

Int This is an interview with Ivor Schwartzman and it's Monday evening, the 11th of August (2008). Ivor, thank you very much for agreeing to participate in the LRC Oral History Project. On behalf of SALS Foundation in the United States, we really appreciate this. I wondered if we could start the interview if you could talk about your early childhood memories, growing up in South Africa under apartheid, and where your sense of social justice and injustice developed?

IS Well, apparently it didn't start with the Nationalists, it started long before, it was called segregation in English, it was just refined under the Nationalists. I grew up in a home of seven children, six sisters and myself, my parents were both immigrants from Russia. My father had been forced to flee because of persecution or being put into the Russian Army and sent to the front line, because Jews were regarded as dispensable products and you went in for fourteen years. So, he and his friends were smuggled out of Russia, they got to the border of Germany, and they swam across a river and then eventually got to Europe and he came to South Africa. He went to Botswana, actually Bechuanaland. My grandfather on my mother's side, he'd come out here earlier, and having made enough money he arranged that my mother came out with her mother and her sister. My parents met, both of them were refugees from oppression and, I don't know...Ja, so one had that background of what persecution was about because one was a Jew. My father was a shop-keeper but he always had time for charity. Sometimes as a child I would go into the shop. This was on Fridays, the day that the beggars came and the beggars always got money. But I don't know where a sense of justice and fairness first arose. I remember my father got me a bicycle and then I felt sorry for our manservant because he got Sunday afternoon off, and he had to walk to wherever he had to go, and by the time he'd walked there he had only had an hour left and then he had to come back. So, I gave him my bicycle. So he had a bicycle, and then my father said: well, that's tough on you, you've given the bicycle to him and now you have no bicycle. So, I didn't have a bicycle. And then one just had a feeling of what was right and what was wrong, and I just remember that, from my childhood, always a caring for those who had not. I was meant to go into my father's business as the only son, and that's why I started university doing a BCom, but when the poor people used to come into the shop and I knew we were better off than they were, ..there was a code which told you the cost price of goods, which I knew, and I knew that they couldn't afford the selling price, so I used to sell at cost, until my father found out and then I was kicked out or rather told I wasn't welcome in the business. By then I had realised that business wasn't a place for me. So I switched from a BCom and started doing a BA. Then majored in Anthropology which taught me a lot more about the indigenous people in South Africa, and I wanted then to go and do a masters degree on culture change, concentrating on when a stronger culture like Western culture comes and destroys a weaker culture. What happens in the vacuum that they leave.. And I was then told: well, you don't make a living from writing a thesis, you'd better go and do something else. So, I did law. I spent four years while at university serving on the SRC. That is when I got involved in student politics, and came under the influence of people like Wolpe and Slovo and Lionel Forman, I may even have joined the Congress of Democrats. I joined the Torch Commando and had my passport taken away. I was even detained for a short time because we wrote "los die vak Unies" (i.e. leave the trade unions alone")on a wall of

Hillman Brothers factory. But then a very intelligent major called Kelly Patterson said: you're an absolute disgrace, you don't call it a 'fuck Unie', that's swearing, you call it an 'arbeit something'. And instead of arresting us he sent us home. I was on the national executive of NUSAS for a short time until the left decided to boycott the whole thing because of the International Union of Students, an organisation which was way out on the left. I got involved in left wing politics at university and, you know, and had a real interest in helping the underdog. I remember going with Ahmed Kathrada and Amina Cachalia, we used to meet down near the library every Sunday morning, and we were given copies of the Guardian and then it changed its name to New Age and I've forgotten what else it changed its name to. And we then had to go to Soffiatown or to Alex and go and sell the newspaper by going into people's home and filling them with revolutionary ideas, and what have you. So I spent many Sunday mornings doing that but I never sold the newspapers, I gave the newspapers away and I took the penny or tickey that they cost, out of my pocket money. I suppose, you know, that's just the liberal in one that doesn't make the workers pay. And that's where...it's always been part of my life, and most of my sisters have had the same sense and feeling of social justice. There was Zilla Graff and Beryl Unterhalter in particular, my younger sister Margot, in London. When I had done my law degree I went to the Bar and got there in 1957. 1960 was when the government started banning political organisations. There was no Legal Aid Board but a Legal Aid Bureau, that was run by Pauline Lipson. She knew or could sense out those members of the Bar who would do something for nothing, and I did a lot of work for her. When people started getting arrested and charged politically, there was no Defence and Aid Fund, and they just had to appeal to people who would do it for nothing or just for expenses. I remember in the early Sixties doing any number of political trials, it turned out mainly for PAC people rather than ANC people, but one did them and one met some very, very worthwhile people. One also met some rogues. One also had to deal with the hostility of judges before whom one appeared, and the hostility of prosecutors and police officers. And there were so many of one's colleagues who didn't touch the work because they were frightened about what it would do to their careers if they were seen to be engaged in this kind of work, and then an amazing transformation took place. When money became available suddenly so many more people became available to take political cases. It may be that I did so much of this work because I wasn't married initially and could possibly afford not to earn any fees. But I did more than my fair share then, and as time went on there were others who did more of it. However when paying briefs started I did less of it, but I was always available if I was ever called upon to do it. I was part of Lawyers for Human Rights. I did a lot of work for the Black Sash, They presented me with a beautifully illustrated book on Shakespeare as a token of gratitude. That was before the case that Janet (Love) was talking about, that Felicia Kentridge was involved in.

Int The Rikhoto case and Komani?

IS I did a lot of Black Sash work before these cases. I was always available for them and was one of the only two male members of the Sash. I've always had a strong sense of social justice. I then also enjoyed doing Commercial Law and I got a fair amount of it. I always had the feeling that I might have got more if I had done fewer political trials. But lots of them were really worthwhile cases and one didn't do them for money.

