

**Geoff Budlender**

**LRC Oral History Project**

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Int This is an interview with Geoff Budlender and its Friday 14<sup>th</sup> December (2007). Geoff, thank you very much for agreeing to be part of the LRC Oral History Project, we really appreciate it. I wonder whether we could start by asking about your formative experiences, growing up in South Africa under apartheid, your sense of that and also the trajectory that led you into the legal profession?

GB Well, I...I grew up in Port Elizabeth in the Eastern Cape, in a middle class fairly liberal family with no contact with black people other than in a master/servant relationship, but growing up knowing that apartheid was wrong and that it should be changed. I came to the University of Cape Town where I started studying medicine and became involved in student politics quite quickly.

Int This was NUSAS?

GB This was...ultimately as President of the Students' Representative Council and also in effect, Acting President of NUSAS in 1972...'73. That had a very big impact on my life because I met the Black Consciousness Leaders as they were leaving NUSAS forming the South African Students Organisation. Particularly Steve Biko and Barney Pityana, whom I got to know quite well and who had a very big influence on me because they...they really shook my ideas about what South Africa was about. I had come to university with the white liberal view that black people wanted to be like us and if only they were more like us all our problems would be solved and I learnt quickly from the Black Consciousness people that (laughs) they didn't want to be white liberals, they wanted to be black people and they...neither did they want to be led by white liberals into the New South Africa, they were going to make it themselves and they challenged white youths in a fundamental way, a very important way and that, in a way, was a critical moment in my life. I was studying medicine, I wasn't doing very well at it, I wasn't enjoying it and I wasn't interested in it and...meanwhile in student politics we were in trouble with the law all the time. People were arrested, detained, searched, and so on...and I had a lot to do with lawyers in that time...and I came to think that that was an area there where one could do something really useful and so my experience as a student activist with lawyers was one of the factors that precipitated my move from law...from medicine into law and, that's what I did in the 1970's, graduated in 1975.

Int With a BA?

GB With a BA and LLB. Having spent also quite a lot of time working with the Institute of Race Relations, where I had been chairperson of the local region and I'd done quite a lot of work with informal settler communities on the Cape Flats, so, that was my first taste of, working with people who were living in desperate circumstances and trying to save their homes from demolition and trying to deal with the...the real sharp end of apartheid, forced removals, the pass laws and so on. I finished law school in 1975 and went to Johannesburg where I did Articles with Raymond Tucker who was a

single practitioner and attorney who had a general practice but a very large part of it was political trial work and in 1976, I was engaged most of the year in a political trial of my former colleagues in NUSAS, a student movement who were prosecuted under the Suppression of Communism Act for activities in which I was also involved. That was when I got to know Arthur Chaskalson because Arthur was the lead counsel in that case. In 1977 and 1978 was the trial of Tokyo Sexwale and 11 others and again Arthur was the lead counsel in that case. That was a trial under the Terrorism Act and during...during this period I had been with others wondering whether there was some more structured way in which the law could be used to do something about apartheid and justice generally. We had started to learn, or some of us had started to learn, about the Public Interest Law Movement in the United States in particular, and we were scratching around trying to find a way of putting together something which might work like that here. What made it all catapult it into action, in a way, was when late in 1978, Arthur was persuaded, I think by David Hood of the Carnegie Corporation, to take up the position of First Director of a new organisation to be formed, and once Arthur became available, all the pieces fell into place. I was employed as a first full-time lawyer in the centre from January 1979, and the organisation grew from there. And, well, maybe I should stop there?

Int Well, you've done that rather well ...pre-empted most of my questions. I'm just wondering whether I could take you back a little bit. ...you obviously had a sense of social justice growing up, and quite a strong sense of the fact that what you were living in, was in fact an abnormal society, so I won't go over that, but I was just wondering whether...the point at which you really became conscientized, as such, was in fact university or do you think it ... formulated itself much earlier, and then really gave impetus during your university days?

GB Well, I was certainly aware of things as a child growing up. I remember when Chief Albert Luthuli received his Nobel Prize which was, I think, in the early '60s, '60 or '61, it's a very vivid memory of my childhood. I remember when Bram Fisher went underground. I was aware of those things happening around me...I remember when detention without trial was introduced...in a really extensive way in the early '60s. So those things were part of my life growing up, my parents were liberal people, they were active in the Progressive Party and so these things were around me, although they weren't political activists. But university was a...was a transformative moment, because it made me think much more fundamentally and more radically about the society.

Int And that was UCT?

GB That was UCT, and a critical moment was in fact my first year at UCT in 1968 when there was a student...there were lots of student protests... we were always having mass meetings and demonstrating about this, that and the other and it all seemed fairly futile, rather ritualistic and a turning point was that first year in 1968 when...a...an African South African was appointed as a lecturer in Social Anthropology at UCT, a man named Archie Mafeje, and the government intervened and said it would, if he was appointed, it would pass legislation to stop the employment of any black academics of the so-called white universities. The University Council capitulated,

withdrew his appointment and students right at the end of a mass meeting, one of the ritual mass meetings, decided to go further and sat in the administration building for a week. It was the first sitting, I think, in a university in South Africa, I was part of it, as a first year student and that was a radicalising moment to move beyond standing with a placard into doing something which was slightly more risky and more engaged. Er, that was an important moment and...as I say, the NUSAS experience, particularly with the black students in NUSAS was a...or the black students leaving NUSAS, was another critical moment, and my ...understanding of what South Africa was about really changed from that, and from...from the work which I did, with the Institute of Race Relations and the Black Sash, around the pass laws and removal, because although I had had a theoretical understanding of what apartheid was about, as a youngster, and then as a university student in my early years, the first time I really saw the sharp end of it, of how it impacted on ordinary peoples' lives was in the Black Sash Advice Office and working with...with informal settlements, people living in informal settlements and suddenly all of these things which one had read about and which one knew were...were wrong, were more than wrong, they were...they had a flavour of the brutality and the flavour of the impact on peoples' lives you could only get by working with people who were affected and I think that was another critical moment in my life for bringing me to a better understanding of what apartheid truly meant in the lives of ordinary people.

Int I'll come back to that, but I'm just curious, the period 1968, the sit-ins, was the influence coming from America in terms of what student politics was about and what it could potentially achieve?

GB Well, the late '60s were a time of ferment around the world, there were student politics, there were the...things happening at Berkeley in the US, there were things happening...there was the anti-war movement in the US, that really was the trigger, and in Europe, in France and in Germany and in the UK, there were very strong student movements, those were the years of the student uprisings. And so I'm sure they had some influence although I thought we were different. I was still quite conservative and I thought well, they were radicals, we were just people who were against apartheid (laughs). I thought we weren't quite the same. But in truth we were part of a broader student movement.

Int I'm also curious, because having interviewed other people from NUSAS...curious about the fact that, the sense now is a very different one from the perception that started about Steve Biko in terms of his ideology and I wondered whether you could talk a bit about that because it seems to me that even though, he joined SASO, he still believed in an ideology that was more inclusive?

GB Oh, he was, he was a very inclusive person, he...Steve (Biko)...saw no contradiction between saying we need an exclusively black student movement and I can have white friends, he saw this as entirely consistent and he had a consistent explanation for it. He felt we had to walk different political paths but that we could have engagement across that barrier and...he was one of the most truly non-racial people I've ever met. He saw people as they were and the fact that we were white was part of who you were, but so be it and, he...particularly he and that first generation of SASO

leadership, people like Barney Pityana, were non-racial people, they were inclusive people. They had a view about how South Africa was going to be changed and had to be changed, and I think they were right. But they, they were anything but exclusive, they embraced appropriately, keeping their distance, people who could be their friends.

Int In terms of NUSAS, then, having to walk it alone, as such, I'm wondering what the tensions were because it seems to me, that different branches of NUSAS had a very different idea of how things could go forward (Laughs).

GB Yes, well, it was a great shock to us, because, you know, ...white liberal, leftist students thought that they were the friends of black people and that we...our whole story was about denial that we were different. Our whole story was...the whole anti-apartheid story was to deny the difference asserted by apartheid and to say basically we're all the same, and we can all be in the same movement and we can all do the same thing and these differences are artificial differences and suddenly the Black Consciousness people said, Oh no, these differences are real, you have had a different life experience, you've come from a different place, you have different opportunities and you have different opportunities for political mobilization and so...they said we're not the same and in fact that was the irony of the formation of SASO in the early days the formation of SASO was welcome by some of the pro-government people, they said this proves the theory of apartheid and that was very difficult for us to deal with. So, there was that thing going on, that we were having to come to terms with being rejected, which is very hard, and to finding a new role and being told that we should work with white people and change white people, was a very uninviting prospect. So we had to find new roles and, some people got involved in work for organisations that was a big thrust of what happened in NUSAS, there the racial issues seemed to be different and there wasn't the same concern about it. Some people got involved in cultural activities, some people got involved in educational activities and some of us thought, well, the best thing we can do is develop professional skills which can be useful, like law, like journalism, like medicine, or whatever, and, that... in a...in a way, my going into law was in partly response to what the Bikos were saying which was that you must redefine the role, you can't lead the struggle, so now you must find ways in which you can be useful to the struggle and of assistance and supportive, and for me that was part of what doing law was about.

Int You also mentioned to me that, at some point you were involved in cases, I don't know if it was the advice centres, in terms of the forced removal? Was that during your student years?

GB That was during my student years, I was...after I left NUSAS...I finished with NUSAS in 1973, I was at university for 2 more years after that and those 2 years I was Chair of the Western Cape Region of the Institute of Race Relations. It was a time when there were informal settlements mushrooming around the fringes of Cape Town and, the police and the administration board were quite brutal in breaking those places up and what we were doing was working with those communities trying to provide support, provide...organize publicity around their circumstances, there were lawyers who were trying to provide them with some legal protection such as one

could, and so, that was part of the story of Cape Town in the '70s, was the story of the mushrooming of informal settlements and increasing difficulty for the government in stopping this, it was the pass laws beginning to break down, if one now looks back, one can see it was the pass laws breaking down and it was also the consequences of the Western Cape policies which had been...Cape Town was a coloured labour preference area, Africans were not allowed in Cape Town, except under very stringent conditions and there was no housing provided for Africans or virtually none, so virtually none on a family basis in Cape Town, and that policy was now having its consequences, was starting to fall apart and so you had these settlements developing everywhere. Crossroads, which was a huge place, started in the mid '70s, early to mid '70s, it was...one of the signs of the collapse of influx control through people just ignoring it and through it becoming difficult to enforce.

Int Seems to me that you had your public interest law experience very early on...

GB Well, I did, I was, you know, I was lucky I...I knew about Public Interest Law before I became a lawyer, I knew about it from a different angle, from being a client and from being...from working with communities, from being, you know, engaged in other capacities, so I'd seen it happen.

Int Right. I want to go onto that trial, the NUSAS trial of Karel Tip and Charles Nupen, they've all...spoken about it and I wondered whether you could lend your version on it, because it seems to me to be quite an important case?

