran a bursary scheme and they still do, and there was a lady that came around to campus, I applied, and I was awarded enough money to pay for two years...pay my entire tuition at Rhodes. The boarding, I just worked and we...we got money for that so that...that was nice because I became financially no longer dependent. Although independent, I was no longer dependent on family, so that was a very great, great help and I really appreciated that. Because it meant I could go to university and do this three-year program in two years and just do it, which is really what it was. I remember doing, what was it, eleven and nine subjects and writing these horrible exams one after the other, passing it. I liked the law; I really, really liked it. I liked the study of it, I liked the writing about it, I liked the teaching of it, I liked the research of it. I really was...I felt that this is right, I didn't want to be a doctor, I didn't want to be a pilot, I didn't want to be...that was...that was nice. And there was a woman named Sarah Christie who is a name that...you will meet her, she was teaching at Rhodes, she was young and new. Labour Law hadn't been quite a subject yet, and we put together a course program, there were six of us, and it was taught on a seminar basis, and we each researched the paper for each week, and we gave the paper. That became our...our elective course. Halton Cheadle had come down as a guest to give a lecture, there was someone else who had come down from Cape Town, Halton (Cheadle) was working in Durban at that time, because Labour Law was just beginning to come into its own. Nick Wiehahn and his Commission had been published and new focus was being placed on this area. For me, Fatti's and Moni's meant this is where work can be done. Trade unionism was exciting for me. So I...I decided this is really what I want to do: specialize in labour work. I also did African Customary Law, which I really, really liked, because it helped me to understand, once again that larger question: what is your place in the world, where do you come from? Helped me to understand that. From...from Rhodes, I was awarded a Fulbright scholarship to go to UCLA, and literally go through the American application system, where you write all your preliminary tests and they want to see whether you are proficient in this, that or the other, which was...which was quite good because it was Math, English, general knowledge...or...

Int So this was your GREs?

RJ Ja, those...those things, ja, GREs and I think the Toefl test and all that. And there was a bit of a lapse between taking out that scholarship and graduating from...from Rhodes, which was a six-month period. Spent it working. I worked in a bank, like...especially went back home to Pretoria where I hadn't been for years, went back home and I worked in a bank there. And working in the banking industry and seeing what was going on just fortified, quite literally fortified my belief that this has to change. There were just too many people who were just too poor to make their ends meet, and that poverty was in my face, in my eyes all the time. Anyway, I took up the...the scholarship, went to UCLA, Richard Abel was my mentor, very, very capable man, very, very capable teacher...

Int Who subsequently wrote a book about law...?

RJ Ja, ja.

Int ...in South Africa.

RJ Do you have a copy?

Int I don't, but I've read it.

RJ It's called 'Politics by Other Means'. And you'll see, I think he...there's a mention in it. He became my...his and our relationship eventually became quite...what is the word...it became quite a good one, because out of that grew his interest. He had an interest in Africa generally, he'd written big works on Kenya and all that, when he had done his post-graduate work, but this gave him an opportunity to, hey, let's find out what's going on here, and when he came through...came out, he came out to CALS at a time when I had just finished there, and introduced him to John Dugard and everyone else that he mentions in the book, and that...that gave him that, and he went into attorney's offices who opened up their archives and files, so he's capable, he did it in two years! I don't have that kind of discipline. But ja, that was a very good experience, because it now gave me the opportunity to, from a distance, see what's really going on in this country and I read more about South Africa then, than I had in my entire life. I wasn't...I mean the history books in my...in my digs was piling up one after the other.

Int So you did an LLM?

RJ I did an LLM, ja, at UCLA. But that was the formal part. The non-formal part was learning about South Africa. I was...I was in that massive library that they have on that campus daily, daily and I must have slept like four, five hours a day, because I was reading, I was absorbing all the works that they have, up until then, we were not allowed to read, and look for it, and look for it...

Int So banned material.

RJ Very, very, very. Mazisi was teaching on that campus, Kunene, at that time and there were a bunch of people who were doing post-graduate work there, if I mention them it's quite embarrassing now, they...in particular, there was a boy...what is his name now...Ziba Jiyane, Ziba came back and became the head of the IFP here. (Laughs.)

Int Right.

RJ Who at the time was a very staunch Marxist. (Laughs.)

Int Interesting.

RJ So when we bump into the streets, I'm like, hi my Marxist friend, how are you? (Laughter.) He says to me, Reagan, stop that. But again there was the formation of cells, and there were people from MK who were on the campus to do different things. And it was also, like all campuses, a recruitment ground for different things and different people. I became involved in a...in a Trotskyist outfit there, which I appreciated because of the intellect. It...it was really very sharp, and it cut through the nationalism because I had, in South Africa, struggled with...with the concept of nationalism and...and how it was brought to bear in this country, and I knew that there was something wrong about it. Being introduced to Trotsky and his works helped me to understand what this was really about, and it helped me to cut through the notions of a national race...a race nationalism or whatever it was that made me uncomfortable, because up until that time all that we were exposed to was, ok, this is South Africa, there's a nationalism, there's a national task that must be performed, which is the overthrow of apartheid, but nobody really asked well, what replaces it? And what is the definition of this cause in any event? So intellectually it was fuzzy. Now that helped me, that period (inaudible) it helped me a great deal. Anyway, I came back...let's get to the stuff...came back in the middle of 1984, because by now it was done, and I decided I'm going to work and live in Durban, because it's the one part of the country that I really like and you can see why, it's wonderful, having lived in different parts: Pretoria, Western Cape, Eastern Cape, this is really where I wanted to come and work. And I came, I came looking for work, had a friend here who's mother put me up for a couple of days, saying, you'd better find work, don't go and sit on my neck here, you'd better find work, and every day coming to the bus and into the city and looked for Articles and ja, walked, walked, walked. And people were offering Articles at a hundred and fifty rand and two hundred rand. The best offer I got was three hundred rand from Ashwin Trikamjee, who was running his practice out of the teacher's sector in Durban, which is where all the Indian fact...legal factories...where all the Indian legal...

Int Firms?

