

Arthur Chaskalson

LRC Oral History Project

Interview 1 - 4th December 2007

Interview 2 - 22nd August 2008

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Int Arthur, thank you very much for taking the time to do this Oral History interview for the LRC.

AC Oh, it's a pleasure. Thank you for the task of undertaking the history.

Int Well, it's a pleasure, likewise. I wondered whether we could start by talking a bit about your formative influences and what could have possibly led you to the legal profession as such, growing up in South Africa?

AC Yes, well...I always knew that I wanted to be a lawyer. When I say 'I always knew', when I was at school I had decided that I wanted to be a lawyer. I'm not sure why I decided that, it wasn't as if there was any individual in my family who had influenced me in any way, my father died when I was young, I had a couple of uncles who were in the law but I wasn't close to them and I certainly had no discussions with them about my future. I think I must have decided to become a lawyer from reading and I probably had a romantic idea about what lawyers could or couldn't do and it was something I wanted to do. And it was strange that I knew very clearly already when I was in my Matric year, I knew that that's what I was going to do and I knew I also wanted to be an advocate and not an attorney. So how all of that came about is not entirely clear to me, other than that I didn't vacillate at all. Even when I went to university, I had to do an undergraduate degree before I could do an LLB and I saw the undergraduate degree merely as a stepping stone, not as anything which would carry with it anything of moment, whereas in fact it was quite useful but I didn't go into it thinking that it would be of any importance, it was merely something I had to do before I could do law.

Int Growing up in South Africa, what was that like? The early years?

AC Well, you know I was born in 1931 so I grew up before formal apartheid, but I grew up in a country which was racially segregated, which...I mean apartheid as I've said before on other occasions, didn't drop out of the air. There's a long history of discrimination, segregation, marginalisation. And so I grew up as a little white boy in a middle class home in an area where I met other little white boys and girls, and that's how I grew up. My family wasn't a political family, so I didn't, as it were, as a young child, sort of get exposed to a political group.

Int I'm wondering, you did a law degree, and I presume that was at Wits?

AC Yes, I did my degree at Wits.

Int What sort of law did you practice thereafter?

AC I went to the Bar as I had always planned to do and in the early...look, my practice, I never had a Criminal Law practice at any stage, my practice was always in Civil Law and the Criminal Law practice that I had was only political cases. I think there might have been...I can't even think of more than one or two cases, which weren't political cases, which I did in the criminal courts. Other than, of course, when you start at the Bar, you do *pro deo* murder cases, it was a duty, you had to do it. So I did *pro deo* cases when I was called upon to do it, I didn't want particularly to do them, I always abhorred the death penalty and I didn't want to find myself in a situation where I would have the responsibility for somebody's life. And so...but when my term came to do it I did it, so I did a number of *pro deo* cases. But apart from that I didn't do...I was never briefed in Criminal Law.

Int So in terms of Public Interest Law, where did that come from, the sense of pursuing law on behalf of the poor, the marginalized and the vulnerable?

AC I think you've got to go back sometime to the...you've got to first of all start looking at what society was like in those days. I left school, I matriculated in 1948, the end of 1948, I started at university in 1949. The National Party came to power in 1948. Apartheid was formally adopted as policy in 1948 so as I started at my university education, it was the early days of apartheid and obviously at university, I started meeting people and being exposed to broader issues than I had met when I was growing up. I had been at a boarding school in Natal, which was fairly cloistered, and I learnt more about what was happening, and when I came to the Bar I made it clear at the time that I would be available to do work for...there was...at that stage, Defence and Aid was established in South Africa. It was a South African-based organisation, it was funded from England, but I did work for Defence and Aid, I did work for the Legal Aid bureau when they asked me to do it, and I started building a practice and so that is where it all started. But by the 1960's, I was already involved in defending people on sabotage cases and so on, had one very long trial in 1963, then there was the Rivonia trial, well it's actually 1962 was that long trial, then in 1963 there was the Rivonia trial which went on till 1964 and then there were a series of trials after that. So I sort of moved between corporation law and defending people who were victims of apartheid.

Int Was there a particular reason? Did you find that kind of law interesting or was it just that you felt the need...?

AC No, I felt that that's what I wanted to do. I...I...it always seemed to me that they were victims and I wanted to be on their side not against them.

Int Right. Earlier I interviewed George Bizos, and he mentioned that he worked closely with you during the 1960s on different trials, and I wondered whether you could talk a bit more about that?

AC Well, you see, look, George (Bizos) and I have known each other for many, many years. We were at university together, we weren't really friends at university, but we knew each other. In 1960...the time I think we got close together was at, in 1963...at the time of the Rivonia trial, because the two of us were briefed together. We didn't know each other well before that, we knew each other very well by the end of the trial and we've remained very good close friends ever since then, and on various occasions in the '60s and the '70s, we would do cases together. I took silk before George took silk, and at some stage, George was in a case, he would ask me to come in to...George always saw me as the law man and he was the fact man. And so we sort of would work together on that basis. Where there were legal issues he would want me to argue them, and where there were factual issues he would deal with them, largely. It was not as clear-cut...not as isolated as that, but we did a lot of cases together over the years. Some of them were... the NUSAS case, which was a students' case, where the students were charged with...under the Suppression of Communism Act, was largely a factual case, though there was quite an extensive legal argument at the end.

Int That was in the 1970s?

AC That was in the 1970s...probably about '75, '76. I'm bad on years...if they become important, you'll have to look up the records. You can't rely on me for anything about years.

Int That NUSAS trial has come up with other interviews, because I've interviewed Charles Nupen, I've interviewed Karel Tip, and I'm going to be interviewing Cedric de Beer...

AC And have you interviewed Geoff Budlender yet?

Int Next week. So I wondered whether you could talk a bit about that case, as well?

AC The NUSAS trial was where I met Geoff Budlender, because Geoff was working for Raymond Tucker at the time. Raymond Tucker was the attorney and we were...George and I and it was Denis Kuny was the third counsel in that case. We were briefed in that case. Geoff had been working for Raymond...now I had been...no, it was there that I met Geoff and...he came in to really attend court, he was the person who was in court all the time at that case. And it was there that we got to know one another. He's an extremely able person; I don't know whether you know Geoff at all...

Int I've heard of him...

AC He's a very, very able person and he obviously was a very bright young intelligent person and I also, well I mean, that was where I met...Charles (Nupen) was one of the accused in that case and so was Karel Tip. And when we...not long after that, I was doing another case, that was a case in which...when the NUSAS case finished, the NUSAS case lasted a year, I remember, I think it was about a year from the time they were arrested till the time they were acquitted and for about a year. And then shortly after that, I went into another case, also instructed by Raymond Tucker. That was a case where Tokyo Sexwale was the first accused and...Joe Gqabi and others were in that case. And once again, Geoff was the instructing...he did, he was really the attorney, going to court all the time. Now it was during that time that the whole question of the Legal Resources Centre cropped up, and it was then that I suggested to Geoff (Budlender), asked Geoff whether he would be interested in coming into the Legal Resources Centre. It turned out in fact that he had been involved in discussions about the Centre or something like the Centre long before I had been. I wasn't aware of that. So really the NUSAS trial was where Geoff and I met one another. It was also where I met Karel and Charles, and both of them decided to do law. (Laughs) I don't know whether their trial had any impact on them or what it was but ultimately they both came into the LRC.

Int I wondered, Arthur, whether you could talk more about the early stages of the LRC, the events that led up to it, how it was formulated etc?

AC Well, the...my connection with the LRC started because of a dinner invitation where Lorraine, my wife and I, went out with Sydney and Felicia Kentridge to have dinner, and we went to a restaurant. I even remember the name of the restaurant, it was called Cock Robin, it was in Rivonia, and at that dinner was a man called...gosh, I've forgotten his name, it will come back to me in a moment, I keep forgetting names...but he was the Project Officer for the Carnegie Corporation.

Int David Hood?

AC David Hood, yes it was David Hood. And over dinner there was talk about...Felicia had already been engaged with this project, and there was talk with David Hood about what they were planning to do, and there was talk about what they hoped to be able to do here, and David talked a little bit about public interest law in America, and that was...that evening...when I got home that evening I said to Lorraine, I thought that that was something I would like to do, how did she feel about it? She was even stronger than I was that that was something, which I should do. I think she was very clear that that's how I should use such skills as I had. And so I 'phoned Felicia and said that if they wanted to...you know, if there was a place for me in the project, I'd be very interested in joining it. And I then got...I was then brought into the project and at one stage, they had contemplated...David, in their initial discussions, a number of people had been involved, and the initial discussions had taken place without me, and they had planned a sort of a research unit plus a litigation unit. John Dugard was going to be involved in it and I think it was contemplated that he would head the whole project. I didn't know about that. But after I came in, they split. The research

project was the Centre for Applied Legal Studies, and the litigation project was going to be the Legal Resources Centre. We didn't have a name at that stage, we thought about the name afterwards. And so it then started that way and...there was always a little bit of tension I think, with John over that. I think he thought that he had been marginalized or sidelined and I didn't even know of his interest in it. I mean, I wasn't told about it until sometime later. And that's how I started to get involved. It then required quite a lot of work, because the professional rules didn't permit advocates and attorneys to work together, and there were statutory problems with the attorneys, and there were ethical problems with both the attorneys and the Bar. So we had to get permission from the...had to negotiate with the legal profession to set up the structure, which was surprisingly...went surprisingly more easily than I had anticipated it would go. And we managed to do that, the Bar agreed, and the attorneys agreed. We had to find a...there was a legal argument about whether you could practise together but that was resolved because...we took...the argument we advanced was...meant practise for reward, and there was a case which said if you didn't charge for your services, you were practising for reward and the attorneys accepted that and then decided that there was no obstacle to that. We were fortunate because we managed to get the leading members of the profession at the Bar and in the attorney's profession. I remember going to speak to a couple of people in the attorney's profession, who were leaders, including a man called Billy van der Merwe, who was a very influential person, who was deep into the Broederbond, he was very, very influential politically and in other ways, and I told him this was what we wanted to do, explained it to him and he actually didn't block it, he in fact I think helped us at the end, at the Law Society.

Int I'm curious, Arthur, what do you think are the reasons for that kind of acquiescence?

AC I can't answer, I really don't know. It's...I mean there were some people at the Bar who objected and said that would be the end of the Bar, which was nonsense, but we had a general meeting at the Bar...we went to the Johannesburg Bar, we had a general meeting at the Johannesburg Bar and we got a two thirds majority and then we went to the General Council of the Bar and we got unanimity at the General Council. That took about a year, and then there were quite a lot of negotiating going on at the time.

Int So you set it up in 1979 and I hear that you set it up in a very strategic location as well...

AC Well, we actually were going to set it up in 1978 but the Sexwale case, the judge who was trying the Sexwale case died, in the middle of the case, and the case had to start again. So we had contemplated we would start in 1978 but because of the fact that Geoff and I were both in that case, and they didn't want to start...there were only going to be three of us, there was going to be Geoff, Felicia and I...as lawyers and there were only going to be a couple of other people...we had a very small budget. So it had to be set back and so we started in '79 after the Sexwale case was finalised.

Int And your first offices were in Innes Chambers...?

AC Yes, we took offices in Innes Chambers.

Int I was wondering, around 1980, '81, you started using the test case approach...

AC We started right at the beginning...I mean, from the very beginning we knew it wasn't to be a Legal Aid Bureau. From the very beginning, the idea was that we would look for cases...you know, test cases aren't everyday affairs, you don't have a test case every day of your life...we would look for cases, which would determine the law or also look for cases which would have an impact, in the sense that they would expose a particular abuse, so we were more concerned with the impact of our litigation and therefore, we immediately started making links with communities and...we didn't want to take on, at the beginning, and I still don't believe the LRC should be doing that, the individual cases of...there are lots of people who run foul of the law and who need assistance from the law and a lot of people who might be...subject to abuse and to exploitation but if it's purely a factual, simple factual matter involving that individual, you wouldn't...it's a service which has got to be provided but that wasn't a service which we set out to provide. Our service had a very clear goal in mind, in that it had to make an impact, and obviously we did take on individual cases during that time because you can't avoid it, the lawyers and others who worked at the Centre would meet people coming in and hear terrible stories and it was very difficult for them to say no. But I was continually putting pressure on people not to allow that volume of work to overtake what was the main purpose of the LRC, which was to do impact work.

Int How did you manage that split? Did you split that kind of work into the Hoek Street Clinic and...?

AC Yes, we established a clinic at one stage. I think the Hoek Street Clinic started probably in 1980...I think we decided that...the Hoek Street Clinic also, we wanted to start involving students and the Hoek Street Clinic was to be a vehicle where the students and the clinic itself would deal with matters, but the main thrust of the work would be done elsewhere. But you know, right at the very beginning, the very first case the LRC took on was the Komani case. So that was in a way a test case, wasn't it?

Int Absolutely. I wondered whether we could talk about the Hoek Street, because I understand Morris Zimmerman was quite the figure?

AC Yes, he was. Well, Morris, he was just a delightful man, he was a man who had run a practise, he was a man of tremendous integrity, he had run a practise on his own for many years. He had been active supporting trade unions, did quite a lot of trade union litigation in his time, he also represented people in political cases on occasion. He was an exceptionally...he was a man, at that stage Zim must have been in his '60s or '70s, I don't know how old he was, he was retiring and I got a message. I can't remember whether he spoke to me or whether somebody else spoke to me, I don't remember, but I got a message saying that Zim would like to come to the LRC and I followed that up and we established a clinic, Hoek Street Clinic, and Zim took charge of the Hoek

Street Clinic, and...he was just, he was a wonderful man with great energy. You know he was growing old at that time but he had tremendous energy, determination, great integrity and he was very good with the young people, the people, the students who were working there...they all liked him. And also when we established a fellowship program, he had an important part to play in that training program.

Int How did the Hoek Street Clinic work differ from the LRC office?

AC The Hoek Street Clinic was what it claimed to be, it was a clinic, which was just to see people off the street and to try to solve problems and we had students working in the clinic. Originally, we tied up with...I think we had Rand Afrikaans University (RAU) were one of the early people who sent students there, and then we had people from UNISA (University of South Africa) also, I think, sent students there. They would work in the clinic, under the supervision of an attorney. There was Lillian Baqwa who was one of the early attorneys and Zim. And they were to deal with basic problems, that was really just a sort of a legal service, but the purpose...it was a training program, it enabled the students to get involved in social law and that was the...the main purpose of taking that on...because Felicia had worked at Wits in establishing, trying to establish a Law Clinic there and there was a Wits Law Clinic and we had links with that. So this was part and parcel of the idea of conscientizing students to what the society was about, at the same time, giving them an idea of how law could help individuals and...providing a service but the difficulty was we couldn't keep everything in the Hoek Street Clinic, because people would come up to the LRC offices as well.

Int So in early '80s, you had two significant test cases: the Komani and the Rikhoto and I wondered whether you could talk about those particular cases?

AC Yes, well the Komani case started before the LRC was started. The Komani case started in Cape Town...there was a decision given...do you want me to talk about the facts of the Komani case, well, you know them do you?

Int Whatever you feel comfortable with, so we have it on record...

AC Well, I don't mind, whether you want it on the record, or whether you would rather fill it in yourself...

Int On the record, that would be great...