GB I suppose it was...it was a very strange experience for me because the people on trial were my friends and people...comrades...they're activists...I was described as the unindicted 6<sup>th</sup> co-conspirator (laughs).

Int You were the candidate attorney, (laughs).

GB I was the candidate attorney I was, in the case, I was one of the lawyers, I was an unindicted co-conspirator, with the result was that I knew quite a lot about the facts of the case. It was my introduction to law, I didn't...to legal practice. I don't think it had the same impact on my life as it had on the lives of people like Charles (Nupen) and Karel (Tip) because I was earning a living and doing a job, it was a political job but, I think for them it was a very different and much more intense experience. I was going to work each day and working and they were my clients for part...much of the year.

Int But in terms of actually...learning about legal strategy and the argument, it must have been quite masterful to watch people like Denis Kuny and Arthur Chaskalson and George Bizos. I wondered whether you could talk about that?

GB Oh, absolutely, I mean, I mean for people...I mean...Arthur (Chaskalson), Arthur is one of the great teachers of law. I spent the first three years of my legal practice working with him very intensively and...most of those three years. I learnt an

enormous amount from Raymond Tucker, from George (Bizos), from Denis (Kuny), and so it...it gave me a different sort of understanding of what the law was about, and it seemed to be a natural thing to do, these were very fine people who one could respect and they were showing us what the law could be, and they were showing us about...showing us the strategic use of law, but what they were not able to show us, and that was my sense of frustration and dissatisfaction, is that it was all defensive, all of it was about protecting people who were being hammered by apartheid, hammered by...in the criminal context mainly, and, I just had the sense that the law could be used in a more positive way than that instead of just as a defensive buffer and that's what...that's what I was becoming frustrated about and that's why I became interested in Public Interest Law...saying there must be more to it than this, what one was learning was that the law had a curious sort of autonomy, that although it was made by an apartheid government, enforced by an apartheid government, enforced by judges who were appointed by an apartheid government etc, etc, etc, it had a quality of autonomy which gave...created a bit of space in which one could move and I was really interested in how you could use that space, that's what drove me into Public Interest Law.

Int When I interviewed Arthur Chaskalson he also gave you credit for having thought about this... the LRC, in a different form much earlier and I wondered, you mentioned that you had got that sense from the Public Interest Law work that was being done in the US, I wonder whether you could expand on that a bit?

GB Yes, I think, yes...at that point before Arthur (Chaskalson) was, he was busy doing a real life job, I had...I went to the States in...I can't remember which year, '76 or '70...'76...at the end of '76, and I spent...I spent a month travelling around the country, mainly visiting Public Interest Lawyers and watching what they were doing and learning about what they had done and it...that did create...that did plant the seeds, undoubtedly, and made friends from... in that time who remained friends and, I think I was interested in it before Arthur had become interested in it, I think that's correct. But, Felicia (Kentrige) was actually the first person to propose the idea, she had a similar sort of experience learning from particularly the US, I think, and she proposed...at an early stage to the Johannesburg Bar Council that a Public Law Found...what she called a Public Law Foundation, be established, and so of all of us I think Felicia was first there.

Int That's definitely the sense as well...

GB I didn't know what she was doing, I got there independently of her but she...she was the first person to put something on paper about this.

Int Right. Felicia Kentridge is also credited for getting huge sources of funding in the early days. I wondered, in terms of setting up the LRC, what was your vision together with Arthur Chaskalson and Felicia Kentridge about how it would actually be established and what would be the mandate of the organisation?

GB Well I don't think (laughs) we really knew, I think we thought, I think we thought that...we had a sense that...that apartheid was...created spaces...the system created legal spaces in which we could operate. We had a sense that the law, when used strategically instead of ad hoc defensively, could be useful. We didn't really know what areas, what were the areas in which we worked, we knew it was the pass laws, the pass laws were at the heart it, I remember that in the very first funding document we put out, there was an appendix describing the cases which we...the sorts of cases which we thought we would run and I was, I think, responsible for putting that part of the document together and one of the cases was Rikhoto, that case...if you go back to that very first document you see the Rikhoto case described there in 1978. We knew that that was an area where, where there was potentially some scope... and I can't remember what the other areas were but we just knew that...one knew from experience that people...that law does create space and we knew from experience that those spaces were very seldom exploited because there were no lawyers available to serve people and so we thought that, if one did it systematically and strategically there was going to be an opportunity.

Int In terms of the Rikhoto and Komani cases, and I think there was one more...

GB Mthiya.

Int Mthiya, yes. It seems to me that...I heard wonderful anecdotes about it from Sheena Duncan from Black Sash trying to find the perfect case for Arthur Chaskalson, and Arthur finding some legal loophole and then Charles Nupen going through reams and reams of paper in some attic or warehouse... I wondered whether you could talk about your memories of that period and...those cases?

GB Yes, Charles (Nupen), Charles...you hear lots of stories, but, the part that I know and that other people...some other people don't know, is that Komani was actually the first case to come into the LRC. I had moved up to Johannesburg from Cape Town, I'd been there three years and...in about the middle of 1979, the LRC was still being established, I was trying to put together the pieces, we hadn't seen a client yet, a letter arrived from Noel Robb, the woman who ran the Black Sash in Cape Town who said: I've read in the newspaper that you're forming this new organisation and we've got a case which we'd like you to take on, it's a case of a Mr Komani and we've lost it in the High Court in Cape Town, and we know that there is really no prospect of success in an appeal, but we feel it can't just be allowed to rest and would you take it on? And, I spoke to Arthur (Chaskalson) about it and he said: yes, let's do it, and at that stage we didn't know what...at that stage we had no sense of how the case would be argued. That case was won because Arthur brought to the fundamentally new approach to the way the case was going to be challenged, he had an entirely different theory from any of those which had been tried in the courts in the past and suddenly a case which appeared un-winnable, by the time we'd finished in the Appellate Division appeared un-losable. It was brilliant advocacy, brilliant analysis, and in a way that was one of the advantages of having Arthur as the lead, was that although he'd done those political trials '76, '77, '78 he'd been largely out of political work for a very long time, and he brought a fresh eye to all of these things, which was different. The people who'd been ploughing that ground over and over again had become quite

jaded, as one does, and it was partly his fresh insights which were so important. Rikhoto was in a sense an obvious case...as I say predicted in 1978, finding the right case was the problem...and I...you no doubt got the story that we won two of the cases administratively, which was a great catastrophe (laughs), and finally, fortunately the East Rand Administration Board said: no, and we were in business. But it was a long time finding the right case and it was an important lesson...it was one of the things which in fact...one of the things which we'd learnt from the US experience, Jack Greenberg from Legal Defence Fund had been so thorough on this and Arthur (Chaskalson) was very demanding on it, saying that if you're going...if you're running a test case, you have to make sure you have the best possible facts. You have the luxury, if you like, of a wealth of materials, thousands (laughs) of people being arrested every day, no shortage of clients and you must find the right case, because Arthur kept on saying, it was almost a mantra, he said: the law emerges from the facts, the facts don't emerge from the law and you've got to get the facts right first; if you get the facts right, the law will follow.

Int Right!

GB And, so, he taught us about fact.

Int I do get that sense from everybody about how methodical and systematic Arthur Chaskalson was and also extremely cautious. My sense is also that in terms of finding these cases you adopted the test case approach. Was that something that was discussed or did it seem just perfectly logical to...?

GB It did seem logical, that's what we'd learnt, in a way, from the Public Interest work, from the famous Public Interest cases and Civil Rights cases in the years. What we learnt...we started, I think, well, I started from the assumption that that's what we were going to do, we were going to do test cases. What I learnt as the case...as the work progressed, was that test cases were not enough. They were not enough because you needed a mass and volume of cases to...for a variety of reasons. Firstly, because it was only by seeing a large number of cases that you would understand the problem. We were mainly white middle class people, we didn't really understand what was going on in peoples' daily lives and we needed the clients to teach us, and so we needed lots of clients to teach us so that we could understand what the problems were, so, you needed a mass of cases, firstly to understand the issues, then you needed a mass of cases in order to find the best case to take on, the test case, and then thirdly, you needed a mass of cases because you needed to be able to enforce your judgment. In Komani, we got the judgment in the Appellate Division and I suppose I saw, I don't know, probably, nearly two hundred people in the year that followed, enforcing that judgment. We went back to court, launched court proceedings at least a dozen times, and finally the system broke and they capitulated. Komani standing by itself would have resulted in rights for Mrs Komani and no change at all. And so we began to understand there was a connection between, the test case and what was called the service work, which was regarded as a bit infradig for famous (laughs) Public Interest Lawyers doing famous victories, that was for Legal Aid Lawyers, it wasn't for us. That was clearly wrong, we learnt the importance of the service work as part of the strategy, and curiously I later learnt from writings and one of the great American

Public Interest Lawyers, Gary Bellow from Harvard, that he had come to the same conclusion, he wrote a very critical article showing how the test case approach was inadequate and he pointed to what would be...became...what I came to understand was the fourth reason why volume work, service work, is important and that is, that that's what builds political constituency and political mobilization, and what Gary Bellow was arguing was...what he called Legal Aid, what we call Public Interest Law work...had to have a political constituency and the cases had to have a political constituency if they were going to have political bite and if they were going to be politically sustainable, and, that's a lesson which I carried through with me to today. When...how many years later, 20 years later, we were doing the...20 years later...the Treatment Action Campaign case in the Constitutional Court. It was the same story, it was the story about the connection between litigation and social organisation, community organisation, mobilization, call it what you will, and so, the test case strategy, I came to believe, was, absolutely important but that it... unless it was linked to something else, what you would have, would be a series of fine decisions in the law reports and lawyers feeling very good about the great victories they would...they had won and no change, and so...how...the critical, animating issue throughout this period still, was, what's the connection between law and political change? And the one thing we learnt, or I learnt, was that test cases are just part of that.

Int I will come back to that a bit later in terms of the current LRC situation, but ...at that time, it seems to me that there was quite an amicable relationship in terms of the test case approach and the service work as such, in terms of the Hoek Street Clinic, etc., and I wondered whether you could talk about that?

GB We managed to marry them, we...we managed to marry these two approaches, partly because, there was plenty of money around, and so we could afford to expand, we could afford to open the Hoek Street Clinic, we could afford to have lawyers doing both of these things and the connection was...there wasn't really a tension between the two. The tension comes when resources are...are limited and you've got to make choices and we had the luxury...because the LRC was successful and because, particularly foreign funders were looking desperately for something they could do, we had the luxury of ample resources. And so, it wasn't a problem. It was a problem only to get it right in our heads that this was all important stuff, and there was a tension to this extent that the people working on the Hoek Street Clinic, I think, sometimes felt, well the people in the other office are getting all the glory while we're sitting here doing...every day seeing clients waiting in queues, and it's not so much fun.

Int It did seem to me though, that the person there, Morris Zimmerman in fact, was someone who really wanted to actually help the man in the street and take every case on?

