

Alec Freund

LRC Oral History Project

21st July 2008

Int This is an interview with Alec Freund and it's Monday the 21st of July (2008). Alec, ...on behalf of the SALS Foundation Washington DC, we'd really like to thank you for agreeing to participate in the LRC Oral History Project.

AF No, that's my pleasure.

Int I was wondering whether we could start the interview talking about your early childhood memories, growing up in South Africa, what was that like, and also where your sense of social justice and injustice developed?

AF Yes, well, actually I was born in Canada. I was...my father had grown up in South Africa, emigrated to Canada, married a Canadian under somewhat false pretences because shortly after I was born he decided that Canada was too cold it was time to go back to Africa. So I came here as a very young child, grew up in Johannesburg, grew up in reasonably wealthy suburban lifestyle in Johannesburg. In a time of what seemed like great stability and wealth, but of course, you know, in retrospect it was obvious that it was very, very...founded on repression and illusion. I suppose I, although my parents were not in the least politically involved or concerned, I suppose I grew up in the South Africa liberal tradition from sort of high school days, influenced by things like the Rand Daily Mail, teachers; I think newspapers were quite an important...they've always been an important part of my life. And then of course had to go through the terrible dilemmas of military service or not military service. Did military service at the age of 17, although before that I had been an exchange student in New Zealand...by which stage I was quite actively involved in anti-apartheid politics. Actively involved is the wrong word. Interested, a close follower. Did military service, went to university and then of course I was at UCT, University of Cape Town. That was a time of huge ferment in the universities.

Int So this is mid seventies?

AF This is mid seventies. In 1976 when the uprisings broke out, I was in the air-force. Or of course also the time of the South African invasion into Angola, where I was not involved but where through my air-force work I was quite aware of what was going on and the lies being peddled in public by the Minister of Defence and the prime minister at the time. But...no, it was in university that I think I became most actively involved, most interested. And where I was first exposed to the LRC. I remember Arthur Chaskalson coming to speak to us at UCT just before, or perhaps just after, the LRC had in fact started. And of course the perspective of many of us was that this was...our critique was a left critique, not a right critique, and I remember Arthur very ably warding us off in answers to questions and such like. And I then was looking for a constructive role post university and in fact I was a...end of my 4th year, which is the penultimate year of a law degree, I was a Fellow at the LRC. And then arising from that after my final year...when I say I was a Fellow, I was a vac student. After my final year I was a Fellow at the LRC.

Int So this was 1982 maybe?

AF It was '82 that I was a Fellow. It would have been January '82. December '80 probably that I was a vac student. And that was in the very early days of the LRC. You know, the original team that I worked with were Arthur (Chaskalson), Felicia (Kentridge), Geoff Budlender, Charles Nupen, Karel Tip, Paul Pretorius...and then amongst the early vac students and Fellows that I worked with were people like Peter Harris, Paul Benjamin, who were close friends of mine at the time. Morris Zimmerman, Graham Dyson. I spent my first vac student here in the...or period in the Hoek Street Clinic with Graham and Morris Zimmerman, with whom both of them I became very close. To the extent that years later when I was living in London I used to go and see Graham in Norway and I used to have long, long chats with Morris Zimmerman. He was an astonishing character. I was very much involved or interested in the labour issues, in the Labour Law issues, and he used to talk to me about the work he did for Solly Sachs, in the thirties. And told me a wonderful story of a passport issue that had arisen for Solly where he'd taken an opinion from a leading QC, as they were in those days, charged him a fortune and told him that because of royal prerogative he had no case. Took a second opinion from a baby, baby junior, who said, no, no, I think there might be a way around this. And that was a fellow by the name of Sydney Kentridge, who charged him a pound. They brought the case, became Sachs versus Donges, which became one of the leading cases in royal prerogative. And, you know, Morris of course was a famous rugby player as well. So he moved in very different worlds. And...anyway...I don't know, shall we try another line (laughs)?

Int I actually want to go right back, and I'm just wondering, in terms of, as you said, growing up in Canada, coming to South Africa and then really growing up here, did you have memories of Canada or did you come at a very early age?

AF No, not really, although I did occasionally travel back with my mother to her family, so I've always had a sense of Canada but not pre-move memories. No...I grew up as a South African, I saw myself as a South African, and that's always been my sense even in subsequent years where I've spent on occasions, two or three years at a time living in foreign countries, I've always seen myself as a South African, still do.

Int So in terms of actually...you said your sort of political consciousness really arose in high school, and I'm wondering...what were the specific circumstances, if you had not come from a family that was really politically active; where were the discourses ...located?