AC Well, the Komani case dealt with the Pass Laws. At that time, there were certain people who had...certain black people who had...let's go back, you see I don't know how intricately you want me to go into the whole influx control system. For people who don't know, it's a complex system...it would take quite a long time to explain. Basically, what it came down to was that the apartheid policy was designed to prevent...really, to de-nationalise black South Africans. And the idea was that black

South Africans would lose their citizenship, they would become citizens of homelands. I'm using black here to talk about Africans. And they would become citizens of the homelands and the...that was the goal, which was that South Africa would become a white country. Now because of the way industry and commerce had developed, there was a very large proportion of black Africans who were employed, in menial positions but nonetheless employed in commerce and in industry and in agriculture. The country was actually dependent upon that employment and couldn't function without it. And so the system which was developed was to force people back into the homelands, to allow certain people who'd been born in the cities to remain in the cities, and there was also a provision that went back a long time, to 1945, an old Act that was never changed, which said that for a person that worked continuously for one employer for ten years in the city, then that person, though he, and I say he advisedly, because it had to be a man, for reasons which I'll explain later, he would be entitled to get urban rights and then live in the city. Now, the migrant labour system worked on the basis that people who came from the homelands would be recruited and the labour would be recruited by agencies. I mean there were monopolies, State-linked monopolies who would recruit labour in the homelands, people would come into the...and they would recruit men, they didn't want the women to come into the cities. There were women who lived in the cities, who had been born here, who had rights under Section 10 (1a) of the Urban Areas Act, but...it was almost impossible for a homeland woman to get permission to live and work in the cities. The men would come into the cities and they would come in on a contract basis and they would work for one year. The contract would be for a year and at the end of the year, their contract would be terminated and they had to go back to the homeland, at which stage they would apply for a job again. But the way it worked was that...because employers didn't want to lose (laughs) their workers because they would train them, it would be chaotic for industry if you trained a person for a year and then the person disappeared and you had to train somebody else for a year. So if you had been working, you could apply to go back to the same employer. So what happened was that homeland people would go back, their contract would be terminated, they'd have to apply for a new contract. If the employer wanted them back again, the employer would undertake to re-employ them and if the Labour Bureau agreed, they would then be certified and they'd come back to work on a permit system for another year. Now, those people would then be living in town. There would also be people who had been born in the cities and who had rights but who may have links with homelands in the sense that they may have married somebody from the homeland. The Komani case concerned the position of a wife, it really was a couple, but the man had rights to be in the city and the wife didn't. For the wife had to get a permit to visit her husband and those permits would be for a very short space of time and you had to go through a terribly long, complicated process, humiliating process to get them and when you came, you could stay for seventy two hours or whatever the permit was for and then you'd have to go back to the homeland again. Now, that case was started in Cape Town before the LRC had been established, and in fact, I think what happened was that the Black Sash in Cape Town who had been involved in it, hearing about the establishment of the LRC and knowing that Geoff was one of the persons involved in it, Geoff had connections with Cape Town where he'd been at university...the Black Sash...they wrote to Geoff and asked whether we could do something about the case. They'd lost the case in the Cape court. Geoff actually came to see me, he brought the judgement and the paper...the judgement to me and we looked at it together. And my view was that an appeal wouldn't succeed (coughs)...My view was that the appeal wouldn't

succeed because the argument which had been advanced in the Cape court was where the regulations said no person may...no person being allowed into the city without a permit...and the argument had been that person there meant a male person and not a female person and I didn't think that that argument would succeed. But I said to Geoff that I think we should take the case nonetheless because even if it wasn't going to succeed, it would give us a feeling of what the impact...of the regulations was. It would also give us a feeling of the attitude of the Appellate Division to this sort of litigation and we should take it on even if we weren't going to win it. But when we started working on the case, we saw a different point, which went to the validity of the regulations not to the interpretation of them. So when we...we then launched our challenge in the Appeal Court, on the basis that the regulation was not effective...because it was invalid. We had two arguments. We decided on the more conservative argument first, but during the course of the hearing, the judge asked us about the bigger point (laughs) and we said yes, we...that was our contention but it wasn't necessary for this case, but they wanted to just deal with that and we were subsequently asked to amplify our argument to deal with that particular point in detail. But that was how that case started. And we won in the Appellate Division, 5-0, and it had a very big impact. First of all, it sort of put the LRC in a way, on the map. It was also I think quite good for the funders, because we said we wanted to do something and within a year, we had done something. Also, at that time, we started developing structures and seeing how to be more effective, how our work could be made more effective by establishing links, sometimes with the media, sometimes with community organisations. And one of the things, which followed the Komani case, was that though the judgement had been given, the administration boards weren't applying the judgements. And we had to try to enforce it through subsequent court action. And we...in the meantime, we had analysed the whole influx control system and we were looking at other issues...the Komani case dealt with the section which was section 10 (1c), in which the Komani's fell, but there was another section, Section 10 (1b) of the Urban Areas Act, which dealt with the resident's rights after ten years, and we decided that's where we would go next. That became the Rikhoto case. But we took a long time before we found a proper case, I mean, everybody was agitating to get onto it, and I wouldn't agree to a case. I remember, they kept getting people from the Black Sash...you see, what happened was that a lot of people would be employed for a long period of time but would take long breaks, for a whole variety of obvious reasons. They wouldn't necessarily work for a year and then take a three-week holiday and then come back again. There were lots of reasons why they took breaks and I wanted to have a very good case before we started, and ultimately, Mr Rikhoto came along, and Mr Rikhoto was a perfect case, because he had been working for the same employer, he was still working for the same employer, and he had only taken three weeks holiday and come back. So it was a perfect case. There was no break. So we then...we said that he'd worked continuously and that the separate contract was really a fiction and that in subsequence, he had been in continuous employment with the same employer and that the attempt to deny that by breaking it up into eleven contracts...and the whole system was designed to ensure that you could come back again, it wasn't random that he came back. I mean the whole system worked on the basis that he would come back again. So it really was a very substantial argument and we won in...we won in the Transvaal court and then we won 5-0 in the Appeal Court. Now that was a very...that had a big...in a way, a bigger impact than Komani, because Komani dealt...well, Komani had a big impact because it allowed families to stabilise themselves and once families stabilised themselves in the cities, it meant that

the city population would be growing, but the Rikhoto case meant that many, many people, thousands of people...I don't know the figures, but I think it was in the hundreds of thousands of people, had...could claim rights. Because the system had been in place for a very long time and because of the system, you couldn't change your job. And employees were very vulnerable, they couldn't change their job, they were dependent on their employers, so it didn't matter how exploitative their employer was, if they left their job they would go back to the homeland and they wouldn't be able to work again. And so there was a huge number of people to whom this case applied, and the Administration Boards who were charged with the responsibility of applying the law, didn't give effect to Rikhoto. They found all sorts of reasons not to, and we continually had to have cases to enforce it, and ultimately, one day, Felicia Kentridge was in court, and Judge (Richard) Goldstone was on the Bench, and Judge Goldstone said to her, to Felicia, why is this case before the court because the Administration Board hadn't even come to answer? He said the Appellate Division judgement is clear, why is this happening? And Felicia told him what was happening so he got very agitated and he expressed his displeasure and asked for his comments to be brought to the attention of the Administration Board. The newspaper reported it wrongly, saying...and there was a headline saying, Judge slams Minister, and it was a big banner headline. Pity we didn't get it, I mean, we've got a lot of banners floating around the office. I remember that huge banner: Judge slams Minister, and that caused a tremendous uproar, and that was in a way a turning point, because after that, the Administration Boards started to give effect...they certainly gave effect to all the LRC clients. In fact, if you had a letter from the LRC, they didn't even look at the letter, they would just stamp the man's reference book, stamp and send him away. I don't know what was happening to others, but it did have a big impact, that case. And then the third case in that series, was a case called Mthiya.

Int Mthiya?

AC Mthiya was the third case, it came from Cape Town and that case was one in which there'd been long breaks. I think one break was as long as seven months. That case was also won. (Laughs) So by that time that whole structure of the influx control was in tatters. At one stage, they had wanted to...they'd toyed with the idea of amending after Komani and decided not to. After Rikhoto, there was a serious attempt to amend. They started drafting legislation, which was promulgated, which was put into circulation on the basis that this was going to extend rights. In fact, it was taking away rights, and we engaged in an analysis of the legislation and ultimately actually went to Parliament to make some submissions about it. The Urban Foundation, Jan Steyn of the Urban Foundation, was actively involved in that, he was encouraging us to do that, and was setting up the structures for it. It wasn't...a number of us, I think I was the only LRC person who went, there were others from the bar who were briefed to come with me to make representations to Parliament about it, but in the end they didn't change the law. There were attempts to and I saw the draft legislation, but I think politically they decided against it, because of various reasons, I think. One of them was of course, the growing power of the unions. And there were so many people who had got rights now, that I think the unions would've gone on strike if that had happened and I think, also politically it wasn't a good time for them. They were trying to promote an image of reform and I think that to have gone back and to have narrowed the law, at that time, was politically unwise. I mean, I don't know what the

ultimate reasons within the National Party were for that, but I do know that legislation was in circulation and Koornhof, Dr Koornhof, was the Minister responsible...put it into circulation and he had trumpeted it as extending rights to blacks, but that was absolute nonsense, it was not extending rights, it was taking rights away if you looked at it carefully. Perhaps he didn't know, perhaps the legal draftsmen from the Administration Boards had put it up in a way, which made it appear as if it was doing something positive whereas in fact it was doing something negative.

Int I wonder, Arthur, given that under apartheid, Parliament was supreme; I wonder why these LRC victories weren't overturned by Parliament. What's your sense?

AC Well, that was the point, that's what I said. I mean, there were considerations given to changing the law...look as far, as the Pass Laws and Influx Control was concerned, there was no doubt, there was definitely a political decision taken. At one stage, they were going to change the law and then, ultimately as a result of lobbying from business, as a result of political pressures from elsewhere, I don't know exactly what happened, but they dropped it. And that was clearly a political decision and why, I can't tell you. It would be very interesting to go and look at some of those old records, if one could get access to them, to see what debates were going on within the party and if anybody is still around who you could rely upon to tell you the truth (laughter) to find out the reason why. All I know is that they put out draft legislation, which was as I said, trumpeted as being positive whereas in fact it was negative and we did a very detailed analysis of it which we made public and they chose ultimately not to go ahead. It could only have been for political reasons but what that political reason was, I can't tell you. But there were other cases, which we did, they didn't change the law, sometimes it was because they couldn't, they didn't want to change the law. There was a lot of action which was being carried out which was in fact illegal, the bureaucrats and the police and the security services acted outside of the law and they didn't want to pass a law saying that people could do that, so those sorts of victories...had an impact. It wasn't as if they made new law, it was that they exposed what was happening as being outside of the law, and there was too big a political cost to changing that. But quite a lot of the cases were allowed to stand ...I mean, they didn't in a way...I mean there were the strike cases, which we won a very important case on the right to strike involving the mining industry, which had a big influence within the mining industry, they didn't try to change the law then. Again, I think the black unions had become quite powerful and also the employers didn't want trouble.

Int In terms of the LRC itself during the 1980s, why do you think the LRC was somehow saved from the threat of banning and closure?

AC Well, it wasn't actually saved from the threat of banning. There was...it has been established – I haven't seen the papers – but it's been established that documents to prepare for the banning of the LRC were prepared. When you go to Cape Town, go and speak to, you must ask Steve Kahanovitz about it because those documents apparently came out at the time of the Truth and Reconciliation Commission. Also, at that time, it was round about that time, that there was an attempt to get trustees to resign...on our Trust we had a number of judges: Johann Kriegler, had become a trustee at the time when he was with the Bar and subsequently became a judge, and

there were other judges in different provinces. The then Chief Justice, tried to get the judges who were on the Legal Resources Trust, he tried to get them to resign. There was pressure put on them and their Judge President was spoken to. I know that because the Judge President, the Natal Judge President, told me of that conversation, said that he'd had a discussion with Chief Justice Rabie who had asked him to get the judges to resign and that he should persuade them to do so and that, John Milne told me that he had said to Rabie, 'I will convey your message to them but I will not encourage them to do so. On the contrary, I will merely pass it on as a message from you and tell them what my views are'. I know that in Johannesburg, pressure was put on Kriegler to resign and he refused. I think that they may have been quite troubled about trying to ban us with judges sitting on the Trust. It would have been difficult. They would've had to have banned the Trust as well, and there were leading attorneys on the Trust...and that was a deliberate policy. You know, we wanted that protection, people gave it to us and they were terrific. I mean, they really...they respected what we were doing, they admired the LRC, they identified themselves with it and it was...I think that but for them, the LRC would not have survived.

Int The LRC was a relatively new venture in South Africa in terms of public interest. I'm wondering how much of parallels and influence the American public interest law organisations or system had?

AC Well, they were obviously of considerable influence because it was that which led David Hood to float the idea here. I think David took a lot of initiative in getting the thing going. And there were three foundations and they used to meet and talk a lot at the time. There was David Hood, there was...he was from Carnegie Corporation; there was the Rockefeller Brothers Fund; there was the Ford Foundation and in fact, before we started, they arranged for Jack Greenberg, who was then the Director of NAACP Legal Defence Fund, to come out from America to spend some time in South Africa and to talk about the project and he came out and we became very good friends. We've remained very good friends...our family and their family have remained very good friends ever since then. And we were influenced in the sense that the idea came from there I think, and the strategy in some way of looking for important cases came from there. I think the legal structures are so different and the political situations were so different, that there had to be differences in the way that we worked but undoubtedly, the...it was the American experience which led, I think, to the idea of public interest litigation here, and it just took its own shape in the light of South African circumstances.

Int In terms of SALSLEP, what was the understanding and the premises under which it was set up?

AC Well, SALSLEP was set up...it really happened because of a man called Lloyd Cutler, who actually was a very influential Washington attorney. Lloyd had been counsel to one of the presidents. I can't remember whether he was counsel to President Carter...and subsequently he was called in to be counsel to the Clinton White House at some stage when there were some troubles. He was a very, very influential Washington establishment attorney and he...the Kentridges knew him. And at one stage, Sydney and Felicia Kentridge, round about the time that we were

starting, I think we'd actually just got going, he asked Felicia what she was doing and she told him. And he said, well, he thought that they should do something to be of assistance and so his firm, he was senior partner at that time of a firm called Wilmer, Cutler and Pickering in Washington and he asked to meet me and Felicia and I, we were in New York at the time. They had met earlier but then we agreed that we'd go down to Washington, Felicia and I. We went down to Washington, spoke to him and he asked one of his partners to come in, and a junior, I don't know whether he was a partner or an associate, the two of them came in, and they were asked please to set up a structure for a trust.

Int That was Reuben Clark...?

AC It was Reuben Clark and Jamie Kilbreth. And they got going there, and that's how it all started. And then they found the trustees; they found the trustees who they thought would be people to have with them.

Int Over the years, what has that relationship been...?

AC Well, it's always been a good relationship in the sense that it was a vehicle through which we could raise money. Ultimately, most of the fundraising was done from South Africa. But it was very important at some stage to have a vehicle to which corporations could make contributions in the United States. The relationship was always a very good relationship and we got to know the people quite well. They would come out here – they had to, to see what they were doing because they were trustees and they had a responsibility under their own legislation to make sure that we were doing what we purported to be doing – and I'm sure that...you know, you can't value those sorts of relationships purely in monetary terms. I think there was an important source of funding, it was never very large but it was an important source of funding and it was also a personal support, which I think was quite important.

Int I hear stories about the BLA at that time competing with the LRC and I'm wondering, what the tensions were with those two organisations?

AC You know...originally when we started, I remember speaking to Godfrey Pitje and trying to...the BLA hadn't started an organisation, the BLA wasn't yet in existence. I remember speaking to Godfrey about, you know, whether he'd be interested or he knew any black attorneys who would be interested in joining the LRC, and he recommended an attorney to us, but we didn't appoint her. In fact...well anyway, we didn't appoint her. But there were good reasons for not appointing her and she's no longer an attorney. The relationship wasn't a bad relationship on the face of it, to begin with, but the BLA...when the BLA started, I think that amongst some of the members of the BLA there was a competition for funds. When I say amongst the BLA...because I heard stories that the BLA...some BLA representative, when they went looking for funds, would be very critical of the LRC. Now, whether that's true or not, I don't know, because that criticism didn't manifest itself and on the surface, things were all right. Certainly, in the early days, Dikgang Moseneke was the leader of the BLA, I'm convinced, was never party to that. I mean, I've always had a very

good relationship with him but he was not active...he was a very important figure in getting the thing going but he wasn't...I would be terribly surprised, I don't believe that he would ever have been critical. They may have argued that it was important that this sort of work be done by blacks, and not by a white-led organisation, and that therefore the money should go to a black-led organisation and not a white-led organisation, which might be a legitimate argument. I mean I don't know what was being said. But on the face of it here, the tension was co-lateral, in the sense that I would hear these stories and people would bring stories to us to say that this was happening, but it didn't express itself in any conflict inside of South Africa and I never took it up. I didn't see that there was any particular purpose in doing that. You know, we stood by what we were doing and how we were doing it, and I think anybody who looked at what the LRC were doing, would see that it was an effective organisation. And that it had a lot of community support. About that, there was no doubt. We had terrific support from within the communities.