GB That's right, I mean, Zim, that's all Zim wanted to do, Zim wasn't interested in test cases. He just wanted to work with people who are poor and oppressed and he wasn't interested in our clever theories, he just wanted to do this work, and he loved it and we had to fight him the whole time, to stop him taking on more and more and more cases, we had to restrain Zim. Zim would just...Zim just had to see an injustice and he was there. He was an extraordinary man and he...he came to the LRC because...he

wasn't invited to join the LRC, he...I came down the lift...I knew of Zim, Zim was a famous South African, he was a rugby Springbok. That means for some...Morris Zimmerman, the rugby Springbok, and I came...I had heard of him, never met him and I came down the lift in Innes Chambers, where Arthur's (Chaskalson) chambers were, one day, with Arthur, and we got to the bottom floor and this man, elderly man, said: Arthur what's this new organisation you starting? And Arthur said: Well, it's a...this...and this man said: I'm coming to work with you (laughs), and Arthur said: Well, I'm not sure whether we're going to have the necessary funds, and so on, he said: I don't care, I don't want to be paid, I'm just coming, and Arthur said: Oh, ok, and we fled (laughs), and I said to Arthur: who on earth was that strange fellow? He said: that was Morris Zimmerman. And so, Zim invited himself in, and he only wanted to work for (laughs) poor people and he just wanted to fight for justice and he had a passion about the biggest case and the smallest case, mainly the smallest cases. So, to that extent, there were...there were people like that who had the space to do what they wanted to do, not everybody wanted to run the big test cases, and Zim was a very important teacher because he taught...he kept on reminding us about justice. When we were getting filled with high blown, high flown theories, Zim would remind us it was about poor people and about justice. So, he was an extraordinary man.

- Int It also seems to me, Geoff, that he was also doing Consumer Law very early on?
- GB Oh, ja, he was the original Consumer Lawyer, he just...he just saw people being ripped off and he couldn't bear it, absolutely couldn't bear it. And he had no theory of what he was doing, he had very little law about what he was doing, he didn't practice law out of books, it was all in his head and...he was a very experienced man, he'd been around a long time. But while the rest of us were reading law reports and statutes and articles, and so on, Zim wasn't interested in that stuff, he was just fighting these cases.
- Int Very early on, the LRC started the Fellowship Programme and I'm wondering whether you could talk about what the...what the *raison d'état* was behind that?
- GB Well, the idea was, that it was very difficult for black law graduates to find their way into the profession, because the profession was run really through an old boys' network. To get articles you needed to know somebody in a law firm, to know somebody in a law firm you had to be part of that social network. And so, for young black lawyers, it was terribly difficult to get into the profession and then, when they did get into the profession, either they...very often, either went to firms which didn't provide them with adequate training, to small firms which didn't have the capacity, or, if they managed to get into one of the better resourced firms, which was...that firm would be doing it perhaps as a token act of social conscience, they would arrive at the law firms with usually inadequate training because of the schools and the universities they'd been to, within a few weeks they wouldn't cope and they would be marginalized and that would be the end of them. And so, it was an impossible situation, though for people to come through that was a...was a miracle. And so, our theory was that, if we could bring people in and give them a year's experience, in which they were given proper attention, proper support, they would then go into the profession and they would succeed. They...the year at the LRC for a long time didn't

count towards Articles of Clerkship, it was an extra year and...so that was the theory of it and of course the same applied, to a lesser extent, to women, women were also discriminated against in the profession, but white women not as much as black men. And so, it was focused on black, young black lawyers and young women and we...we were able to recruit wonderful people because the opportunities weren't great, we were...(laughs)...we didn't have much competition and so we got the very best, some of the best and the brightest, saw, here is an opportunity to do something really interesting, to do something really worthwhile and to get a good training at the same time and to open a door and to practice. So we got very good people, and that, looking back now...I think the first fellows came on in 1980...and looking back 27 years, one has to say it's one of the most important things the LRC has done, when you see where those people are now, it's extraordinary.

Int It also seems to me that the LRC may have actually created opportunities for some people who would have been terribly marginalized because of their political activism. I'm thinking of someone like Azhar Cachalia, and so the doors opened; the LRC didn't seem to mind that too much...

GB Ja, I think that's right, I think we...well, some of us came from that place of course, but I think it did...I think what it did was, it created...yes, a home, a point of impact on the system, a place where you could find your way slowly into the profession, without too much discomfort and too much of the...feeling...too impassioned by the inconsistency between your political beliefs and what you were doing for a job. The LRC created that transitional place.

Int Sure. I'm also wondering, and...this is quite a simple question for a lawyer...but in terms of...parliament being supreme under apartheid...and...I'm wondering how the legal victories, that the LRC got early on, Rikhoto, Komani etc., what were the reasons behind them not being overturned by the apartheid regime when they could have so easily been?

GB Oh, that's a fundamental question. And it goes to the question of when the LRC was established. The LRC gets established in 1979 that was a time...the 1980's...was a time when internal resistance is growing and external tension to South Africa is growing. The sanctions movement is building, the calls for isolation for South Africa are building and the government is under pressure to be seen to put its best foot forward, it can't be seen, I mean, it takes progressive measures, reactionary measures, that pays a price, and so when Komani is decided, or when Rikhoto is decided, the government has to make a political calculation which is: what will be the cost of reversing this? Because all over the newspapers are: the Appeal Court gives this important decision, rights for black people, and the government can't easily be seen to be taking them away, and so, the moments when the LRC was established was fortuitous, if the LRC had been established in 1969 and not '79, I don't think any of those decisions would have stood. I think every one of them would have been taken apart within a matter of months, by legislation, but, we were just...it was a happy timing that the political context was right, and, well, it wasn't an obvious thing that it was going to happen, there was a moment...there was quite a time when it wasn't clear whether the government would legislate to reverse Komani. By the time Rikhoto

came along, it was now, I think, '83, pressure is growing but we, we knew that...we heard that the cabinet was considering legislation to reverse it and we commissioned some research which we...on what the likely impact would be, how many people would be affected. It was a very conservative piece of research done, showing it wouldn't be so many people after all and that was slotted into the political process, and, I think, had an impact. But it was mainly the timing. It was mainly the time of political ferment, internally and externally and government having to be quite cautious.

Int Right.

GB And the government not entirely certain any longer, some of the old certainties were starting to crack. There were some people in government who said: well, there may, probably will be black people in the cities forever. The apartheid structure is not ... not going to work. And so, there was a time when there was less certainty and confidence in government, I think, the '80s was the beginning of the crack.

Int Yes. Certainly, the '80s was a time of heightened repression and resistance and I'm wondering, just very closely aligned to that question, what do you think were the reasons for the LRC not being bugged...it may well have been the threat of closure, banning orders, surveillance against people, what do you think were the reasons?

GB Well, I think I should say something before I say that, I think the other thing I have to say is that if the...I think if the judgments which had been obtained, had really visibly threatened the fundamentals of apartheid, they would have been reversed in a flash. We were working at the edges...at the margins, maybe the margins is understating, but we weren't, it wasn't a direct challenge to political power. If it had been a direct challenge to political power it would have been wiped out. The...why the LRC wasn't attacked directly would...well it was attacked in various ways, meetings were bugged, people had stones thrown at their houses...through their houses...at their houses, and tyres of their cars slashed, but you know, it was fairly trivial stuff, relative to the real repression which was going on. LRC people weren't detained and locked up, the organisation wasn't banned and it wasn't cut off from its funding and, one has to ask why. I think, well, I know we came quite close at one stage, ...you have to go back, I mean, when the LRC was established the...publicly stated principle and ideology was: this was going to be law for poor people who can't afford lawyers, well of course, everyone has to be for that. We did say we were going to take on test cases which were...because that would maximise the impact of the work...take on cases which were typical. But, there was a soft sell not a dishonest sell, but a soft sell, it was sold in that form to the legal profession which then endorsed it, after some reluctance. We had very eminent trustees who...some of them became judges and so they gave us protection and the LRC was, I think, fairly close to the edge of what was tolerated and there was a time when there was a threat to close it down, there were...there were three judges who were trustees...have you heard the story?

Int I'd love to hear it.

GB Right, there were three judges who were trustees of the LRC, and in each case the Judge President of that division was contacted by the Chief Justice who was told... who told them: I've been told by the Minister that he wants to take action against the Legal Resources Centre but it's embarrassing to do so with a Judge as a trustee, so would you please resign. One judge resigned and subsequently denied that he'd done so for that reason (laughs), still denies that he did so for that reason, that's the truth. One had said...Johann Kriegler had said: I'm going to resign, he said: I don't really feel comfortable as a Judge and a trustee, but when he heard that, he said: OK, well, in that case, I'm staying (laughs). He obviously needed...

Int He told me this (laughs).

GB That's absolutely true, he said: I'm staying because you need me. And, the third Judge, Andrew Wilson, in Natal said: Ha, you at the LRC think you've had enough of me, but now you'll never get rid of me (laughs). Andrew also said that he was staying and in fact Andrew's message from his Judge President, John Milne was different from what the others received. John Milne was Judge President of Natal and apparently said to the Chief Justice: I will convey the message, but not the instruction.

Int Right (laughs).

GB I will convey the message to Andrew and Andrew said: yes, two chances I'll accept that, and so the Judges were very important and by then we were also something of an international reputation and it was going to be politically costly. And, so we survived and let's be blunt we weren't, you know, they had bigger things on their plate than the Legal Resources Centre, they had bigger things than us going on.

Int It's a strange anomaly that arises it seems, that there was this curious respect for the rule of law under apartheid and I wondered whether you could talk about that?

GB Yes, there was a very peculiar respect for rule of law, there was a...part of the Afrikaner Calvinist tradition that the courts were important and that they were a separate source of power and you couldn't, at least visibly, interfere with them. And there was a strange respect for judgments given by the courts; by and large they were complied with. In curious ways, I mean, they took on a...judgments of the courts took on a force of their own, I saw it most visibly during the Emergency, when law really did break down, government just did whatever it liked, but even then during the States of Emergency...I never forget a case I had for a young man, his mother came to see me and she said: my son has been detained without trial under the Emergency regulations, and I said: yes, we both knew that this was not an uncommon event, and she said: the thing is, they took the wrong son.

Int Oh dear!