- Int I'm going to take you right back, Ivor. You mentioned that your parents, well, your dad had fled, and I'm just wondering whether at home there was a discourse of that, about persecution and injustice?
- IS No, the one thing my father could not talk about until he was dying, was what it was like and what it was about. And I've heard the same from other children of refugees. There was a great gulf between my father and me because we came from two such totally different backgrounds. I mean, he was brought up in a place where they were used to having pogroms and they lived lives of fear where they weren't allowed to go to proper and ordinary schools. Where they...most of their...and they got religious instruction and a bit of secular instruction, but then he came to South Africa and the things that interest a young boy in South Africa were never ever part of my father's life. So, there wasn't a great deal that the two of us could talk about. I mean, he wasn't very interested in football, they didn't play a lot of cricket in Russia, and he didn't read the same kind of books as I read or have the same kind of interests that I had. In any event there wasn't much of an opportunity to talk because there were seven children in the house who had to be accommodated and anyway six of them were girls who took over the house. I just had to do my homework and get on with it and then at the age of 12, I was happy to go to boarding school. I just saw my parents on school holidays.
- Int And in terms of...you growing up in South Africa, at some point the Nationalist Party, as you said, apartheid didn't start in 1948, but clearly in 1948 things shifted, and I'm wondering for you...as a young person...?
- IS No. There was something less harsh about the way that segregation operated and there was obviously less brutality. I mean, people were still picked up and arrested because they didn't have their specials or their passes with them to be out in the street after nine o'clock. In some places a siren would go off when black people had to be off the streets. The Nationalists didn't invent segregation. It was just that there was a greater harshness to it. When done by people speaking English, it seemed to be a little less bad, but it was the same medicine just in a harsher form.
- Int I'm also wondering, as a young person, what was your sense of what was going on in terms of the racial disparity, did you every question it...was there discourse in the family about this?
- IS No. No, one just took it...well, you accepted that this was the way society was ordered. I couldn't imagine telling our gardener or our manservant that, you know, you must rise up against this. One just tried to make their lives more bearable and pleasant and chat to them and be nice to them and they would be nice to me in turn. I'd get very upset when I saw and heard people shouting and being rude to black people. But it was only when I got to university that my eyes were opened and became politically aware. I was 12 when I left home to go to boarding school, and it was a typical English-style boarding school where you were cloistered in a macho male environment...

Int Was it in Johannesburg?

IS No, it was in Port Elizabeth. It was an old-style English school where we had to wear suits and straw bashers and it was run like any one of these English public schools, and one's whole life was...evolved around the school and sport and what have you. And one was aware of social injustices, but, you know, what more was there to do other than to give money to beggars and be kind to people.

Int But, you went on...you had an interesting trajectory at university and then you went on to do law, but why? I know it's a profession, but was there any other impulse?

IS No, I wanted to be a politician...

Int You did?

IS And I thought that by going into law I could be a politician because I enjoyed the cut and thrust of debate, but then I realised that there was no role for a politician who thought like I did, and I wasn't prepared to join the United Party or any other political parties that were around.

Int So at Wits...I assume you went to Wits?

IS Yes.

Int Did you...NUSAS...had that been formed by then...when you went to...?

IS Oh, NUSAS was around for a long time.

Int So were you involved then with student politics through NUSAS?

IS Well, NUSAS wasn't such a great organisation. The great liberal or the left wing organisation was Wits university, and to a lesser extent Cape Town, and I was there together with George Bizos and Ismail Mohamed. We all served on the SRC together. George (Bizos) was far more vociferous. So, you know, Wits was passing all the radical resolutions about change, and we were castigating the fascist regime in America, and lauding the peace-loving Russians who were trying to salvage the North Koreans from the persecution of the West, and germ warfare that the Americans were conducting, and all that kind of thing.

Int But, of course, at this point, NUSAS was a multiracial student body and hadn't endured that split, and I'm wondering what your sense was of NUSAS?

IS Well, NUSAS was part of the International Union of Students that was controlled by communists from the Eastern Bloc. NUSAS was also passing those kinds of resolutions. And then came “reactionaries” like John Didcott and Ernie Wentzel from UCT who tried to steer NUSAS away from the far left, and they were met by the powerful voices of the Harold Wolpes, the David Holts, and the rest of us. And then gradually they gained an ascendancy, and I started getting a bit disillusioned at being told how I had to think and how I had to vote, and I eventually spent my last year at a NUSAS conference, talking about us getting out of the International Union of Students. But that had nothing to do with being liberal and left.

Int I wonder whether you could talk a bit about what it was like going to university with George Bizos, who’d had an interesting trajectory of his own, and Ismail Mohamed?

IS Well, with Ismail (Mohamed), as with all one’s black friends, one had a totally artificial friendship. This was because a barrier came down since you couldn’t discuss a film, you couldn’t discuss a concert, you couldn’t discuss what you’d eaten at a restaurant, because they weren’t allowed to go. So, the level of your friendship was primarily at a political level. George (Bizos) was just another ‘boykie’. I mean, you know, we used to play poker together and there wasn’t anything special about George (Bizos). He was just, you know, good company, a very pleasant man, but there was always this difficulty with Ismail (Mohamed), he was a difficult person as well.

Int In what way was he difficult?

IS Because Ismail was only balanced because he had chips on both shoulders.

Int Ok. (*Laughter*).

IS And he had this obsession with work. Having said that, we did have a very, very close relationship. I mean, he even moved my admission to the Bar. It was the first time that a person of colour had moved the admission of a white person to the Bar. We spent a lot of time talking to each other, but, you know, there was always this...well, it couldn’t be a totally normal and ordinary friendship because of the colour bar. One could go the odd restaurant in Fordsburg where it was permissible, or he could come here, but, I don’t want to discuss Ismail (Mohamed)’s personal problems. He had such a complicated home life and family life, and that was part of what shaped him. For example, even though he was married, the man never had a front door key to his home. He stayed at home with his parents, and his mother always waited up for him.

Int (*Laughs*) Ok. In terms of studying law, did you get a sense that the law could be an instrument of social change? Did you feel when you were studying...?