RJ ...firms were...were based. I came very close to accepting that when I walked into the LRC in Durban, where Paul Pretorius was interviewing people for Fellows, to become Fellows at the LRC, and I went into that interview and I got a job in Durban for a

position in Johannesburg (laughter), went back home, packed up, said thank you very much, I'm off your neck, gone. Went up to Jo'burg, they were offering six hundred rand at the time, which was massive, it was a massive salary for a candidate attorney, and that was the introduction to me of the Legal Resources Centre. I knew they existed because the propaganda had moved down to the campuses and we knew that they were recruiting because they went around from campus to campus looking for people. On campus they were liberal, it was a liberal public law interest formation, in fact it was work. Went there, the people in charge at the time were Geoff Budlender, Felicia (Kentridge) and Arthur (Chaskalson), quite literally they were the people who ran the committee. My principal was Charles Nupen, because I had a particular Labour Law bent, I wanted to do Labour Law, Paul (Pretorius) was one of the...he wasn't quite a director yet but he was on the same...they were all on the same level there. (Mahomed) Navsa was in between the fellows and these...these boys but he had become one of the boys there. Mr Zim (Morris Zimmerman), a wonderful man, wonderful man, I really, really liked him, I thought he was a mensch, I thought he was a real person. Now, the...the...at the LRC I appreciated being exposed to legal practice, I really, really did, because I learnt the craft from there, I learnt the craft of drafting, the craft of reading, researching, interviewing a client properly and putting a case together, I learnt that from the LRC. I don't think I would have learnt it as well as I did. Charles Nupen was my...was my mentor, quite simply, Charlie (Nupen) would say, Regs, we go in, and we'd jump into a car and we'd go in to interview a group of workers in a factory outside Jo'burg, we'd come back, we'd put the case together, his notes, my notes. His handwriting is appalling, but he will tell you that too. And you would literally nurse that case through and...and he was very key, he was very key in my development. Paul (Pretorius) was a more thoughtful person and had always been, sort of take an intellectual approach, stand back, consider, put the words together in a draft form, cast them into a pleading and move. What also attracted me about the LRC was that they were litigating in the public interest. The funding difficulties meant that they were constrained in terms of what they could take on and what they could not take on. And at the time the funding was foreign so there really was no South African funding, and working for the LRC, you always felt pressure. You felt pressure but you also felt privileged. I certainly felt privileged working there. Cecilie (Palmer) used to say, you boys, this is not the real world, because it was protected, so we were not only privileged, we were also protected. And we were protected as an institution largely because of who and what Arthur (Chaskalson) was, to a great deal. And I think he used that influence correctly to advance the cause of democracy, liberally defined, which is what he did, and I think that was good. So we would fight big cases, profile cases, Geoff (Budlender) was one of those people who would say, who's going with me today? And we would have a roster of people who would go with him down to the Magistrates Court to oppose the Pass prosecutions. As late, ja, as late as '84, '85, these things were still on, and ja, we would walk down there, and then we would find clients who'd been arrested the day or the night before for not having the right permit to be in the right place. People didn't have Section 10 rights, they were looking for work, boom, they were arrested. And then, ja, there's a lawyer, you know, that kind of work was good work. It was also good work to be exposed to. So as far as the philosophy of the LRC goes, they lived that out. I thought they were very limited. I personally thought that they were not strong enough, I felt they were picky because while you were constrained to choose, you're obviously going to choose the cases that are sexy, and that is what happened then. The unpopular cases, the hard cases, didn't really get there. And I'll

give an example: there was a man named Mr Bartman, I'll never forget him, he ran a security guard company, Springbok Patrols, it's now Springbok Khulani, if you drive around you'll see them, who was the most appalling employer, not as a person, but the conditions under which he employed his workers were just appalling. And he had this huge truck that he drives around the countryside of South Africa and picks up unemployed people who look for work, drives them to Johannesburg, puts them up in a compound up there, feed them water and bread and then assign them a job for twelve hours without giving them anything, no support. And some of these people made it through. They heard about the LRC and they made it through to the offices, and the first one or two come through and we would do the case and it gets settled. Principally, Charles (Nupen), myself and Edwin (Molahleli), were the people who worked on Springbok Patrols, because when they'd come into the office, they haven't washed, they haven't been fed, they are people who were totally destitute, and desperate, and who have worked for hours and hours and hours. And everybody would say, phew, here they come. (Laughs.) And I would take them into a hall, listen to the story, and I got to meet Bartman and it became a routine procedure every week that I would 'phone him up and say I'm seeing you tomorrow morning because I now have another list of people, and eventually we fixed that thing, we fixed it, because he had to employ people in the right way. But that was just very typical of what was prevailing at the time.

Int But the LRC didn't choose to take that on?

RJ It didn't really, because you know you could make a good...what is the word, class action if you will, in whatever form it would have been possible at that time, you could take on that as an example and fix it systematically, rather than just one by one. Bartman became easy to settle because he was going to throw money at it, because the money that he threw at it didn't really threaten his economic...the economic survival of his firm. In fact, it helped him, because the LRC is quiet, Reagan is off his back, and business carries on, and I just knew that the approach that the LRC took to this thing was just wrong but: funding. Funding was the problem, was the issue that was raised. My time at the LRC was too short but I'm also pleased that it wasn't longer. It was clear that there were some cliques that were being formed. I thought they could have done more with instructing people, they could have taken on more fellows, and exposed us to different work. I had made choices about labour law and public interest law; I was going to litigate in the public interest. John Dugard later said to me, Reagan, not every black lawyer is a public interest lawyer. In fact, you are very naïve to believe that you're going to survive in practice. The other outcome of the LRC was that because you were in there, you had been trained well, it was easy to secure Articles because you...these boys are well known, they...the one thing that they do very well is the public relations around their work and around who they are. They have it down to a 'T', and we haven't learnt how to publicise with credit the work that we do. As black people, we just haven't, we just carry on. The NUSAS old boys understood the value of publicity, they understood the enormous goodwill that gets generated by a simple newspaper article, by writing...appearing in the paper, giving a speech, going...and they did this work, to their credit, and that's why they are where they are. Don't get me wrong, they were also very knowledgeable people, and they do work hard, but they work hard on a particular political program, which really was a sort of a left-leaning social democratic program, nothing earth shattering. They were

not going to change the world to better black people. No, it wasn't that. Or to alleviate the oppressed, it wasn't really that, because if that was what it was, then Ms. Grootboom would not have died without a house, do you see what I mean? But the country goes on, despite the Grootboom judgment, despite the woman having died and despite the thousands of people. So I'm saying to you that something more was needed, something more probably is needed. I got...secured Articles out of the LRC with John Brand's firm...John Brand, you also would have met.