GB They came looking for son A and he wasn't there and they took, by mistake, they took son B and they got...no, hang on, let me say it again. She came and she said...that's right...she said: they have taken my son...that's right, that's what it was...they've taken my son, but they took him under a warrant issued in his brother's name and what can we do about it? And I said: Well, they can't arrest your son under his brother's warrant and we can go to court and get him released. And we brought an application for his release and it became clear from the police answering affidavits that they'd in fact got the right chap, they'd got the one they wanted, but they'd got his name wrong. And, when I said to the mother: look, this is what they say about your son, this is what they say is the one they were looking for, he's this, he's this old, he's done this, she said: yes, that's the one they've got, but they've got his name wrong, so I said: well, that's not going to do us a helluva lot of good, because we can get him released, I think a court will order his release because you've got to be issued under the right name, but how much good is that going to do us because they'll just issue a new warrant? And we shrugged our shoulders at each other and we agreed, let's go ahead and do it. Then we went to court, we got his release, they released him, and they never re-detained him and they didn't re-detain him because there had been an order from a court that he must be released, there was this mad obsession with the form, rather than with the substance, and so the court had said he must be released and so he must be released and he mustn't be detained, and you had exactly the converse situation happening in the Emergency, you'd go...you'd go to court for a detainee and you would fail in your application for a release and then you'd go and see the police and try to persuade them to release him and say: look, this and that and these reasons, and they'd say: no, the court has ordered he must be detained, and you'd say: no, no, no, the court hasn't ordered his detention, the court has just not ordered his release. And, they'd look at you in a blank sort of way and say: no, we now must detain him because the court has told us we must detain him. So, there was a...there was a const...there was an obsession with the form of law and that created space. And there was...and some of the judges were in fact independent. Its...that's what one has to keep on remembering, that...and most of the judges...well they were almost all white men, almost all of them shared the values and the prejudices of the political system, but most of them thought they were independent and if you could reach their minds through a process of logical argument, they would think: oh, well, if that's what the law is then I must go that way. They didn't cheat very much, not at the level of the Supreme Court, at the Magistrates Courts they cheated all the time, but some of the judges cheated, but not many of them cheated, you had to get past their prejudices and they had an instinctive, most of them, an instinctive pro-executive position and so you had to do quite a lot to get there, but, if you could breach that and get them to look at the law, they would very often follow what the law said.

Int ...this just reminds me of what Felicia Kentridge said to me, was that there were often very ...so-called conservative people on the Board of trustees of the LRC, but somehow they managed to see the value of what was being done...

GB Yes, I think conservatives...conservatives believe in the rule of law and so, some of the trustees were...were quite conservative, but they believed in the rule of law and...it was, it was fundamentally a rule of law organisation, I mean, if you say, what were the values underlying what we were doing, one of those values was the rule of law.

But Felicia (Kentridge) said, I remember her saying at one stage: when all of this is over, the most important thing the LRC will have done, is support the rule of law.

Int Absolutely.

GB And I thought, hell, that's a rather pathetic, conservative view (laughs), I was much more radical than that (laughs), and I thought, hell, that really shows you don't understand, and she was absolutely right. She was absolutely right that the premise that law is...the rule of law is important, that law is there to protect people against power, it has an abiding value which we need today which one needs in all societies at all times. And I remember being absolutely disparaging about Felicia (Kentridge), saying: what a bloody fool she is, but she was absolutely right.

Int Hindsight (laughs).

GB That's right, well, Felicia (Kentridge), Felicia we often thought, I often thought, was wrong and she often turned out to be right.

Int It also seems to me that quite early on people, SALSLEP of course started, and certainly from interviews with members of SALSLEP there is an enormous respect for people like you, Arthur Chaskalson, Felicia Kentridge and other lawyers, and it seems to me that some very rewarding friendships and associations were set up...

GB Well, SALSLEP were the friends of the Kentridges, SALSLEP, Sydney and Felicia knew the good and the great in the legal world in America and they were very persuasive, very attractive, and doing fine things and so they pulled in all these eminences and the rest of us rode on their coattails (laughs), I mean, these great eminences in America (laughs), in the legal world all signed on with enthusiasm to SALSLEP, I think largely on the strength of Sydney's charm, persuasion and eminence. It was one of the weaknesses of SALSLEP because when the next generation came and went...

Int You mean the next generation here?

GB Of SALSLEP, and here, the next generation here didn't know these great eminences and then by the time the next generation of SALSLEP people came they didn't know the people in South Africa, and what broke down were these quite close personal connections which were, really, I'm sure a major driving force for the SALSLEP people, I mean, why on earth should a lawyer sitting in Washington care at all about what is going on in Johannesburg? Well, because my friend Sydney Kentridge is there, or my friend Arthur Chaskalson is there, or some of them, maybe, my friend Geoffrey Budlender is there, but, by the time those...as those links become attenuated over time, so the driving force becomes weaker. And I think that's what led to the weakening of SALSLEP. It was inevitable. Looking back, one can now see what

should have been done, that both parties should have been working much harder at building those relationships through the generations.

Int Sure.

GB Through the generations of LRC and SALSLEP, and not enough attention was given to that. Same thing happened in the UK with the Legal Assistance Trust. We were the trustees, friends of Sydney (Kentrige) and Arthur (Chaskalson) and Felicia (Kentrige) and when they went, well, then, there wasn't much left.

Int Absolutely, I agree with that. I'm also wondering, quite early on, Carnegie, Ford and Rockefeller gave significant amounts of money and...*(paused to turn air conditioner off)*...and it may have been David Hood for example who had given money for CALS to be set up as well. I'm wondering whether you could talk about that and CALS in relation to the LRC?

GB This all happened at the same time, CALS and LRC and then a little bit later, Lawyers for Human Rights. CALS and LRC were parallel organisations; David Hood's vision was that we were going to be the litigators and that CALS would be the researchers and that we would work together. But, it didn't work like that, because the lawyers wanted to do their own research, the litigators wanted to do their own research and we don't research cases in the same way as American lawyers do, we don't...we've got a much smaller system, the LRC people did their own research and very soon, the CALS people did their own litigation and that led to some tension, which I'm sure you know about. There was some tension between us, between the organisations, although there was more than enough work for everybody and there were close personal friendships across that divide and for many of us in the organisations, it was fine, not an issue, but there was a tension. It was given...heightened force by a CALS document which went out to funders describing the LRC as the litigation wing of CALS (laughs), which didn't please Arthur; you can imagine Arthur's response, and so...there was, there was a tension, but Arthur was on the CALS Board and, there were close personal friendships across it and, in the end CALS went their way and did their thing and we did our thing and there was a year or two of tension and it passed. And again, it passed because there was more than enough work for everybody, there was more than enough money for everybody, and so, what was there to fight about? There was, they were squabbling over glory, squabbling over anything and there was actually enough glory for everybody (laughs), so it was tense for a while, but the tension disappeared.

Int I want to move on to the Black Lawyers Association because it seems to me there was considerable tension there and I wondered what you thought of the reasons behind that?

GB There was tension there and I think the real tension...again BLA was funded and supported at about the same time, and what happened was that the...they didn't succeed in hiring...well, there was no Chaskalson to lead, firstly, so it didn't succeed in hiring a Chaskalson or someone of that quality, and their mission was different

from ours and more difficult. They were training black lawyers that was their main focus. BLA Legal Education Centre, that's what they called themselves, they did some litigation but hardly any, they didn't have experienced litigators and their work was less glamorous and more difficult and they didn't have a Chaskalson. And so, tensions grew, they grew because we were almost exclusively white, for quite a period and they became the poor relations in a way, and I think it was very tough for them, some... the relationship was a very awkward one, we were...we were fraternal, but awkwardly fraternal.

Int One of the things that comes up time and time again, certainly in the interviews in America, is the sense of accountability and, the vision that gets promulgated is that of Arthur Chaskalson sitting at his kitchen table studiously doing his books and accounting...since Arthur's far too modest, I wonder if you could talk about that?

GB Arthur (Chaskalson) is the most punctilious person, everything has to be right. Every case had to be right and the books had to be kept with great care. We worked closely with the auditors and bookkeeping was absolutely meticulous, to the last penny; he is a man of very high standards in everything that he does, and so, that's part of the tradition and the legacy he created in the LRC, that, that there was absolutely precise and careful accounting for every penny and that the salaries paid were appropriate for the nature of the institution. In fact there was a continued tension between the staff and the trustees because the trustees...some of the trustees kept on saying: you're not paying enough, salaries should be higher, and the lawyers were saying: no, not really we think that's ok.

Int Gosh (laughs), that's unusual...

GB Ja, because it was...and in fact, in retrospect the trustees might have been right with what the trustees were saying, some of the trustees were saying: this is all very well but one day you're going to get old and retire and you're going to have to have a pension, and for those of us under 30 or 40, that was a long distant future, we couldn't imagine that. Arthur (Chaskalson) was already very well established, he...there were long periods when he wasn't paid at all because he was allowed to do a limited amount of private work and he would, the first call would be on his salary and he would knock off his salary in a very short space of time, (laughs) he could earn in a few days what he could, his monthly salary and so, there were long periods when he worked for the LRC for free effectively, subsidizing it through a few private cases here and there, and the rest of us thought we were being paid quite well actually, we were being paid quite reasonable salaries but we weren't being paid what people in the private profession were used to, and so that was where the trustees were coming from...but, anyway I was deviating...the accountability was a very...was a fundamental part. Arthur said you've got to write reports, you've got to produce reports on time and you've got to produce a national report and there's got to be no funny business with the money, the money is given for purpose A, it's used for purpose A, full stop. No questions asked, and I think that built confidence in the funders. We, I think we had a reputation as being very tidy, very, very tidy.

- Int You certainly did...I'm also wondering, in terms of organisational dynamics, all organisations have dynamics...when reading the Ford Foundation Archives, one of the things that came up was there was not enough women at the LRC and there were not enough black lawyers. I wonder whether you could talk about this?
- GB Those were both true, I think, again in retrospect, we didn't give as much attention to it as we should have, I think we were wrapped up in what we were doing and doing it successfully and we thought that's fine, but we didn't give enough attention to it. It changed, it changed during the mid to late '80s when there was...the moment of tilt came when it was no longer really a white organisation, with a few black people in it, 'cause that's what it had been, and as far as the law is concerned a male organisation with a few women in it. There was a...there was a problem always in those circ... situations is that there weren't that many women, well established in the profession and there weren't that many black lawyers well established in the profession. That's usually an excuse that's not an explanation. If you're sufficiently serious about it you find the people and I don't think we put enough effort into it, I think it's a...looking back I don't think one can dispute that. It was always easier, the usual problem, it is easier to bring into an organisation people who fit easily into the culture of the organisation, who have the same background, the same training, the same experience and who are quick starters. If you want to change the institution, it requires hard work. And you make choices about where, what, where you put your hard work and I think we didn't always make the right choices.
- Int One of the dynamics that perhaps is not talked about often... is the idea that there was quite a close coterie of relationships based on the NUSAS background. I wondered whether you thought that might have created a sense of exclusion and, competition, etc.?
- GB It may well have, I mean, it didn't really...I mean there were a lot of ex NUSAS people, there was Charles (Nupen) and Karel (Tip) and Paul Pretorius and me, that's four of us, that's a lot, in one office (laughs), speak to Mohamed Navsa about it, he was in the office at that time, I think it was tough for him. What was happening was, was people were...jobs were becoming vacant and people were applying for them and oh, there's Charles (Nupen), and oh, there's Karel (Tip), nice easy fit, well qualified, well trained, well, you appoint him and you don't really apply your mind sufficiently to organisational diversity. I think it was a tough organisation for...I think the Johannesburg office was a tough place in those years for people who didn't have the NUSAS background. But that was only Johannesburg. Cape Town, Durban, Pretoria, PE were quite different, but I think the Jo'burg office was a hard place for...for those who weren't part of the team, I mean, we were friends, we'd go off and have lunch together every day and watch soccer on the TV together and, we were buddies and I think it was hard enough to be part of that. Mohamed (Navsa), I know, found it very tough. Found it very, very tough.
- Int Yet, other wonderful anecdotes that emerge are scenes of you and Mohamed Navsa playing table tennis (laughs).