- IS No, I thought that if one became a lawyer, you could then change it. Because the Law School was a reactionary place, I mean, Professor Harlow was the head of the Law School, he was a German Jewish refugee who denied his Jewishness, and was as right wing as possible, and he's the one who told (Nelson) Mandela: don't even try to get an LLB because no black can make it.
- Int Gosh...
- IS He was bad news, and Ellison Kahn was a lackey, and I studied law, because law was a stepping stone to politics. But, you learnt nothing in law about the rule of law. And when they taught you Roman Dutch Law they didn't tell you anything about the liberal values of the system. You were just taught lawyer's law.
- Int Right. I'm also wondering...when you finished with your LLB do you head straight to the Bar, or Articles...?
- IS Well, I finished my Articles of Clerkship which qualified me to be an attorney. However I had always ways wanted to be an advocate so I went to the bar..
- Int So where did you do your Articles?
- IS In Johannesburg.
- Int But, what firm, was it a commercial firm?
- IS It was a commercial firm, there weren't any other kinds of firms.
- Int Right, ok. So you went in, and then at what point did...your work with the Legal Aid Bureau and Black Sash precede the formation of the LRC?
- IS Oh yes.
- Int Could you talk a bit about what was going on at the time, in terms of what was available to indigent people in terms of having access...?
- BS Well there was a Legal Aid Bureau run by Pauline Lipson and she would arrange the defense of people charged under the Pass Laws, or people who couldn't afford a divorce, or a worthy criminal trial or something like that, and she worked on a shoestring of a budget. I think they might have had a street collection for the Legal Aid Bureau, and by and large what they depended on was people who were prepared to take on her work for nothing. She was a qualified attorney. And then you got people like Ruth Hayman who was an advocate who started an attorney's practice in which her main interest was Human Rights. She wasn't out to make money, she just

wanted to cover her expenses. And then there was another group of attorneys including Raymond Tucker who did a lot of this kind of work.

Int And this was through the Black Sash that Raymond Tucker...?

IS Not only them...no, it was even before the Black Sash.

Int Really?

IS And then, you know, one would go into the Black Sash...the Black Sash had these advice bureaus, and one would go and give them advice on what they could do in a particular Pass Law case, or what have you. And I remember going down to the Pass Law Courts, and making a nuisance of myself and getting some people off, and failing with others.

Int At some point you began to take political trials?

IS Ja.

Int Could you tell me about that and how that came about?

IS Look, it's so long ago. It was the 1960s and attorneys and others were looking for advocates to run cases. I remember there was this Shulamith Muller. She and others began to sniff out those who are prepared to do the work. And I remember spending three...three months in Lydenburg with David Soggott defending 70-odd people charged with public violence. We succeeded. We were paid our expenses and pretty little else

IS That was a long hard trial and, you know, there was just no money in it. But I wasn't the only one who did it, there were others.

Int And then at some point during this period, in 1974 there was a Legal Aid conference ...at the University of Natal. Do you know much about that?

IS Uh, uh.

Int Ok. At what point did you start hearing about the LRC, did you hear about it before?

IS I heard about the LRC right at the very beginning.

Int Ok. Could you talk about that?

IS Well, the Kentridges have been very close friends. When Felicia (Kentridge) came to the Bar she had chambers next to mine. So, you know, whatever Felicia (Kentridge) did, I knew five minutes afterwards and I was aware of her interest establishing a LRC. One of the attorneys who regularly briefed me, was a man called Morris Zimmerman, who(m) I came to know very well.

Excerpt of interview edited by interviewee.

IS And so I used to...Jules Browde did his work initially, and when he took silk I became Morris Zimmerman's number one, and Morris Zimmerman was always talking about wanting to change things. He was very angry about what was going on in the country and wanted to change things. And I think...I think I helped influence him to go to the LRC, but I think that was after Arthur (Chaskalson) had already gone there.

Excerpt of interview edited by interviewee.

Int ...when Felicia (Kentridge) was interested in starting the Legal Resources Centre, what do you think were some of the primary reasons that she felt it was so important?

IS I don't know of any husband and wife who have really succeeded in the same profession at the same time. And I think Felicia (Kentridge) really wanted to stamp her own mark in the profession, Sydney (Kentridge) was doing it his way, and, I think, Felicia (Kentridge) was terribly disadvantaged as an advocate being Sydney (Kentridge)'s wife. And...she also had to bring up their children, so I think that Felicia (Kentridge) was really looking for a place where she could make a difference in her own right. That's just part of it just at a human level. You know, she went to the Law Clinic at the university where she could do those things, but then, you know, the idea of a...of the Legal Resources Centre...and I think there were similar organisations in America, that kind of inspired her, and that's what got her going.

Int Do you know much about how influential Jack Greenberg might have been in this?

IS Enormously influential. The friendship and closeness that exists between the Kentridges and the Greenbergs goes back all those years. You know, Jack Greenberg was somebody who did what he did in the...at a time when they wanted to bring about change in America. They needed dedicated Civil Rights Lawyers, a proper organisation, and people cared to do that. I am sure that this influenced Felicia (Kentridge) to try to establish a similar organisation in South Africa. In those days you could get local and foreign funding for properly organised and worthwhile institutions. At the time I really got involved in the 60s, in a school called St Barnabas College. I don't know if you've ever heard of it?

Int Yes, it's a private multi-racial school?