Int One of the...when I looked at the Ford Foundation archives, there was this criticism, growing in the 1980s, about the fact that there weren't as many black lawyers attached to the LRC, and I'm wondering whether that was the reason behind the fellowship program. What was happening at the time?

AC No, the fellowship program started much earlier, much earlier. We always had an idea of training, we wanted to work with students, and the fellowship program started probably in 1980. It was within a year of our having started. I remember being in America and meeting some, meeting some lawyers there and talking and the idea of starting a fellowship program came from a discussion which I had with a lawyer in America who had...her name was Jane Picker, and it was over a meal, actually Felicia and I were together at the time, it was over a meal when this thing, somehow or other the idea of an internship cropped up. And we hadn't done it because we couldn't article, the law didn't permit us to article, because only practising attorneys could article and the only reason we could function was that we weren't practising attorneys. And Jane Picker, I think Jane Picker said, well, why don't you offer them an internship, whether you can article them or not, it will be valuable to them. And that idea, I brought that idea and we started the fellowship program. The idea of the absence of black attorneys here was not...I mean the point was that it was not easy to find people to come in to do the work who had the...you know, people who were...it wasn't a policy not to have black attorneys, it was just quite difficult to find people who wanted to come in and do the work....

Int Do you think the qualifications were substantially different, in terms of...standards etc.?

AC Well, I think that the experience, which black attorneys had...first of all, there were comparatively few black attorneys. Most of the black attorneys who were practising at that time had been in practice for quite a long time. Not all of them but most of them had been in practice for quite a long time. The nature of their practice had taken them in a particular direction: it had been a particular sort of litigation, largely concerned with divorce, matrimonial work, accident work. And that tended to be the sort of practice, and criminal law...and often the people who, at that stage too, the people

coming out of universities were not...out of the black universities, were not well trained. But there were still some people who...but they were largely the people who were coming out of the black universities, there were still some black law students from Wits and Cape Town, but most of the people were coming out of the homeland universities and they were very poorly trained. But you see, when we started the fellowship program, now the first, in the very first fellowship year, Mohammed Navsa was on the first fellowship program and he was a very able person, Mohammed, he's extremely clever, very energetic and he impressed everybody in that program and we asked him to stay on. We did want other people to stay on as well, but a lot of them wanted to go off into practice.

Int Sure. one of the things that comes up often as well, is that early on, there was a coterie of what's called the NUSAS boys, and I'm wondering whether that led to some sense of a culture where there were people who'd grown up together, went to university together, who knew each other and may have been very competitive and there was some sort of sense of....divisions within the LRC? Did you get a sense of that?

AC Look, that may have been, that may have been. I can't...I guess that it may have been that there were people who knew each other well and therefore related well to each other, that they may have been seen as somehow having some sort of special core value amongst themselves. That wasn't really brought to me. I'm not saying it wasn't there, but it could easily have been there and probably was there, I mean that would be quite natural, for...that too. I mean, you know, also there would have been racial connotations to it as well I think because they were all white and I think the young black people in the organisation might have felt that somehow or other there was that division. I can't...you know, you must speak to the people who were in that position and find out from them.

Int Sure, the other thing that I was wondering about as well, is during the 1980s, you had a core set of funding: Ford, Rockefeller, Carnegie...by the (mid)1990s, South Africa was no longer fashionable to fund and I'm wondering whether that's been a growing issue for the LRC?

AC Well, you see, first of all, if you go back to the 1980s, Carnegie had stopped funding us during the 1980s, they were the initial funders but they didn't stay on...at a certain stage, their emphasis shifted, they had a new program director who was interested in different things, and so Carnegie stopped funding us; Rockefeller Brothers Fund stopped funding us; Ford Foundation continued and the LRC, the Trust built up a very big donor base with government, foreign governments. When I say foreign governments, it was largely foreign government money. It was often routed through churches, or routed through other institutions; it was largely foreign governments who were funding because I think there was an acceptance that what the LRC was doing was important. So after 1994, the situation did change. You see, I stopped being on the...(coughs) when I went to the Constitutional Court in 1994; I resigned as a trustee of the Legal Resources Trust. And I couldn't have any contact with the Trust at that time...

Int You've subsequently come back...

AC I came back when I resigned as Chief Justice.

Int Right, and that was when?

AC 200...it was in 2005. I retired as Chief Justice in 2005 and then I was asked if I'd come back as a trustee and I agreed to do so.

Int So since 199...

AC So from 1994 to 2005 I wasn't involved at all...but I do know that funding has been a problem, though they continued to raise a significant amount of money...but the...it was more difficult to raise money and the LRC has had to close one of its offices now. The Pretoria office was closed largely for financial reasons, not entirely, but I mean it was... certainly financial reasons were the major reason, I believe, for the closure. It may have to trim its activities if it can't sustain a funding base. It seems...it's at a stage now I think, where there's quite a lot of hope that it will again develop a powerful funding base. I think a lot of what it's doing is important and I think that since Janet Love has come in as Director, I think that she's an effective person at that level of fundraising and talking and promoting and I get a sense that she will find the money...and there was a time when the LRC didn't have a director at all, there were acting directors, and I think that was a time when people performing that duty didn't see it as their main responsibility to raise money and so on. But I think that there may be a change ...it is more difficult to raise money because a lot of donors now want to give money to the government, and the government wants to get the money, they like to have control over civil society so they like people who want to give to civil society to give to them so that they can route the money to civil society.

Int And is the LRC...would the LRC be one of the organisations that the government would really give money?

AC It's really interesting to say, because I think some people in government wouldn't like...would find the LRC quite threatening but at the same time, they're very proud of it. I mean, when I retired as Chief Justice, there was a ceremony in Parliament which...speeches were made by all the political leaders, and everybody referred to the LRC and how important it was, but I do think that the LRC has caused the government a lot of trouble. (Laughter) In many ways, bureaucrats don't like being held to account. It's a different sort of trouble...it's not the sort of oppression...you've got a government now which actually wants to deliver social services, it really wants to promote change and...so it's not a government which is hostile to the goals of the LRC, but it is a government which doesn't like having its decisions interfered with. I think most governments don't like having their decisions interfered with...I think there's generally somewhat of a tension between governments and judiciary, and also between governments and public interest...and some elements of the society generally.

Int I want to piggyback on that, Arthur, and ask you about...you really had close links with ANC....leaders, throughout your career, 1950s, 60s, 70s and 80s. And then, transition happens and there's this government that comes in that's predominantly ANC-led. How does the LRC reconcile itself to the fact that it would then have to take cases against the ANC?

AC It was never an issue. It really wasn't an issue. I mean, I remember very clearly, when I...in 1993 I resigned as National Director and Geoff Budlender took over as National Director, and I stayed on at the LRC but I had been very involved in the whole constitutional negotiations and I wasn't able to give time to the LRC and I felt that really, it was proving too much for me to deal with all of the constitutional negotiations which were going on and at the same time to take responsibility, and Geoff was carrying a very big burden and I thought that it was right that he should become the Director. It was obvious that he would be, he was the Deputy and it was quite clear that he would succeed me and I resigned as National Director and that was probably in about '93, sometime in 1993, the constitutional negotiations were still going on. And the LRC had a dinner in my honour, and they invited a whole host of political...they weren't political leaders yet but you know, the...I mean, Mr Mandela was there, and also a whole host of people from the...negotiating team from the ANC structures and I remember speaking at the time, talking and saying, I remember actually very clearly saying, that there are a lot of people present here today who at some near future are going to hold high office in government and don't expect the LRC...you'll be hearing from the LRC when you're there, don't expect it not to happen.

Int Well, that's been proven true, hasn't it?

AC Yes...look, the situation is different, the situation is different in the sense that the government as government is, I think, committed to addressing fundamental issues of poverty and change, exploitation, a whole bundle of legislation put in place towards that end, and what the LRC is concerned with is poverty and the legacies of apartheid and good government and democracy in the sense that decisions should be taken properly. And so, the situation's quite different in the sense that the goals of the LRC would be similar to the goals of government, whereas before there was a sharp conflict. But the point is that you hold government to account, and government takes a particular decision to do or not to do something and the LRC then engages. I'm quite sure that the litigation around socio-economic rights has been very troublesome to government, particularly the litigation around AIDS, I think must have caused a lot of trouble within the ANC structures. I'm pretty sure that the litigation, I know that the litigation around the land rights in some areas has caused a lot of government resistance and the big cases which were done concerning mineral rights and land rights which went across the government's policy to vest some of those rights in Alexcor did lead to tensions and in fact, the government ultimately tried to get the LRC out of that...they tried to deal directly with the community rather than have the LRC litigating so I've got no doubt that there are within government circles, people who find the LRC troublesome. At the same time, they're also quite supportive of the

LRC in the sense that they see it as a structure, which is promoting change rather than resisting change. So there is a tension.

Int I think it's a necessary tension. What interests me is the fact that one of the criticisms - well, I won't say it's a criticism - one of the ideas that's come through is the fact that the LRC has relied a lot on external sources of funding and now talking about funding again, the idea is to encourage more internal funding, so funding from the legal fraternity, corporate world and it's also been mentioned, the State. And I'm wondering what you think about funding within South Africa?

AC Well, first of all the LRC would be delighted to get funding from within South Africa. There's not a culture of giving to this sort of organisation in amounts which would be necessary. There's always been some and I think it was allowed to stagnate at a certain stage instead of being encouraged and I think that the Trust at the moment clearly has a policy to try and get local funding but the sort of grants you get locally, are...the grants that come from a corporation's budget where they've got a whole list of charities and unless you can get somebody who's particularly interested in what the LRC's doing and is prepared to push a big grant, the sort of grant which you get, five or ten thousand rand, is very small in relation to the LRC's needs. And even if you get up to slightly bigger grants than that, I think that there's always been a difficulty. And so a lot of the funding continues to come from external sources. I don't think it's necessarily a good thing and I would like to see the LRC getting more funding internally. I don't think it's for the lack of trying. But it may be that it's not being done as well...when I say, as well, I think there are particular strategies, which have to be adopted and I think it needs to be thought through quite carefully. It's not that the LRC doesn't try to get money locally - it does, but I don't think it gets enough locally to make it a...to have it as a substantial base for its funding and I think it needs to and I think everybody knows that it needs to and hopefully, that will happen. I think it's necessary in the longer term to have a big funding base. I also think it's...I believe and I know it's difficult from a fundraising point of view but I believe it's quite important to have a big individual funding base. You know, if you can get a thousand people giving you a hundred rand a year, that's a hundred thousand. If you can get a thousand people giving you five hundred rand a year, now that may not be big money but if you can start building that base, I think it does two things: you start getting known in the public, you start being able to have a public constituency where people know who you are. I've been urging that that be done and that we should start doing that, but they'll need to put in place a proper structure for that. Because it requires a different type of fundraising. You know the big fundraising requires personal contact and discussions, whereas I think at that level, it's a different thing. It would require some form of contact but once you've established a contact you can follow it through with letters. You know, last year you gave X rand to the Legal Resources Centre, would you renew your grant, and these are our needs and so on. And I think if you set up a proper structure, you can build on that and you'll find that people who start giving, continue to give. It becomes one of their grantees, as it were.

Int My sense is that Felicia was very crucial to fundraising early on and when the Kentridges left, in the '80s to England, the LAT was set up at some point. I'm wondering what that relationship has been between the LRC and the LAT?

AC Yes, well, again, the LAT was set up, it was set up by Felicia and Sydney and other people: Joel Joffe became a trustee of that and they... Again there wasn't a great deal of money. It wasn't that it wasn't...there was...it was significant but not a great deal. But it was again important to have support from within England and they put the LRC into contact with a number of important institutions. The relationship...Felicia has been really very ill recently...I don't know whether you've seen her.

Int Yes, I've interviewed her.

AC She's very ill and Sydney...you know basically, the LAT has reached a stage where it feels it can't do anything anymore and that it's not worth the cost of keeping it going from their point of view, but if the energy were to come from South Africa, they would be quite happy to remain in place. And Jill Williamson who had dropped out for some stage, has come back in. She was on the board of the LAT but she had been an active administrator at one stage and she has taken on that responsibility again, very generously and Janet Love has done quite a lot of work in England and I think that there's a good chance of a substantial funding base being established in England again. Sufficiently important to keep the LAT going. But I do think that is what has happened with the SALS, well, Harvey Dale has been very important and Harvey has kept SALS going because of his interest in the LRC. SALS is an important vehicle. And again, it's often a contact. You know, if Janet goes out to America, Harvey will have arranged appointments for her to meet people and to see people and whether the money comes through SALS or whether it comes directly here, is not important. Whichever way it goes, it's money. But I do think that the LAT really ran out of steam and at one stage, they were going to close and I'd come back onto the Trust. I spoke to Joel Joffe at the time and Janet was keen to keep it going and I tried to persuade them to just stay on, to see what happened...we accepted...I mean everybody accepted...Joel's attitude was that there was money still there, largely coming from him, I think, a big grant from him and he didn't want it all to be used up on administration when it could be used...he didn't think that the cost of keeping the LAT going was merited by what was being brought in because nothing was being brought in. If that turns around, then the LAT can keep going and they accept that. So it's not for a lack of concern about the LAT, it's just the viability of the whole proposition.

Int Arthur, when I interviewed Felicia, she said that early on there was an understanding within the LRC that you would get the best legal minds and you would pay them well, and I'm wondering whether, in a post-apartheid situation where the opportunities have grown so much, and lawyers are being offered such good salaries, whether that's become an issue and an area of concern?

AC Felicia's quite right when she said that we wanted to get, we really wanted good lawyers, this calls for very skilful lawyering, for many reasons...you had to be politically skilful, you had to be legally skilful, and we really did set quite a high standard at that level. Now, when we talk about, when Felicia talks about paying reasonable remuneration, yes, the remuneration had to be reasonable but it wasn't

comparable with private practice. And the big difference is this: it had to be reasonable, one really didn't want to be paying people, you know, we didn't...we never...we always felt that the salary had to be something which people could live decently on, but it would never ever be comparable to what that particular person could earn in the private profession. What has happened now...at that time there was...the LRC was a place to which people who felt an identification with the anti-apartheid struggle could come, and there was a sort of a personal drive to do something and therefore to be engaged in what was seen as an important venture to promote rights and to resist apartheid in different forms. That brought people in who were willing to come and work at the salaries which were given, and I think if you compare our salaries to the private profession salaries, they were always much, much, much lower. But they weren't as it were, the sort of salary, which somebody might get in a charitable undertaking. So we didn't see it as a charitable...you know, a lot of charitable undertakings work on voluntary and we couldn't expect people to come in and devote all their time to it on a voluntary basis, they had to be able to live on it. What has happened since 1994 is that, with the change, there is no longer that...there's no longer that drive...it's a different situation. The people who wished to make a particular statement against apartheid and they would come here, they were more interested in making a statement than getting rich, would come here and so you could get very skilled and talented people and we had a lot of people who wanted to come and work here, who were willing to take low salaries...

(Recording ends. New Track begins)

AC So you no longer have the sort of political, the strong political desire to identify with an anti-apartheid struggle and a willingness to accept a lower...a lower income. What was important then was engaging in the struggle, which was being conducted, rather than the income. That has changed. And also the opportunities for people to make money have changed. I mean the legal profession have become very wealthy and the disparity between what the LRC could afford to pay, and it still pays quite good salaries, but what it can afford to pay and what people of skills can earn in the private profession has grown much, much wider. And there's also not the same...there are people who would like to be part of the LRC but that's not exactly the same driving force as was there before. So I think it will take a bit of time before one...You're going to have to find the right people who want to make a career in community law.

Int Arthur, I want to take you back to 1994: Did you have a sense that you were going to become Chief Justice?

