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LRC Oral History Project

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Int Wim, thank you very much for your time and for agreeing to be part of the Oral History Project. I really appreciate it. I wondered whether we could really start this interview by talking a bit about your formative influences, growing up in South Africa when you did and how you actually came into the legal profession. What were your influences?

WT Well, I grew up in Pretoria where I lived from the time I was born until I left university. So I grew up in a very traditional, very ordinary Pretoria Afrikaans establishment home. Except that my parents were always a little bit more liberal than our friends and peers and so on. Not a big deal if I look back at it now, but I always felt that we were a little bit different from other people. And there was nothing special about it...I went to the local school and local university and so on. My father was a lawyer. I was never aware of the fact that that influenced me to choose to go into law. But I would imagine that it would have done. I simply had all sorts of other ideas through school and went to the army after school – that was in 1968. I make the point because I never fought in the townships (laughs). And sort of late school, early army, decided that I wanted to go into law and that's what I did. I came to Johannesburg immediately after my LLB, which was in the mid seventies, and I have since then practised at the Bar. My choice to go to the Bar was not consciously influenced by my father but it just seemed to be the obvious thing to do. Presumably because I had his example. So I joined the Jo'burg Bar in 1975. I felt very raw and ill at ease in this very fancy WASP establishment. But enjoyed it and still do. The features of the job that I really appreciate most is firstly that I work on my own in the way that I determine and not subject to other people's direction. And secondly, and that comes closer to the LRC thing, that one does sometimes, not often, but sometimes feel that you can make a difference. And that is also so in my job more than in many other jobs. And that's what I've enjoyed about it. Having come from Pretoria, this slightly left of centre in the Afrikaner establishment, I of course found myself in a different environment in Johannesburg, with lots of liberals around. And became involved in human rights work in the late seventies and early eighties and thoroughly enjoyed it. I remember in those days that lawyers more than anybody else, who operated legally, had a capacity and opportunity to resist to government. But my practice initially was very corporate, very commercial, very ordinary. And only in the late seventies and early eighties did I acquire a substantial human rights component. I have however always retained a mixed practice. I've never been an exclusively dedicated human rights lawyer. I still do commercial work and any other work which I also find attractive frankly. If I had to choose, the human rights work is certainly a hell of a lot more interesting. But it's even better to do a spread of things rather than just one thing. So in the eighties I didn't do a lot of human rights work but I was involved in some interesting and exciting cases. One of them was as junior to Sydney (Kentrige) when we acted for an ex NUSAS president called Auret van Heerden, who was tortured in detention. We ran a long arduous trial in Pretoria before a very deeply embedded establishment judge and lost. Wrongly I think. But still, just the experience of doing such a case with Sydney (Kentrige) was an amazing experience. I did some of the other...I did a lot of humdrum insignificant human rights work as well. But another significant case or series of cases that I did in the mid eighties was for Wendy Orr who was the doctor, the district surgeon, who came out and spilt the beans on the

torture of detainees in detention in PE. And that preceded even...that was actually a sequel to something else and that was that I acted for the people in what was then known as the Kannemeyer Commission, which was a judicial Commission of Inquiry appointed after the cops had opened fire on a funeral crowd in Uitenhage on Sharpeville Day in 1985, I think. That was also, you know...unbelievably exciting experience. There was low-level war in that area at the time, and I was there with a wonderful crowd of people, including Fink Haysom and Halton Cheadle and lots of those CTH (Cheadle, Thompson and Haysom) people. And we ran the case...nobody ever quite knew exactly who our client was. I think it was mostly COSATU who was behind us, acting for the community. So there was that Commission of Inquiry. And Wendy Orr happened to be a formal witness in the Inquiry because she participated in some of the post-mortems of some of the victims. So about a year later when she wanted to come up with her story, she approached Halton (Cheadle) who approached me, and we acted on her behalf, and it was also very, very exciting. And that was the Commission of Inquiry, and subsequently a series of civil claims on behalf of the Uitenhage victims against the State, which we won. The State eventually capitulated. So, those are the more important human rights cases I did at the time.

Int I'm just curious, going back a little bit, growing up in Pretoria, you said, left of centre...that's interesting...I'm wondering what your experiences were of growing up under apartheid. Whether you felt a sense of injustice and how that may have factored into the type of human rights work you eventually do?