- IS It was...no...a non-racial school, it wasn't multi-racial.
- Int Right, ok.
- IS And it was the only school to admit kids on the basis of academic merit only. So if you had no money, and you were bright, you got in for nothing. And if you were bright and had a lot of money you paid full fees. And we managed to raise a lot of money from overseas and, you know, that kind of made...working in St Barnabas, kind of made me feel better about living in South Africa and being here, because one really thought one was doing something worthwhile. And I eventually became chairman of the council and I was there right until the end. And what killed St Barnabas was the 'new South Africa'.
- Int Really?
- IS Ja. Because now that we've got the 'new South Africa' everybody's got an opportunity for education, you don't need to provide specially for people, and the donors started drying up. And then the South African donor said...they said: well, we'll channel it through the State, and, of course it all got sucked in, and nothing went anywhere. And then you got the argument you...that you can't have an elite...a school for the elite. But now they realise that you need elitist education. But the school died. And, well, that was a great sadness for me, but, one could do things there. I mean, Felicia (Kentrige) went her way, and she really, you know, she really made a great contribution.
- Int So the Legal Resources Centre had already started in 1979, had you known Arthur (Chaskalson) prior to that?
- IS Yes, well, Arthur (Chaskalson) did a BCom at university and this...and I don't think that Arthur (Chaskalson) had a political thought in his head at university. Arthur (Chaskalson) was a very good sportsman. You know, he was a very good goal keeper and he was a very good wicket keeper and he did a BCom, I don't think...no, Arthur (Chaskalson) wasn't a political animal at university, so I knew him from there. And he did his Articles at one of the best firms in town, Deneys Reitz, and then he came to the Bar, and naturally he was getting that kind of work.
- Int Arthur also had a very lucrative commercial practice?
- IS Ja.
- Int What do you think was really the impetus for him to do...just to go and head the Legal Resources Centre, what's your sense?

IS Look, I've never asked Arthur (Chaskalson) this, so it's presumptuous of me to say so, but I think that Bram Fischer had an enormous influence on Arthur (Chaskalson).

Int Ok. Interesting...

IS And, you know, you get somebody...you get people who say there comes a point in my life where I've got to make a change and I've got to make a difference, I can't just go on providing lip service to this, I'm really going to make a difference. And he gave all of that up, I mean, that's why he's such a wonderful person, he could have been totally selfish and self-serving.

Int Sure, sure.

IS And you know, the Sydney Kentridges of this world didn't make any real sacrifice to do the great cases that they did. I mean, Sydney (Kentridge) had achieved that kind of eminence where...I mean, the Biko case, I mean, it's not being unfair to him, he had two outstanding juniors in the form of Ernie Wentzel and George Bizos, they did all the leg work for Sydney (Kentridge). Well, that's what a leader is meant to do, he's meant to have good juniors, and the silk comes in and takes over and uses their work. But, Arthur (Chaskalson) was a different...he was a different...you know, Arthur (Chaskalson) is a great, great human being. He gave it all up, for this, and that's why you can't really throw a stone at Arthur (Chaskalson).

Int Absolutely. Quite early on, I mean, given Arthur (Chaskalson)'s nature, the LRC was a very cautious organisation, would you agree with that?

IS Cautious without being cowardly.

Int Yes...

IS There was nothing...I don't think that they ever refused to do a case because it was unpopular, or that it involved the possible chagrin of the powers that be, or anything like that. But he adopted a lawyer's approach to matters.

Int But from what I can understand, given that this was Arthur (Chaskalson) and there was the LRT, the Trust had been set up with Charl Cilliers and Sydney Kentridge...the LRC was protected in a way, because it had these...

IS By the Trustees?

Int Yes, it had a good reputation, would you agree with that?

IS Well, any organisation that's got good Trustees is a...protected from who?

- Int From the apartheid regime.
- IS No, I don't think that the apartheid regime had any respect for Sydney (Kentridge) or Charl Cilliers. But the fact that Sydney (Kentridge) graced it and Charl Cilliers, who was a partner in one of the top legal firms, graced it...wasn't Basil Wunsch a Trustee and others?
- Int Sure...
- IS I mean, that gave it respectability, and if he had got people who were Human Rights Lawyers but didn't have a standing in the practice or the community, that would have affected it, but I don't think that the government respected it because of those people. They didn't respect...what respect did they have for Bram Fischer?
- Int What role do you think John Dugard played in the LRC?
- IS None.
- Int None. So, would you say...and this is a running argument...do you think that CALS preceded the formation of the LRC?
- IS In time?
- Int Yes.
- IS Did it or as a matter of fact?
- Int I'm wondering, what do you think?
- IS No.
- Int No, it didn't?
- IS No, I think...no, CALS performed an entirely different function.
- Int Right... But do you think it started around the same time?
- IS Yes, or did it as a matter of fact?

Int It still remains a mystery (*laughs*). And it seemed to me that there was some tension in the relationship between Arthur (Chaskalson) and John Dugard, do you know what that might have been about?

IS It could only have come from John (Dugard)'s side.

Int Ok.

IS Because, John (Dugard), I think, is one of the biggest complainers about how unfair life had been to him. His life was one disappointment, according to him, after another. He wasn't...he didn't succeed at the Natal Bar, I don't know why he wanted to go to the Constitutional Court, he didn't get there, I don't know why. There are so many other things that he wanted that didn't come his way, and that kind of achieves a momentum of its own. What John (Dugard) overlooks entirely are the other doors that then opened for him and the great things that he has achieved, achieved as a result which would not have happened had his career taken other directions. But having said that, I mean, John (Dugard) and I are very good friends. We have been good friends from the time they got married. We both adopted our first children and they were both born on the same day, the 12th of July. John (Dugard) and Jane (Irwin), and Pauline (Schwartman) and I have been friends going back, what, nearly forty years. But, John (Dugard) can be a prickly and difficult person, while you know Arthur (Chaskalson) carries no baggage. Arthur (Chaskalson)'s a saint. There are so many people who carry crosses and burdens in their life, but not Arthur (Chaskalson).

Int So, from quite early on, the LRC was really informed by the NAACP Legal Defence Fund in terms of test cases, and so the Rikhoto and Komani cases were really key test cases that the LRC undertook. What was your sense of that in the current climate; do you think that the Rikhoto and Komani cases really were the pre-cursors and really undid Influx Control, or do you think it was more a function of the historical context?

Is I don't think that you can say a court case undid it.

Int Right...

IS It was a function of so many factors, but, of course, it helped a great deal. That was Section 10 (1b) of the Urban Areas Act. Ja.

Int Exactly. It's also said that quite early on, CALS had people like Halton Cheadle and, Fink Haysom, etc, and they went on to form...Cheadle Thompson & Haysom, and they took on the key political trials, what do you...?