Int As in Bowman Gilfillan?

RJ Bowman Gilfillan at the time down in...which again, is a prestigious office, a prestigious...it was at the time the biggest law firm in the country, and what would you not do, what would you not give? I had no effort, I had to make no serious effort, I got interviewed, I got taken, do the work.

Int So you did two years there?

RJ I did one year.

Int One year?

RJ I chucked it up. (Laughs.) I did one year and I was restless, I was really, really restless, because it was now '86...'84, '85, '86...it was now '86. I'd done the one year; I was getting very, very restless. The country was changing quite rapidly.

Int States of Emergency?

RJ States of Emergency was vicious. And we...I wasn't a pure lawyer, I wasn't just a lawyer, I had other work that I had to do, which was really political work, and that space was getting very tight, that space was getting very tight, closed down and tighter and tighter. People in Durban and Cape Town that I used to see often outside of work, were disappearing and things were just...ooh, it was getting very, very worrisome. Mummy was getting very worried because while I was living and working in Jo'burg, I could see her more regularly and weekends I would go home, if there were...and she was getting worried about what was going on, and the kind of language that I was speaking, and the things that I was saying, she would just say, my son, please be careful, remember that there's no point in dying as a hero, because the world will still go on, you need to live, you need to be alive if you're going to do the things that you wanted to do. I went to London.

Int Right.

RJ I did the one here, I took, with John's (Brand) permission, I took two weeks leave, which is all that you were allowed as an Articled Clerk, and really what I was doing

was looking for a way out of the country. I secured a British Council scholarship to the LSE.

Int LSE right...

RJ London School of Economics, for a year, two years. And oof, it was my break. And I wrote to John (Brand), I said, I can't come back, I 'phoned him, I said, I can't come back, John (Brand), I want to pick up a scholarship. He was livid. He was angry with me. He was angry at me because he had invested time and training into this relationship. We had, between John (Brand), myself and Martin Brassey, we'd become quite a good pair, a good team, and we were taking on some nice cases, some very good labour cases that we were loving. And Martin Brassey's an intellectual, John (Brand) is a great lawyer, it was a good school, and from John's (Brand) point of view, I understand that he was angry, I don't think he actually quite recovered from that. I chucked it up and I enrolled at the university, which was really a break from the country and time to do real work, because we could sense that something was going to break, something was going to break, and as far as the left were concerned, we were not quite ready. Timothy was a very good comrade as part of this stuff, and there was trouble coming, we knew that there was trouble coming, and I just ran.

Int I want to stop you at this point because of the time you mentioned earlier...

Int *Recording ends.*

Interview 2**10th September 2008**

Int So, Reagan this is the second part of your interview, and rather fortuitously, I managed to continue with you later, which I'm rather happy about. So you really wanted to get out of the country at that point. But you were also saying that the left weren't prepared, and I wondered whether you could pick up that point.

RJ Well, the country was wrapped in a rise of coalition politics. The UDF had been formed, COSATU had been formed, trade unions had been unbanned, and I recall very clearly the May Day rallies that were organised. The first one in '85, that... '85, '86, when the trade unions had been unbanned and there's a picture, there's a very vibrant picture of, I think it was Commissioner Street in Johannesburg, thronged with COSATU marchers, and it was...everyone knew that in terms of the timetable of a nation's development, the hour was very close for the collapse of apartheid. But it was also clear there was a huge chaotic moment that was going to ensue as a result of that. I think in many ways the country was on a knife-edge, it really, really was, because the apartheid regime, and I don't really like that word, but anyway, the government at that time had not made up its mind about how it's going to respond. They were on the one hand increasingly repressive, they were holding on to Emergency States declarations and the repressive machinery in terms of kidnapping people and making people silent, while at the same time there was, there were talks of Mandela being released, and there was a conditional offer for Mandela to be released.

Int But not everyone was privy to that...information?

RJ Well, it was known.

Int Ok...

RJ It was known. I carried, I'll tell you, as late as, the conditional offer came much later than '85, '86, but there was talk, there was talk already at that time. The Afrikaner liberal wing were beginning to start talking to the ANC in exile. There were these meetings Van Zyl Slabbert led to Dakar and those places, so there was clearly moves to precipitate or anticipate and in fact avoid this chaotic moment, which would have ensued. And it was avoided because people then started talking. But I think that the ANC in exile knew, and there was certainly communication between the government and selected people within the ANC, the extent to which they've kept it secret, is obviously not known to me or kept it confidential amongst certain people. But I think that fact was out, because what was written large, was that the country could not continue as it was before, otherwise the streets would quite literally bleed, and it would've...it would've...it probably would have erupted into racial violence, because race was the edge of this whole thing, race was the edge. It wasn't the economy, it wasn't my or your economic position vis-à-vis the rest of the world, it was race. Race was the issue. And that did two things, it generated a lot of impetus, because it's an easy emotional stimulator, if you will, it's easier to respond emotionally to issues of race than it is to respond to issues of poverty, but at the same time it was also the danger about the whole thing. And so there was fear, there was fear generally. And I

just knew that there was no answer, there was no immediate answer, there was no immediate answer that was principled or that was bedded down in a strategy or in...even a tactical approach to avoid this nonsense, and to steer the country into the right direction. It was dangerous; it was very, very dangerous at that time. From the left and from within the left, we were talking amongst ourselves and we were theorizing and that was scary, that was scary. We'd gather in small groups and different places and we would talk and everybody would ask, well, what needs to be done, what should we do, and the answers were not obvious. And it's an amazing thing because without State power, you really cannot do anything, without mass power you really can't do anything either, and the left didn't have that. You see, the State power was directed against the massive power that was being raised as a popular banner under the UDF, COSATU and the ANC. Those of us who were to the left of that were just there, without making any real influence, you know. We had friends and we had associates, we had colleagues and we sometimes would march alone, but you didn't have...I didn't really have an ideological commitment because the disaster was also clear, the disaster was also clear that, hell, a Nationalist...a government of nationalism? Black nationalism? What does that mean? And the questions were not answered properly; the questions probably were not even posed properly. Anyway, so I took that time out and...