WT I don't know when I first realised that what was happening was wrong. But it was somewhere, I would imagine, school, late school or early varsity. I didn't have any perception then of what I...to the extent that I do now, of how evil the system was. But I did grow up with the knowledge that the system was wrong and so that conviction that what was happening was wrong and ought to be resisted was part of it. There's another part of me that just likes to resist authority I think. So...and I don't want to exaggerate this because compared to what other people did and the sacrifices they made, I did bugger all. I had a very charmed life. A big practice and lots of safe neutral clients. And just some human rights work on the side. Oh, there is another factor that I've also enjoyed and I still do today. And that is that I like the idea that the Boer from Pretoria firstly can resist the Boer government at the time, but secondly these days I've over the last decade or so lost my tolerance with liberals, the smug liberals...it gives me a sense of satisfaction that I think I know better than some of the liberals who were staunch opponents of apartheid at the time, but I think they've got stuck. I do think that although I'm a Boer from Pretoria I've moved on (laughter).

Int That's interesting. I'm wondering, in terms of the cases when you studied law, how did you actually get into the human rights work? What was the conduit? Was it through NUSAS?

WT No, not at all. In Pretoria there was no such...there was no NUSAS, there was no...nobody resisted anything. And I didn't get into human rights law at university; at university I was just a regular law student, dabbled a little bit in student politics, and there I was also sort of on the left fringe of Pretoria University. But you must remember Pretoria University in 1975 was far right, so to be left of centre there...but I

think what it did for me is a growing... firstly a growing conviction that our society was structured on an immoral basis. And secondly, a sense of identity with those who resisted rather than went along with the establishment. And establishment didn't much like me and I didn't much like them (laughter). In the eighties, I can't remember when, but also through the Haysom Cheadle connection, I became increasingly involved in labour work as well, which was fairly sort of quasi human rights work. So my identification with that side of the divide, not only apartheid versus opposition but also management versus labour – I was on the labour side – my commercial practice was very, very staunchly management, whereas my labour practice was consistently labour. It did cause me some conflicts, which I actually quite enjoyed if the truth be known. And that was because I had a number of retainers from very fancy corporations including Anglo and de Beers and Goldfields and Trust Bank and so on. But I also took on a retainer – I was the first advocate ever to get offered, through Halton Cheadle, and to take a retainer for COSATU. Whereas the Anglo retainer paid lots and lots of money, the deal we struck on the COSATU retainer was that they would give me a fresh COSATU t-shirt every year (laughter). And then in the late eighties when there was a lot of labour litigation my retainers conflicted. Retainer means that I would take the client's work and not act against it. So, and more often than not, the mining houses litigated against COSATU and then I'd be conflicted. It initially worked to my disadvantage because it would then mean that I couldn't act for either, because a retainer also means that you wouldn't act against the client and that was an unfortunate outcome. But I then relinquished the mining house retainers and kept the COSATU retainer. Because I thought that that was more interesting.

Int Was that the first time you had engaged in pro bono work?

WT No. I'd always done a bit of pro bono work, not a great deal, but a lot of the work that I've been describing, human rights work, I can't remember now when I was paid and when I was not paid. But I was frequently not paid for it. And I was fortunate in the sense that I could fund pro bono work by the income that I earned from my commercial work, so I've never been dependent for my livelihood on the pro bono part of my practice.

Int You mentioned, in the eighties being junior counsel with Sydney (Kentridge), and I was wondering how you came to that? Was it through...had you worked at all with the Cheadle, Thompson, Haysom firm?

WT My work with them started up in about '84ish. I remember the first really big case that I did for them was the Kannemeyer Inquiry. And from then I did a hell of a lot of work for them. But it wasn't the first time that I'd acted for them. I had the odd labour case with Halton Cheadle so we knew one another and we'd worked together a little bit before that. And then the Auret van Heerden case was not from Cheadle. But I think it flowed from the work that I had done in the Kannemeyer Commission and in the Wendy Orr thing. And then shortly after that there followed the Auret van Heerden. And I think it was because people had noticed that I enjoyed the work that I got involved.

Int So throughout the eighties, you'd done human rights work and you mentioned that you'd got involved with the LRC in 1995, if I'm not mistaken?

WT '95, yes.

Int So prior to that what was your knowledge of the LRC?

WT Well, there was Arthur (Chaskalson) and Geoff (Budlender), you know, and I knew Arthur (Chaskalson) from the Bar and he was always this giant at the Bar. And I knew Geoff (Budlender) less well...and I knew Sydney (Kentridge) of course and I knew Felicia (Kentridge). And all of these gods had all gone to the LRC. Started up the LRC. and that made a huge difference because sometimes the sort of virtuous work, the human rights work, was done by people who didn't have any other work. And there was some perception, some idea, it's the losers who do pro bono human rights work. Because anybody who attracted paid work didn't do it. but suddenly...not suddenly, there'd always been exceptions, but suddenly there was this brilliant, unbelievable group of people whose standing in the legal profession was just beyond comparison, who were doing this work. And I think that not only did it for the rest of us bring home and emphasised the importance of what they were doing. But also the virtue of doing it. They really did so much for the stature of human rights work. And not only were they of such standing but the quality of the work that they produced was always the best of the best. So I think it had a huge impact, beyond the actual cases that they did, the example that they set to the rest of us was just amazing.