IS But, did they?

Int Well...?

IS Well, they took on some of them.

Int Some of them, ok...

IS They were in the Maritzburg Treason Trial, Norman Manoim of the firm, did a great deal of work. There was much political rivalry, I mean, there was an indecent fight amongst Human Rights lawyers to get overseas funding. You had the ridiculous thing in the Maritzburg Treason Trial, where, I think, there were five or six firms of attorneys, all of them collecting money from overseas, but most of them doing none of the work.

Int Right. What made the LRC different in all of this, do you think?

IS Its absolute integrity. You couldn't point a finger at anything that anyone did there.

Int From quite early on, there was quite...there was a senior group, Arthur (Chaskalson) being one of them, and Felicia (Kentridge), etc, but there was this very good quality of middle range lawyers, they had Charles Nupen, Paul Pretorius...

IS ...you had Mohamed Navsa...

Int ...Navsa, exactly, and...what was your sense, did you ever get a sense that there was rivalry... internal rivalry, in the organisation between the NUSAS boys and someone, for example, like Mohamed Navsa?

IS No. Mohamed Navsa would always be "contrary" and regard himself as "an outsider trying to break into a club". But that's, you know, that's Mohamed (Navsa), and that's why he's like Ismail (Mohamed), also only balanced because he's got so many chips. Have you interviewed him?

Int Mm,. And so do you think that the LRC was not subject to being banned...or its members being detained, what do you think were the reasons for that during the 1980s, which was a particularly...?

IS They did nothing to attract a ban.

Int Right. But yet they...

IS Did they? I mean, they didn't get involved in any of the great political trials.

Int But Arthur (Chaskalson) on his own, did take trials on, didn't he...?

- IS Ja, but not in the name of the LRC. Was the Rivonia Trial during...?
- Int No..
- IS Was Rivonia...?
- Int Before.
- IS Before?
- Int Yes. So, in terms of...so, we come to the post 1990 phase, Arthur (Chaskalson), in his farewell address said that the LRC's role as a Public Interest Law organisation, is to take on government, even if it is an ANC government. Do you think that the LRC has taken...done that, in the post apartheid context? Or should I say, rather, has it done it effectively?
- IS Well, you've got to give me examples...How many of the great cases that have opposed the government, are LRC cases? Is the TAC matter an LRC case?
- Int The TAC case, yes.
- IS That uses the LRC.
- Int That was an LRC case...and Grootboom was an LRC case.
- IS Well, then it has.
- Int Right, ok. And one of the difficulties though in the post apartheid context is that if you get a case like Grootboom, you may win the case, but in terms of implementation it doesn't seem to have...
- IS Well, you won...you won the Pass Law case in, it didn't bring the Pass Laws down.
- Int Mm...
- IS Because there was no will on the part of the government to do it.
- Int Right. One of the curious things...with the Pass Law Case, for example, Rikhoto and Komani, was that under apartheid, if parliament was supreme, those legal victories

could have been overturned by parliament, but they weren't, what do you think were the reasons for that?

IS I don't think there was the will to do it anymore. Who...I've forgotten who the Prime Minister was at the time.

Int Was it John Vorster? I think, wasn't it...or no it was PW Botha...

IS Well, you're already coming to the end when there's a realisation that (Hendrik) Verwoerd was wrong.

Int So, currently in South Africa, you get this situation of attacks on the Constitutional Court Judges, being called counter revolutionaries, crisis in the judiciary, Cape Town Bar being in total disarray...

IS ...Johannesburg Bar is not far behind.

Int ...yes. In that milieu, how do you think a Public Interest Law organisation, who's mandate is to take on government where necessary in terms of Public Interest issues, how does it then...is there room to manoeuvre and space to function effectively?

IS Well, I think the will to do it is going. I mean, I look at the LRC today and I don't see it as a dynamic organisation any longer. And it's not headed by a dynamic lawyer who can see what can be achieved by and through the law. Arthur (Chaskalson) had a vision of what the law could achieve, and in thinking through what the law could achieve, he had with him Sydney (Kentridge), he had Charl Cilliers, and he had any number of great legal minds to help think, how can law function, let's go and get the case. George (Bizo) is still there, but, who else was at the dinner to honour Felicia (Kentridge) and Albertina (Sisulu)?

Int Sorry, the rest of...?

IS The LRC.

Int Not everyone, no, most of the staff wasn't.

IS Maybe it's because I'm getting old, but I'm not aware of dynamic young people who want to make a career out of Public Interest Law.

Int Why do you think that is?

IS I think most of them are seduced.

- Int By money?
- IS Well, I think that Gilbert Marcus, Matthew Chaskalson, the Budlenders, I think they do whatever they can do, whenever they can do it. I don't think that Gilbert (Marcus) is charging a fee for acting for the Constitutional Court Judges. He went and volunteered his services. Should the LRC have volunteered its services?
- Int It begs the question: why didn't it?
- IS Well, but who is the leadership of the LRC to counsel it to do anything? And if the Head of the LRC is on the ANC NEC, you're not going to get any initiative from it, to really tackle the government at the kind of level that it ought to be tackled..
- Int Do you think it's a conflict of interest?
- IS Well, if this is correct, you wouldn't get it, but why did this farmer from...who's just won this case in Pretoria, there's this farmer...white farmer whose farms were taken over by the Zimbabwean Government, and the South African Government did absolutely nothing to assist him. And the Constitutional Court has given a judgment in which it spoke about the duty to assist citizens ...I think it arose in the context of the people who are being taken to where (Simon) Mann and those other thugs were supposed to have organised a coup...have you read today's Business Day?
- Int Not yet.
- IS I mean, I don't know who his lawyers were who went to the High Court in Pretoria and got an order compelling the South African Government who had completely ignored this man's rights in terms of the Constitution to do something. How do you get constitutional cases? Does somebody come knocking at your door to ask if they can take your case. Did someone come knocking at the LRC's door and say: look, here's...let's attack Section 10 (1b) of the Pass Laws, here's a client? How did it happen? If you want to compare it to the NAACP, you know that was limited to the Civil Rights of blacks in America.
- Int So what in effect you're saying is that one needs very strong leadership that has a legal mind, in order to understand what cases require constitutional litigation?
- IS Ja.
- Int Ok.
- IS Didn't Dunstan Mlambo have something to do with the LRC.