AF I don't know, but I think the newspapers were very, very important. Particularly the Rand Daily Mail. I mean, incidents that I remember very clearly were things like when Timol was killed in detention, there was a Cape Town priest who called upon, some or other category of people to engage in a hunger strike. In which I then participated, probably at the age of, I don't know, 14 or 15, which was a very odd scenario, because there I am at a boarding school, nobody around me is on a hunger

strike, and I'm on a hunger...but I don't know if it was really a hunger strike, I certainly remember some type of fasting. I probably would have had a few friends who were sympathetic. *Phone interruption*

Interview resumes

Int So you were really talking about how you started fasting in solidarity somehow...

AF Yes. And, I mean, obviously that didn't last long. But it's one of those things that stands out. I mean, I remember very clearly the Biko inquest, but by that time, I think, I'd just written matric. I'm just trying to think earlier than that what were the key issues that really lived with me. But certainly I had a sense of, from at least early high school days, a sense of the obvious injustice of the discrimination in South Africa. The irrationality and absurdity of the type of race discrimination that existed. Not a clear sense of what ought to be done to put it right, because one's a product of the society one lives in and the ANC was a hugely suppressed organisation at that time. I think if one had grown up in the 1950s, one would have had a completely different sense to the sense I had growing up in the 1960s. Where really there was no ANC as far as I was aware or could see. It was so completely smashed, or apparently so. There were no forces of resistance other than things like the Helen Suzmans, the Progs and the like. So I wouldn't have had a clear sense of a way forward but only a sense of the obviousness of the wrongness of what we were in. And I think that was typical of the time, of a certain community, of a white liberal community. And I of course didn't move in white liberal circles, I mean, you know. Since that time we've become friendly with Helen Suzmans and the others of that ilk, but at that time I wasn't exposed to those people at all. I just moved in ordinary, as I saw it, middle class, English speaking South African circles.

Int So getting to...you went to military service first before university, and I'm wondering whether you had any sort of objections to that or you saw it as necessary?

AF No, I had objections but it was a deeply difficult question because I didn't see indefinite imprisonment as a realistic option, and in fact at that time there wasn't a movement that had got going. By the time I'd come out the other side of university, I was involved with advising and assisting people like the End Conscription Campaign. But that's five years later. At the time I'm talking of, I had...certainly a strong sense of unease. But as I saw it, it was a question of leaving the country or not leaving the country. And I wasn't keen on leaving the country. And of course when I went into this, this was a somewhat theoretical debate, there was no resistance. By the time I came out it was quite different! I mean, there was, you know...either while I was there or shortly after I was there, military became involved in...no, in fact it would have been later...became involved with townships issues. While I was there, I think when I started probably there was some sort of, and there must have been, some involvement on the Namibian/Angolan border. But it was very low key. And while I was there, it became major! And so I...I was in charge of an air-force security function which exposed me to very high levels of intelligence. And, you know, a friend of mine, Chris Robin with whom I'd been friendly in school days, was a young

officer, was actually the first white soldier killed in Angola, to the best of my knowledge. And the signal came through, and I see that this friend of mine has been killed, and within days, PW Botha was denying there were South African troops in Angola. So, I mean, by the time I was there I was in the thick of it, but it wasn't how it seemed when I went in. It changed in that very period.

Int Sure. I'm wondering also...going to university, did you become involved...NUSAS was in operation and did you become involved in student politics or...?

AF Only a little. Not much in NUSAS itself, but NUSAS had a sort of a side organisation, a sort of a NUSAS law project, and I became involved with that.

Int Was that the Wages Commission?

AF No. I was not involved in the Wages Commission, although I followed all of that, I watched all of that. I had some reservations about some of the NUSAS politics. Those reservations dissipated the longer I was there.

Int Sure. What were your initial reservations about NUSAS?

AF That it was too doctrinarily Marxist. And...my position had been a more traditional liberal position. And it wasn't just the Marxism, it was the fellow traveller of Marxism, which was a sort of a slavish adherence to Moscow. But lots of things changed in that time. One of the things that changed in that time was that the ANC camp internally...what went on to become the UDF...became much more liberal in its politics. It started to espouse the value of democracy, and that really came to a fore. I was involved...I was head of Legal Aid at UCT, and they ran a big project, and through that I was very much involved in Law Students Council issues, and through that also NUSAS legal issues. And we, under the event chairmanship of Andy Durbach, who was a fellow student of mine, organised, I think, a highly influential conference at the time...would have been probably in 1981...on legal issues and they had invited people like Zac Yacoob, who I met then for the first time; I've got to know him very well since then. And I think that was a turning point for a lot of people, that conference and the events preceding that conference. And by then...the Congress Movement, had in my perception changed significantly. And of course we can see now with the benefit of hindsight and reading into the material that's since become available, the internal struggles within the ANC are the very issues that are playing themselves out in the world that I'm moving in at that time. And the move away from Moscow, and if we look at the sort of the politics of Oliver Tambo, Albie Sachs, that was showing itself in the circles that I was moving in. And that brought into resistance a whole new range of people who would have been anti-ANC, who were brought into the Congress Alliance in that time. And in fact what I'm seeing now is that a lot of those people have been lost. So-called coloured people in Cape Town, very much brought in to the Congress Movement. And today some of them deeply disillusioned.