Int I'm just wondering, in terms of being part of the Johannesburg Bar, what was the relationship between the Bar and the LRC? The LRC came into being since 1979, what has the relationship been during the eighties until you joined?

WT Let me say in the late seventies, early eighties, I was just a junior advocate at the Bar so, I don't think that I can accurately speak about the views of the Bar. But from my perception what I can say, is that the establishment of the LRC and its relationship with the LRC and the relationship between advocates and attorneys and the way in which the LRC operated, required the Bar to make an exception to a number of holy cows. And the Bar in those days was actually just unbelievably conservative, particularly when it came to Bar rules and Bar traditions and Bar way of doing things and Bar conviction that it knows better than anybody else. And I don't think that those exceptions would ever have been made, the space for something like the LRC to be established would just not have opened up if it hadn't been Arthur (Kentridge) who was the prime mover behind it. Arthur had been not only a leading advocate at the Bar but also a leader of the Bar. I think he was Deputy Chair of the General Council of the Bar. And you know, with his measured, conservative, logical, sensible, moderate way of putting his case, he persuaded the Bar to, not only permit the LRC, but largely to embrace the LRC. When they were first established, they were established in the same building as the one in which we were. So I don't think that the Bar ever thought of them as a foreign entity or a risk. It was always very much one of us who had gone out to do this wonderful thing. And I think it also assuaged the consciences of many advocates to think that we now had one of the top people from the Bar now doing all

the good works, so that the rest of us can get on with our commercial practices (laughter).

Int I'm wondering, during the eighties predominantly the LRC was involved in overturning some very key apartheid legislation. I'm wondering whether you were aware of that at the time and, what your sense of it was?

WT Yes, I was aware of it, they received quite a lot of publicity, and it was amazing given the context in which they worked. Remember in those days, if you could use the law to eke out a millimetre worth of space, then it was a fantastic thing because the law was always used in very crass ways in the opposite direction. So what they were doing was remarkable and unique. But it was so remarkable and unique only because the legal system of the time left so unbelievably little room for issue litigation, human rights litigation. Yes, so I was aware, but I was never in the eighties intimately involved. Well, there did come a time when I did the odd case for them...I can't remember now when it was, but for instance I remember the case in which the Kwa Ndebele election was overturned because women didn't have the vote. It was a case that I didn't ultimately argue for them, but I remember that Geoff (Budlender) and I drafted the papers. There was another time when Nic de Villiers from the Pretoria office got arrested in...somewhere, and I was also involved in whatever legal steps were taken to secure his release or something. So I did work for them occasionally. But I was never one of those guys like Charlie Nupen and Paul Pretorius and all the others who started off inside the LRC, and, you know, were intimately involved.

Int They also used...they used a test case approach, and I'm wondering what you thought of the test case approach that they used?

WT Well, I never thought about it deeply, it just seemed obvious that if you have superb but extremely limited capacity, then it seems obvious that the best and most productive way to employ it, would be to very carefully pick the odd case, which was important in the sense that it had an impact on many, many people and not just the particular litigant. So I never thought about that strategy much because it seemed such an obvious one. What wasn't obvious was where to find the little cracks that they exploited – that was sheer genius. But the test case method of doing their work, seemed to me to be an obvious one.

Int In terms of, under apartheid certainly, Parliament was supreme, and the law could be easily overturned. I'm just wondering what you thought were the factors that mitigated against that and enabled the LRC to actually retain its victories?

WT Let me tell you, I always thought...not thought...I have subsequently regretted the one case we never did, and that was to challenge the founding premise of our law, that Parliament is supreme and should be treated which our law did, as if it were a democratic Parliament. All sorts of implications for the interpretation of law and so on, inherited mostly from England. But founded in a premise, which was quite different from our set up. But anyway that's by the by. I think that they were able to achieve and attain their victories because...for two reasons. The one is: sheer

pragmatism, and that is that the Nat government was...had some sensitivity for bad publicity. And I think they sometimes just didn't have the political space simply to overturn whatever victories the LRC achieved. And then...but there was also an oddity...I think Sydney (Kentrige) has spoken of it on occasion. That although they so crassly abused the rule of law, there was a certain fastidious observance of...what would you call it, what's the other phrase...the rule of laws. And I can't remember whether it's his example, but a very brilliant example of it was the Biko Inquest, that we actually had State assassins who murdered people but at the same time had this old rule that if anybody died of unnatural causes, that there had to be a public inquiry where advocates could cross examine cops. So I think that there was this odd adherence to some kind of rule of law rather than just rampant political will. I think a combination of those two factors. I'm not ascribing any virtue to them.