Int He was a Fellow at the LRC.

IS Ja.

Int As you know, about 19 members of the Bench were Fellows at the LRC?

IS Ja.

Int Ok.

IS I can't see what the LRC is doing today. Maybe it's its own worst enemy.

Int In what way would it...?

IS Well, the AIDS cases stem from the LRC, but what other public interest matters are there? Then you have got the other NGOs who punt their own interests. You've got the AIDS Law Clinic Should it not have been part of the LRC?

Int Mm...

IS You've got Nicole Fritz and her lot, well, not her lot, that's her. It is (George) Soros who's pouring money into that. Shouldn't he be pouring it into the LRC? And I don't know whether people create their own agendas and then create their own organisations.

Int What's your sense of what's going on in South Africa in the judiciary, in terms of rule of law and government, the current crisis with John Hlophe, Jacob Zuma, the Constitutional Court, how do you understand all of this?

IS Well, do you think they're all linked?

Int I wonder (*Laughs*)

IS John Hlophe, I think, is a product of indecisiveness on the part of the Judicial Service Commission...

Int You mean in terms of hiring him in the first place or in terms of the Oasis Case?

IS No, in failing to deal properly with him.

- Int Ok, in the Oasis Case?
- IS In the Oasis Case, and if you want...and then if push comes to shove, then you point a finger at Pius Langa who thinks of Ubuntu too much, and you know, we've got to look after people and we must be nice and we must stroke them. And well, ja, in running this program for women, Pius (Langa) played a part, but now one just sees the character of the man, he's such a good man, he's just not cut out to be the tough Chief Justice that one needs.
- Int Wouldn't you have said the same thing about Arthur (Chaskalson)?
- IS Yes. I don't know if Arthur had it, but he wasn't put to the test. But I've got no doubt what Dikgang Moseneke would have done.
- Int What do you think he would have done differently?
- IS He would have kicked (John) Hlophe out. I don't think he would have thought twice about it. Look, I know Dikgang Moseneke from the time he was 16, because I appeared for him in his trial in the Pretoria High Court. But, Dikgang (Moseneke) is a tough, strong leader. From what I hear now, Bernard Ngoepe is going to stand for the vacancy in the Constitutional Court, and if he gets the vacancy, he'll be able to tell (Jacob) Zuma, God forbid (Jacob) Zuma's our President, that he'll be a very good Chief Justice. He'll be totally malleable, and then Dikgang (Moseneke) won't get the position that I've always hoped he should get, because he'll provide that strong leadership that the court needs and that you require of a Chief Justice. Ismail Mohamed couldn't do that either.
- Int Now, John Hlophe was a Fellow at the LRC and he's always had a reputation of being rather diligent and charming, what do you think might have gone wrong in the Cape Town Bar to elicit such behaviour?
- IS At the Cape Town Bar...I think you become the victim of your own personality. What was John Hlophe?...He was a Fellow - that's where you start, but, the fact that you start as a Fellow at the LRC doesn't mean to say you're going to be the Archangel Gabriel all your life.
- Int No, not at all. (*Laughs*)
- IS So he then became an academic at the University of the Transkei, and then he got plunged into being a judge and he was out of his depth. Don't people behave irrationally when they don't know how to behave?
- Int Why do you think that so many people say that judges in South Africa might be out of their depth, and I don't include you in that? (*Laughs*)

- IS Because they take the position believing they can do the job, but they can't.
- Int But do you think this might be a function of young black judges getting a position too soon?
- IS Well, now, are you talking about John Hlophe, or are you talking about others?
- Int Ok, more generally, but John Hlophe in particular.
- IS John Hlophe I think is...I don't...look, I've...I've had very little time...I've met him twice and I've dealt with him twice. One at a...we got appointed at about the same time and he was at that conference, and, I mean, he got rather prickly and upset there. And he presided at one of the selection meetings where we were seeing whether these...this first lot of women should move on. He was a totally...he was totally benign then. But, you know, the way he behaved about the appeal in the Clicks matter! He was put under pressure so, he said: well, I'm in a position to show them who's boss, and bugger them, I'm not going to give them a judgment, I'm going to assert myself. And he did. But then I think he behaved totally inappropriately. And, if you're looking for racism you can find it under every stone. I know so many Jews who see anti-Semitism in everything that...in every single walk of life. It happens because it's...because it's...because he's an anti-Semite, and I think a degree of paranoia grips people.
- Int What about young judge more generally, do you think that they've ascended into positions of power too quickly?
- IS Yes. It's not positions of power, it's positions of responsibility.
- Int Exactly...positions of responsibility, as judges?
- IS Well, ja, the Judicial Service Commission is as much at fault as anybody else, because I don't know how many people there were on that Commission who really realised what is required of a judge. When you say there's got to be transformation, but there's got to be transformation at what price? And if you can look today at what's happening in Johannesburg, where I think there are more acting judges than there are permanent judges, that is because there are not enough people to take the job permanently. And you simply can't take a person with no legal background or what have you, and suddenly call him a judge...and put him there. You've got no background, you don't understand. There's so much you don't know that you can only learn from practise.
- Int Ivor, the LRC since 1994, in particular, has been plagued by funding concerns, which wasn't the case when Felicia (Kentridge) started it because she got key sources of funding from the United States. You were at the dinner on Saturday night, what do

you think are some of these difficulties that the LRC experiences with regard to funding?

IS Nobody's interested...there's a total lack of interest...it's not driven anymore. You go to the average businessman and you say: well, is the average businessman interested in doing an AIDS case? What do you need it for? You know, we've got a 'new South Africa', we've got a wonderful Constitution, you're not fighting a great social injustice. I don't think that South African donors were ever the backbone of the financial support for the LRC.