Int So, you know, early on you mentioned that...you went straight into university after military practice and then you did an LLB. I'm just wondering if I had to take you a bit back, where the formative influences might have come, for actually going down the legal pathway?

AF Well, I didn't want to be a lawyer, I wanted to be a journalist.

Int Interesting...

AF And I also wanted to go to university, I didn't want to go straight into journalism. And I went and had a chat to the then editor of the Rand Daily Mail, he said to me: if you want to do journalism...there was then a new journalism degree at Rhodes...he says: don't go to Rhodes, he says, go and do a law degree. So I did that. And unbeknownst to me there was a young woman who was a cub reporter on the Argus at the time in Cape Town, who also wanted to be a journalist and went to talk to the editor of the Argus, who gave her the very same advice. And she and I met in Latin 1, then being a requisite for law degrees at the time. Subsequently married, she's now a judge and I'm now an advocate.

Int (laughs) Interesting story. Wonderful.

AF So neither of us intended to get into law but I think once I was in a law degree, I never seriously thought of going into journalism.

Int Why was that?

AF Because I found it very interesting. Yes and no. A lot of what you study as a law student is sheer drudgery and I once thought that you had to be very clever to get a law degree; I very quickly realised you didn't have to be clever at all. You had to have an incredible capacity to have the self-discipline to deal with drudgery. So that's the downside of it. But the upside of it is that, you know, the law just takes you into the cutting edge of the issues of the day. And to make a living, engaging intellectually with what's really going on in your society, to me is very interesting. I suppose it's probably what attracted me to journalism, but I found that it was...you could engage more actively, more interestingly, I think, in law than in journalism.

Int In your narrative earlier on, there's obviously this love for newspapers and then it seems to me that that translates itself into a love of the law as such. I'm wondering if, at what point did you decide that you wanted to actually become a vac student? Was it a natural progression?

AF Yes, well I mentioned earlier, quite a formative address that Arthur (Chaskalson) gave at UCT...that might have been the first time I ever met Arthur, I'm not sure. And we as kind of young, quasi radicalised students, were not at all persuaded that an LRC type project made any rational sense in the South African climate, and the judiciary.

Of course at that time none of us were sure that we in fact wanted to be lawyers (laughs). The issues that became the issues of, you know, should you be judges and should you be practitioners in the apartheid legal system were very much the issues of law students. But that debate was unresolved in my own mind. And then along comes Arthur (Chaskalson) who had been practising largely as a commercial lawyer, starts up this new enterprise and I probably was one of those who led the charge in question time as to whether this could possibly work and whether it was capable of succeeding in the current type of climate. And I must have been quite impressed with his answers, because certainly I remember very clearly that that was a job I wanted to get (laughs). And got it. I had previously, I think the year before that in my summer vac, worked both in an accounting firm and in a small attorney's firm who specialised in things such as divorces and criminal law, and I was entirely...certainly I didn't want to go into accounting, and I was not really attracted to the other stuff, although it was interesting it wasn't where I wanted to go and spend my life. And...no, I think that to me the LRC then seemed to me to resolve a lot of the questions in my mind as to a way in which you could use your skills, do something interesting, actually make a useful contribution, and also the flip side of that for me, the benefit directly to me, is the exposure it gave you to what was then a very, very rare phenomenon, which was a working environment across the races. LRC just had all sorts of connections, all sorts of interesting people, and it's hard in our present circumstances to recall quite how rigid the racial segregation was. And the LRC didn't have that from the outset. So that was very interesting and attractive to me at the time.

Int I'm also wondering....you started off as a vac student 1980, and earlier you reminisced a bit about Morris Zimmerman, and I wondered...that was attached to the Hoek Street Clinic...wondered whether you could talk a bit more about that in terms of from what I can understand the Hoek Street Clinic really did...consumer law issues, and also Morris Zimmerman had this idea that...it wasn't about just the high impact cases but seeing everyone...