Int No, I understand...in fact that's something that has come up repeatedly, surprisingly in interviews with American SALSLEP members who've wondered about this and this idea that there in fact there was this fastidious adherence to the rule of law and it's ironic.

WT I mean, the Biko Inquest I think was a wonderful anomaly. Government murders a man in detention but then allows lawyers on a huge public stage to show them up. And they never changed that, they kept the rule. I think they were too politically compromised to change it. They would dearly have liked to do so.

Int So once transition happened, did you find that the nature of your work changed?

WT Um...Oh let me also tell you just a little bit more about the eighties. There was also, what I'd forgotten about, of course there were the States of Emergency and there were lots of States of Emergency litigation, and all of us engaged in it. Ismail Mohammed always led the pack. He was a very enthusiastic...but that was also, you know, fascinating times.

Int Can you tell me a little bit more about that?

WT Well...when the State of Emergency was declared, the government ruled the country by decree. There were always sets of Emergency regulations. There were different sets, I remember the primary set were what they called the Security Regulations under which everybody got detained. But then there were also media regulations regulating the media and so on. And I think the establishment judges were very much aware of the...under the impression of the fact that the country was under siege and that it's now time for every citizen to do his duty to hold the line and so on, so it was very tough litigating before them. But there were little cracks and there were sometimes judges a little bit more liberal and a little bit more sympathetic, so it was...two kinds or three kinds of litigation we did at the time. The one would be to scrutinise the regulations and dig up any conceivable rule of administrative law under which the regulations could possibly be changed. And there was quite a lot of development of the law on that score. Mostly done by Ismail (Mohamed), the rest of us also did a little bit. I was in fact Sydney's (Kentrige) junior in a case in which the media regulations

were successfully challenged, or some aspects of it. That was the one part. The other part was acting for detainees. There was a constant battle to extend the little bit of protection that they had. Not very successful but very active. And then at the same time of course the ANC cadres were active in South Africa so it was criminal component as well. Every now and then somebody would get prosecuted and I never defended the high flying leadership, but I did quite often act for low level cadres who were prosecuted. To appear for a “terrorist” in Klerksdorp in the Regional Court, somebody who was branded a “terrorist”, who would be brought in, in leg irons, and then there’d be evidence of...the cases against him were so overwhelming. Because it would start off with the informers in the camps across the border. The arms cache and the confessions that they beat out of him and so on. So then to appear for such a man in the Klerksdorp Regional Court in 1986 was heavy going (laughs).

Int But it sounds to me like you had then participated in political trials?

WT Well, I suppose you could call it...they were political trials in the sense that they were people being tried for political activity.

Int What do you think mitigated against the threat of closure of the LRC during the State of Emergencies?

WT I frankly never knew at the time that there was that risk. I know today that there was. I’ve heard lots of people tell the stories. I must tell you frankly, firstly lawyers and advocates, more particularly enjoyed a privileged position in the apartheid society. I think that we...and white lawyers on top of it. I think that government...advocates weren’t immune from government interference. But I think one always felt that government would be slow to act against white lawyers. And then these lawyers were lawyers of such standing that government would be even more inhibited from acting against them. What I realise today is also how important it was that the LRC trustees were people of such standing that the government just wouldn’t pay the political price of closing down as subversive, an organisation with such leading citizens associated with it.

Int Coming back to my question about the transition, I was just wondering whether the nature of your work had changed, because you’d participated in quite a bit of human rights work that was inclined towards resisting the State. And I’m wondering how that has changed?

WT It changed a lot. I can’t clearly remember the period of transition from 1990 to 1994. Because human rights didn’t disappear overnight. There was a tapering off as it were. Because government policies were now liberalised and so on. So there was that period. But then came the Constitution. And I was very fortunate because the first case in the Constitutional Court was the death penalty case, and the newly established court asked the Bar Council to nominate two people from the Bar to act, represent the accused in that case. And the Bar then nominated Gilbert Marcus and myself. So I acted in the very first case in that court. And it was a fantastic experience. But what it also meant was that I had to learn a bit of Constitutional Law very quickly. None of us

knew any Constitutional Law whatsoever. I remember a December holiday where I spent swotting up Constitutional Law. Oh, and the LRC offered to act as our attorneys in the death penalty case. And it was really from that joint experience that Geoff (Budlender) and Felicia (Kentrige) then asked me whether I would join the LRC initially for two years. And the big, big difference between that experience and the apartheid experience was that under the apartheid experience the scope for progressive action by law was so extremely limited, the tiny little cracks were so few and far between that the problem was to find them. Suddenly in '94 the opportunities were so overwhelming that the real difficulty was to find a way of choosing what to do and what not to do, because there were fantastic cases to be had all over the place. And it was actually quite difficult to choose. And so to my mind the big difference is that where this starvation was the problem under apartheid the abundance was the problem under the Constitution.