- GB Passionate table tennis, table tennis, we had that, yeah, we bought the table tennis table and that was...Mohamed (Navsa) and I were the most fanatical,
- Int Yes, clearly.
- GB Charles (Nupen) came third and Zim (Morris Zimmerman) used to play periodically but Mohamed (Navsa) and I had endless, endless table tennis battles in which I'm sure, we really played out the battles of the LRC, without ever saying...
- Int Yes, therapeutically, I'm sure (laughs).
- GB Well, it was only therapeutic for the person who won (laughs), the person who lost... Mohamed (Navsa) and I had a very intense relationship and in that way an awkward relationship, slightly, it was awkward at times. I think, I think it was a tough thing for him, I think what...the reason he survived was, besides his own qualities, which were huge, is that (Morris) Zim was there and Zim loved Mohamed and Mohamed loved Zim and, I think that made a huge difference for him.
- Int Right, yes. In terms of the women...I'm wondering whether ...there were certain women who didn't fit in or who just didn't seem to get into the culture, there were others who did and I wonder whether you could talk about them?
- GB Well, the first woman in the organisation, was Debbie Dison, I think she was the second lawyer employed by the LRC.
- Int That was during Felicia's (Kentridge) time, early on?
- GB Yes, and Debbie (Dison) didn't fit. Debbie didn't fit because she and Arthur (Chaskalson) had different views about how things were going to be done and what we were going to do, and when Arthur said: No. She didn't say: Oh, ok, she said: Oh, fine and she did what she was going to do anyway.
- Int Right .
- GB Sometimes in a somewhat indirect way, and Arthur (Chaskalson) found that very difficult to cope with. She, she didn't...that was a real tension, she...she wanted us to be doing things which we'd actually agreed, which means Arthur decided he wasn't going to do and...it was...she was there for a few years, I can't remember how long, not so long, a couple of years and she left and she was killed in a car crash shortly after that.
- Int Gosh...

GB Felicia (Kentridge) was there in a somewhat ambiguous role. She did not (have) much legal practice, she raised money very effectively. She generated ideas, she was the most creative person in the organisation, she drove us all crazy, because she was always producing ideas and those ideas always involved the rest of us doing some more work.

Int Yes...

GB And so Felicia (Kentridge) would...Felicia's refrain was: somebody should do such and such, and I would groan inside knowing who the fool was going to be who was going to do it (laughs). And Felicia...some of Felicia's ideas were crazy and impractical and some were absolutely brilliant, and what one had to do...to learn to do, was to say...to say to oneself: she is going to come up with ten ideas and only one or two will be good, the others will be absolutely impractical and those one or two may be brilliant, and you had to continually say to yourself: don't react too quickly because it sounds off the wall, it might actually be right. And so Felicia's role in the organisation was quite...I mean Felicia...I'll never forget, Felicia came to, came to a meeting of ours...she said she'd seen a brilliant new machine which we must use, it's called a word processor and we should really get word processors in the office. I said: what a lot of rubbish, who needs these fancy machines, you've got a dictaphone and a good secretary that's all anyone needs, what a lot of rubbish. And, I even persuaded her that it was a lot of rubbish although, I mean, it didn't take long before I discovered that she was right. She...she generated ideas and she...and...but she didn't practise very much law so she was not at the heart of the legal practice...

Int Do you think that created tensions, Geoff, the idea that she was in fact a lawyer and she may inadvertently have taken on the role of being a fundraiser, as such?

GB Oh, I think that is what happened, I think it was an inevitable consequence of the fact that she didn't actually have much experience as a practitioner. She had been at the Johannesburg Bar, she was...at the time that the LRC was established, she was not in practice she was teaching at Wits, running the Law Clinic, running Practical Legal Studies Programme and so, she didn't have a lot of legal experience and she didn't have a lot of confidence, in court. And so, she got left behind in a way, and I think, that was...I'm sure she must have felt awkward about it. Actually what she was doing was in many ways, more important because it was easy, not easy, but you could find lawyers who could do the job. To find a Felicia who could do the things that she could do was not so easy, because she's one of a kind. She drove us crazy (laughs). She's really one of a kind, there's no one like her. And...but it was a source of awkwardness, whenever Arthur (Chaskalson) needed a Junior Counsel, who would be the Junior be and in the first few cases it was Felicia and then as young advocates joined us...Mohamed (Navsa), Paul (Pretorius), Karel (Tip), Chris Nicholson in Durban...people elsewhere, then, she sort of fell by the wayside.

Int I'm also wondering, at some point during the '80s, if I'm not mistaken, Cheadle, Thompson and Haysom set up shop, in Johannesburg. What was the relationship between the LRC and Cheadle, Thompson and Haysom?

GB Well, they were really CALS in drag, I mean, that's all they were in the early years (laughs), Cheadle, Thompson and Haysom worked for CALS (laughs), they were paid a salary by CALS.

Int Right.

GB And they set up this law firm so that they could run cases because they needed to have attorneys and they were all attorneys. And it then took on a life of its own. They started hiring people and became a serious law firm. The LRC had very little relationship with Cheadle Thompson, we were mainly attorneys, they were mainly attorneys, they were doing their cases and we did ours and they did a lot of more directly political work which we didn't do, they did a huge amount of work for the Trade Unions, we didn't represent Trade Unions, they did a lot of work for the UDF, we didn't represent the UDF, and there wasn't really a tension, I don't think, because we were connected but not quite in the same sphere. We were in the same sphere, but doing different things and so, they moved into a really quite different direction of being a firm, which in the end was earning a fee from the clients, they were working for organisational clients which had a bit of money, or which had funds and, I never saw that as a problem and they did very creative work, they did terrific work.

Int Sure, I'm also wondering, at some point quite early on maybe, the LRC really took on quite significant Labour Law Cases and I wondered whether that was a problem in terms of whether there was this feeling that you were specializing too much?

GB No, we did...there was...the difficulty with Labour Cases was that we were not entitled to represent Trade Unions, the theory being that Trade Unions had their own money and therefore they weren't poor and therefore they weren't eligible to be our clients. Not really much substance in that, but well, there is a bit of substance. The real truth was that it was, a...Trade Unions were politically very threatening and it was a political choice as much as anything else. A political choice imposed upon us, partly by our own trustees. They were...one of our trustees in Durban kept on going off to the Durban Club and meeting his friends and being told that they were being sued by the LRC, (laughs) and it was very awkward, you know, why are we...we used to come to these trustees meetings and be asked why are we doing all these Labour Cases. So we did Individual Labour Law mainly, we did a lot of it, some quite big cases. And, sometimes the work was really a Union Case disguised as an individual case. But, the division between the two was...was artificial, of course, I mean, we were involved in the big miners' strike there, the National Union of Mine Workers in Marievale, it was where I first met Cyril Ramaphosa, we did some quite big Labour Cases, they did a lot in Durban, did much more in Durban than we did, well, we did a fair amount in Johannesburg.

Int I'm thinking of people like Paul Pretorius, Karel Tip and Charles Nupen, who really enjoyed this kind of work...

GB They were Labour Lawyers.

Int Yes...

GB And, I think, they found it difficult because they couldn't get quite to the heart of the Labour Law. They couldn't do the big Union Cases because we wouldn't represent the Unions. And so, it was always...they were always, I thought, slightly frustrated by the limitations placed on us. They were labour people, particularly Charles (Nupen) and Paul (Pretorius). It was not my area of interest, I did a bit of that sort of work, I did the NUM Case in Marievale, but, I think it was a bit difficult for them because their friends, Cheadle and Thompson and Haysom were doing these huge Union Cases and they were representing mainly individual workers who had been dismissed, which was much less interesting.

Int What do you do when you have a coterie of very highly accomplished and certainly competitive young lawyers in one firm...an organisation, how was that handled?

GB I haven't, I mean, I may have lived in a fool's paradise, but I didn't experience it as a problem in the LRC, it was very collegial, I mean, maybe I was just blind to what was going on and the others found me very difficult, but I didn't find any of them very difficult. We all had our own practices, there was enough work to go around, again, Rikhoto, Rikhoto was Charles' (Nupen) case, I did a lot of work on Rikhoto working with Charles, assisting in various ways and never had the sense that it was wrong in any way, because it was Charles' case and that was fine, and others helped me with the cases which I was running. So, it was, it was quite comfortable and collegial, I thought, one of the things that made it easy was that we knew one another quite well and we had high levels of trust between us and when things got really too tough we could play table tennis and bash each other around a bit. So, I, as I say, I may have lived in a fool's paradise, but I didn't experience those relationships as difficult.

Int Also, the other thing is that, what does one do when you have someone like Arthur Chaskalson, who is the Head of an organisation and who so clearly has a firm vision of how to run the organisation, then you have lots of people with lots of bright ideas?

GB Well, it's fine when you've got an Arthur (Chaskalson), because when you've got an Arthur you can have an organisation which is theoretically democratic as far as the lawyers are concerned, LRC constitution says: every lawyer is a member and has a vote, and Arthur could be out-voted at any moment and never was, because, A. he was very persuasive and, B. he was Arthur, and he was actually the boss, and when he said: well, this is how it's going to be, you would listen very carefully, his style is very inclusive and consultative and when all of that had gone down and he finally said: well, this is how it's going to be, we would all accept it, even if we occasionally grumbled a bit. Where things started getting difficult was when Arthur left...

Int This was in '93?

GB Arthur (Chaskalson) left in '93, I became National Director and I didn't carry the same natural authority that Arthur did, I said: this is how it's got to be, someone might say: no, but I was able to carry it off to some extent because I'd been around for such a long time, I was a bit older than some of the other people but also I'd been there since 1979 and so I carried the institutional authority. But, I had problems at the Executive Committee which was really where all the big things took place, EXCO, I had problems at EXCO, the kind Arthur had never had, because people would say, I'd say something and others would say: no, and they would organize to get other people to support them. When I left and Bongani (Majola) took over he really had trouble, because he didn't have the organisational history.

Int He also wasn't a lawyer?

GB He wasn't a practicing lawyer, he was an academic, he didn't know the organisation that well, he didn't know...practice law at all and now it became a problem because when he said: we're going to do X, people would say: no, we're not going to do X and he couldn't insist, and I think that's when the, the structural weaknesses of the organisation became clear for the first time. We thought it all worked fine, I thought so, but it became clear that it was an organisation which would be structurally incapable of making difficult decisions, in the absence of a leader whose authority was accepted by everybody. Bongani (Majola) didn't have the power to say, or the authority...didn't have the legal authority and he didn't have the political power to say: I am now telling you what we're going to do with X. And that became a problem, because it's fine when things...in the good days, but when the hard days come and difficult decisions have to be made, whatever difficult decision you want to make there will be one constituency saying: no, it affects us negatively, we say no, and you can't get those decisions made.