AC No...look, I was very deeply involved with the constitutional negotiations.

Int So that was prior to 1994?

AC It was from 1990...the constitutional negotiations ended in 1993. December 1993 was when they ended and the election was in April 1994. No...at the time, I don't know that I was consciously...I think I...I'm trying to put myself back in that situation. I knew there was to be a new court, which would be the Constitutional Court. It wasn't

clear to me at that stage yet how that court would be appointed, because there was to be a body known as the Judicial Service Commission, which had been established and there was quite a complicated procedure for...appointing people to the court and it wasn't clear to me how that would work. But I...I knew that at that stage I would like to be on the Constitutional Court. I didn't know whether I would be but I thought I might stand a chance of being on the court, because it was going to be a new court. But I don't think I contemplated that I would be the head of the court.

Int So at what point...was it from 1990, '91 that you started working intensively on the Constitution?

AC Yes, after the unbanning of the ANC in 1990, the ANC established a Constitutional Committee in South Africa. I became a member of the Constitutional Committee and I worked on the Constitutional Committee from 1990 right the way through. But I also, at the time of the negotiations, I got drawn into the negotiations.

Int CODESA?

AC I was at CODESA but I...I was at the multi-party negotiating process and I also attended the bi-laterals and I used to go along as the legal adviser at all the bi-laterals and the *bosberaads*. I would go to all of those and I would even go to some small meetings where there were about four people who were discussing particular points. And so I was very deeply involved at that stage from 1990 right the way through to the end of 1993 and that was really at that time that I was...there was very little time I could give to the LRC, I still would come in to the LRC, I was working very long hours, but it was then that I realised that, you know, it was in 1992 or roundabout then, that I felt I couldn't stay on, it was wrong for me to stay on as National Director, but I'd like to stay on at the LRC. And so, though I would have realised...and it's difficult to try and put yourself back in that position, I think I would've realised that I had a chance of getting onto the Constitutional Court. It was by no means a certainty and I would've been happy to continue at the LRC if I wasn't on the court.

Int During that negotiations period... issues that subsequently became quite contentious issues, for example, like amnesty, those were key issues then and I wondered whether you could give a sense on record...?

AC Look, as far as the amnesty issue was concerned, that did not take...that took place largely in private discussions between the ANC and the National Party. The Security Police were very deeply involved in that and the Security Police and the military were putting tremendous pressure for a blanket amnesty. The ANC was opposed to it. I wasn't involved in those discussions at all. But what I do recall very clearly, was I had been asked to go down...you see, after the interim Constitution had been adopted, it was adopted in December...when I say it had been adopted, it was adopted in December at the multi-party negotiating process, ...when consensus was reached.

Int This was December 19...?

AC 1993. It then had to go through Parliament. Now it might have been November, I can't remember the exact date at this stage, I think it was either the beginning of December or November, but it had to go through Parliament and there was a parliamentary sitting to that purpose and I think it was in December or January, and again my timing is a little bit confused. It was the end of the year anyway or the beginning of the next year. I was asked by the ANC to go down to Cape Town and I was asked to be available with the senior government law advisor. If there were any changes proposed in Parliament, as it was contemplated there might possibly be a change that might be proposed, we had to approve of it. Both of us had to approve of it before, you know, it was understood that if anybody was suggesting a change, and there was a sense that it might be material...it was a precautionary measure and I was there, senior government law advisor was there and while we were looking at documents, we weren't...no changes of any moment came through, there were little...few technical things that we were looking at, more from the technical side than anything else, I remember very clearly Mac Maharaj and Fanie van der Merwe. Fanie van der Merwe was the leading intermediary on behalf of the National Party. He'd been the Director General of Justice and he'd been very influential with De Klerk and others. Mac Maharaj had played that role for the ANC, he had been the sort of floor manager for the multi-party negotiating process. They came with a piece of paper, which happened to be the concluding resolution on national unity and which made provision for amnesty. And they gave it to us, we were sitting there, and I remember Mac saying, you're not to change a single word. They'd been negotiating this for a very long time and ultimately they had reached agreement on it. And that was the last provision...that thing came in as a concluding resolution and so that discussion went right up to the end. Then there had to be legislation because it made provision for legislation. At that stage I was not involved anymore because I found myself on the Court and the legislation...George (Bizos)...have you spoken to George?

Int Yes.

AC George should be able to tell you about that because I think he had some part in that.

Int He spoke about the certification and that was it...

AC Did he not talk about the amnesty legislation?

Int Very briefly. I'm wondering whether there are other constitutional issues that have since, become quite important, that you were involved in at the beginning?

AC I'm not quite sure...

Int Any issues such as land, any of the other issues have come up before the Constitutional Court that you think are important that the LRC now has to deal with?

AC You know, when I was involved in the constitutional negotiations, it was largely to deal with the structure of government and the Constitution itself. We had to approve of everything because our committee was the co-ordinating principal committee, but there were other committees looking at different things and there was a different committee which was looking at restitution of land rights and so on. So I wasn't involved directly in it but I did attend discussions at times when people were talking about land and property and so on. But the ultimate legislation, which came in place, you know, that was something which was after the event.

Int In terms of the constitutional litigation, what was the reason for setting that up within the LRC?

AC Well, I wasn't in the LRC at that time so I can't tell you. Thinking back at it, you'd have to find out, but I know at that stage Wim Trengove came into the LRC. It was after I left, Wim Trengove came in and George persuaded him I think to come in and it probably had something to do with it. Probably, I don't know, but it probably had something to do with it. You'd have to find out from them. That's what I think will be a pretty good guess.

Int Being on the Constitutional Court and having the LRC, bringing cases forward, was there any difficulty with that as such?

AC I didn't see it as a difficulty. I mean, you know, you're appointed to the...the tradition in common law countries, and South Africa had been a common law country basically...of course, Customary law had been relegated but basically the legal system functioned according to a common law system. Common law system, people were appointed to the Bench from the practising legal profession, and everybody who went onto the Bench had had clients at different stages and had contact and what you had to do was to make sure that there was no occasion on which you might have advised somebody in a case and then had to decide the same case. But otherwise the fact that you had once acted for the...for an insurance company and the insurance company came before you as litigant in an entirely unrelated matter, wouldn't affect the matter. And so that had always been the position and it wasn't as if the Legal Resources Centre was...it was there on several important cases but it didn't...the fact that it was there, I didn't find it in any way embarrassing or difficult. I was rather quite pleased to see them because on the whole, when they came their arguments were very good. And you know, you wanted to have good arguments, whether you agreed with them or not, you wanted to hear the proper arguments.

Int Well, the Constitution has certainly been described by people I've interviewed, both in the United States and here, as one of the most advanced Constitutions in the world. Do you have any concerns about the Constitution and its enactment in the current dispensation?

AC I think there's...I have a different...let me go back a bit. I think that our democracy is fragile in the sense there are huge disparities of wealth still within our country, it's underdeveloped, and there's also a great deal of wealth being generated and some

people have become very wealthy. Now, I think in situations where there's a high level of unemployment, where there are big disparities of wealth, your democracy must be fragile. It calls for astute political government, which I think we have had, to keep matters coherent and I think that the ANC has been very skilful at political level in maintaining and progressing. There have been criticisms of aspects of government and I'm sure that there are many legitimate criticisms of it, but I think on the whole, it has been very skilful in what it has done. But there are fault lines within the society. Now, if those fault lines threaten democracy and democracy fails, then the Constitution would go or could go with it. So it's not that I think that the ANC political leadership would want to change fundamental principles in the Constitution, they've been very good on the whole in complying with the Constitution. Right at the very beginning, one of the early cases that the LRC had, was...not the LRC, one of the early cases, which came before the court, was a case dealing with local government elections. Local government was a very complex structure, it had not been dealt with at the constitutional negotiations because it had been too difficult to deal with, because you had the apartheid structure of black, white, Indian, coloured local authorities all within the same urban area each with different financial...each with different responsibilities, each with different budgets, and so, each with elected or non-elected...in the case of black local authorities, they had no legitimacy but you had all of those structures in place. And they couldn't really work out what to do with...and rather than put it into the Constitution, they provided a framework for local government and left it to the subsequent legislation. Now that legislation...they put in place actually before the Constitution was adopted, some legislation called the Local Government Transition Act, which was a terribly complex piece of legislation, which I didn't have anything to do with and only saw when it came before the court. But the elections had to be held and they were quite crucial elections, because local government...to get democracy at local government was very important with local government still in apartheid structures. Because of the complexity and the difficulty of getting it right, Parliament decided to delegate that power to the President, so President Mandela was given the power to pass proclamations and a structure was set up for him to get advice from all the political parties and in the end, they...a series of proclamations was enacted by Mandela, basically with the consent I think of all the political parties. And the validity of those proclamations was challenged. And the Constitutional Court held that the...under the Constitution, the President didn't have the power to make proclamations which in fact were laws superior to the Local Government Transition Act. And it contained a power enabling him to repeal the Act under which he took power, and the court said that under the Separation of Powers...that was Parliament's responsibility and not the President's ...and they struck down the proclamation. That was a huge thing. President Mandela went immediately onto national television and said, I acted in good faith, I believed I was entitled to do it, Parliament supported it, I accept the Constitutional Court's judgement, they are the guardians of the Constitution, they are the experts in this field, I accept everything that they have done, I'm going to convene a special sitting of Parliament (*inaudible*) to deal with the matter. Now that was very early on. Ever since then, I mean, President Mbeki also was respectful of the court, I don't think he liked some of the court's decisions but that's a different matter. I'm not sure that President Mandela liked our decision on the local government. But President Mbeki has also always been very respectful of the court. And at an institutional level, the government has always taken the position that it accepts the judgements of the court. And so I think at that level there are no signs that the Constitution will be changed.

The problem as I see it depends upon how successful the political leaders are in steering a course over the next ten, twenty years. I think we've got a delicate...I think our democracy is fragile but I think it will survive. But it may not. And if it doesn't, then the Constitution may become a casualty but I can't see them changing it now...they may change things. I mean, there's been talk about...there's been a lot of talk as to whether the provinces...whether the provinces should be continued or not...

(Recording ends New Track begins)

AC There had been talk about the provinces not being a success. And I don't think they have been successful. I think the provincial administration hasn't been particularly good and there's a suggestion that delivery might be better if they concentrated on delivery through local government and vested powers, greater powers in local government. So there has been a debate around that and it's not impossible that there may be a change in structure. The floor crossing legislation hasn't been popular, and it may be that that would go. But I don't think the core democracy values would go. Certainly not under the present leadership, and I'd be surprised if it would go unless there's...unless the economy is unable to sustain the needs of the country, then anything could happen.

Int In terms of the rule of law from a rights-based perspective, do you feel that that's become an entrenched feature or is it as fragile as this democracy?

AC Well, I'm not sure that I'm a good person to answer that, because I don't know enough about what people...I can give you an answer, I'm not going to avoid it, but I think that one needs to talk more to people, you know, more to people who are living in poverty and who make up the majority of the population, who are affected by it. I think that the notion of a rights-based Constitution is something which people respect and are quite proud of, and of course, there was a tremendous drive for rights because of the history of apartheid and within the ANC itself, there was a demand for this right to be entrenched, that right to be entrenched. If you look at the Bill of Rights, you'll see all sorts of clauses put in which reflect the past: such as there should be no detention without trial; and everybody should be entitled to leave the country...There was a demand to try to undo what apartheid had done, so I think there was a very strong desire for a rights-based Constitution. It does put impediments on government, because it does mean that government action can be controlled by the courts if it doesn't comply for instance with the requirements for just administrative action and if legislation interferes with any of the rights in the Bill of Rights, that might be an impediment to government. And so it does make it more difficult to govern. But I think that on the whole people like the idea of having rights. Now there is a tension: there are some people who say, there are too many rights and that's a cause of crime, which I think is absurd. I mean, it's just ridiculous, to think that in any way the fact that there's a Bill of Rights has got anything to do with crime, it's got nothing whatever to do with crime. And it's just a slogan and so some people say, it's because we have so many rights and no responsibilities that we have crime but that's not a thought-out position. It might be a popular position but if you ask anybody to explain it to you, nobody can. So there may be that trend...the abolition of capital punishment has not been a popular move, but it was something, which the ANC itself supported

strongly. And when the 1996 Constitution was adopted, there was a proposal in the constitutional negotiating process that the Constitution make provision for capital punishment and the ANC rejected it out of hand. They never wanted capital punishment. You know, seventeen years afterwards, they may, but I think again, I feel that basically they want...there is great advantage internationally in having a constitutional state with a strong Constitution and a respected court. And I think that that is quite important and so there'd be big political costs and so, that...the change would only come, I think, if the political needs...if the political tensions are such that those in control think that it's worth taking that cost.

Int Recently, Arthur, in terms of public interest law, more organisations have cropped up that deal with specific aspects of public interest law. Is there a concern that the LRC may not have specific focus or may not be drawing on its strengths as such?

AC I'm not aware of that. Because the LRC has...I'm not aware of that. Maybe some people have said that but I've not heard it nor have I seen it in practice. It seems to me that...basically these issues arise because of society. When an issue becomes crucial within society itself, when there's...take the whole question of the anti-retroviral and AIDS: that was a huge societal issue. And ultimately the LRC took it up. But it wasn't as if it had an AIDS program. It took it up because it was the best organisation to do so and it was asked to take it up because it was the best organisation to do so and I think because the LRC has traditionally been very skilful in what it has done and the quality of its work has been high. I think those major issues will continue to come to the LRC. And, you know, in a society where so many people need access to courts, the fact that there are a lot of organisations is not a bad thing.

Int The LRC, as been described by people in the United States I've interviewed, as well as here, but mostly in the United States, as the greatest public interest law organisation in the world. Do you think, the LRC...I'm wondering whether it's given that level of recognition internally, in this country, by the legal fraternity and other aspects of society?

AC I really again, I can't answer that. I think it's held in quite high regard by the legal fraternity. I think so. And certainly as I told you, when I went to Parliament that time, a lot of people were talking about the LRC and the importance of its work. So they still acknowledge that. I don't know, I think that the legal profession...at some stage they were a bit anxious about the LRC, in the early days, that they had let loose an organisation which was troublesome, but I think that since 1994, they've been very proud of the LRC. And I think if you were to go to...on the whole, I think the legal profession respects the LRC, and judges often ask the LRC to do things for them. I mean, they...in a matter where they need to hear arguments, they refer the case...they ask the LRC to prepare an argument for them, so I think that it has got a good reputation inside the country. It certainly had a good reputation within civil society and the anti-apartheid structures in the 1980s.

Int One of the things that's come up very often in interviews in the United States, people have attributed a lot of the success of the LRC to you, in particular, and interviewing

people here in South Africa, they've all reflected, people like Charles Nupen, Karel Tip, Mohammed Navsa, they've all reflected on your mentoring of them, and support of them and your caution and your style. I'm wondering now as a trustee, I'm wondering, whether you worry about or whether you have a concern, whether there isn't enough of that level of mentoring that's going on and maybe some sort of sense of people, like Morris Zimmerman etc., a more paternalistic protective attitude towards the younger lawyers. Is that a concern?

AC I think that the...and again I'm too far removed from the day-to-day operations in a sense, but the sense that I have is that there are some offices, which are better than others. I get that sense. I don't know...you see, if you look at the Johannesburg office now, it's doing a lot of good work but...George (Bizos) is in the Constitutional Unit now, he's a formidable resource for anybody to draw on but there are largely young people here, and there aren't very experienced lawyers in the day to day work at the Johannesburg office. Cape Town office has got a lot of very experienced lawyers because a lot of people who joined the LRC in the '70s are still there and they've had twenty or twenty-five years experience in this sort of work. So I think there is that...there is a factor that not all the offices have experienced leaders within them. Some do and some don't. But there is a resource, and I think that basically there have been some...I think there's sufficient support...also a lot of the people at the Bar, you know, they can go to the Bar, there are a lot of people to whom they can turn for litigation and they know who the good counsel are and who are willing to support them and some counsel who'll do it at either a modest fee or low fee or whatever, some will charge, doesn't matter. But they can get a lot of the technical support from the Bar, so I think...you know, to be practical, I mean when I came into the LRC, I had been Chairman of the Johannesburg Bar Council, I was a practising silk, I'd taken silk in...when did I take silk? I don't know, I'd been a practising silk for several years; I'd had a big practice. I was very experienced. There's no one at the Johannesburg office of the LRC with that experience. There's George in the Constitutional Unit who's very experienced, and he does give support to people, and people can draw on him when he's available, but he isn't...he comes to the Johannesburg office meetings and he does run seminars but there's...but if you're looking at the Johannesburg staff, there's nobody with that background, whereas I say Cape Town's got people with very considerable experience, Durban's got people with very considerable experience, so I think one's got to look at it that way. But I also think that...there are young people with skills. I mean you shouldn't underestimate the contribution, which can be made by young people who are skilled, committed, and willing to take advice and so I think they've got the nucleus of everything.