Int So when Geoff Budlender and Felicia Kentrige offered you a position in the LRC, this was around 1994/95?

WT Yes.

Int You obviously had to give up a lucrative career and I'm wondering what was going on at the time?

WT Well, let me firstly say they offered me the opportunity to do what Arthur (Chaskalson) had done, you know, and that just sounds fabulous. But secondly I'd been in practice since 1975, this was now '95, so it was 20 years down the line. I had taken silk in 1987, so this was 7 or 8 years later, so the idea of a new challenge in something else seemed very attractive to me. I also...I had under apartheid...in 1987 when I took silk I was offered an appointment to the Bench as a judge but I decided against it. I pissed off the particular Judge President who then made certain that he would never ever offer me even an acting appointment, which he never did. But it didn't bother me much. He was the same guy who threw out Aurret van Heerden's claim so I had no qualms about it. So...20 years in practice, lots of doing what I had been doing for 20 years, there's this opportunity to do something else, to do what Arthur had done, and to do it under this spectacular new Constitution with all your opportunity that it offered. It did involve a very big financial sacrifice, but yeah, it was quite exciting. I sold my home and bought a smaller one and I contracted my whole lifestyle, and once having done so, the freedom that it gives one to do things because they're interesting, not because they're profitable, is quite an attractive proposition. They asked me only to come for 2 years and that was our initial deal. I ended up staying for four and a half years. But yeah, so...it was never meant to be a permanent life change, it was meant to be just an interesting experience. And I benefited very, very greatly from it because it's exactly when Constitutional Law opened up and the job they gave me was to head up...when I say head up, it was me, the Constitutional Litigation Unit was a one man unit base.

Int Oh, it was?

WT Yeah, I normally had one or two junior people who helped and so on, but they came and went and it was substantially I worked on my own. But it allowed me to do more Constitutional litigation work than I think anybody else in the country at the time.

Int Could you describe that work a bit more?

WT Well, as I say, our difficulty then was to decide what cases to take and what not. And I never quite managed to define the criteria that we should apply. Because people came to us...the way it worked is that some cases came directly to the Constitutional Litigation Unit. And other cases came through the branches. People had a case, realised there was a Constitutional issue and then brought it to the unit. So there was this overwhelming demand for Constitutional litigation services. Oh, and there was also a fair share of just business people who wanted, because there was no...there was a great shortage of Constitutional litigation experience. And we had to decide what to do and what not to do. I tried at the time to take cases on the basis that I would take cases which are important to weak and vulnerable people. But that in itself was also such a broad test that it left one with more work that we could do. And the kind of work I did at the time...you should first have a look at the Annual Reports of the time, because that at least listed some extracts of the work that we were doing. But it was very, very varied and it was not focused. It was all over the place.

Int It seems to me that coming in at a particular time, during transition must have been very exciting...

WT Yes.

Int Also, the LRC itself must have been undergoing its own transition, given the nature of its work during apartheid and now. And I'm wondering what your sense of that was during your time at the LRC?

WT I of course wasn't so close to the LRC before I joined, that I could really compare pre and post. I remember I was a little bit anxious before I took the job that people...that LRC might be going under and that I'd be joining a sinking ship. But I remember the one condition I set when I accepted, is that I said to Geoff Budlender, I just want to know whether you plan to leave, because I don't want to come if you plan to leave. He said: no, no, he's...no plan to leave. And then shortly after I joined, 2 or 3 months he came to say that he was offered a job of DG of Land Affairs and would be leaving (laughter). And he was very, very apologetic but it was absolutely clear that he gave a perfectly honest answer when I asked him, and that there was just this unforeseen event which came afterwards. So I can't really compare it pre and post, except that I do know that the...oh, yes, hang on there's another big difference as well. In the old days, LRC and the work that I did was very solidly anti-government. So much so, you know, that if one did a criminal case in a political trial, you barely talked to the prosecutor because they were the enemy and one dealt with them only if you had to and there was no collegiality or camaraderie or anything like that. And lines were clearly drawn and it was easy to identify. Suddenly we were mostly on government side...mostly not always, sometimes the laws of the old order were now being