Int So you were with the LRC, right?

RJ Was at the University there in London, and of course, London is South Africa. I mean it's a little South Africa, so you can't really escape it, and the intention never was that either. But the points of engagement in London in exile is horrible. I felt that South African politics in exile were dismal, they were dreadful, and if you're not part of an organised structure, you really were an isolated individual and therefore not making any input into anything, and having no influence, so that time might as well be spent better looking at your work. I did that, I did Labour Law with Wedderburn and Heppel, and Reinard and those people, did a Masters there, and when the time was up, I said, ja, I'll come back, and this...I returned at the end of '87, '88. And of course I didn't really escape anything. (Laughs.)

Int Back in the trenches.

RJ Yes. Came right back into it. John said, your job is open if you want but you'll have to start again. I said, I can't...

Int So you were at CALS?

RJ Ja.

Int Oh, this was with John Brand...

RJ John Brand. Because I came home, I actually came home to mummy and the family and all that, and said, well I need to look for work, I went around the country visiting my friends, took a motorbike, came around, set to finish the motorbike in Windhoek, where Anton Lubowski...ended up an intern on that side. But anyway, that was just the first month. Then I started looking for work, CALS advertised a position, John (Brand) said, come back to work. I said, John (Brand), I can't start doing Articles again, I'm now twenty-six years old, I have to start working quite soon. Went to work for CALS, had the interview with (Halton) Cheadle and (Paul) Benjamin, Paul Benjamin, and became a research fellow with them on the Labour Law project, which again, was close, was nice, was the work that I wanted to do, was very sheltered. CALS is very sheltered. Picked up on the tensions between CALS and the LRC. John Dugard was head of CALS at that time; I think he was just short of his tenth year, two years short of his tenth year. John (Dugard) was a remarkable man, was very involved, and I believe, very committed in his way, to South Africa. And he demonstrated that repeatedly. He was trapped in the liberal thinking but he was a smart liberal, he wasn't a fool. I think he still is. John (Dugard) and I did...you may remember there was a coup in Bophuthatswana and the soldier who led the coup was called Phiri. John (Dugard) and I did that case, because those boys were then tried for treason by the Mangope government. John (Dugard) and I worked on that case. It was very nice. Again it was natural, it was normal work. I didn't know what it meant to draft commercial pleadings in a big commercial firm, it's not what I do, I still don't do it. And doing the research and teaching at Wits under the CALS banner was very, very nice. It was a nice outfit. Ferial Haffajee worked in the library at the time. (Laughs.) I wouldn't tell her that one yet. So you can see the coterie of people around us were people who were all thinking and they were all working out their own place in the world and the contributions that they think they would make and how they would live that life out, all of us were in different ways. I did...I worked on the Labour Law project, which was funded by the World University Services, and various Scandinavian people. I don't know much about that funding relationship. Now I think I ought to have known more and perhaps taken charge of some of it, but Paul (Benjamin) was running it. I don't know much about how these people administered the funding, how they dealt with it, and whether they administered it cleanly or not, so I really can't talk much. I know there was a conversation between Paul (Benjamin) and I about him saying to me that, Reagan, maybe you should take charge of the WIS project and the funding and report to the funders.

Int This was Paul Benjamin?

RJ (Paul) Benjamin. Benjamin was at the...

Int At CALS?

RJ ...at CALS and (Paul) Pretorius was at LRC. Pretorius in the meantime had left...

Int The LRC?

RJ ...LRC, he'd gone to the Bar. Gilbert was at the Bar in Johannesburg, Edwin (Cameron) was at the Bar in Jo'burg, Edwin was also...

Int Is this Edwin Cameron?

RJ Cameron.

Int Right.

RJ (Edwin) Molahleli in the meantime had also come to CALS, because this is how this worked. Edwin Molahleli and I...I joined the LRC, then he came. I went to Bowman Gilfillan, then he came. I took Kate's job, by the way, Kate O'Regan's job. (Laughs.) And Edwin (Molahleli) took my job when I didn't come back. And I joined CALS and then Edwin (Molahleli) when he finished his Articles with John (Brand), came to join CALS. So over a three, four year period, Timothy was at the Bar, he'd now decided, he'd done his Articles with Raphaely Weiner, he was going to go to the Bar, and that's what he was doing, so he had joined the Johannesburg Bar. Karel Tip was at the Jo'burg Bar, Gilbert Marcus was at the Jo'burg Bar, Pete(r), Harris, Fink Haysom, Paul Benjamin, Clive Thompson, Halton Cheadle, these boys were running...were running their firm, Cheadle Thompson and Haysom, and CALS was being run as an extension of that. The nature of that relationship is a puzzling one historically, because CALS was headed from the university's point of view...

Int By John Dugard?

RJ By John (Dugard), who was a professor. And CALS was part of Wits, but the practical activity...

Int The legal litigation?

RJ All that stuff, was run out of...

Int Cheadles?

RJ ...Cheadle Thompson. And these boys were professors; they were associate professors at university, to facilitate the relationship. It's...it worked very well but it was incestuous, it was very incestuous and gave greater control to the CTH boys than it did to the university. It certainly did. And because the funding was external between Paul (Benjamin) and Tom and...they would source the funding and therefore it became semi-independent from the university and therefore the control of the university just wasn't visible, and John (Dugard) was the person who said, hey, let's do the work, but who I believe was concerned about the nature of the governance issues. Governance was not a big issue, it never was. It became an issue afterwards; it was never a real issue. The funding was coming in, we were...people were employed

and the work was getting done. I ran an entire series of classes on a Saturday morning with different COSATU unions for about three months, on WIS funding, around the new Labour Relations Act, the new proposals and the changes in the (inaudible) 1988 proposals in particular, which was designed to clamp down. We did all of that and that was done on WIS funding. I didn't do much reporting for these things, because it was just an event. So I don't really know much about the funding, I cannot tell you much about it. The governance issues were puzzling. They were puzzling but didn't really trouble me. Perhaps they should have, but didn't really. John (Dugard) then left and in came...