Int No, not at all, it was started by...the funding really came...the seed money...from Ford, Rockefeller and Carnegie, but, as you know, bilateral funding was the process in terms of transition, so, money goes to government, and LRC cannot really take money from government. So, it's now left with the situation where it has to raise its own funds, and it is particularly difficult, as you rightly point out...

IS Well, it's what happened to St. Barnabas. People didn't feel an urgency or a need to do it. And where is the culture of Human Rights now? Jody Kollapen started doing a great job and even that organisation's been side-lined and turned into a nothing.

Int Mm. The other thing I wanted to ask you is that, the LRC...often the argument is that it's unable to attract young lawyers, particular young, black lawyers, because they're really snapped up by commercial law firms. What's your sense of that?

IS The same thing. And what's motivating black lawyers, not a great Human Rights tradition. I think people are basically selfish. What got things going in the past? People who had an enormous social conscience and wanted to try and make a difference. People like Arthur (Chaskalson), people like George (Bizos), Halton (Cheadle), Charles (Nupen), and then they moved on, but where are those people today? Where are the people to take over this mantle and to run these things? You had Lawyers for Human Rights in the olden days, created by the Bar - you could turn to most members of that body, but how many members of the Bar can you call on today to take a Human Rights case?

Int In terms of Public Interest Law issues, what do you think are the key issues that an organisation like the Legal Resources Centre should be focusing on now and for the future?

IS The alleviation of poverty. And how you can do something about creating jobs. Because you've got to undo the social injustices, that's what it was created for.

Int Sure.

IS And what are the injustices? The poorer remaining poorer and getting poorer, and then you've got to find somebody who's going to be able to contextualise this into

something that a Legal Resources Centre can do? I don't know what SETAs are meant to do, and these various other things into which government pours millions.

Int The other thing, Ivor, is that you knew Morris Zimmerman, now from what I can understand, Morris (Zimmerman), like George (Bizos), always...there's always been this tension in Public Interest Law, particularly in an organisation like the Legal Resources Centre, where the person comes off the street with his or her concern, and one then has to perhaps focus on that, but there's also this need to have an organisation that has focus areas, key focus areas, and does high impact litigation. LRC, probably due to funding, is increasingly going that direction, or should I say, has gone that direction, but in the early days there was the Hoek Street Clinic and there were all these Advice Centres, Mohamed Navsa went off to the Advice Centres, Mr. Zim...Morris Zimmerman, ran the Hoek Street Clinic with Pinky Madlala, what's your sense of how a Public Interest Law organisation should be functioning, should it really be taking the route of only high impact cases within its focus areas?

IS No, no. I think the high impact cases get the publicity. The advice that was given at Hoek Street Clinic...just...as at Legal Aid Board level did not attract publicity.

Int Legal Aid Bureau?

IS It was the same kind of thing, you were helping little chap. But, I mean, the big public issues, you know, that is Zackie Achmat's thing, I mean, that can't be dealt with at the Hoek Street level, can it?

Int Sure... absolutely.

IS So, there are two roles...there are two roles for it.

Int And you would recommend a dual role?

IS Ya, but I don't know to what extent that role has been taken over by the university clinics.

Int Right...

IS I don't know to what extent the clinics at Johannesburg University and Wits really provide the service or you're just going to duplicate it, or should the LRC become part of that? And from that they might...well, that might be a grass root from which they can find the bigger issues that they ought to be taking on. I mean who took on the case of the man who wanted the dialysis in Natal, was that the LRC?

Int It was LRC. Mr. Soobramoney. That was JP Purshotam at the Durban office at the LRC.

IS Ja.

Int Ivor, I was just wondering, in terms of Mr. Zimmerman, given that he has passed away, I'm just wondering if you could talk a bit about him, particularly around why do you think he was really motivated to go to the LRC, and I'm given to understand, that he was never paid?

Is No.

Int Right...

IS Well, he's another saint. I mean, when you think of where he comes from, he came from Jansenville in the Karoo, and he went to the University of Cape Town, his father had a trading store there. And he played rugby barefoot and he got to university and they gave him a pair or rugby boots and he became a Springbok rugby player. Then, he married the daughter of one of the top South African silks, Ziya Zimmerman...Ziya Rosenberg, and he was in partnership with Louis Kane- Berman. Lu Kane- Berman's son is John, who's the Institute of Race Relations., Lu Kane-Berman was one of the founders of the Torch Commando, and they let a moment in history disappear, but, (Lu) Kane-Berman and (Morris)Zimmerman were partners. And then Hayman Godfrey & Sanders, one of the top firms, offered them both a partnership, and they said: on one condition, that you give up your Public Interest Law and your involvement in trade unions. (Lu) Kane-Berman went along to Hayman Godfrey, and Morris Zimmerman said: you're not going to seduce me into this thing, I'm going on my own. And he did. And he was a wonderful man.

Int He was really...he's really regarded as a proponent of...Consumer Law...

IS I think there's an enormous amount to do, but, you've got to get to the Bar and the Side-Bar and get those young attorneys interested in doing it. Maybe you can't do it through a Public Law firm. But if you could get people to give up time, like they do in England. Barristers in England are required to do a specific amount of pro bono work. But I don't know what the source of it is. But, how do you discipline a profession that is self-servingly interested in making money?

Int Right. Now, I understand that you train women advocates...?

IS Not only...women advocates...

Int To become judges?

IS No...what happened...(am I out of hearing?)

Int *(No, I think...for the moment, you might be...a little).*

IS What happened was that...transformation's a great cliché in this country, so they want to transform the judiciary. First it was ...you've got to have more blacks, now ..then, the minister being a woman, said: you've got to have more women. So the minister said that she was going to start a program at Justice College. Do you know the existence of Justice College?

Int No.

IS It is run by the Department of Justice and it trains magistrates to think like magistrates and act like magistrates and behave like magistrates.

Int Does it work?