Int Having been a founder of the LRC and seen it over the years, and now as a trustee, I'm wondering what are your concerns, projected concerns for the LRC for the future?

AC Well, the biggest concern is the ability to sustain funding in the long run. That's a major concern. I think also, skills...this sort of lawyering is quite difficult, it's complex and there are lots of opportunities for progress because the skilled lawyer can make very considerable gains and I think we've seen it in a large number of cases, which have come before the courts where there've been good lawyering...has made a big difference. It's not only in the arguments; it's actually in the preparation of the

case, the sort of material, which gets put before a case. The courts decide cases on evidence and on what the evidence is that's placed before them, whether that evidence is in the form of an affidavit or in the form of a witness giving oral testimony, and the whole tactics in presenting cases, that's terribly important. And that's where skills really count, because by the time it gets to the court, very often a judge could...if a case has been well presented, very often a judge can pick up what the outcome should be, but to get the right case before the court, to get the right facts before the court, to put it before the court in a proper way, to see the issues which have to be raised, because the court won't decide issues which aren't raised in the papers, so you've got to be able to see the points and identify them and articulate them. I think that is a very great priority and so I think that the skills base of the LRC is important and it's difficult to attract people into it where...to try and get young black lawyers into the LRC is not easy because a really skilful young black lawyer has got huge prospects at the moment, in private profession. Also, has huge responsibilities: family responsibilities, other responsibilities, usually lacks capital and the family lacks capital, so the demands for a high income to establish not only themselves but also their families and others, so the pressures to get people of that calibre into this are...they're difficult, and you've got to be really very committed, to come in. And there are people who are willing to do it but it's...I think that that is a problem and so what one wants to be able to do is to sustain the funding and to be able to attract people who will accept the type of salary structure that the LRC will offer, which does mean that for most very skilful people, a financial sacrifice. So that I see is a problem and you know, the LRC has been in existence for quite a long time now, and I'm sure that there are a lot of people who have those concerns and you'll find them.

Int Absolutely. Reflecting on your experiences setting up the LRC, I'm wondering whether you have any memories and thoughts that you'd like to share about what it has meant to you, being part of the LRC?

AC Well, I mean...it was a very fulfilling part of my life...I think the sense that we were doing work which was important, the sense that in some ways we were able to identify ourselves as being against apartheid, the sense of...the very considerable success which I think we achieved over the years, all of that was very fulfilling and so I...it also brought me into contact with lots of people I might not otherwise have met, and an immense respect for the dignity of...the dignity and courage of people who are being oppressed, poor people, with very little education and I think, I think that was a terribly enriching experience for me.

Int I'm wondering whether there are stories that are left to be told, stories that remain. What are those? (Laughs)

AC I'm sure there are. I'm not good at those sorts of stories. I tend not to look back, I tend to look...I've always...one of the nice things about being at the Bar was when you'd finished a case, it was over, and then you'd move on to the next case. And so it didn't matter whether you...you know, you might be upset if you hadn't done as well as you wanted to do, had lost a case which you thought you might win, but you always were looking forward to something new and so I think a lot of my life has been looking forward not looking backwards and so I tend not to think a lot about the past, I tend

not to...I don't...I think because of that, because I don't sort of tell stories about the past, and more concerned about the future, I tend not to have a particularly good memory about the past. I mean people can prod my memory, and very often...I always tease George Bizos, I mean he repeats it quite often...I think for his 75th birthday there was a function here at the LRC for him and I at that function, I said, George has got this extraordinary memory, his memory's so good he can even remember things that didn't happen (laughter) and George always tells that story about himself. Now George is one of those people with a phenomenal memory and he's a raconteur and he talks about these cases and he remembers things, and he's written this marvellous book, I don't know whether you've read it?

Int I am reading it at the moment...

AC It's really an excellent book, it's a good story. Now I'm...but when I'm with George, George will sometimes say something and I'll say, you're wrong, it didn't happen that way, it happened somewhat differently, but if you ask me to, you know, it wouldn't come into my mind, I wouldn't have thought of the incident unless George had thought of the incident. In fact, one or two incidents in his book, he asked me to look at the draft, and I said, that's factually incorrect, and you better go and look at the record, and he went and he found that I was right and he was wrong, so I have got a good memory for certain things, but it doesn't come out of me.

Int No, I understand. It resonates, that's my case too...perhaps what I would say, having been fortunate and privileged enough to be doing these interviews, which I think is of a remarkable organisation...right from the people that I've interviewed in SALSLEP, now SALS, Reuben Clark, right through to Jamie Kilbreth, Bill Carmichael as well, and also here in particular in South Africa for the past two weeks, and I'm sure I'll hear more as I go along, until the end of December, everyone's remarked about how important an influence you've been on their lives and on their professional development, so it has really been...

AC Well, that's good to know. I don't know whether it's a good or a bad influence, but it's nice to think that people feel that way.

Int And I think it has had a profound experience on people who've left the LRC in terms of their everyday practice, so just to let you know...

AC Thank you.

Int Arthur, is there anything else before we end?

AC I haven't really been thinking of what to say.

Int Well thank you very much for a wonderful interview and moreover, for your time.

AC Anyway, thank you. You've been very nice to talk to. Thank you very much.

End of first interview

Interview Two:**22nd August 2008**

Int This is the second interview with Arthur Chaskalson and it's Friday 22nd August (2008). Arthur, on behalf of SALS Foundation, we really want to thank you for again agreeing to participate in the Oral History Project.

AC Well, thank you for doing the project.

Int Thank you. I wondered whether we could start by reflecting: in our previous interview, we did quite a comprehensive interview, but I wondered whether we could talk about some of the major cases that you personally took on during the 1980s in particular, and leading up to 1994 when you left the LRC for the Constitutional Court? And I wondered whether you could talk about for example, the Delmas trial and other trials that you were involved in?

AC Well, first of all, the Delmas trial of course was not an LRC case. I was asked to...George (Bizos) and I have long stories about how I got involved in that case and how that led to George getting involved in the LRC. Perhaps...has George told you the story?

Int Yes, but I'd like your version. (Laughter)

AC Well, you know, I guess probably the same, substantially the same, but the whole Delmas trial started because George (Bizos) came to me one day and he said that he was...he was in the Delmas trial and he had to go to Greece. And they were doing...they'd received the indictment and he'd like me to just look at the indictment and talk to him about it, and I looked at it and I talked to him about it and I said I thought the indictment was defective and they needed a lot of particulars, and he said, yes, he thought so but he's going to Greece and he can't do it, he's got juniors, would I mind just looking at the matter and dealing with the request for particulars? I said, ok, so the request for particulars was settled and then George got back from Greece, and the answers were provided and then he came to see me and he said, what do you think of this, and I said, I think that the indictment is no good. So he said, well, will you argue it? He says, he'd been in Greece and I've worked on it and I argued these issues at the...I didn't actually argue them but I helped prepare the argument for the Rivonia trial on these central issues and he said, you know it all and really, I can't deal with it and you've asked the particulars, won't you just come and argue the case? So I said, I'll come and argue it. So he said, well then, the case is going to be next week, we'll have to go and see the accused and I said, yes, we'll have to go and see the accused. So we then go off to the prison, in we walk, and George says, I want to introduce you to the leader of the team. (Laughter) And so that's how I got into the Delmas case. I argued the matter, the judge agreed that there were defects but he wasn't going to quash the indictment, he ordered a whole lot of particulars to be furnished and then I stayed on in the case but at the time, it was agreed that...you know, I couldn't possibly go into the case, it was a huge case full-time and it would mean just getting away from the LRC and I couldn't do that. And in any event, you know, it wouldn't have been appropriate for me, I had a lot of responsibilities at the

LRC so I...what happened was I used to meet them, every weekend they would come to my house and the whole team, a lot of people, a lot of young attorneys as well as counsel and we would discuss what had happened and discuss tactics and I would be asked to come down to court for different occasions, to lead particular witnesses, to cross-examine some witnesses, and to apply for the judge's recusal. And so that was really...and then ultimately when the case was over, I did quite a lot of the argument on the case, and then I really did all of the argument...not...I mean I presented the argument on the appeal, so that's how I got into the case. But then when it was all over, it was reaching a time when...it was...I can't remember the exact time but I remember speaking to George (Bizos), saying that I, you know, that we needed some...wouldn't he just sort of...there were people at the LRC who would like to have access to his skills and would he meet people? And then he, in a series of events, he then started coming down to the LRC for a bit, and then I said, you know, don't you think now that you're here, you could stay a bit longer, and ultimately, he came into the LRC. And I do remember telling the story of all of this at a dinner when I was leaving the LRC at this stage, there was a dinner given to me, and I said, it all goes to show that one can learn by experience.

Int (Laughter) Indeed.

AC I'm not sure whether George's account will be the same but the sub-strata will be the same, because that's exactly what happened.

Int Yes, exactly. But the Delmas case was a very long running case, wasn't it?

AC It went on for three years.

Int Right. Was that the longest case that you took on?

AC Well, you know, really I...it's certainly the longest case in which I've had any contact with, but I don't think, you know George really ran that case, George was there all the time, I came in sporadically, I mean I wasn't there all the time, I would come in, I'd go out, I'd come in and I'd go out, and over the whole period of three years, I...it was only a...you could measure my actual attendance in court in terms of months rather than in years.

Int In your previous interview, you made an interesting comparison. You said, the agreement between you and George Bizos, was that he was the fact man and you were the lawman, and I wondered whether that applied to Delmas as well?

AC Well, I think that's probably correct. I think it would probably be correct...I mean there was...whenever there were...well, I wouldn't say whenever, but often when there were law points to be argued, George would come and ask me to do it. So I argued the indictment, I argued for the discharge of the accused, I dealt with all of the central law issues on the...you know, at the end of the case, when there was argument

as to whether or not the accused should be convicted, and I dealt with all the law issues in the appeal. In fact, I argued the whole appeal. And there were different issues which cropped up, and of course the recusal application was also a law issue, so a lot of my concern was around legal issues, but I was also concerned with George, I mean, George used to like to have someone to speak to and the whole question of the tactics of the case, the planning of the case. So we would have these regular meetings, I mean, every weekend, I think, for practical purposes people would be at my house and we would sit in the garden and talk about what had happened in the case that week, what needed to be done, what the tactics would be, and so I took part in the planning of the strategy and tactics, but the actual day to day implementation of the leading of the witnesses and cross-examining was George. I only led the one major witness, I led Popo Molefe who was in the witness box for about three weeks, took about five days to lead his evidence, he was one of the very...he was one of the crucial witnesses and Gilbert Marcus and I had worked with him on it. But I didn't lead any of the other witnesses, George did all of that.

Int I'm also wondering, during the 1980s, which was a particularly horrific time, and the interesting thing is that the LRC really came into its own, it started in 1979, but really came into its own during the 1980s, which is a time of repression and the height of resistance as well. And in the previous interview, you mentioned to me how the LRC wasn't safe from threat of banning etc. because there was some concerns...and that I needed to speak to Steve Kahanovitz...

AC Were you able to do that?

Int I'm going to interview him soon, so I'll certainly ask him then.

AC He's probably got some documents, because he found them.

Int I was wondering, what do you think, in terms of the actual work that the LRC did during the 1980s, how the States of Emergencies impacted the nature of the work?

AC Well, the changing political situation definitely affected the...affected the major issues which were being addressed. When attempts were being made to...to enforce the Group Areas Act...a lot of work started being done around the Group Areas Act...a lot of ordinary...court work going to defend people, not necessarily big issues, and big cases. When there were major strikes, the LRC got involved. I remember we got involved in the first big gold mining strike, when the gold mines went on strike, I think it was at Marievale, they had a strike, the gold miners, and it was a major case and to the surprise, the great shock of the mining industry we won in the Industrial Court and we romped home on appeal. And it had a very big impact. But it wasn't as if we'd set ourselves out to do it. It was just simply that this was a big crisis and they came to us, it was actually Cyril Ramaphosa, I remember Cyril coming to talk about it at the office and the question was whether we should do it or somebody else should do it, and he said he wanted us to do it, and so we went ahead and did it. When forced removals were being highlighted, we got drawn into it, and of course, the Emergency really did affect everyone. We got drawn into the Emergency because it became a

central issue, it affected all our clients communities, all the people who we had been working with, so we had a lot of work to do to try and protect them against harassment, at the same time as running cases to try and get people released from detention. At that time I did the Omar case, which we...it wasn't actually an LRC case but I think it was done from Cape Town from Michael Richmond who was a trustee of the LRC. I think it was his office who was acting for Dullah Omar, who was later, as you know, the Minister of Justice, but he...that was a big case because it became a sort of a notorious case. A lot of people have written about the Appellate Division judgement, suggesting it was wrong, and we argued it in Cape Town and we lost by...we lost 2-1 in Cape Town, there were three judges who got a dissenting judgement in Cape Town. We took it on appeal and we lost on appeal again, again there was one dissenting judgement. But there was a lot of criticism of the Omar case. But apart from that, there were other cases going on at the same time. Some of them coming directly from the LRC, some of them people coming to...you know, asking me to get involved in them. I remember some from Namibia at that stage also, where we were in the Appellate Division trying to deal with very repressive legislation from Namibia, not too successfully in the end. But that was what was happening, so if you look...I mean, if one goes back and looks at the reports, you will see that the core of the work, you might say, remains around...some very big issues were being taken up depending upon what the political dynamics of the time were, and what demands were being made on the LRC.

Int Absolutely...for example, in the Cape Town office, the KTC case, if I'm correct it started in 1986?

AC (Laughs) I can't give you the...but I know how it all ended.

Int Right. And I wondered because that case in some ways really seemed like the LRC was going into the trenches, as such, and I wondered whether you could talk about that?

AC I mean, it was a very important case and what was happening was quite awful, and the LRC had acted for a lot of the communities who were now being harassed and being actually killed and driven out by force. And I know Lee Bozalek went down on the day of the attack on KTC...a lot of these terrible things were happening, and was very nearly arrested by the police but was in quite considerable danger, and the LRC got involved and we started a huge case against the government. And it went on for a long time, it was unfortunately at that time, the Cape Town court was not a...the Judge President was a man called Munnik who was perceived as being very, very close to government, very hostile to the LRC, apart from his own political attitudes, he didn't like the LRC. That I've heard from other people, from other people including somebody who he had heard was working at the LRC who he tried to stop working, telling them how dangerous the LRC was and how they shouldn't be there. And he had appointed the judge to hear the case; he'd assigned the case to a judge called De Kock who was also one of the worst judges you could have got from the point of the LRC. So it was a huge, mountainous case with not much assistance, you know, not much sympathy from the court as to what was a quite terrible thing. The case went on for quite a long time, but one of the incidents in it was...that we were having an

annual meeting in the Magaliesburg at the Mount Grace Hotel and at that meeting we were discussing the case, the resources which we still had, the cost was a big drain on the finances of the LRC, because we had to employ counsel to do it, what was happening, and we subsequently were told by somebody...who had worked at Mount Grace, who had told the Chairman of our Trust, Charles Cilliers that the police...hotel had arranged with the police to bug our conference and that they had...somebody...they had taken a room right next to where our conference was being held and they had tapped our whole conference. And we decided that we were going to confront the police on it, so we took some of our top trustees and we asked for a meeting with the Minister of Justice and he agreed to see us, and the Commissioner of Police was there, and we told them what had happened, we knew what had happened, they didn't want to...they didn't deny it, but they didn't want to...but the Commissioner said, well, we'd have to go into it, but what we pointed out to them, it was the grossest breach of privilege that they had actively interfered in the case and made it almost impossible...we settled the case not long after that, that letter of settlement and some...I can't remember, it was some millions of rand was paid actually to the community. Subsequently, I refused to go to Mount Grace – there was to be...CALS was having a conference there and they wanted me to go and I said to John Dugard, I won't go, I'm not prepared to enter that place, and I told him why, and he said, are you prepared to tell Mount Grace and I said, yes, so he and I drove out there, we saw a manager, and I told the manager exactly what had happened, and I said, quite correctly, I said we had confronted the police, the Minister, and they hadn't denied the allegation, it was true. He then confessed (laughs) and said that he thought he had to, and I said, I didn't think that there was any obligation to invite guests to your premises and then eavesdrop on their deliberations. He professed ignorance but he was actually a former Rhodesian policeman so I think that it was his...I think in fact that that he was a willing conspirator. And since then I've refused to enter Mount Grace. My wife tells me I'm being ridiculous (laughter), it's twenty years, it must be twenty years...She says it's changed hands. I said, how do you know it's changed hands? She said, it's been sold and new people are running it, and I said, I'm not going into that place.