Int Dennis Davis?

RJ ...Dennis Davis. Edwin (Cameron) was still there. Edwin (Cameron) was really the leading light, intellectual leading light. I think that...I think he's still the brightest jurist that we have. I don't think there's anybody come close to it. That makes plain the tension between him and (Mahomed) Navsa, because (Mahomed) Navsa is meant to be, or is regarded, or is supposed to become...but I don't think he's coming anywhere near. He can't...look, the boy works hard, but I think that for natural sense of justice and fairness, and the ability to put that in words in any pattern, (Edwin) Cameron takes it.

Int He writes beautifully...

RJ Gosh. He's also brave, you see, he's also brave. If you were Edwin Cameron, being gay and come out and being infected with AIDS and come out, and still do the job that you do, and do it for the sake of those two causes, I think that kind of bravery is Purple Heart stuff, you know. And I think that separates him, that separates him. It's the bravery that separates him from the rest of his peers. And he will also call a spade a spade, in the best possible words. But he will do it, and I think the admiration there is deserved. I think he's been treated unfairly but that's another matter.

Int I'm wondering, you had the experience and probably the privilege of working for two organisations, which is the LRC and CALS. When you were at LRC, what was your sense of the relationship and the dynamics between the LRC and CALS, and then when you were at CALS, what were the dynamics between...?

RJ Ok. It...the one obvious inaudible that came through at the time, was that it was a collaborative one. It seems as though they were working together. The attorneys Fink (Haysom), Halton (Cheadle), and Clive (Thompson), would come over to the LRC offices and have a joint consultation on a particular matter with Arthur (Chaskalson) and people like that. It didn't happen with every case. They were isolated cases because remember that they were picky and they were picking and they were very choosy about what cases they'd take on, certainly the LRC was, Cheadle Thompson had bills to pay so they would take any client that walks in. But I certainly remember clearly being part of a consultation where the people around the table in the consultation room was Geoff (Budlender) and Arthur (Chaskalson), from the LRC,

and I think...(Charles) Nupen was there too, Charlie, and the attorneys were (Halton) Cheadle and (Fink) Haysom and Clive (Thompson), on a labour...

Int issue...

RJ ...labour issue. And in that sense there was collaboration but there was also mutual learning, mutual recognition and mutual support, so the one would learn off the other. Certainly at a social level they were all mates who all did their things together. From CALS' point of view, I believe that John (Dugard) would have liked to see a more clearer separation between the two, in fact between the three, as far as he's concerned. Because CALS was not the LRC, and CALS was not Cheadle and Thompson. CALS was in fact a university institute that should be run and...

Int ...as research?

RJ ...and should be regarded as such, and who should be doing research. But the boys would say, hey, research without practical da-da-da, is not the right...John, you yourself take on cases, (inaudible) most famous case, that's what it's on, you know, you wrote stuff about South West Africa, Namibia, that's practical work, it has implications; John (Dugard) wasn't blind to that, but I think the governing issues, with hindsight now, the governing issues troubled him because they were not defined, they were not clear, they were...they were like this, they were fluid and not always symbiotic although that was there. I certainly had that sense. From the LRC's point of view, they enjoyed working with Cheadle Thompson and Haysom, they enjoyed working with CALS, because it meant reaching into two different institutions, one was the university, the other one was a proper law firm, and gave credibility, I would imagine, and even sustenance to CALS...I mean to the LRC, and validation, legitimacy and all that came through, because the LRC was an awkward animal for lawyers, for the organised legal profession. The Bar Council, the Law Society, didn't quite permit, their rules don't normally, don't naturally permit attorneys and counsel in the same office working in the same case, unless the one is briefed, and at the LRC that wasn't the case, they were both together. And I know Arthur (Chaskalson) had worked particularly hard to find a space, find a niche in the organisational structure of the legal profession for the existence of the Legal Resources Centre. What else? Look, they...I'm certainly not personally aware...I think they kept it away from us, I'm certainly not personally aware of any animosity that manifested itself in those relations. There was never also...I'm not aware of any accolades that were misplaced for work done. I'm not aware of that. For the most part they were colleagues collaborating, feeding off each other, supporting, mutually supportive, and intellectually the same thing would happen. So I think it was a healthy partnership, I must say that because I don't have any better information. Although my time at CALS was much longer than my time at...

Int LRC...?

RJ ...the LRC and so I would have picked it up, and I was, I'm keen enough an observer to have picked up anything if there was.

Int Was there ever a sense, and certainly this was during the mid to late 1980s that perhaps the LRC was really very cautious in what it did, whereas Cheadle Thompson Haysom might have been at the cutting edge?

RJ Certainly, certainly. Certainly. Cheadle Thompson...I don't know how long you've been out of this country but there used to be an ad on the big billboards, it was a Gunston ad of a man in khaki clothes and a 4x4 behind him, standing lifting his foot...braving the frontiers of the world: that's Cheadle Thompson. (Laughter.)

Int Thank you for that!

RJ That's Cheadle Thompson and he quite literally took the part by buying the first 4x4 and driving around the country. Cheadle Thompson certainly did groundbreaking cutting edge work, go into a new area, forge new law, build and fight for it. LRC was law abiding, LRC was essentially law abiding and had to do with who Arthur was and the stamp that he brought onto it. Arthur (Chaskalson) is not someone who's going to shake the world, he was not a revolutionary. Cheadle Thompson, certainly under Fink (Haysom) and Halton (Cheadle), had an adventure, they had an adventure, they had a sense of, we can change this, we can take this on and we can...and that's what they did, that's quite literally what they did. And they had the intellectual acumen to do that. Arthur (Chaskalson) was a very cautious person. Between Arthur (Chaskalson) and Felicia (Kentridge) and even Sydney (Kentridge), law was traditionally practised and traditionally defined in the practice and therefore the selection of cases was even more pickier, and that hence my...the point that I made at the beginning some time. I felt they could have been more brazen, braver in the selection and I felt they could have stuck their necks out a little bit further, especially given the kind of protections that the LRC did enjoy.

Int In terms of the Bar?