Int I want to come back to that, Geoff, I...wondered whether you could reflect on the '80s, you were there really from the beginning. What were some of your significant moments be they in terms of the cases you fought or otherwise?

GB Well, the worst moment, (laughs) the worst times were the State of Emergencies, that was absolutely terrible, because our premise was, law restrains power, rule of law, and what the Emergency was about was no restraint on power. Government could make whatever law it liked by proclamation that...the Public Safety Act gave a very wide powers to the President to issue regulations and proclamations to do with anything, and he did. And so, there was no longer even the trappings of restraint which Parliament imposed, which was a process of public presentation and public debate which is reported in the press and which is debated and kicked around and, thank God, Helen Suzman stands up and opposes it and there is a bit of a fuss, and there is a bit of a cost attached. Parliamentary Legislation was not a simple matter, even though the Nats had a huge majority, now, it happened by the stroke of a pen, the President...what the laws...what the President says today, the law is. Secondly the courts abdicated. The Appeal Court said: whatever the government wants to do is fine, basically. The Chief Justice cheated, he appointed to the Judge...to the Courts...to the panels hearing, the security cases, the same judges over and over again and so, now, you were really done for. And it was the only time that I thought this business of

law has now become a farce, and you can't be a lawyer in South Africa any longer because there is no law in South Africa. And I really questioned, I really became very anxious about it wondering whether you could continue doing this. And then the moment passed, it wasn't a moment, it was a very long moment but, I think, whereas before I'd always been confident, even though we debated and argued the issue, can you be a lawyer in apartheid South Africa? Do you lend legitimacy to an illegitimate system? We used to argue these things, backwards and forwards and uphill and downhill and in the end in my heart I knew it was ok, because there were clients there who wanted to use this thing and if we could get a victory and the clients wanted us there, then we could do it and the positives outweighed the negatives. But, by the time the Emergency came, you had to question that. So...but, curiously at the same time, going through the course are all, the more enlightened decisions about race questions, the pass law cases, the forced removal cases, the citizenship cases, the Appellate Division goes in two paths simultaneously, they crack down in security matters, they say: whatever the government says is fine, and in race matters they say: oh well, things have to change.

Int So they start repealing?

GB And they start repealing and the things started getting kind of wild and so 1986, I mean...one of the high points of my life was...I was given an advance draft of the law which repealed the pass laws, abolition of influx control laws, given a draft and asked to comment on it by someone from the Urban Foundation and I couldn't believe it, the law repealed simultaneously, repealed the pass laws and stopped forced removals from African...from rural areas. It was all in one Bill, and I nearly fell over, a moment of incredible triumph, they were uphill and they were wonderful, wonderful clients, I mean, God, marvellous people. The women from KwaNdebele whom I represented challenged the KwaNdebele regime, wonderful people. Forced removal... the rural communities were fantastic, marvellous people and, so there was...it was a most fulfilling time.

Int Some of your best cases would be on what aspect of law?

GB The best satisfying cases were the rural...

Int Forced removal cases?

GB Forced removal cases, because the people were so fantastic and because the cases were so bound up with peoples' lives and the law was so closely connected with political struggle, because actually you couldn't do a helluva lot with the law, if it wasn't connected with what the community's own resistance and so the people were very inspiring, absolutely extraordinary, extraordinary people, absolutely inspiring people. I spent, God knows how long, traipsing through the rural areas spending day after day with the clients there who were just magical and that was the best part of the work.

- Int Well, having seen you in court the other day, it seems to me that your work continues in spite of transition (laughs).
- GB It doesn't change you know, the same cases, not quite the same cases, but it doesn't change.
- Int You're still dealing with peoples' lives...
- GB Still dealing with peoples' lives, poor people's lives.
- Int You had some people within the LRC who were very closely aligned with...in terms of defending the ANC, so then you get change, what was the sort of discourse that you may have been privy to about how the LRC will then approach a new ANC led government?
- GB Oh, big question. What do we do? Not discussed very much.
- Int Really...
- GB I mean, it should have been discussed in those years after Arthur (Chaskalson) left, '93 to '96 when I left to go into government and somehow we just kept going, we did...well, things changed in one way...we did three sorts of things, one is, we were continually being engaged by the new government or by the ANC just pre '94, to assist in drafting Acts of Parliament and so on and to give advice on policy questions and we all threw...those of us who got the opportunity, we threw ourselves into that with enthusiasm, we were very excited that our skills and our knowledge were now being used for this, so there was...that was a whole new area of work and that was fine. We...some of us said: I wonder whether this is what we do and we then said: well, hell man, this is what we do to represent our clients' interests actually, so that's fine, then we were involved in enforcing some of these new laws which also seemed fine. We were involved in fighting remnants of the old regime, which was fine and the moment of truth came when we were fighting the new government which was saying we resist you under these new laws, the Richtersveld land clash, some of the evictions, some of the welfare claims. I don't...I never found that uncomfortable, actually, I think people in government found it uncomfortable, because we were their comrades and we still had the moral high ground, we were representing the poor people who were their constituency and I think some people in government found it very awkward and some got annoyed. When I was in government...when I left the LRC...at a party when I left, I said: if you don't sue me I'll know that you're not doing your job.
- Int (laughs) Right, I heard that...
- GB But when they did it I wasn't so pleased (laughs). But they did, I mean, there was a famous occasion when Henk Smith blackmailed me to get some benefit for clients of

his in a rural area, it was an absolutely merciless blackmail and made me enraged until I realised what was happening and then I just burst out laughing and I capitulated (laughs). I went to the minister and I said: Henk has got us over a barrel, he's blackmailed us, we're going to have to do this and the minister also burst out laughing and said: Ok, we'll do it. We ended up suing our friends and our comrades and the time came when that turned and they started becoming very annoyed about it. I think the turning point was the TAC case, I think that was...that was such a high emotional issue...

Int Also high profile.

GB And a high profile issue, and the President himself involved and I think the TAC case was a turning point in many ways for many things. Sometimes ministers still liked us, I mean, the Minister of Social Development, Zola Skweyiya, supported the cases we brought against him. I mean, when I would see him he'd say, we'd sit on platforms together, and he'd say: the LRC sued me, because where would we be without the LRC, because these cases would never get brought. There was a famous case, we brought a case which involved, which cost the government over a billion rand, and there was a cabinet sub committee set up to deal with the matter and Zola Skweyiya sat on the sub committee, it was a welfare case, and he backed us, and Penuell Maduna who was the Minister of Justice and who was on that sub-committee, backed us and said: the LRC's done the right thing. Trevor Manuel was furious, he was also on the sub committee but they...some of them understood, and some of them behaved like government always do which is...it's very annoying to be sued because you've become confident that you're right and you know what has to be done. When I was in government I became very annoyed with the NGOs sometimes, I said: how come they say these things, I'm working very hard, I know what has to be done, they must now stop interfering. Who elected them, you know? But that's the changes, I think the changes...the tipping point...turning point is the TAC case.

Int I think you're quite right. You were National Director from '93?

GB '93 to '96 or '93 to '94, I can't remember.

Int It seems to me those were really, really crucial years, particularly around the issue of funding because that's when it became no longer fashionable, in a way, to fund South Africa...

GB Well, that's only partly true, that's what we thought was going to happen, and what killed us, was that it didn't happen, we said...everybody said: oh well, it's over, now the democratic revolution has happened, we don't have to support this any more, but the money kept coming, and so we kept on saying to ourselves: the time has come to tighten our belts, because the money is stopping and the money kept coming and it kept coming and it kept coming and, I think, it kept coming...it was still coming when I left the LRC in '96 and some parts of it were still coming when I came back in 2000, although it was starting to decline and, there was a delayed reaction by the funders, in other words, for a few years we were able to say: no, no what we are doing is really

supporting democracy, enabling the new government to do its job properly and ensuring that it does its job properly and everybody was friendly and buddy buddies and it was fine. I mean, I don't know what the numbers show but I would suspect that the numbers, as far as overseas funding, the numbers started to drop late '90's rather than mid '90's and so, the delayed...the fact that it didn't...we kept on saying: it's going to come we must do something about it. We did nothing, we were irresponsible and it had no consequences because the money kept coming. And I think, in the end everybody thought, well, the money will come forever.

Int In retrospect what do you think could have been done to actually ensure that funding would continue on an even keel?

GB I don't think it was possible to ensure that, I mean, I think the LRC needed to make a number of hard decisions. Firstly, it needed to be much more focused on recovering costs in litigation in which it was successful, it came to that very slowly and haltingly and still hasn't come to it adequately, because there's no incentive to the lawyers to do it. Because, if you've been involved in a big case and you've won the case, you want to get onto the next case, you don't want to spend time collecting fees which is a difficult and burdensome task. So, I think, there was an inadequate focus on recovery, and I think we were too slow in saying: ok, we are now going to have a serious programme for scaling down and focusing what we do. This is the beginnings of the Legal Aid System and we can't do everything we would like to do, and there was a reluctance and unwillingness to make choices about how big, what priorities, and where, and only in the last two years has the LRC done that, and it's too late, not too late, it is too late. If it had been taken earlier, life would be easier now. And so the LRC started eating into the reserves, the financial reserves that had built up, that's what they're there for, that's fine, I don't think that's a problem as long as it is able to bridge the gap, but we, we made the decisions too slowly and I blame myself partly for that, although those were...those were good years, '93 to '96, we were heroes, you know, our friends are in parliament and in cabinet and, you know, the LRC was a favoured institution and some ministers were telling funders, please continue giving money to the LRC, so those were easy years in that sense, but by the time the late '90's came along it was different and the hard decisions weren't made then, and one of the reasons the hard decisions weren't made was because of structural failings in the LRC. Bongani (Majola) is now National Director, he has got the problem exerting his authority and Bongani leaves as National Director, and there is an interregnum when people come and go the whole time, there is no one who is able to say: I'm telling you now, this is what it's going to be. And that's what Janet Love inherited and what she's had to do.

Int In terms of restructuring?

GB Ja, she's had to take on what should have been done 5 years earlier.

Int It seems to me that actually what happened with donors and funding is that they started giving money to government directly and civil society and NGOs seemed to have real problems around that and some of course, collapsed. The LRC survived, but

I'm also wondering at that point the LRC was favoured by government but after the TAC case do you think there's been a very visible kind of noticeable sense of: LRC shouldn't be funded or shouldn't exist?

GB I don't know, I haven't been close enough to that, but I would be surprised if there hasn't been that. I mean I...one hears occasional rumblings, but I've been too distant from it. What happened was, you're absolutely right, after '94, a number of NGOs did go to the wall, foreign aid started coming directly to the government instead of to NGOs understandably and...but it didn't strike...curiously...and, and so there's been a closing down of space for NGOs whereas previously there was a profusion of NGOs in the legal world, there's now quite a small number, a very small number of viable ones, hit the LRC late and slowly because the LRC had such a reputation, but...and the foreign donors understandably said: why would we support an organisation...the foreign governments said: why would we support an organisation to sue its own democratic government, what's the logic in it? I remember somebody from the Irish government saying to me: we would be very surprised if the South African government supported an organisation in Ireland which is litigating about abortion rights, it's got nothing to do with you, and we'd say: yes, yes, but you understand transition, etc. etc. But it did become more and more difficult to justify, there's no doubt about it and one...I heard that European union funders were put under some pressure by government and told: the time has come to stop funding these organisations which are taking on the democratic government. That's not what the EU should be doing and if that did happen which is what I'm told did, it would not be surprising.