Int It's good to stand by one's principles, Arthur. I'm wondering also apart from...I know the KTC case was a very long case, but apart from that case...from the period of about 1985 to 1990, what was the major focus of the LRC's work?

AC You know, that's so difficult, because I find the time conflates itself, it's very difficult to know. I'll have to think back. Certainly, during that period, there was a lot of work being done in Natal, in relation to the conflict around the Inkatha and the sort of UDF supporters who were identified as being really supporters of the general Congress Movement. And a great deal of work was there, and I actually went down to argue one of the cases there, I remember, it was to deal with dangerous weapons and we actually won the case. We won in Natal court.

Int And that dangerous weapons case, what was that pertaining to?

AC That had to do with...oh, ok. What had happened was that the...you know, I'd have to...it had to do with the fact that there was...I can't remember whether it was a

regulation or a law, but it had to do with...you couldn't use...you couldn't sort of parade with dangerous weapons in public. And the Inkatha people were being allowed to do it, and it was said that they were cultural...that these weren't dangerous weapons, that they were cultural accoutrements and you couldn't tell a Zulu man that he couldn't carry *knobkieries* and spears and other matters like that, because they were cultural. And we actually won...it was quite a tricky law point because it had been...the regulation which was being challenged, I think it had to do with some...you know I'd have to look at the case again, but I do remember that the regulation which was an issue which we were challenging, was...had been issued by the President under his powers as the Supreme Chief of all the black citizens of South Africa. And there was a line of authority to say that that was equivalent to an act of Parliament and the courts couldn't interfere, but we managed to persuade the court that what had happened here was...that they did have jurisdiction. It was quite a difficult legal issue but we won it. We won it in Natal. And I think they noted an appeal but I don't think the appeal ever went ahead because I think the political dynamics at the time started to change. We were also at that time engaged in a number of issues around the Brits forced removals: the attempt to move people from what had previously been called the *Ou kasie* location. Geoff Budlender was very active in that. I don't know whether you've spoken to Geoff about *Ou kasie* but it was a very big...You must speak to Geoff about *Ou kasie* if you see him, you must ask him about the *Ou kasie* events. It was...it became a big case for different reasons. The *Ou kasie*...the story really is this: *Ou Kasie* was a black location for the city of Brits, and when Brits started, the location was removed from the city, as was done...you know, all black residential areas were removed from the city, but Brits grew and it started growing and it got closer and closer to the location and then the land on which the location had been established, then became quite valuable, and they wanted the land. And so they decided to move the community to a place, I think it was called Letlabile, some twenty kilometres outside of Brits. And the community didn't want to go, for a whole host of reasons. Brits was an industrial town, it had small industries there, a lot of people could go to the factory gates to see if there was casual labour wanted that day, people could look for work, to go twenty kilometres away would really remove all of that opportunity and they didn't want to go. Not that Brits...you know, not that the old location was a great place but they just didn't want to go, so they...first of all, the first attempt that the government did was to, well not the government, but the local authority there, was whenever a house became vacant, they would knock it down to try...instead of filling it, they would knock down the house and we went to court on that, and we said, you can't do that. Your duty is to provide accommodation not to destroy accommodation, and we won. That judge who decided that, if I remember correctly, was Judge van Dijkhorst, who was the judge in the Delmas case, and it was after the Delmas case. And it was after the Delmas case that this happened. Then there were two or three other applications, court applications, and each time they tried a tactic, I can't remember...Geoff will tell you the story, I...he will remember it better than me, but I remember, we had two or three court applications, which were successful. They then decided that they would issue a proclamation under one of the Statutes that they had, and the Minister, who was Heunis at the time, issued a proclamation and we then challenged the validity of that by way of legal action, which would require, we issued a summons that would take two or three years to run its course and in the meantime, they, we, you know, they couldn't really move them while the action was pending. I can't remember whether we got a court order or whether it was just accepted that they couldn't if there was

action pending, because we were challenging the validity of the proclamation and if the proclamation was invalid, there would have been no legal authority to move, and you couldn't determine that without hearing evidence and so, you know, it actually put a brake on it, and in fact, there the...what happened there was that the political dynamics changed to a stage where they, where it no longer was an issue and the location remained. So it was a very long drawn out battle, but also what happened during that time was that some of the leaders of the community, who were engaged, were being harassed by the police. And so the LRC had to send out people to defend them, or to write letters to protest, you know, a whole lot of energy went into it, and Geoff will be able to describe the details of that to you. I don't really, you know, my memory's not all that good, you'd have to jog it, I can't remember in times what was going on, one would have to probably look at some of the reports.

Int I was also wondering, Arthur, during the States of Emergencies, there was a whole slew of detentions, political detentions, and I wondered what role the LRC might have played with regard to them?

AC It did. It had quite an active role in them. In this sense, that at a very early stage, at a very early stage, the LRC became the focal point of meetings. The lawyers who were active in it would meet on a regular basis. I can't remember whether it was once a week, once a fortnight, something like that, to discuss what was happening and to discuss tactics. And so the LRC became a sort of a, not a clearing-house but a focal point for discussion and the planning of strategy. A lot of cases were taken on. A lot of them were purely straight forward cases of people who had been wrongly arrested and you'd go to court to try and get an order, which was always quite difficult, because of the...it was quite difficult because of the statute, the regulations gave the Minister immense powers and, but sometimes the facts were so stark that even the Minister didn't have enough gall to be able to justify it and people would be released. I don't know that we got many people released but it had some sort of a break on it. Also, at that time, I remember there was an action involving the police (laughs), it's coming back to me now, now the...the police had raided a school during the Emergency and the, the kids, I don't know, the kids had been protesting outside, jeering, and a team of riot police under the control of then Brigadier, I think, Swanepoel who was a notorious man, known as *Rooi Rus* (Red Russian), he was a recognized torturer, a terrible man, he led the attack on the school and they just swept through the school beating children and disrupting the classes and so on. And we started an action, we sued, it actually came to trial and Swanepoel was a terrible witness. I remember after his cross-examination, their case collapsed and they paid us damages. But I remember that whole incident around the school, the kids, what was happening, what it was like to be a school child in those environments, and how the police...that reaction between the police...those were the sort of things which were happening. I mean, it wasn't a central thing, but it was just something which was egregious, what had happened to those school children and the LRC did take it on and the case actually ran its course. I'm trying to think of the others: there were the strike cases, there were the forced removal cases, there were the Emergency cases, there were...and all the time there were...there was what you might call the issues around subordinate legislation, harassment, meetings, speech, there were a couple of cases which the LRC had on meetings as to whether they could or couldn't be banned,

not...they came up from Durban I think, they got lost...I'd have to go back to the reports, I really don't remember.

Int That's quite alright. Arthur, in terms of the period of 1990 till 1994, apartheid had collapsed, but at the same time it seems to me, that the work of the LRC continued in particularly KwaZulu-Natal office perhaps, and I wondered whether you could talk about that, the atmosphere during that period from 1990 to 1994?

AC Look, you know, from 1990 to 1994, I was deeply involved in the constitutional negotiations. I got drawn into the negotiations early in 1990, it's...I can't remember exactly when it would have been. It was after Mr Mandela had been released, the...I remember the sequence of events. I remember that first of all, the leaders of...the, you know, Walter Sisulu and other Rivonia trialists were released, and that was round about, shortly after February 1990, not long after that, but Mr Mandela was kept in detention. Govan Mbeki had been released a bit earlier. In fact, I remember visiting Govan Mbeki in Port Elizabeth, and I'm trying to think what I was doing in Port Elizabeth. I think I must have...it may have been that I was down in Port Elizabeth for the Goniwe inquest. I'd forgotten about the Goniwe inquest but we...it was a first Goniwe inquest and I had been in that region and I think Govan Mbeki had been released but Mr Mandela hadn't been released yet. And the constitutional negotiations really only got under way, officially, though there was some covert discussions going on, the actual, proper negotiations only started after Mr Mandela had been released. And it was round about that time, that I...you know, when they really got going, that I got deeply involved in them and a great deal of my time was taken up on the negotiations. I would attend the bi-laterals, I would go to the...I attended the ANC...I was...I was asked really to be legal adviser to the ANC so I would go to either...the National Working Group, which was really the driving force, would have a meeting once every week on Wednesdays, they used to meet I think, and they would have a session on negotiations. I used to attend those sessions just to talk about the, you know, legal issues which were arising. Whenever there were bi-laterals between the ANC and the National Party at the time of negotiations, there used to be three or four people who would go. It was usually Cyril Ramaphosa, Joe Slovo, Mac Maharaj, Jacob Zuma was there on occasions, and I would go with, as the legal adviser, to be there just to discuss what, you know, what was happening. I went to big bi-laterals which were taking place when they had large groups of people at the so-called *bosberaads*. And I was at Kempton Park, all the time, so I was really very, very busy at that stage. I was diverted from the direct work of the LRC. I would come in from time to time, but Geoff (Budlender) was really running the LRC and it seemed to me at that stage that Geoff should take over, because in fact I wasn't, I wasn't there. I was and wasn't there, you know, I mean the hours of work were extraordinarily long, but Geoff had to take the whole responsibility for running the LRC during that period. And he can talk to you about that, that time...I did come in, I knew what was happening, I was still the National Director, I still had a lot of responsibilities but I can't remember the time when I said: No, it's not right, you must now take over. I've forgotten when it was, it was probably round about 1992, 1993, somewhere round about then, something round...you know I don't know, I'm bad on time.

Int Arthur, when I interviewed Albie Sachs, he mentioned the enormous amount of work and he really credits the setting up of the Constitutional Court to you, and the amount of work you put into that, and I wondered whether you could reflect on those experiences of setting up the Constitutional Court?

AC You know, again, I think Albie is being over-generous in that comment...the...I was...it was in July of 1994 that Mr Mandela, I was asked to see...I got a message that Mr Mandela wanted to see me, and I went out to Pretoria. He was the President then, I mean, it was after the elections and he asked me whether I would, you know, he said that he would like me to be the President of the Constitutional Court, and...you know, it was an extraordinary, you know, just an extraordinary thing for me to be given that opportunity, that position. And it was announced very soon after that, that that was going to happen and at that stage, I then, you know, I had to go to...I had to start...there wasn't a building actually, I mean. There were temporary premises in an office park called Braampark, and they had built a courtroom there, and they had built a series of offices around. And, you know, it wasn't a bad thing, but when I arrived there, I remember when I arrived, there was no furniture. There was a chair I think, in...they had one or two chairs, there was absolutely no furniture...there was...Mrs Stander, who is still the Registrar of...she's the Senior Registrar at the court, she was there. She's an interesting person, Mrs Stander. If you are interested about the court, you could speak to her because she was actually, I remember we had a chair, I was given a chair. I also, another thing I remember, was there was an enormous safe in the office, it was a colossal safe, an ugly, huge, ugly thing, and I remember looking at it and saying: What is that doing there? (Laughter) And they said: That's your safe, and I said: What would I need a safe for? And they said: You've got to have a safe for private documents, and I said: I don't want a safe. I don't want that in my office. And they said: You can't move it, it's too big. And I said: You're going to have to find a way. And I don't know what happened to the safe, it did go away, I don't know where it went to, but it was, you know, a little bizarre. It was a huge safe, it was not just a little dinky thing, it was a terrific...I'm sure I could have got inside it. There was absolutely no furniture, there was nothing, there was no staff, nothing. So we really started from that...I didn't have a secretary, we had to find a secretary...and...the first thing that I...the first thing that I was at the...The person who had designed the court had some government architects to do the interior design. They had a library; the library that they'd set aside for the court was no bigger than this room.

Int Gosh.

AC It had some shelves in, it was no bigger than this room. It had shelves on the wall, and shelves in the middle, nowhere to sit, and I looked at it and I said: Is this the library? Yes. And I said: But how can it be a library? I said: Where can you work? He said: Do people work in the library? I thought they just sent for the books. (Laughter) And so I decided that was no good and we had to get a...we had to expand, so we got another floor, we got another half floor where we established a library, and additional offices. Then we had to deal with the whole question of the...of employing staff but the big thing was the appointment of the judges of the court took place in October. There were hearings at the Judicial Service Commission and we had to...there were

about a hundred people nominated for positions because we followed a process whereby we called for public nominations and I think there were over a hundred names which were put forward. We had a sub-committee of the Judicial Service Commission short-listing the nominations. There were some very good people but who were too old, in the sense that they were already in their seventies, and the retiring age for a judge is seventy, at that stage. There were...we short-listed, I can't remember how many, about twenty, maybe more, and we decided we were going to have public interviews. We had it at the Civic Theatre here in Johannesburg opposite the court premises and we interviewed people there on the stage.

Int That was public?

AC Public, yes. The public were present, the media were there, and those interviews went on for three or four days. The Commission then had to meet and give the President ten names. I'd better step back...what had happened after I had been appointed, the interim Constitution required the President to...after the President of the court had been appointed, they had to appoint...four judges, four sitting judges had to be appointed, and that decision had already been taken. Apparently it had been taken in relation...when I was to be the President, the four sitting judges had been decided upon at the same time and I was told who they were going to be. So there were now five members of the court. We needed another six to make the composition of eleven, of the additional...and under the requirements of the...we had to give the President, I can't remember, I think it was three names more than...we had to give a list with at least three names more than posts to be filled. So we had the interviews and we compiled the list. I then saw the...Minister and I saw the President together because he had to consult with the...he had to consult with me, I think. Anyway, he did consult with me and then afterwards he appointed six judges. That was in October, so we had our early meeting...everybody came together and we started working on...In the meantime, I'd been working on the rules with Judge Mohammed, who had been one of the judges who'd been appointed. I'd been working on the rules of the court, we'd prepared some rules for the court and they had to be agreed between myself and Chief Justice Corbett. I went down to Bloemfontein and saw Chief Justice Corbett. He was very supportive actually. We were very lucky in the sense that if it had been someone else, the whole atmosphere and tension...and there was tension between the Constitutional Court and the Appeal Court. But it would have been, you know, it wasn't as a result of him, and he actually smoothed a way...smoothed the path in many ways which a more hostile person wouldn't have done.

Int And what was the tension, Arthur, necessarily between the...?