RJ The Bar, but also internationally. You know, it would have been difficult for PW Botha or the Minister of Justice under PW Botha to arrest Arthur (Chaskalson), because he had dared to take on or to say something or to fight a case that he should not have fought, you know, or because he had dared to break the law. They didn't have a sense of that reality. Cheadle had. Cheadle had a clear sense of that reality and therefore the only way in which the attorneys in Cheadle Thompson were being constrained was by being harassed. They were never arrested. They were harassed and people were being watched, and ja, one man was killed when he opened up a letter that wasn't meant for him. Bheki (Mlangeni) was killed. That was the way that the government would have dealt with that kind of obnoxious behaviour. Arthur (Chaskalson) was never a threat. I don't think the LRC was ever a threat to the existing government. They were very cautious, they were very careful, they were traditional lawyers, you know, get up in court, make a submission and fight for that submission, and the social consequences of that wouldn't be visited upon them. So that's...ja, I hope that answers that one.

- Int Sure, absolutely. Just going back, when you were at the LRC just prior to that, there'd been the Rikhoto case, there was the Komani and the Mthiya cases. Did you feel that given that under apartheid Parliament was supreme, that those legal victories would be sustained or that they could have been easily overturned? What in fact made them not be overturned?
- RJ They were exciting cases. At first it sort of made me feel like I'm in the right place in terms of working. Parliament wasn't really going to do this. The Nationalist Parliament, it didn't disturb them. It was a judgment and if you read Pik Botha's responses to those cases, he usurped them as validation of the independence of the judiciary. He (laughs)...now if you have someone in Foreign Affairs who's smart enough to say that to the world, then you're earning credits if you're an apartheid government. Then the LRC's a good thing and we wish there would be more lawyers of that kind to demonstrate to the world that, notwithstanding what Parliament says, this is what happens and Parliament respects the independence of the judiciary. Remember that's the one thing that they always said, our judicial system is independent, not the laws but the judicial system is. Sustainable yes, but executable, enforceable? No. And that's the difference I think.
- Int Some say...some argue that the Rikhoto case, Komani and Mthiya really were the precursors to actually Influx Control dying away during the mid 80s?
- RJ I've seen the text on that, and look I think they were important milestone cases, but in any event the Influx Control legislation and the mechanism for enforcing it, had already atrophied. It was no longer possible economically to sustain the levels of economic development and demand while at the same time, you're having a whole battery of policemen checking, stopping people on the road and checking for permits, passes. No, I think that that was going to go. I think that they are nice signposts on the development of the legal system but they are not cases without which Influx Control would have remained in place. I don't believe that. I think that the economic realities of South Africa would have overtaken the legislation and the mechanisms in any event. And business would have been smart enough to it. Always. Because remember that in this country the business lobby have always said the laws are hampering the flow, the free flow of labour. Migrant control, migrant labour, all that was useful up to a point but had outlived its time, and it had to change. So I think it would have changed. It's useful in the history, and I don't quite know how it's going to get written up, but it will be interesting to see. It's useful to have these cases, Rikhoto in particular, it's a very useful case to point to, but it's absurd to say but for that case...I think that's too far.
- Int The LRC was in early negotiations with Felicia Kentridge and Sydney Kentridge, Arthur Chaskalson, with Jacqueline Berg at Columbia. There was a model it was based on the test case approach and on the NAACP Legal Defence Fund, and I'm wondering whether you thought that that approach was important and appropriate to the South African context, particularly during the 1980s? And perhaps even now, in a post-apartheid context?

RJ I think it's more needed now. The test case approach, NAACP model, I think it's needed now but it's only one of so many more things. Was it appropriate during the 80s? Probably was, given the personalities that were in charge of the LRC. Probably the better way to come at this is to say: if you put Fink Haysom and Halton Cheadle in charge of the LRC, would the approach have been...I think they would have ran it...overrun it. I think they would have taken on all comers, which the LRC could have done. I think that given what we said...

Int regarding?

RJ ...they could have been braver. The test case approach is a cautious approach, it's an approach that says, let us look at the limits of the law, find a pattern that suits our purposes and then within the limits of the law, prosecute that case with the hope that it will have social impact and political impact at the highest level. That's romantic. The other way is to say, hey, here's a case, (inaudible) that doesn't suit us, but hell it's got all the elements of challenging, let's say, Influx Control. Let's do this and then run with that, irrespective of...with little hope of what the social and political impact might be. And then wait for the results to ramify. I think the Kentridges and Chaskalsons were concerned to be seen to make impact, and therefore were very cautious, and therefore very slow, and therefore very limited in their impact. I don't know if that comes to you...

Int Sure. I'm also wondering, how, given your political background, coming into the Legal Resources Centre, and although you of course had people like Tim Bruinders etc. who shared probably your political background, but then there were also this very strong contingent of the NUSAS old boys as they were called: Charles (Nupen)...

RJ ...Charles (Nupen), Paul (Pretorius)...

Int ...Karel (Tip)...

RJ ...Geoff (Budlender)...

Int ...and Geoff Budlender?

RJ Geoff (Budlender) was a champion of NUSAS.

Int Of course, absolutely. And there had been that split quite early on in the university days in the 70s between BC movement and NUSAS. I'm wondering how much of that came into the LRC?

RJ We didn't replicate it. We didn't. It wasn't much talked about. I was aware of it, I think they were aware of it, I think we all were, and we also didn't cross the lines. There was no deliberate crossing to build a bridge. I know that I referred to them as

the NUSAS old boys, these boys are not going to permit us to do this thing, let's do this thing differently, kind of thing...Timothy...ja, we were all aware. We didn't really replicate our politics. I was there to learn from them, and I think they were there to teach and mentor, which they did. They were also there to protect, because there were limits, there were limits to the extent of your involvement in big cases. Ja.

Int I'm also curious, because I know that you were already into labour law and so was Charles, but at some point the LRC was extremely reluctant to take on labour law as their area of public interest, and I'm wondering whether that was something that motivated you to leave, or whether that happened subsequently?