Int In terms of funding, the argument that arises is that perhaps LRC has been too dependent on external sources of funding and not enough attempts have been made to garner internal funding from a) the corporate world, b) legal fraternity and c) the state, what's your sense about that?

GB I think the belief that you can get big money from the corporate world in South Africa is misplaced, because why would it? It requires a very long sighted vision to say we're going to support the LRC, if a corporate world carries favour with those in power and if it's going to do business, if it's going to do corporate social responsibility then it's going to do things that the government will like and...there may be few places in the world in fact where big corporate money goes to organisations who challenge government. There may be some but I can't think of any offhand. Anyway, you get the odd very rich individual, a Soros, will spend his own money. But where do you find a big corporation giving large amounts of money to an organisation which challenges the government? But...you're not going to see it in South Africa. The LRC has failed to build support in the legal profession, should have done better, it failed to build support both financial and in terms of assisting the running cases. Our biggest failure in the '80s was, we should have spent time and effort in building a group of lawyers around the LRC, outside the LRC would also taken some of the cases and do some of the work. We were just all too busy with other stuff and it was a mistake. The LRC would be better off now if we'd done that, and you get money from that, also, the curious thing is, the people who give you their money are the people who will also give you their time. So, it's just how it works. We

didn't do that, so we failed in the legal profession, we, as far as getting money from government is concerned, well, the LRC gets some money from the Legal Aid Board now, and that's probably the best prospect. I don't think there's any prospect of direct government funding and it might not even be desirable. The Legal Aid Board is at one removed and gives quite significant money to the LRC to support particular cases. I, don't think...I think one has to take quite a realistic view of what can be done by... what's financially supportable in South Africa at a particular time. Then if you look at other parts of the world, LRC is a remarkably large organisation given the size of South Africa. I mean, where else do we have an organisation in four or five cities of that size. At its peak, it was one of the largest Public Interest Law Organisations in the world. That's a fluke of history because so much money came in to support it. You can't expect to support it at that continued level forever; I don't think it's realistic. I know people in Ireland who are trying to set up a Public Interest Law Centre, a small thing, struggling to find the money, they'll find one big donor and they're away and they don't think they can support this on a permanent basis from corporations and individuals in Ireland, and neither will they.

Int Sure, I'm also wondering, the Pretoria office closed, was that purely based on funding?

GB I don't know, I haven't been engaged in that, I suspect it's more than that, but I don't know.

Int Ok...you said that structurally the cracks started to appear when Bongani was around, what's your sense, even though you're not part of it, what's your sense of what's happening in the LRC currently?

GB Janet (Love) is the first National Director, probably since Arthur (Chaskalson), to say: I am the National Director and I am issuing an instruction. Lawyers, some of the lawyers in the LRC heave a sigh of relief and say: Thank God...one of the lawyers in the Cape Town office said to me that he 'phoned Janet...that he spoke to Janet about a particular meeting and he said he didn't know if he was going to go, and Janet said: I'm telling you, you have to go. And he said: I felt such relief, that somebody was telling me (laughs). So she's had to take on asserting that authority and she's done it with great skill, she's managed to miraculously bring people along with her, she's had to...they've retrenched about a third of the staff which is the hardest thing to do, and they've done it with as little discomfort...with a lot of discomfort, but no more than was necessary. And she's having to rebuild and it's very difficult because there's a lot of things that need to be rebuilt, a lot of things fell apart, really through the absence of a...partly through the absence of a National Director, since Bongani (Majola) left. Because going through one temporary person after the other, it's an impossible situation for an organisation under stress. So, structurally, the impression I get when I'm at a distance, I really am at a distance from it, but I get the impression that it's quite fragile. The work is still there; amazing cases are being done, amazing cases. I see bits of it because I get asked to assist with some of it, the work is still there and wonderful stuff is being done and the need is just as great as ever and will continue to be, in fact the need is greater in some ways because the LRC is just about the last soldier left standing, you know, there's not a whole lot of other stuff going on in the

legal world and, people outside the legal world, NGOs, civil society outside the legal world represent, rely very heavily on the LRC, still. Maybe more than before. So, it's terribly important still but it's now a tough environment. When we did it in the '80s it was a politically tough environment in one sense but actually it was an easy environment. The clients were there, the money was there, the people were there, those were...that was the easy time for the LRC.

Int Interesting, though it's ironic, isn't it?

GB That's right, that's right!

Int What do you think makes this so particularly difficult, in this kind of context?

GB Money, firstly, well it's a combination of things, it's money, it's an inability...it's a difficulty of retaining skilled lawyers for whom the opportunities are now many. When in the 1980's any lawyer who cared about justice issues, had very few opportunities open, the LRC was one of the few, people flocked to the LRC. If you say to me what else could you have done other than work at the LRC in the 1980's, I can't even begin to answer the question. I don't know what I would have done. Now people can do other things, you can become a judge, you can work for private practice and earn quite a lot of money and say: well, the struggle is over and I'll do the occasional case for free to make myself feel better. So the private profession is very attractive and government positions are attractive and are reasonably well paid. And so, hiring and retaining really skilled lawyers is very difficult now. Particularly experienced ones, you can get the youngsters, but to get...now to hire a lawyer and retain that person for 10 or 15 years is terribly difficult. What the LRC did...its great strength in the earlier years was, it brought in young people at the beginning of their profession and hung onto them and so they grew. Now you lose people after three or four or five years and you never get the more experienced people, it's a lot more difficult. The long-term people are the people who have been there forever. But look for people who have been at the LRC as practicing lawyers for between five and ten years, I'll bet there's hardly any. Quite a lot more than 15 but five to ten is not so many.

Int It also seems, besides actually kind of attracting and sustaining, maintaining lawyers, it also seems to me that there are people who want to remain within the LRC but then the difficulty arises that they are not paid comparable salaries...

GB Well, that's right, the money is not there and you inevitably look at your friends. If all of your friends are also working in the LRC and struggle organisations of one kind or another then it's easy, but when your friends are buying fancy cars and fancy houses and your children are growing up and they are going to school and university it's not so easy any longer to be so high minded about it.

- Int The other thing, Geoff, it seems to me that, and correct me if I'm wrong, just from my sense, is that major law firms whether commercially based or not, are actually setting up pro bono sections and...
- GB Some of them are, not really on a scale of, Webber Wentzel in Johannesburg have done it quite significantly, there are a couple of others who have done some, not really very much. I don't think, I mean there's a huge gap there, they haven't really taken it on significantly. What they have done is, they've hired every bright, young black lawyer they can find. I mean, for those people now the world is their oyster, what a turnaround. Twenty years or thirty years ago people were desperate for a job and the LRC was a safe haven. Now the opportunities are endless for bright and able young people. That's of course the story of success (laughs) one can't complain about that, but it makes it hard for the LRC. It makes it very hard.
- Int The other thing that arises, as well, is the fact that these small organisations that are springing up and they also get a lot of media attention or perhaps market themselves very well, like the Aids Legal Project, and I'm wondering where the LRC then gets positioned within this Public Interest environment?
- GB Ja, well the LRC is no longer the fashionable new kid on the block, it's hard to keep case with, when new things happen, the Aids Legal Project does terrific work, it's smaller, it's like the LRC in its early years, smaller, more mobile, more flexible, less costly and so it's easy by comparison but I know they've also been struggling now they've been saying: where is our future, where are we going, what are we doing, but the LRC...size and the history of the LRC are its strength and its weakness. It's less agile than it used to be. Inevitably so.
- Int Right. In terms of current rule of law issues in a constitutionally based society, where do you think the LRC ought to be focusing its attention on...what areas of law?
- GB I think the difficulty is...I mean there are big rule of law issues, obedience to court orders, compliance with the law generally, that's a very important issue. I think the really difficult question is, in areas where...people say...somebody said to me this morning: children die in hospitals in KwaZulu-Natal from infection, why is the LRC not there? Well, it's not so obvious what the LRC would do if it were there. What do you do about children dying in hospitals through infection, babies, it's not so obvious a legal solution to those things and so there is an expectation...so I...people...it's very easy everybody says: the LRC should be solving all these big social problems. I don't really believe that because I think many of the problems are not amenable to legal solutions, they need political solutions and management solutions. But I do think that...I think what the LRC needs to be doing is to be recognising that it's getting smaller, and may have to continue to get smaller, become much more focused in its work and to say: actually we can't be all things to all people, we can't take on every good cause that comes our way. Well it's got to make a choice, either it's going to say: well, we will be opportunistic in a positive sense and we will just take on good cases at random, or it's got to become more focused and say: we are only going to focus in particular areas and become very skilled in those areas and work strategically

in those areas rather than big bang cases. I think that's a better course, the latter course. But it's much more difficult. We spent how many years and years that I was in the LRC, continually trying to focus and there was a continual tension, because a client comes in the door and has a problem and a terrible injustice has been done and for people who work at the LRC it's terribly difficult to say: sorry, I'm busy with something else, I've got important work to do, don't trouble me. Particularly when there's nowhere else for that person to go and that was the LRC's crisis all the years, was that you couldn't, you could never really get an adequate focus, every meeting we had was about focus, focus, focus and you could never do it, because there was nowhere else for people to go, and, that's what Zim (Morris Zimmerman) was saying, Zim used to laugh at us, he just used to laugh at us. We'd have these earnest discussions about focus and strategy and he would just take on the next client who walked in the door (laughs) because there was an injustice and there was nowhere else for that person to go. He said: what on earth are we here for if we are not here for these people? So, you've got to... I think it's easy to say what the LRC should do, the LRC should identify a limited number of focus areas and organize itself around those areas and build links with civil society organisations in those areas and move forward in a coherent basis in those areas. That's, I think, obvious.

Int What would those areas be, Geoff?

GB Well, you've got to find areas where there are civil society organisation to link with, the LRC's natural areas are housing and land, that's where it's been for 30 years, and, there is hardly anything on the ground there, so what do you do, I mean the obvious areas are the inner city housing, land redistribution and restitution, social welfare and health and education...

Int When you say health, do you mean public health?

GB Public health and education, and the most important thing to tackle is education in the schools, which is our biggest area of social collapse and it's the area where it's least obvious what lawyers can and should do about it, but at least there are organisations there, I think a lot more time needs to be spent on education myself, where the solutions are very difficult. But there maybe something useful for the law to do. I mean that's five very big areas, that's the whole world, (laughs) but then there are all the other things the LRC does, and the LRC does environment, it does refugees, it does, I don't know, there's women's rights across a broad range of issues, it does, I don't know, you can't do all those things.

Int Absolutely!

GB You've got to start saying: we'll do a more limited range but I don't know that anyone will ever be able to say that.