AC You know, the tension really came from this, and that was that a new court had been appointed, which was really above them, and in a way, what was being said, is you can't deal with the Constitution, and we've got to have a new court to deal with it, and the Constitution was the supreme law. Now they...to try and...I think they made a mistake. There was a...in the initial interim Constitution, there was a negotiation...there were a whole lot of issues on the table. At one stage, the Appeal Court suggested that there should be a special Constitutional Chamber and it should all be in Bloemfontein and the Constitutional Judges should come down but they

would just form a separate chamber and they could be supplemented by judges of the Appeal Court, but the Appeal Court judges would be both in the Constitution and general, but the constitutional judges only in the Constitution. Anyway, the ANC rejected that out of hand, and said there had to be a separate court with no links to the past, and it was never really an issue in the negotiations. I mean, I was present at the...at the...I was present at the bi-lateral where it was raised and it was never put in issue at all. There had to be a separate court and...and that it wouldn't be part of the appeal court. And the whole question was then how it was to be constituted and...that was, that was actually a direct negotiation, well, Dullah Omar who was...and Kobie Coetzee, Dullah Omar who was now Minister of Justice under the new...and Kobie Coetzee who was former Minister of Justice under the National Party and might have...sorry, I've got it wrong...Dullah Omar...this is at the negotiations stage not the post-negotiations so he became...but anyway there was a negotiation between Dullah Omar and Kobie Coetzee and ultimately they reached an agreement that the court would be separate. That was never an issue but the whole question was jurisdiction and I think, to protect the...what was then the Appellate Division, so as there wouldn't be appeals against their decisions, they said that the Appellate Division would have no jurisdiction in any matter which the Constitutional Court had jurisdiction. The Constitutional Court would have jurisdiction in constitutional matters where the Appellate Division would have no jurisdiction. And that was designed to avoid a situation where we would set aside judgements of the Appellate Division. It didn't work and it couldn't because you can't actually have a constitutional matter, which doesn't...you know, you can't put things into boxes, they conflate. And it was done away with, in the final...in the 1996 Constitution, it just simply didn't work. But there were the tensions as to, you know, the authority of the court, what was going to happen. I think that those tensions lasted for some time. Certain of the old judges also didn't like the new judges who were coming in. I mean, they hadn't been...most of us hadn't been judges of...the only judge...we did have, look, we did have judges, people who...we had six, now to...thinking back, there were six who were already judges. Of the eleven members, six had been judges previously, but they'd all been judges who had been seen as being, you know, on the left, liberal...amongst the few liberal members of the judiciary, so there was a tension between the old apartheid judges and the new judges, and the position of the new judges who would now be very senior, if not the most senior and...So there was all of that tension. There was also a degree of tension because a lot of people were...a lot of the old judges were saying: What are we doing, you know? It's clear, Roman-Dutch law; we don't need a Constitution, what's all of this nonsense about? It's not law. And so there was a degree of tension as to applying the Constitution. And it took a bit of time for that to work its way through. I think there may still be a bit of tension but I think it's gone now; largely...it will largely have gone. There's still a bit of tension...there were joint heads of the judiciary made between the President of the Constitutional Court and the Chief Justice of the Supreme Court of Appeal and they were joint heads of the judiciary, they were equal in status and they were...in State protocol they were equal and the public functions were divided between them. In around about 19...oh, it doesn't matter when, but...I'd have to start...it was round about early 20...I think it was 2001, they brought...they did away with that division, created one head of the judiciary who was to be the Chief Justice, made that position in the Constitutional Court. I was then the head of the Court and my title was changed from President of the Constitutional Court to Chief Justice of South Africa. And that has had the effect of really consolidating the Constitutional Court as the apex court.

Also, the Constitutional jurisprudence has shown that you can't develop...you can't look at the Constitution in isolation, it affects everything because the interpretation of statutes has to be undertaken to give effect to the values of the Bill of Rights; the Common Law has to be developed in accordance with the Constitution, and the Constitutional Court has jurisdiction in those matters so it's jurisdiction is really broad...and the whole area of administrative law has been constitutionalised so matters which would go to the Appellate Division now come on appeal to the Constitutional Court, so the Constitutional Court is hearing lots of cases on appeal from the Appellate Division, setting aside its judgements on occasions, upholding them on others. And it's now recognized, I think, by everyone as the apex court but it was a process and there were some tensions and it was...they had to be managed. At the beginning there were a whole lot of problems to be addressed. We had to meet and talk about how we were going to deal with things. We developed a very collegial court, I mean, it was really a...you know, when a lot of people get together you can have personality problems but in fact, I think that there are tensions from time to time, and there were and there always will be when people are working together, but on the whole, the court was extraordinary. Everybody was very supportive of one another, working together, wanting to help people and we started developing different projects. And so the court has grown. I mean, it's a...it's now got this amazing building.

Int At what point did you move to that building?

AC Well, the building was always...I mean, from the moment we got into that temporary premises, I had my eye on a building for the Court. In fact, on the day of the Inauguration of Court, I was...I spoke at a lunch for dignitaries that had attended the inauguration including the president and the Minister and I said: Well, we're here in the temporary building but one day, we've got to have a proper building for this court. And the Mayor of Johannesburg and his...the Head of the Management Committee of Johannesburg were there at that lunch, and shortly afterwards I got a call; the Mayor would like us to come to lunch. So we all went off to have lunch with the Mayor, and basically what he was saying is he'd like the court to be in Johannesburg and they would like to find a place for us to have the court. And that led to our starting to investigate sites they offered to us and ultimately, one of the sites they offered was the site of the Old Fort, which...initially it didn't sound attractive and when we...when I went to look at it after I'd been told and those who'd been to it were very enthusiastic about it, I realised it really was an historical place and a perfect site for the court and so we said we would like that, and the whole process of getting the court up had to go on. In the meantime, we were really trying to get to know each other, to start our jurisprudence. We were invited to Germany at an early stage, and that was a good thing, because before we had actually heard any case, the eleven of us travelled together. We got to know each other in that situation and we went to Germany and we spoke to them about their Constitutional Court and how it functioned but it was also an early organisational thing. They wanted to take six judges and I said: No, none of us will go then. We were a new court, we can't...I'm not going to take six people with me. Either we all go or none of us go. I mean I understand you may not want to take them with and they came back and said: No, we could all go. (Laughs) So we all went together. And there was a lot to do in setting up the court...and also just in building the atmosphere within the court. But that was a shared responsibility, I mean, everybody on the...all the judges took different responsibilities for different aspects

of the court administration. We would meet and discuss these matters but there would be different committees. We also managed to...I was able to persuade Dullah Omar ...you see, it didn't take any persuasion; I wanted to have law clerks. I thought it was a very good thing to try and have...to get young people into constitutionalism, and also to break a mould where the only people would be the sort of elite white practitioners. I wanted to have an opportunity to bring young people in from diverse backgrounds to the court and he agreed to that, and he found the money for one clerk for each judge, and then we, we found money for a second clerk, from the Atlantic Philanthropies, who actually saw Omar, talked to him about it, and he was very enthusiastic. It was agreed that a trust would be set up to administer the monies and in fact, one of the, one of the trustees would be...the Director General of Justice And so we established the Constitutional Court Trust and we got money for a second clerk and we were able to...with twenty two places, we were able to ensure that there was really a diverse group of black and white men and women, and that became a...that has continued over all the years, and it's been amazing...it's really been quite remarkable. You can see some of those young people now who are coming through are going to be judges, are going to be leaders of the profession. I see them in action already, you know, I watch some of their progress and already I think, I've got no doubt that within the next few years, there will be judges. People who started as clerks will now be sitting as judges, if not permanent judges, acting judges, because they may not be ready, you know, they may not be ready to commit themselves to a full-time career but may be willing to take on responsibilities as acting judges. That was a marvellous program. The library was then built up. We managed to...I remember, I remember it was Albie's (Sachs) idea actually, I think, to invite all the ambassadors to visit the Court so we had a function for the ambassadors. They came up to the court, we talked about the court and took them around, told them what we were doing and they...we showed them our embryonic library, which was now on a separate floor but didn't have a lot of books. And the Norwegian ambassador said: Could I speak to you? And we went off to my chambers and he said: You know, the Norwegian government wants to make a gift of ten million something, I think it was ten million rand, just to mark the new Constitution...it's not part of our ordinary grant making programme...it's just a sort of a birthday gift. He says: I can't find anyone to take it. When I say...go to people and say...they say: Well, we'll think about it. Would you like it for the library? I said: Yes. (Laughter) So I then got in touch with the Minister and told him about this and the money went into the Constitutional Court Trust...I can't remember whether the Constitutional Trust had been formed or was about to be formed but it went into the Trust. So we had this to help us start getting the library and then when it was heard what the Norwegians had done, a lot of other ambassadors said: Well, we would like you to have some of our Law Reports, so we got American Law Reports, we got Canadian...a whole host of governments started saying: We will give you a set of our...so we got a lot of Law Reports given to us. And the library today, under first...Laurie Ackermann and Kate O'Regan drove that. It is one of the...it is a magnificent library. I don't know if you've had an opportunity of seeing it?

Int No, not yet...

AC It's an absolutely magnificent library. It's the best...it's one of the best law libraries in the country, but it's...you know, the Appellate Division has got a sort of a centuries

old library, but this is the best Constitution...it's probably got the best resources of constitutional law on the continent. And they've now developed a program to go...to make it a virtual library, to try and make it accessible to outlying areas in this country, and also in the region and throughout Africa. So that's been a huge development. So there's been the building, there's been the library, there've been the clerks programs, there've been...we started...preparing our judgements for...so as they could be put onto the internet immediately, which involved a particular form of presentation, and so we numbered the paragraphs our judgements so as that...when they...if they were in the official law reports, whether they came off the internet or the law reports, paragraph one would always be the same. So instead of having to refer to a particular page, you could refer to a paragraph. We did that, right at the beginning. I think some of the other courts have now started to follow suit. We also started issuing...trying to deal with the media because we found reporting of the court quite appalling and we tried to have meetings with the media and they said that really, they didn't, you know, they didn't have the resources, their reporters weren't really up to it, so we started a system of preparing before each hearing, a media report as to what the issues were going to be and then a media summary of the judgement and that wasn't done by the judges, it was done by the clerks. We made it quite clear, we didn't want people reading our media summary to interpret the judgement so it was made perfectly clear that this was a court production but not of the judges and...and so we did that, and that now happens regularly. And then the court has also been...it's had this extraordinary art collection which Albie Sachs put together, it's remarkable. I mean, it's a beautiful building, it's got this...have you been around there?

Int I've been to interview people but never had time to really look around. I should go. (Laughs)

AC It's a beautiful place.

Int Arthur, quite early on when the Constitutional Court was set up, a lot of the cases that came forward were actually LRC-driven cases, and I wondered whether you could talk about the cases that came before the Constitutional Court that came through the LRC?

AC Yes, there were some very important cases that came from the LRC...

Int For example the death penalty case?

AC Well, the death penalty case...the LRC...certainly were engaged in the death penalty case. I can't remember whether they had been asked to act as the attorneys for the people. I know the Bar appointed counsel and I can't remember whether...did the LRC act as...I know they were in the case.

Int I know Wim Trengove was, and I wondered whether he'd come through the CLU by that point. I wasn't sure?

AC You know, I'm not sure. I know Wim (Tregove) argued the case.

Int And George (Bizos)...?

AC But George was briefed by the government.

Int Right...

AC George (Bizos) was briefed by the government to represent the government's interest. Wim (Tregove) argued the case for the...for the accused persons, and I'm pretty certain that the LRC provided the attorneys work and the logistical support, and they got a lot of help I know from, you know, their research was undertaken around the world, and they got a lot of assistance from different countries in regard to their jurisprudence. It attracted an enormous amount of attention...in the sense that everybody knew the case was going on, precisely because the LRC had been engaged in it and had been seeking information about, about foreign jurisprudence on it. So that was a very early case, and it was argued by Wim. I don't remember who the juniors in the case were, but there were also some very major cases. I mean, the Grootboom case, which dealt with the housing, which has been the subject of a great deal of misreporting, and though it hasn't...it had to deal with access to housing and the LRC came into that case on appeal, to represent the Human Rights Commission. And it was really their intervention, which was crucial because they put before the court information and arguments, which were very powerful. And the LRC also handled a number of major cases relating to socio-economic rights...the AIDS case...

Int The TAC...

AC The TAC case, which was a brilliantly presented case. They did cases on pensions, and they did that Richtersveld case. The Richtersveld case was one of the most, I think it's one of the best presented cases I have ever seen. Because it was an astonishing...it involved social...undertaking research into social history and also in regard to aspects of law, which had never been explored properly, relating to indigenous title. I mean there was some assistance...because indigenous, questions of indigenous title had arisen in Australia and New Zealand and Canada and elsewhere. But there was absolutely nothing in South Africa on it. And it involved complex arguments around the mineral laws, the impact of laws, but what made it such a brilliant case, what made it such an extraordinary case, was the way it had been put together. It was an extraordinarily complex and difficult case, and it had been put together, I think, quite brilliantly, and I think that, you know, it's one of those cases where I think that the early preparation, and that's true of so many of these cases, it's the early preparation which wins the case, not the last day in court. I mean, sometimes the last day in court is important, but you can't win if your papers aren't good. And I think, one of the big things with the LRC, has been in the cases, which I've seen, you know, sitting as a judge, has been the meticulous way in which the papers are put together.

Int Arthur, you left in 2005, you came on as a trustee to the LRC, and I'm wondering what you think have been some of the challenges of the LRC from that period, from 2005 to 2008, from your position as a trustee?

AC Look, let me say immediately, that the...at one level, the challenges remain the same, and that is to provide access to courts, to advance the interests of the disadvantaged groups, and to try and promote the fundamental values of the Constitution: dignity, freedom and equality. Those are core values and really, if you look right back, from the beginning of the LRC, those are values, which really determined its work. Now of course, the LRC has the advantage of having a constitutional order and good law, whereas before they had oppression and bad law. So they in fact are better able to advance those interests now than they were then, because the tools are better. The problems that the LRC has faced are really at two levels. At one level, there was a problem after Geoff (Budlender) left, of directorships and there were changes in directorships over a period of time, and during that period, I think that there was...funding got, you know, the funding base wasn't nurtured as well as it should have been, and so there were...there was...when I arrived as a trustee, I think there were not financial problems in the sense of the fact that the LRC couldn't function. It still had a good finance...a good donor base, but its expenses were significantly higher than...the grants it was receiving and it was drawing on its reserves, which had grown. It had grown because the...reserves had been built up during the earlier period. I mean, we were very clear that we had to have reserves when we started, you know, as soon as we got established and got big, because you couldn't have a situation where if a grant comes in late, you can't pay salaries. Or if you had to close an office, you couldn't do it. You know, we had to build reserves and we were quite open about that. Our reports used to state that the trustees believed that the reserves were essential and that they require a minimum of two years to function properly, and so we went for that. What happened was that we put...the reserves...as we built up the reserves, they were invested and with the extraordinary stock exchange boom which took place in the 1990s, those reserves shot up a bit. And so they had quite substantial reserves to draw on, but it wasn't such a good situation because they were drawing down on the reserves and you couldn't run at a deficit of five to ten...you know, it was about ten million rand a year they were running at a deficit on. And so that was the very first situation I was...that presented a problem. It was round about that time that I came in, that Janet Love became the Director. There had been a hiatus. There had been acting directors and it doesn't work well. You can't have people, I mean, Steve Kahanovitz would come up and do a job, and then Vincent (Saldanha) would come and do a job, but it's not...you know, they were commuting and it wasn't really what they wanted to do. And I think that Janet has been marvellous. She has introduced...she understands systems, she understands administration, she understands money. She has been very good. And she's also got a superb political sense, she knows, I mean...she herself has got a long history of political activism. She understands, got very good community links and she understands what are basic issues for a community and why they should be...so I think though she's not a lawyer, she has been an absolute find. I don't know, I must...I don't know how she was found, I must really make that inquiry one day. But she has, I think the LRC has stabilised itself. There is still a need...the budget is close to being balanced now, it's not quite balanced but I think it will be this year. The...the...as far as the work is concerned, one of the problems has been again a staffing problem. And that is that it's

difficult to find...I don't know what's happened. You know, at the time, under apartheid, a lot of people wanted to come to the LRC. They really wanted to because I think it was a way of saying: I can do something, I want to do something. A lot of very bright dedicated young lawyers came to the LRC for that reason, wanted to, and it was really a very...the skills level was very high, they were very, very competent people. I think with...after 1994, the, the...a lot of people are...first of all, a lot of young black lawyers who are talented and huge opportunities opening up for them in different places, and there are really, you know, there are financial considerations. People who've had no, really have had no, you know, no opportunity to save, who've come from families who've had nothing, who've helped them to get through and now have an obligation to help their families and others, the disparity between what the LRC can offer and what they can earn in private practice, is very substantial, and I think people are drawn there. You know, that won't last forever, because if society normalises itself after a while, there will again be a core of people who wouldn't be subjected to those pressures. So I think that the LRC needs...you know, there...some of the offices, the Cape Town office for instance, has got a lot of old well-established lawyers who've been around for years, who've obviously got very considerable skills and know the whole field inside out. Some of the other offices, the Johannesburg office doesn't have those skills. George (Bizos) is available in the Constitutional Unit, he's a man of immense capacity and ability, but apart from George, they don't have those skills and the Johannesburg office needs to be rebuilt. Some of them look good, they've got a very good young advocate who's come in, Adrian Friedman, who's very talented person and before him there was Richard Moultrie, who's very talented, and I think that they are starting to draw in young people like that who will be willing to come for a couple of years and then move on. And they need to rebuild skills. I think their work is still of a high standard, but part of it draws on people who have been associated with the LRC. I mean, Geoff (Budlender) does a lot, Wim Trengove, other people get pulled in who've got the skills, so I think as far as the structure is concerned, there is a need to, just to get a couple more senior lawyers, and to develop the skills, to hone the skills. But I think it's still doing very well but you must beware of allowing your structures to run down. You must watch that.