RJ No, it happened subsequently, because labour was threatening to overwhelm. They were cautious about us...well, let me say two things. One is my own term was for a year and I was going to go in any event, and I don't know whether they were going to ask for an extension because I understood the system to be: give incoming people an opportunity and just churn them out on the other side, that year may count towards your Articles, whatever, whatever. That didn't really trouble me. But I wasn't going to stay there; I knew that, just for my own professional development. The debate took a very serious turn when we put the formation of IMSSA on the agenda. The LRC used to have these wonderful meetings out at Mount Grace (laughs).

Int Which was bugged at some point...

RJ They were all bugged.

Int Right, ok.

RJ They were. They were wonderful conferences and judges would come to it and people would find a moment for a weekend to reflect and talk and share. They were great.

Int This was at the AGMs, was it? The Mount Grace meetings? Were they part of the LRC AGMs?

RJ I think they were part of it, they might have been part of it, I can't tell you that right off, Roxsana, but there were all these people there. It was a great opportunity. And on one of those meetings I think in '84...'84, '85, Charlie (Nupen) had put on the agenda: Mediation, alternative dispute resolution. And I think part of what was motivated by it is to blight the sharp edge of the introduction of labour into the LRC, because with labour you can't really have a...you can't pick your cases because they're all there, you can't...a test case is nice, it comes along now and then but there's labour work every day. And I remember that debate. The debate ended with yes, a resolution that the formation of IMSSA is probably...but during the debate it was welcomed by the LRC founders because it meant that labour work would find an alternative home. And it also meant that we don't have to litigate because the very introduction of mediation and arbitration means alternative dispute resolution, so we

don't have to carry the burden of this thing and there was a lot of talk about funding. A lot of talk about how this work would be funded. And the interest that came was wonderful, the parties would fund, they would share the cost and the arbitrator, mediator would...And I think that was welcome, I think that's how the debate or how the threat for the LRC, if ever there was one, was dissolved by the formation of IMSSA, against...at which they put a lot of energy and Charles (Nupen) worked hard. He was an LRC man for a long time until this baby was formed, and as soon as it was now growing, boom, he went over and he became full-time director there and he left the LRC. Ja, and '88, '89...'90 it was established, it was fairly strong.

Int How long were you at CALS for?

RJ I was there...

Int From '87?

RJ November '87 until March, when I started my pupillage in Pretoria...1990. And so until the end of '89. Yeah, three years...it's a good three-year period. I did my pupillage in Pretoria in 2000...in 1990.

Int Right, ok. And then subsequently?

RJ Well, subsequently, while I was at CALS I met and married Priscilla Jana and I did pupillage in Pretoria at the Bar there, and I joined that Bar for two years. I then came down to Durban, bearing in mind that I always wanted to live and work in Durban. (Laughs.) Left the Bar, then I came to teach, came to teach at the university, UDW, and I taught Labour Law and Jurisprudence, researched and wrote and did all that stuff, knowing that at some point I'm going to return to the Bar.

Int Ok.

RJ And became very involved in the whole transformation of the...of Higher Education debate...

Int ...the merging...?

RJ ... there's a history there. And for ten years that's what I got involved with. Merged different institutions, both universities and the technikons, got involved with that. It's ironic, the...my labour law skills as an IMSSA facilitator / mediator, those skills were brought to bear there and I often facilitated those things and then became involved in the actual administrative mergers, and in 2002, we finalised the merger of ML Sultan and Natal Technikon, and that's done, and then I said it's time to come back to...

Int The Bar?

RJ ...yes, practise and I've been at the Bar now since 2002, full-time.

Int And your practice is it primarily commercial?

RJ My practice is civil, it's a civil practice. It's primarily a labour practice, I don't do much criminal work, very little commercial work, because I don't quite have...I don't have that bent, I have the bent...I think the world regards me out there as a human rights lawyer and a labour lawyer. I don't see commercial clients with big files and business outside my door, no. It's primarily still individuals, which I like, it's very nice. Transnet is a big firm but they use me as a labour lawyer and as a facilitator, mediator, arbitrator, that's primarily that work, which I do. I like it, I like the practice, I like the independence of the Bar. I'm worried about the politics of the country.

Int Right. Which brings me to the next question...

RJ Sure.

Int In terms of rule of law, and I've come into the country and there've been attacks on the judiciary, Constitutional Court's been described...judges have been described as counter-revolutionaries. What are some of your concerns as a former LRC person for public interest law in this country, and do you think that an LRC can function in that milieu and take cases effectively, where judiciary's being threatened?

RJ Roxsana, I'm not sure whether the judiciary is fundamentally being threatened.

Int What do you think?

RJ I don't see signs of that. I hear the inflammatory talk around it.

Int Right, ok.

RJ I'll say from my point of view the...firstly, judges, the judiciary as an institution are not beyond criticism. Now at law school they would have taught us that ,yes, you can write case notes and you can criticise a judgment, play the game don't play the ball...I mean play the ball don't play the man, don't attack the judge personally unless the attack is warranted. But I certainly firmly believe that judges are not God, the judiciary is not an institution that is sitting in an ivory tower, it's very much part of what shapes our country, and they are manned by human beings, men and women are there. They live in this world. And I think sometimes they will make mistakes, mostly they get it right. So I think that the...there's an overreaction, there's a political overreaction to the inflammatory language, which is political language, it's not legal language, it's not lawyers standing up and saying this court is bad. In fact, not at all, it's to the contrary. The politicians are doing this because at the moment, there's a

particular political agenda. Now the danger in that is, yes, that cannot happen, it cannot be allowed to...we cannot allow the populace to dictate the outcome of a particular case, but if you read any judgment, judges are sometimes at pains to say, the law must be developed to accommodate the aspirations of the people, and there's a relationship there, not a particular case outcome, as in this example of Mr (Jacob) Zuma, and I think it's wrong, and I don't think that should be allowed. But there are cases where we say, hey, this law that stops people from crossing this road is wrong, and it should be changed because the aspirations coincide so the law must be developed. And I think that relationship, that nuanced relationship, is not appreciated. Judges counter-revolutionary... (Laughs.) Our history is spotted and dotted with judges who were revolutionary and counter-revolutionary. So it's not a new charge, provided of course it can be shown. I think in this case, presently, it is not justified. Because there are no counter-revolutionary judges. Rather what they're saying is it's designed to intimidate the judges, and that is the trouble. When people who are leaders in political organisations say things we presume they speak for whoever they stand for and their supporters, and if that...in their speech they open the door, then I'm concerned that when any judge drives down the road and is recognised by any one of those supporters, that judge may come to harm. That is the danger there.