Int Having been here for a short period of time, I sense that there are lawyers who are extremely committed, but the dilemma that arises for them working with the LRC, is

how do you actually divide your time if it can be possible, to take on the everyday case that affects peoples' lives, and very important to the person at hand, but then also concentrate on high impact cases, which have strong theoretical arguments?

GB Well that's been the tension in every serious Public Interest Law Organisation in the world, by serious I mean by those organisations which aren't just doing highflying one-off big shot cases and which aren't just closing their eyes to the big issues and just seeing every client in the door. The ones which are strategically focused have the continual problem, how do you...attention between the service cases and the impact cases, and you can't...there aren't formally because you don't know what the impact issues are until you've seen the service cases. I mean, we spent a lot of time in Jo'burg fighting consumer cases, trying to shut down a couple of crooked motor car dealers, Zim (Morris Zimmerman) and I had a particular enemy who we both fought for years and the only way we closed him down was that he was killed in a car crash (laughs). We spent a helluva lot of time closing down crooked Burial and Benefit Societies, you see those things where people come in, who would know that these were issues. But you've got to make choices and that's the hard thing. I can't remember who it was but one of the American Public Interest lawyers said to me and I'll never forget what he said, it may even have been, I think it was Gary Bellow, he said: the great myth is that by dealing with clients on a first come first serve basis, you don't make choices. Absolutely untrue, first come first served is a choice. You exclude those who are not mobile, you exclude those who are not aware of those rights, you exclude those who live furthest from the city centres and he said so first come first served, the Zim theory, is a choice and I think it's the wrong choice, I really do think it's the wrong choice, in these circumstances.

Int Where would those people go then?

GB God knows. But you can't do everything, you can't solve everyone's problem, you know, if there are people out in the rural areas who are starving, literally starving, people have no water, you've got to invest time and energy to get to them, find them and spend time with them to understand their problems, understand the politics and the law of their circumstances and then deal with them and assist them. That's what we did with the forced removal cases, we had the luxury of the time to do it, but if you sit in your office in town and wait for the people to come to you, you'll never serve all those people, never ever serve those people and so what do you say: well, the people in the cities who are having their cars illegally repossessed and their homes illegally repossessed and various terrible things are happening to them, they may or may not find somebody else in the city and there are people who are more on the margins of society who have nothing, no prospects, unless you actually reach out to them actively, and I think you've got to do that, you've got to reach out because otherwise you're in a very small limited zone of service and you don't reach people who most need it. It's helluva easy to say, it's helluva difficult to do but...in the forced removal cases the amount of time that was spent on those cases traipsing into the rural areas not only me, it was...we could only have done if we had a...if we said: well, you're not going to see everyone in the city who's got a problem, people would come and I wasn't there, people would come to Jo'burg office, is there a lawyer available, well, Budlender's not here, he's out in the Eastern Transvaal and no one

ever said to me I should stay in the Johannesburg office to do those things...we had the capacity, we were lucky.

Int ...I'm wondering, very naively perhaps, whether...the Hoek Street Clinic's closed, the advice centres are no longer operative, whether there is a place for that kind of work, in terms of everyday work, so that perhaps certain lawyers could concentrate on focus areas or high impact cases?

GB I think that's right, I think if you...the question is whether you can do it both in one organisation, and you need quite a lot of money to do it in one organisation. We could then. I doubt it now...I think what the LRC...what we should all be doing is we should all be working quite hard on ensuring that government money goes into those types of institutions, that's where government funds properly belongs. We should be spending much more time trying to drive the Legal Aid System in that direction, I think there's litigation that should be run, you could challenge that...I tried to do a couple of cases about that which came to nothing but I think there's more to...one government capitulated which was catastrophic, in fact, both capitulated, but I think there's work to be done at a policy and litigation level in making sure that government spends the money on creating those services. That should free up some LRC capacity. But, I'm afraid it's a bit like the myth of Sisyphus, I mean, it's a hopeless task to think that you're going to serve everybody or that somebody will serve everybody. One day when heaven arrives that will happen, in the meantime choices will have to be made and the LRC has to make choices.

Int I'm also wondering, it seems to me that within the LRC structurally there was a coterie right on the top of very, very well qualified lawyers who played a mentoring role, you for example, Arthur Chaskalson and George Bizos and then there's a middle tier of equally good lawyers, but younger, advancing, etc. and then you have the up and coming, fellows etc. that structure doesn't seem to be that apparent any more, in terms of the middle and upper tiers?

GB I think that's probably right, I think what's happened is, as things have changed politically and some of the people at the senior level have either moved, well, they've all got older, moved onto other things in their lives and they haven't been easily replaced. Well, you can't replace a Chaskalson that comes once in a generation, if you're bloody lucky.

Int Or a Budlender (laughs).

GB Easier to replace a Budlender, you can't replace some people but you...the real problem is retention, retention of the really skilled people because what happens is, like all organisations of this kind, which are not driven by money, by high fee tar... you know, a law firm is driven in theoretics by high fee targets and those who don't make it get chucked out. Not really true in practice, but that's the theory of it. In the LRC what would induce an under performer to leave, nothing, the under performers have an inducement to stay because they don't have anything else to go to. The people who have an inducement to leave are the high performers so you have a perverse

situation where the...contrary to the supposed law firm which attracts and retains the high performers because it pays them so well. In an NGO with fixed salary scales, repetitiveness of work, but that's another issue, but the top performers tend to be driven out because they reach a peak and they can do nothing more and they need to go somewhere else and they need to do something more interesting and more lucrative and the lower performers tend to be retained and not pushed out. So it's a perverse structure and I don't know...it's a problem with NGOs all over, the difficulty is how you make an NGO work, how you gently squeeze out those who are not productive or try to make them productive, squeeze out those who are not productive and retain the productive people, I think that's very hard. When you don't have what we had in the '80s, which is high political ideals, the last thing people wanted to do was to leave. People were there because they really felt passion about it and they wouldn't consider anything else, now, the passion is of a different kind. And you can fool yourself that you're doing these fine things by going somewhere else, you become a judge and well, I'm doing fine work for the public. The other thing that happens is that the...it dries people out and it's again an experience all over the world, is that the work becomes very repetitive after a while and there comes a point where it just doesn't excite intellectually in the same way as it used to, and I must say that was one of the reasons I had to leave the LRC and I came back, I came back for four years after government...

Int So that was 2000?

GB Beginning of 2000 after I left, I left at the beginning of 2004, I think, ja. By the time I left I was doing the same thing every day, over and over again and one needs some variety.

Int And now you are an advocate?

GB Now I do a different thing every day and some of it is ridiculous work, some of it I say: why on earth would anyone want to spend time and effort doing this except that there's someone paying the fee? But the work is different every day and it's been a surprise to me, I hadn't realized how stale I'd become at the LRC from doing the same thing every day. I wasn't learning much and I think people get to a point where they need a change and then you lose your best people. You lose people with the greatest skills and experience, so you've got to find a way of giving them the excitement which is necessary to keep them going.

Int One of the things that's often been said about the LRC in interviews I've done, certainly abroad, is that the LRC is the greatest Public Interest Law Organisation in the world. Do you think that it's given that same level of recognition inside South Africa?

GB I don't think anyone who knows South Africa understands that and I don't think people in the LRC understand it.

Int You mean now?

GB Even now, I think...it's not really understood. But it is a very extraordinary organisation...I mean, it's interesting that you should say that because I've heard other people whose judgment I trust say: actually this is and has been a unique organisation anywhere in the world, the scale and the scope and the importance of what it does and the sustained importance of what it does. I don't think anybody in South Africa knows that. LRC undersells itself, habitually, and I think the people in the LRC don't know it but...I don't know of any organisation like this anywhere. I can think of one in India which is a bit like that, I can't think of one anywhere else.

Int Geoff, I have tired you out by asking you a wide range of question (laughs) but I am wondering whether there are things that I've perhaps neglected to ask which you really feel ought to be included in the LRC Oral History?

GB You've gone everywhere (laugh), you've gone everywhere...let me just think for a moment. No.

Int On a closing note, what are the stories that remain to be told?

GB Someone needs to get to the clients, and I don't know how that ever gets done. The clients are getting old, but there are new clients. The story with the clients, I mean, what has never been recorded and no one has ever tried to record, is how the clients experienced the LRC. It would be such an interesting story, what they thought was going on, who they thought these crazy people were.

Int And how their lives changed...

GB And how their lives changed, it would be wonderful, I mean it would be a terrific story, my favourite...I've got one story...my favourite...one of my most favourite moments in my, God knows how many years in the LRC, was at a place called Mathopestad, which is a rural area North West of Johannesburg, people were threatened with forced removal. I worked for them for quite a long time and they had an old man, chief, acting chief actually, John Mathope who was a stern, rather conservative old man, a man of great strength and very clever, I didn't know that, I only learnt that as I worked, he had this very clear sense of what, a strategic sense... he was quite an interesting man, John Mathope, anyway I worked for the Mathopestad people for I don't know how many years and finally, we never actually went to court, there was no lit...there was one minor litigation, but there was...working closely with them, there were other organisations, supporting them in various ways and advising, strategising and dealing with government, etc. etc. and finally they were reprieved from forced removal, some time in the '80s, and there was a celebration afterwards in Mathopestad, and I went along and everyone else went along, all the outsiders who had been working with them and old chief John Mathope made a speech and he said he wants to thank the people who have worked for them, he thanks the Black Sash which have worked very closely with them, and I thank this one and I thank that one

and some companies who gave us money and you thank this and thank that and we thank them all and we are very grateful for their support. And he didn't mention the LRC, and I thought: that's bloody funny, but ok, I wasn't upset, I thought he's forgotten, but it's alright. And he was about to stop and he said: there's one organisation I haven't mentioned, he said, I haven't mentioned the Legal Resources Centre, I haven't mentioned Mr. Budlender and the reason I haven't mentioned him is because I have been talking about all of these people from outside who have been helping us and he's not really from outside you see, he has now become so close to us, that we don't think of him as outside, he's so close to us, I mean, and he said something in Setswana and people who understood...there was a translator, he was speaking Setswana throughout, and when he came to...and the reason we haven't mentioned him is because he is so close to us, the interpreter says, because he is so close to us, and then he said something else and the interpreter went snigger, snigger and he said: he is like our underpants, like our broekies (laughter).

Int That's what Clinton Bamberger spoke about...

GB That was the nicest thing anyone had ever said to me (laughs), that I was like his underpants. That was a magical moment, old John Mathope saying I was so close I was like his underpants, (laugh). There's obviously a Setswana proverb which says he's as close to me as my underpants (laugh).

Int Clinton Bamberger...told me a very limited version but he said the broekie bit.

GB The Black Sash ladies used to...Gill de Vlieg from Black Sash was there, she laughed so much I thought she was going to wet herself and she's always referred to me as "Broekies Budlender" ever since then. The clients were fantastic, the clients in the rural areas were just fantastic, and I mean...that was what was so enriching about it, wonderful.

Int Thank you, Geoff, thank you so much, for a wonderful and a very reflective, thoughtful interview.

GB Thanks, Roxsana.

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