AF No, that's right, I mean, the LRC in those days, was pursuing quite different things in parallel. What I got directly involved with, first as a vac student and thereafter for a portion of the time that I was a Fellow, was the original Hoek Street Clinic. Because there was a later Hoek Street Clinic. But the original Hoek Street Clinic was located on a pedestrian walkway very, very close to the Park Street Station which was the central point of which African workers and consumers entered the city. And they passed in their hundreds of thousands every day, both ways. Pinky (Madlala), Ida (Motsoeneng) Graham (Dyson), Morris (Zimmerman), I think they were the Hoek Street Clinic and then there were a couple of people like myself coming in and out. And they would take what cases came or what problems came, not necessarily cases. But there was a considerable focus on consumer matters and on small employment matters, where I had greater expertise even then. But not only those: housing issues, pass issues...I suppose those were the core of them. I mean, what it did for me was to kind of open my eyes in a practical sense to black life. In a theoretical and political sense I think I had some understanding already. But the practicalities of day to day African life, predominantly urban African life...learning about the problems, both the bureaucracy and sometimes the corruption within the housing administration, that was quite a big feature of the work I did there. And then there was the question, well, what if anything could you do about any of these things? And I actually think that in the

consumer work, I think quite a lot was successful. I don't think so successful in changing laws, it was much more successful just in enforcing the few rights that there were. And I think that for example the furniture traders in the vicinity of the Hoek Street Clinic would have changed their routine practices quite considerably, because they just got thumped time after time after time. Then...and we were quite distinct from the LRC central office. They were then...in fact when I started...when I started...the LRC wasn't at Elizabeth House, it was in Pritchard Street, it was in the old...what became, and what was before and since then, was the Bar Library. But that was quite a rarefied atmosphere, that was an atmosphere where it sort of approximated a legal firm, whereas where we were, we were out in the trenches (laughs). But they were looking at bigger, more strategic litigation, and we might have filtered stuff through to them, but it was quite a different world that they lived in from what we lived in those early days.

Int You also made a distinction which I hadn't been aware of is the old Hoek Street and the...original...I wondered whether you could talk about that.

AF Well, I can't quite remember that myself, but I seem to remember...in fact, I think it might have been the difference between when I was there as a vac student and when I was there as a Fellow. I think they moved. And I think they moved only 300/400 metres, but into considerably more salubrious offices and bigger offices. I think that must have been in that time that I'm talking about. I mean, the original office was, you went up some very poky stairs onto a dingy backroom couple of offices, and the later ones were just a little better.

Int So, you know, there must have been something about the experience as a vac student that prompted you to then, instead of doing Articles.

AF Oh, I had no doubt that I wanted to go back. Had no doubt. And if it had been open to me to stay longer, then I would have. You know, the way it worked in those days was...a one year fellowship, which was not as in later times a time that you could use towards or as part of your training as articles. It was completely outside of that structure. And I think the thinking at the time was, we want people coming in and out, and we're not trying to hold onto these people coming out of the universities, but to me there was no doubt at all that that was where I wanted to be. It was fascinating, it was stimulating, it was exciting, it was quite successful, exposed you to a real insight as to what was going on in black urban life, at the same time it connected you into a whole sort of different elite. The anti-apartheid internal elite. And I met all sorts of interesting people in...I mean, I remember for example I was reminding Dikgang Moseneke, just after he came off the Island, he came and had lunch with us. And we used to have a constant stream of these people coming through. And even coming through the Hoek Street Clinic, I remember in my early days there, Nadine Gordimer coming through. And I remember Judge Hoekstra coming through, and that was part of Arthur's (Chaskalson) skill, that he managed to straddle that divide and tried to persuade the powers that be that this was a legitimate institution that should be seen as something that should welcome and not oppose. And Hoekstra was doing some type of Commission on legal clinics and whether they should have rights of representation, I think, something like that. And I spent quite some time with him, some days with