Int Sure. In the previous interview, you really emphasized training and how important training was. I'm wondering, having just George (Bizos), particularly in the Johannesburg office, ...there is Ahmed (Mayet), but there is no real middle level of senior lawyers who can provide that training, does that then not impact on the training of young...?

AC I'm sure it does. I've got no doubt that it does. I mean, the Johannesburg office is under-skilled and needs to build those skills, but there's a resource problem. You've got to find the money and you've got to have the money to be able to employ people. I know, I mean it's not that the LRC is not addressing that, they are addressing that, they're trying to find people and in the end, I think that what you really need to do and may...what they may do and I don't know whether they can find it, you want somebody, you mentioned Derek Reed earlier, somebody like Derek who's nearing the end...I mean Derek came when he was quite an established practitioner, I wouldn't say he was at the end of his career but he was nearing the end of his career, you could see five/ten years down he'd be retiring...If you could find people who are just about to retire, are retiring and who want to do something, I think that to get those

sort of skills in of experience, where younger people can go and speak to them. I mean Morris Zimmerman was a great...great...and he was at the end of his career when he came, but he was a wonderful figure and inspired a lot of young people. Mohammed Navsa...I'm sure if you've interviewed Mohammed you couldn't interview him without him eulogising Morris Zimmerman. And I think that that's one of the things which they should try to do, is to try to find people for whom the money isn't a great issue, must pay people because I think that they...people...you know, somehow or other it's better just to say: No, no, we value your services, we're going to pay for them, but they don't need to earn vast sums of money if they are nearing the end of their careers, and bring them in, and see if that can be done. I think that that would be something but I...you know, like everything else, it's a process, you've got to look and I know that they are looking, it's not that they're not concerned about it, it's just that there's a question of money and balance and finding a way.

Int Arthur, in the last interview you also mentioned that this new government is also a government that doesn't really like to be interfered with as such...but in the current context, I've come back to South Africa and there's a huge crisis about the media, attacks on the Constitutional Court judges as counter-revolutionaries, attacks on the Constitution, and it seems to me in the Johannesburg and even in the Cape Town Bar, crises in those institutions as well. I'm wondering how all of this impacts in terms of rule of law and a human rights discourse that still needs to be entrenched, and where public interest law organisations...where the space is for them to manoeuvre effectively? Because, by virtue of being a public interest law...the mandate is that they do take on government where necessary...

AC Well, first of all, I think...I don't think any government likes...

Int Interference...?

AC Interference, yes. No government likes to be sued and told that they are not carrying out their job properly, they don't, governments don't like that. At a political level they don't like it and the bureaucrats don't like it because that's their job and...So I think that there should be a tension between government and courts in the country where there's a Constitution, which is justiciable, is to be expected. There must be a level of tension. I don't think that that is a serious thing. I think that what has happened recently in the last year or so, is a worrying...it is very worrying. I spoke about it on Wednesday and I...it is a matter of concern to me. What interests me, is I've seen two recent things. One is a speech by the...or one of the...the Deputy President of the African National Congress, Kgalema Motlanthe, wrote in ANC Today - ANC Today is a weekly or bi-weekly newspaper of the ANC - and he wrote an article dealing with this topic. It was a very measured article, written in a tone quite different to some of the language, which gets flown around by the Youth League and the Young Communists...the Young Communist League, I think, YCL and the ANC Youth League. The language is quite different and it's much more measured and basically, the thrust of what he was saying was that the ANC believes in an independent judiciary but it's also appropriate to...where appropriate...doesn't mean the judges

can't be criticized but they do believe in an independent judiciary. And it was quite a thoughtful article. And I used that when I spoke to show...to deal with it, and because there were aspects of it, which I thought he hadn't taken through to what was required. At the same time as I spoke, Zwelinzima Vavi, who's the Head of COSATU, spoke, and he said that the press is all to blame for what has happened; COSATU is not opposed to an independent judiciary; COSATU fought for an independent judiciary, wants an independent judiciary, believes in a supreme Constitution, and he said it fought for a supreme Constitution, it would continue to fight for it and if any talk about doing away with an independent judiciary or our supreme Constitution, you'll find COSATU in the streets to oppose it. Now, he also then spent most of his time talking about the Jacob Zuma case, and what he says is that the real issue is not the independence of the judiciary, the real issue that's dividing the country is Jacob Zuma. And that that is the cause of all the divisions and that there's a very strong belief – though he doesn't put it as belief, he puts it as fact – but I mean basically what he was saying is that the country is divided. There are those of us who believe that he is being victimized and made unfair victim of political process...of politically motivated charges and processes, and that he's been treated shamelessly and that is what the real issue is. And he didn't say so, but I think a subtext is when that is resolved everything else will be resolved. Now I think harm has been done by some of the wilder statements which have been made, and I think one of the reasons why Motlanthe may have written the article that he did, was to try and pull back a bit. I think Vavi's speech, even though it leaves open gaps, is also a pulling back, and I'm hoping, but you see some of the...there are some people who are quite wild who know nothing, really know nothing. When I say: know nothing, they really are politically immature and also don't understand the role of courts. But I don't...I think that the...at an institutional level, at...I think within the ANC and COSATU there's a realisation that this has gone too far and they've got to come back. Now that doesn't mean that it necessarily will happen. I think that one's got to be very concerned when this sort of language is used, and I do think that there are figures in the Communist Party, like Blade Nzimande, who are really...pursuing a harmful course in what they say and the way they say it.

Int Regarding the use of intemperate language, the Human Rights Commission hasn't really come out and criticized it in vociferous terms. It has, but not quite in those terms. I'm wondering whether you think Kader Asmal's idea of a National Council of Civil Liberties, like the one in Ireland, would work effectively in South Africa? Do you think that's something...?

AC Well you know, those sort of, those sort of structures are, those sort of structures if you can, if they've got the energy and the money and resources, it's...I mean there's...the Human Rights Commission is under-resourced, it's got a huge mandate and it may be that a civil society undertaking with a much more narrow...that doesn't have a broad mandate but is able to focus on very central issues, would be able to gain publicity and become a sort of, some form of a pressure group, to keep matters before the media. You see, the media...I think we don't have a good media. I mean, Vavi's speech was largely an attack on the media, he spent most of his time complaining that the media misrepresented what was happening and were picking words out of context and not reflecting the true attitude of, of COSATU. You know, some people say that as soon as you claim that you've been mis-reported that shows two things: one that

what you said was true...so I don't know. But I mean, whatever it is, it's not an assertion, it's a pull-back, and I do think that people you know, in the political domain, don't like, you know, the idea of a strong, of a centre of power over which they have no influence, is not necessarily in line with their thinking. I think that that's certainly Nzimande's attitude. He doesn't like the idea of an independent court because it's outside the political influence that he might be able to wield. I don't think that's true of everybody. In fact, rather amusingly, Vavi when he spoke, because I spoke, you know, we spoke together, rather amusingly, he...I mean, COSATU has made a lot of use of courts, historically and even at present, and he says: We win cases and we praise the court. We lose cases and we criticize the court. He says: You can't win them all. (laughs) But I mean basically he knows that you need...that times in a body like COSATU, which may be in conflict with government over certain issues and in conflict with big business over certain issues, needs an independent court and not a compliant court and so I think he's right when he says we want it, and what he's also saying is we don't want you to deal with Zuma. And so I don't know where that all goes to.

Int Sure. Arthur, in terms of the LRC, what are your concerns in that context? Do you have any concerns for the LRC being able to carve a space and to actually...?

AC You know, I mean the space is there. I don't think the Constitution's under threat; I really don't think the Constitution's under threat. You know, I hope not, there's been no signs of it and I think there'd be quite a lot of resistance within the ANC itself and with other civil society. If the Constitution were under threat, it would be different but if the Constitution's not under threat and the constitutional protections are there, the space is there. So all it then depends upon, whether the judiciary, the judiciary's powers are there under the Constitution and they can't be taken away unless you change the Constitution. So it would then come down to the composition of the judiciary and whether there would be attempts to manipulate that. No, I think there's quite a core of people who believe in constitutionalism, quite a lot within the judiciary do, not all but a lot of them do. It would take quite a long time to do that, to change the attitudes. So one will have to wait and see. I don't, I don't think that the LRC's under threat at all. In fact I think that if there are threats to civil society or to any of the basic freedoms, it makes the work of the LRC even more important. So I don't see that as threatening or hampering the work of the LRC. It might...you know, they may be working in a more hostile attitude but it wouldn't be as hostile as...it would take a long time for it to be as hostile as it was in the 1970, the 1980s. (Laughs)

Int Absolutely. Arthur, I'm in fact obliged to ask you this question because everyone from Reuben Clark senior to all the SALS board members that I've met over time, as well as in South Africa, are always amazed and marvel at the fact that you gave up such an established and lucrative career in civil practice to run the LRC...and I just wondered, in terms of your reflections at the time, what was the impetus and where was the sense that you had...that this was something that you really wanted to do?

AC Well I, you know...it's, I mean, one's got to...you know, your life develops over a period of time, it's not a sudden impulsive decision and I had always from quite an early time at the Bar, I felt that, you know, I understood what the...what the...the

injustice of our society and I had always from quite an early stage, been engaged in cases...addressing those issues. In 1963 I was, I was thirty one, thirty two, I was in the Rivonia trial, roundabout that time I was doing other trials, I mean, I'd been in a long PAC trial before that, before our first son was born, I remember that...I remember cross-examining Swanepoel, later Brigadier, but at that stage I think he was Captain, I first met him as Sergeant, then he was Lieutenant then he was Captain, then Major, then Brigadier, but I mean...so it wasn't something which dropped out of the sky, that sort of a thing...I mean I had always felt that I had been given opportunities to work in those matters...And so it was something I, it was a concern which I had, and really it all happened, as far as I was concerned, when I went out to dinner with Sydney and Felicia Kentridge, and they had taken David Hood out to dinner. David Hood was the project officer for the Carnegie Corporation, he was in South Africa, and we all went to dinner and they talked about it and I don't know whether Felicia at that stage had in mind that she wanted to get me somehow supportive of what was happening and whether this was just an opportunity to let me hear, I really don't know, but I mean we talked quite a lot over dinner about this and I came home that night and I said to Lorraine: I think that's something which I want to do, and Lorraine said: That's something which you should do, and she, you know, she was...

Int Quite supportive.

AC More than supportive. (Laughs) I mean, she, her values are very, very powerful and I mean she's influenced me in many ways, and...you know, our own recollection of it is not precisely the same, because she says I had some hesitations about the money and I'm not sure that that is entirely correct. I mean, it may have been because I wouldn't have known what money was available and I may have said, well, it's got to be feasible, because we had, you know, we had a couple of small children, it would have to be practical, whatever was going to happen, and I didn't really know what was going to happen at that stage. But I then 'phoned Felicia within a day to say, that if you are interested, you know, I'd be very interested, and if you want...if there would be a place for me, I would like to do it. And that's how I got into it. And then as we went along, you know, we...what money was available at the beginning, we had a very small undertaking, but there was enough money to...to offer me a salary that I could, that we could manage on, and so money...money wasn't an issue. And it's really one of the best things that ever happened to me. I mean, really, the Legal Resources Centre gave me an opportunity, allowed me to meet people, to have contacts with the country, I'm sure if you trace it backwards you can see the whole thing going through to getting involved in the constitutional negotiations to becoming Chief Justice, all of that...you can trace right back...

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

AC I haven't thought of that. It's no good asking me because I won't remember...I just don't know. You know really, I think that the...I think that if you look back at the LRC, there were some very remarkably, remarkable people who got into it. People with considerable skills, determination and commitment and it's that that built the

organisation. I mean, wherever it opened, it had those people and...I think it's, I really do think it has been...you know, Sydney Kentridge once spoke, I think it was after 199...certainly after February 1990, I can't remember, maybe after 1994, but he spoke at one of the gatherings and he was just talking about the need for the LRC, and what he was saying, is every country needs organisations like this one but it's not just...don't say every country always needs organisations like this and I've got absolutely no doubt that given our socio-political environment, the huge disparities of wealth and privilege still exist, the room in the Constitution for positive action and the, the history of the LRC, that it has a very important role to play, potentially, and it would be a great pity, really be a great pity if through a lack of resources it isn't able to do that.

Int Absolutely. Arthur, I was wondering whether you want to end the interview with a particular memory which you feel embodies your experience at the LRC, and of course it's been a long time...whether it's a case or an interaction or whether it's something with George (Bizos) or Mohammed Navsa or anyone else...

AC No, I think there are lots...

Int Lots of memories...

AC I think I've got lots of memories. I don't think I can pull out one...I mean, one thing which I really do remember quite vividly, was the argument in Komani with Chief Justice Rumpff, who was very hostile to the proposition to begin with but he was, he was hostile but not, he was hostile in ways in which he could be hostile without being rude or abusive. He could be quite harsh and I remember him at one stage saying to me: What are we going to do? What are we going to do if you're right? What happens to all of these people who are here, if they're going to...a farmer comes and you say they're entitled to be here, what's going to happen? A farmer brings him into town...what's going to happen? I said to him: You know, I suppose the same thing that happened in the 1930s when white people left the land, we'll have to build houses for them. And (laughs) somehow...I don't know...I just remember that, it's a funny little incident but I do remember that exchange. I also remember how he, I also remember in the Komani case, while we're talking about it, I do remember, I do remember that one of the things that...he gave me...you know, we had a really rough passage and (laughs) our opponents who...a junior counsel for the government was Jeremy Gauntlet, who I occasionally remind of the occasion. But he...they were laughing at tea thinking they had an easy case to argue...and when they started arguing and within about a minute or two, Rumpff said to their leading counsel, I think his name was Hofmeyr, said: Mr Chaskalson said this. I think we're being led

up the garden path. There must be an answer to it. What is the answer? And he couldn't answer it. And Rumpff got so cross with him, he destroyed him. And he really, by the end of the argument, there was practically nothing left of their case because he was so angry...and I remember standing up with the reply, saying: I hope I'm not leading anyone up the garden path, so he said: No, no, no, I didn't mean it that way. (Laughter) So that's a favourite little memory that I have but it's not so much about the LRC, it's just a moment in court.

Int Sure. Thank you very much, Arthur. As usual, it's a pleasure to interview you. Thank you very much.

AC Thank you. Well, thank you for what you're doing.

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Legal Resources Centre Oral History Project

PUBLISHER:

Publisher:- Historical Papers, William Cullen Library, University of the Witwatersrand

Location:- Johannesburg

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DOCUMENT DETAILS:

Document ID:- AG3298-1-025

Document Title:- Arthur Chaskalson Interview

Author:- Legal Resources Centre South Africa (LRC)

Document Date:- 2008