staunchly defended by the new order. So one would find yourself both sides of the line. And actually since then and still today I have a question that I have to ask myself all the time, and that is, am I not perhaps moving too solidly to the government side of the line? I do a lot of work for instance, for the National Prosecuting Authority which is basically criminal law, but on the prosecution side. And I do other work for government as well because I also do think that the work of advancing democracy and fundamental rights in the new South Africa isn't always on the anti-government side, it's sometimes on the government side to defend progressive policies or whatever. So that a big change was that one was suddenly not simply against the government but on both sides of the political line.

Int It's interesting you say that because I'm wondering what conversations might have gone on during that period because essentially the LRC was really on the side of the ANC under apartheid, and then found itself then having to take cases against the ANC, and the Treatment Action Campaign being one example. And I'm wondering how that happened in terms of its metamorphosis?

WT Well, I think...I think it was quite a natural development because the LRC, certainly what I did, was to take those causes that one felt ought to be taken and then you sometimes found that that was government's case and sometimes it was a case against government. I can give you some examples for instance: when the final Constitution was negotiated I wasn't party to the negotiation but I was often consulted by government, by the ANC side, on issues that arose. When the final Constitution was ultimately finalised, I was one of the advocates who defended it in the Constitutional Court. You know there was a certification process. So I was, in those days, very solidly and very clearly on the ANC side of that Constitutional negotiation. But at the same time I...oh, and I acted for Mandela in more than one case, in his divorce and in his case against Louis Luyt and so on. Which is also a product of that, choosing sides. But at the same time you'll see in those reports there were lots of cases that we did against the government.

Int Yes, I have no doubt about that. It's interesting, the Constitutional Litigation Unit seems to me arose at a time when there was work on South Africa's actual coming to terms with its past. And one of those was the Truth and Reconciliation Commission. I'm wondering how, and if, your work dovetailed at all with the Truth and Reconciliation work?

WT Yeah...I can't remember when George Bizos joined. But of course...I think he was there for most of the time that I was there, yeah. And of course George was very closely involved, not only with the work of the Commission but with the conceptualisation and with the drafting of the Act and so on. So there was a close LRC link to that process but mostly through George (Bizos). My link to it was...I had links at various levels; I acted for some of the people in the Truth Commission. I acted for instance for Abubaker Ismail, who was the guy responsible for the Pretoria Church Street bomb. I acted for other people in a case in which a Security Policeman had murdered his wife and now wanted amnesty on the basis that it was a political offence. Oh, I acted for Paul Verryn in the Stompie Seipei/Winnie Mandela Inquiry. But I also on occasion gave advice to the Truth Commission itself. And the most

significant occasion was on the 37 members of the ANC leadership to whom they had granted amnesty, they asked me whether that amnesty was validly granted and I advised them that I didn't think it was so. So that caused a lot of controversy, and still does. They're still people talking about prosecuting the 37.

Int Those are tough choices to make. I'm just wondering, did you feel in any sense having come into the LRC a bit later and also working single-handedly almost in a unit, I was wondering whether you felt isolated from the rest of what was going on and within the LRC in the different centres, the historical lineage that had...?

WT No, I don't think so. I made a deliberate effort to interact with the LRC regional offices, and because I provided a service which was sexy and everybody wanted to participate in, I had a very good relationship with most of the people in most of the regional offices, and worked together with them frequently. And precisely for that I made a point of always making it plain that they could use my services only in the way and to the extent that they wanted to, so that I wouldn't come in and take their cases. And on that basis did wonderful work with lots of regional offices. Mostly...never quite Pretoria, I don't know why not Pretoria, but Johannesburg, Grahamstown, Cape Town and Durban, I did lots of work for them.

Int So what made you leave the LRC, the Constitutional Litigation Unit in particular?

WT Um...I...the real question is the other way around. I came for two years and stayed for four and a half. So after two years the question at the back of my mind is: for how long am I still going to stay on? And I stayed on for another two and a half. I think after four and a half years, I more or less exhausted the excitement of it, and it was very, very hard work and...you know, I finally came to the point where I felt well, it's time to go back to the Bar.

Int Reflecting a bit on the LRC and your experiences, I'm wondering, you said it had an enormous benefit upon you. I'm just wondering what precisely those benefits were and how you see that in your current work?