Int Earlier you also mentioned that Mrs Grootboom didn't get her house. Do you think that the LRC can be held responsible for that, in terms of being cautious? Because I'm wondering as well...for example, in the Eastern Cape, there've been social welfare cases which the LRC's taken on, and had favourable judgments, but the government then hasn't...

RJ ...doesn't enforce...

Int ...followed through, and I'm wondering whether in the Grootboom case it really was a matter of the State not being astute enough to give Mrs Grootboom a home?

RJ What is the value of the judgment to Mrs Grootboom? What is the value of that? She doesn't have a house. The judgment says, give her a house; the court says, give her a house. Now why...how does a court enforce its own outcomes? I...there must be mechanisms to compel. And there's an experience, there's an experience of the Indian Supreme Court, where Veramantri said, hey, the right to water, no, the right to water is an element of the right to life, and if a section of the Indian population is deprived of water because they build a dam that reroutes the flow of the stream on which that community depends, something is wrong. Give them water. Now the dam may well be 'go ahead' and be constructed, but the court is able to say, I direct that this company or this government by whose permission this thing is built, provides water. Lay the pipes. And I'm saying if it means that we have to go down to approving the plans and saying yes, and the timetable for the institution of those rights, that's part of what we must do. Otherwise what is the point of giving Mrs Grootboom a judgment that says she's entitled to a house, but we don't then call the relevant authorities to office and say, I want you to within thirty days or x period, deliver to me a plan in terms of which Mrs Grootboom is going to be secured for a house. She and every other person in that situation. The same with the social welfare cases. Why should there be...our case rolls...every day the motion rolls are littered with applications of

on behalf of persons who have applied for social welfare grants or an identity document or something, it is not given, and they roll over. Now if you're going to criticise a judge, criticise them for not doing that work, for not calling the Director General to the office and say...to the court, to the open court and say, I've given a judgment some months ago directing that this must happen. This has not happened. Explain to me why it hasn't happened. Give me your explanation; produce for me a timetable, the shortest possible time through which this will happen. That's intervention, and I think that's what the LRC should do. I think that's what the LRC can do. And I think that's where the LRC fails. In public interest law, that is exactly where they fail. And if they are going to be public interest law practitioners, which is what they are, get less hung up about the test cases, because the test cases are not as needed anymore in the constitutional dispensation that we now have. Now you want to vindicate people's rights, and that must happen. So I think that far from writing up the annals, (laughs), it's quite the opposite. It's quite...the beginning of perhaps a new chapter, a new phase of work in the life of the Legal Resources Centre, because they are...the population is at the mercy of really unscrupulous bureaucrats. And that's the work of the LRC.

Int Reagan, in terms of the fact that there are other smaller NGOs doing a lot of public interest work apparently, there's the Children's Law Project etc., I'm wondering where you think the LRC can be most effective in terms of public interest law issues?

RJ I think in the area that we're just talking about now, because the...there is no longer a need for a flagship test case, because the Constitution covers most of that ground. Its says who a citizen is and what the rights of a citizen is...vindicated, so I think the role of the LRC going into the future would be in the area of quite simply, vindicating the rights of citizens, that should probably be the motto, put that flag up: vindicating the rights of citizens. And raise a whole generation of lawyers whose job it is to vindicate the rights of citizens vis-à-vis government, because the provincial governments, the local governments, the national government, is so far removed from the individual citizen that the LRC can be that bridge. And it doesn't have to be antagonistic stuff. Sometimes it must be, but I think ja, vindicating the rights of citizens, probably.

Int Ok. Reagan, I've asked you a range of questions. I'm wondering whether there's something I've neglected to ask you, which you feel ought to be included as part of your LRC Oral History interview?

RJ Look, I think that the LRC is a good institution, it's a liberal one, it doesn't pretend to be anything else and it shouldn't be...

Int The way you use 'liberal' in this context is a very South African way of using...

RJ Ja, it's not the American...

Int It's not 'progressive'. By 'liberal', you don't mean 'progressive'.

RJ I don't mean 'progressive'. I mean sort of centre, and maybe slightly to the left with a lot of pretensions. But it's not a radical...I think it was progressive initially, in the context that it started out. It no longer is. I think it can become that. I think it can become a very progressive vindicator of citizens' rights, I think it can do that. And you don't have to be political to do that; you don't have to fly the ANC flag to do that, or the SA Communist flag or any other brand. But that's work that, as a lawyer, you can do. And I think it's in the public interest that the LRC be funded and be seen to do that work, that the funding is attached to a slogan like that and that lawyers are employed to do that, because in all the smallest spheres of...where...the spheres into which people's individual lives break down into, that's where it's needed. And this whole business about children, the whole business about women, you know, whether it's children in prison or women's rights, it's...the list is long.

Int I'm also wondering whether you could end the interview, if you could share a particular memory, whether it's a client that you worked with at the LRC or whether it was any individual, one of the other fellows...or even subsequently when you were at CALS, and you interacted with the LRC, that you feel really in some ways embodies what it means to have been at the LRC?

RJ You know, there were lots of cases and the people that we worked with, the professionals...I thought Mr Zimmerman was wonderful, because I thought he embodied...but I don't want to isolate him.

Int There was also Pinky Madlala, who you mentioned was huge...

RJ Pinky (Madlala) was huge. Pinky (Madlala) was very, very large in her presence, in the LRC. She had a force. Arthur (Chaskalson) was guiding but she was the force. But probably (laughs), the front face of the LRC in Johannesburg was Ma V (Vesta Smith). Between her and Cec (Cecilie Palmer), I mean, they were excellent. And I thought Ma V (Vesta Smith) in particular, epitomised the ideology if you will, of the LRC. Because it wasn't just another NGO. It wasn't a welfare organisation either. The lawyers did their bit, but I must tell you, without the front desk running in the way that it did, and Ma V (Vesta Smith) being there, I don't think the lawyers would have been half as effective. So, ja, I think...I thought that she was great.

Int Reagan, thank you ever so much.

RJ Thank you. Thank you very much.

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