IS Well, go and have a look at our magistracy. And she said she was going to do that in order to train women to be judges. And Pius (Langa), or the heads of court, told the minister that if she did such a thing, the judiciary would refuse to recognise those women, because one doesn't want replications of civil servants. And the minister, or whoever, I don't know how it arose, the situation was then created, well, in those circumstances, if this is what you think, members of the judiciary, you do something about it. So, what the judiciary then decided to do, was to start a program to identify women who had the potential to be made acting judges. Because the judiciary can't appoint judges, they've got to be appointed by the Commission. So what they decided to do was to start a program and they advertised the year before last, and they got an enormous response, and they whittled it down eventually to 20 people last year, who they thought had the potential. And then they had to go on a training program, and I was then asked to run that program. And I ran it, and part of the programme...well, it was a phased program, and it ran over a period of a year and at the end of the day, I think that, of the 20, I think we said about eight of them had the potential to start serving as acting judges. Others had no potential, and others could reach the potential if they had a bit more training. And I think about...I think just about all of those people have been given acting appointments, as judges. And they'll then have to perform, and based on how they perform, they'll go in front of the Commission and they'll either get an appointment or not. And then they decided to do the course again this year, but, it requires an enormous sacrifice on the part of these women. Those who are magistrates or public servants, it doesn't matter a great deal because they go on getting paid their salaries, those from the private sector, I think they offer them a stipend of fifteen thousand rand a month. Now if you pay people fifteen thousand rand a month for a year, you're not going to get many people who are prepared to make the sacrifice without knowing that there's anything for them at the end of the road. So, one's doing the second program and the initial phase is going to finish this month.

Int So it runs for a year?

IS Ja...

Int or every three months?

IS No, but there's an initial intensive, kind of, teaching phase, and then there is six months where they get mentored by individual judges in divisions. So they sit with that judge, and that judge assesses them as well, so there is the double assessment and then they come back to me, and then there is a further assessment, and then they go onto a final assessment by a committee. And now the second lot are going through their initial...through...are nearing the end of this initial phase which started on the 1st of June. They'll finish by the end of it...so, it's three months. Some of them will go through, but, at a meeting that we had a couple of weeks ago, somebody started talking about a third intake and I said: enough's enough. And I think Pius (Langa) agreed that what one's really got to do is to train men as well. I voiced this view as well, that it's totally wrong to require a higher standard of women, and then just let men become acting judges with no background. And these people really need skills training. And there is a piece of legislation in the pipeline, that they're going to create a centre for judicial training at judge level, and it's just a question of the Act being ...of the Bill being made an Act of Parliament; Dikgang Moseneke is intended to head it and apparently...you know, they're great on infrastructure...on superstructure, but no infrastructure, they've got the money to put up a building, they don't know what they're going to teach, how long it's going to take and who's going to teach it. But, that's why there shouldn't be a third intake. But you're not going to get many people at R15000 a month, and you get these chaps, who say: well, you know, women, well, you know...R15000, that's not bad for a woman. But, that's nonsense, but, you're not going to get them, just like you're not getting many people at the Bar who've got practices to go to the bench. You're not getting a black man with a good...or woman, with a good practice who's going to give it up. Khomotso Moroka's not going to give it up to earn thirty thousand rand a month as a judge after tax.

Int Are there any female LRC lawyers going through your training program?

IS No. Uh uh. I think last year there was somebody from...somebody had been...somebody from Natal had come via the LRC.

Int Well, this year there's Chantel Fortuin...

IS Ja.

Int ...from the LRC, right.

IS Ja, she's the only one. Shame, she lost her son, killed in a car crash.

Int Yes...So, for the time being, at least, they're known as Ivor's girls.

- IS The Schwartzman girls.
- Int The Schwartzman girls. (*Laughs*). Ivor, 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 Oral History interview?
- IS What do you want to know about me?
- Int (*Laughs*).
- IS Um...I think that far too many people are thrown away when they can still make a contribution, and that compulsory retirement or sidelining of people with experience, is really going to harm this country. The country's going to be caught short by failing to go on using anybody. Maybe I'm beginning to get paranoid, because I wanted to go on working on the Bench and one of the reasons I wanted to go on doing it, was that one could mentor judges, because you find people who come there, they're not all...lots of them are out of their depth. But the ones that you really admire and know that you can do something with, are those who come to you and discuss their problems with you, and there's a growing number of people who came to the Bench towards the end of my time of serving there, whom I felt one could...one could really help. And I know of other judges who wanted to go on serving, who're being told: no, go.
- Int Gosh.
- IS Where one's so short of skills, to say we don't want you, or we don't need you, I think it's just so short-sighted.
- Int Ivor...the range of people that you've worked with who are in some way associated with the LRC is quite astounding, Morris Zimmerman, George Bizos, Arthur Chaskalson.... I wondered whether there was a particular memory of any of these individuals, that you particularly treasure, a story perhaps?
- IS No, I'm no good at stories.
- Int (*Laughs*).
- IS I...it was just the enormous warmth one felt whenever one spoke to Morris Zimmerman about what he was doing. And the enormous sense of worth that he felt in himself, because of the work that he was doing...
- Int At the Hoek Street Clinic?

- IS At the Hoek Street Clinic. And how it meant so much to...I think I actually arranged Zim's (Morris Zimmerman) first interview with...I think I arranged for Zim (Morris Zimmerman) to see Felicia (Kentridge) or Arthur (Chaskalson), to get him started in that. And then when you hear (Mohamed) Navsa, for whom it is difficult to be humble, talking about how much he loves and respects what Zim (Morris Zimmerman) did for him, and his memory. And that's just an abiding and great memory, and I just wish there were more Morris Zimmermans.
- Int Yes. I agree. Ivor...
- IS You never met him?
- Int No, I didn't, unfortunately. Ivor, I want to thank you for a very candid and also very thoughtful interview, thank you so much.
- IS I don't know about thoughtful...oh no, I just spoke. But you have to send it to me so I can edit out.
- Int ...Edit it. Sure. Thank you.

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