WT It was the most wonderful thing that I did, it really benefited me I think a helluva lot more than it benefited the LRC. What it did for me was various things...the obvious thing that it gave me the opportunity to specialise in Constitutional Law what exactly what I've done. I didn't actually think of it that way at the time, it just seemed exciting and sexy and a thing to do, and that's why I did it. But it gave me that advantage. It gave me other advantages as well. Funny enough one of the main advantages was: to see what interesting work there was to do when one did it because it was interesting, pick cases because they were interesting rather than that they were paying. When you grow up at the Bar, and you've been here for 20 years, I've never been a particularly materialistic person, but you acquire a habit of thinking of time in terms of money. And even though I did lots of pro bono work, you would still at the back of your mind think that I have today sacrificed so many rands, you know. Whereas my four years at the LRC completely severed this link between time and money. You did cases...I got paid very, very little, and you did cases because they

were important and interesting. And if I were to list this...the best experiences that I've had at the Bar it would probably include a lot of the work that I did at the LRC. So that severance of the link between time and money, and the lesson that sometimes it's a helluva lot more rewarding to do interesting cases rather than paying cases, is another advantage that I gained there.

Int You mentioned earlier that one of the advantages of working for the LRC was working with people like Arthur Chaskalson, and earlier of course you had worked with Sydney Kentridge. ...and of course Geoff Budlender...I'm wondering whether there were other people in particular, people you met maybe through the SALSLEP Board or people in South Africa who were lawyers?

WT I didn't. At the LRC I did work with a lot of lawyers in the LRC, but by the time that I was there the sort of judges of the legal profession who were my seniors had all left. I was probably amongst the most senior people at the LRC. So I worked with wonderful people with whom it was a pleasure to work, but it didn't include any of those judges of the profession.

Int At the time when you left, what your concerns were, if any, about the LRC?

WT Um...I thought that...well, two things. I thought that they...I was worried that quality of the work of the LRC was going down. They had a very strict, each according to his need, pay policy. And it was one established in the old days for very understandable reasons. But it was a pay policy which was strictly according to years in the profession. You had a chart: how many years have you been a lawyer? 17. That's the pay. And that kind of rigidity, low pay in the first place, but then **inaudible** also, which doesn't distinguish between good lawyers and bad lawyers. Didn't worry me, I had a bit of practice on the side, I'm not suggesting I was dissatisfied, but what that pay policy did, was that it paid bad lawyers too much and good lawyers too little. So all the bad ones stay and all the good ones go. In the old days the momentum of quality was maintained because the LRC was staffed by idealistic people who weren't there for the money. That element largely, not altogether, but that element became far less pronounced, and I was worried that the quality of the work at the LRC was going down. The quality of the administration has always been appalling. It was terrible. I couldn't type and there were no proper typists, no proper back-up services, but that was more of an irritation than a real hindrance.

Int Now, at the moment, even though you're not with the LRC, do you have concerns for it?

WT I think the same concerns frankly. I think the LRC's work is far from what it used to be and there are still a couple of...still a few good people, but I don't express any particularly knowledgeable view, but it just seems to me that one isn't used to the LRC of whom one knew in the old days, that it's work was always of the top drawer quality. These days quite often, it's very, very poor quality. I still work with them quite a lot. One of the most exciting cases I've done since leaving, was a case they did

for the Richtersveld communities for the recovery of their ancestral land. So yeah, I still...

Int In terms of public interest law, consistently I get people saying in interviews that the LRC is one of the greatest public interest law organisations in the world, and I'm wondering what your thoughts are about that and how...or if the LRC has influenced public interest law work in South Africa?

WT I can't speak of the international comparison because I actually have nothing to compare it with. But certainly in South Africa, I think one can make the point that I made in the beginning, that not only in the eighties but there's still the enduring...image of public law created by Arthur (Chaskalson) and the LRC. And I think they have done so much to give public interest law a credible face that I think that that influence still endures. There have been other organisations who have been good, other spin offs. One of them was the Women's Legal Centre who in recent times I think actually outshone the LRC, but was also modelled on the LRC example, and in fact started up by people who had started off at the LRC. And I'm sure there are many others, but yeah, I think that's part of the legacy of the LRC.

Int In terms of...what have been the highlights of your involvement with the LRC...? Anything that you feel has in some ways determined a bit more of who you are, a sense of yourself in relation to the work you do?

WT Well, I think that the point that I made earlier for me was the most enduring advantage...benefit for me. And that is the lesson that it is often more rewarding to do interesting cases than to do paying cases. Mostly, if I were to think back of the most exciting cases that I've done, almost all of them would be pro bono cases rather than big commercial cases, whatever their name is.

Int Do you think that the legal profession in South Africa is really truly...and I've asked you this about the Bar...but I mean, currently, do you think the legal profession supports LRC, is aware of the stature of the LRC?

WT No, I think that the stature of the LRC has diminished very significantly. I suppose because the stars have gone, but also because the quality of the work has gone down. So I think people still think that the LRC is virtuous and honourable but I don't think that there is that awe and respect that the LRC used to enjoy. One hears gossip of people who say sometimes cases are very badly done. Not always, there's some good quality but I think that that image of the LRC as a superstar has waned very significantly.

Int What would you attribute that to?

WT No, just the stars have all gone home and the foot soldiers have carried on with some exceptions. I think it's not a question only of image; it's a question of reality, the quality of the work had gone down.

Int I'm wondering, if there was anything further that you would like to add to the interview that I may have neglected to ask? Any stories in particular that you'd like to add to this Oral History?

WT Um...well perhaps, how much I enjoyed George Bizos, because he was right next door to me and we've always been close colleagues for years and years. And to have him there in this environment where I was a bit of an outsider, was wonderful. I remember at one point it became very important for them that we should log our time, because they often received funding, but on condition that it be used for certain kinds of work. So it was important for them on their computer to know how many hours you spent on this kind of work and so on. And I had never logged my time, and their biggest problem was to get George to log his time (laughter), so they convened this special meeting, of which the sole purpose was to get me and George to log time (laughter). I knew that it was a special purpose meeting, George didn't, because part of their strategy was, to pretend that this was a meeting designed to urge everybody to log their time. So there was a...I can't remember who gave us a pep talk, really earnest and serious and important pep talk, of how we should all log our time. And when the pep talk ended and they opened the floor for discussion, first one to speak was George, and he got up and he said, how terribly important it was, and everybody should do so, and no exceptions and so blah blah blah, he said: except Wim and me of course, over my dead body will I ever fill in a time sheet (laughter). So it was delightful to have him there. I'm not a corporate person and I had George as an ally.

Int Well, I'm going to be interviewing him this week so I'm looking forward to that. Wim is there anything else that you'd like to add?

WT No, I don't think so. I'm sure I'll remember something tomorrow.

Int (laughs) Well you can always contact me. Thank you very much for your time, I really appreciate it.

WT It's a great pleasure. I enjoyed it.

Recording turned off then back on

WT Talking about the Richtersveld case with Henk Smith, and it started off with a hearing in the Kuboes community hall. Kuboes is a tiny little village in the Richtersveld. There are really only four villages and this is one of them, where the hearings started up. And remember there's no accommodation, there's no guest accommodation in the place, but the local shopkeeper cleared his house for us and our legal team stayed in his house. And that was about 200 yards from the little community hall where the

hearing was held. So on the first morning all the lawyers...we dressed up in our regalia, our bibs and our gowns and so on, because there are no facilities at the community hall, and we walked down. And somebody had organised all the school kids to give us a sort of a...stand in a guard of honour all the way down with little flags and so. I felt highly...it was very thrilling but I was very embarrassed. I didn't quite know how does one deal with this sort of guard of honour. And my only role model was the queen so I would, you know, sort of wave regally and shake a hand here and there. And when we got to court the Richtersveld people are very, very religious. So they said to us: do we mind if they were to say a prayer when the court started? And I knew the judge from the old days in Pretoria, and I knew firstly that there was no ways in which he could allow the one side in the litigation to do a public prayer once the court was in session. I also knew that he would squirm because he's a bit of a hypocrite, he holds himself out as a big Christian so it would be very difficult for him to say, no. So I went and I asked him whether they could say the prayer. I said, they would very much like to do one, and he squirmed as I predicted he would, and then he said they could do it, but before the judges came in. And the oldest member of the community, I think it was Oom Danie de Wet or some such name, an ancient member of the community, would say a prayer in Nama (*clicks*) and the hall was packed, packed, packed, packed. And it was wonderful to see our opponents standing there respectfully with their heads bowed while my clients were praying for God to strike them down (laughter). And it became a ritual for them to pray for the long trial that then ran, in every court they would always say this prayer, always in Nama, so I never understood exactly what they were saying. But the day in the Constitutional Court, they also said this same prayer before court started, but this time the most senior member who did the prayer, was one of the Afrikaans speaking part of that community. They call themselves *Bosluisbasters*, and he said the prayer in Afrikaans, and for the first time did I understand what he was saying. And I remember my consternation at one point in his prayer where he said: 'And oh, dear Lord, today we sacrifice our legal team on your altar' (laughter).

Int Is Nama a particular dialect?

WT Their language is Nama, but they speak Nama and Afrikaans.

Int Okay, thank you for that wonderful memory.

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