him. When I was a Fellow later, I had an absolutely fascinating project...I think Arthur (Chaskalson) showed some confidence in me, and I was given a mandate to go into the townships and other community organisations and investigate and make recommendations on the establishment of a whole network of advice offices. Now, I mean, I didn't just come into that with a clean sheet, a lot of work had been done within the LRC and I was pointed in various directions. But, you know...for example, Frank Chikane's church in Kagiso; he was then in detention. I remember vividly going to...going out there to talk to some or other members of his community, some sort of sub-committee, and there was a three year old little black girl, who when she saw me ran in terror, because the only other time she'd seen white people come there was to arrest Chikane. But in that particular church, with Sibongile Mtembu (Mkhabela), in somewhere in Soweto, I think it might have been in Zola. I worked on the possibility of some 10 or 15 clinics, none of which were then existing, and met some absolutely fascinating people. And eventually that structure did get off the ground. Not all of them as we'd intended, and not all of them successfully, but it was, I think, a very good project. In fact, just the other day I was doing some work for Pick n Pay, I was in the Pick n Pay Head Office on a human relations problem they have, and a fellow comes into me and says: I know you, I met you in such and such a township 20/25 years ago. It was one of the people...he's now a Director of Pick n Pay (laughter). Isaac somebody...I forget...Motaung, maybe. And so...in fact, that took a large part of, I think, the first six months of my fellowship. And that was quite unique, I don't think any other Fellows did that type of work. I also worked quite closely in those days with...what's his name...he's a judge in Bloemfontein now.

Int Mahomed Navsa?

AF Mahomed Navsa. That really became Mohammed's baby. But Mohammed at that time, and I'd known Mohammed at university. Mohammed had been the convenor of the UWC law clinics when I had been convenor of the UCT clinics, and before me, my now wife, Kate O'Regan had been the convenor of the UCT clinics. The three of us had worked together. We had, for example, established a clinic at Crossroads, a joint UCT/UWC clinic, which had its own intentions and difficulties. But Mahomed had been a Fellow at the LRC, I think, but in any event had gone off to do pupillage as an advocate, I suspect with George Bizos. And while he was away I was carrying the baby and I imagine his pupillage took six months, so I think he came back at the end of that and then I would have handed over to him and then got involved in much more routine Fellow work.

Int Mahomed (Navsa) was a Fellow and I suspect that must have been a year before you, maybe 1980.

AF Mmm. He was a year ahead of me at UWC.

Int Sure. You know, having done so many other interviews...you get a sense of the personalities and characters...

AF Who was who.

- Int ...there's a... sense that Mahomed Navsa was very much, very close in some ways to Morris Zimmerman...and there was also...tensions within the NUSAS grouping and, ...other groupings in the LRC, and I wondered whether you could talk a bit about that?
- AF Well...the latter phenomenon you talk about, I don't think I was really aware of.
- Int Fair enough...
- AF Although I can understand it. But Mahomed was probably, and still is, a very interesting personality. And I always felt that there were deep tensions within himself as to his attitude to some quite basic things. One of which was working closely with white people. And I think, at a sort of a rational level, he was entirely in favour of it. But at a deep internal level somewhere, I think, there was a real tension and perhaps a bitterness, I don't know. So there were tensions. I had some tensions with him. But those tensions...I said to you, when we established the Crossroads clinic, those were already there. You know, there were times we worked together and there were times where we got divorced (laughs). And then we would try and put it all together again.
- Int And weren't these really ideological differences earlier on in terms of UWC and UCT and how each were perceiving each other?
- AF I'm sure there were, I'm sure there were. Although, the word ideological is itself perhaps ambiguous. But certainly there would have been a powerful camp within UWC, which he would have said as a matter of principle, you don't work with white students.
- Int So were they adopting, what was predominantly a BC line?
- AF Perhaps, perhaps. There would have been some of that. And what was...what sometimes struck me as strange about that particular grouping is the amalgam of some BC, some very kind of workerist positions, and some fantastically conservative positions all jumbled into one (laughs). But I suppose that's through all societies and all movements, but I remember being struck by some of the ironies at the time. But, yes, as you say, Mahomed was always very close to Morris Zimmerman, and...but I worked, once I got out of the direct responsibility for the establishment of the clinics, I worked as an assistant to Charles Nupen, but also quite a bit with Geoff (Budlender). I mean, I often say to people, I think Geoff is probably the greatest lawyer I ever worked with. I still think that today. I think his not appointment as a judge is an absolutely outrageous scandal. And Charles (Nupen) had his strengths too but he would be the first to tell you that administering law cases was not his strength. But I got involved in those days with some fascinating work. I mean, I had already by then become very interested in Labour Law and when I left the LRC I became very much a trade union lawyer for many years. And I can remember, probably the very first labour law case of the modern era that counts, I was pulled into by Charles (Nupen). It

was a case called Stobar, where some workers in the Johannesburg area had allegedly been involved in a go-slow. Now that in itself is quite significant because although the Durban strikes had taken place some time before that, the trade union movement was tiny and not very active then, but it was just about to take off. They'd been in a go-slow, they had been dismissed, and most lawyers would have told you that there was nothing that could have been done about that. But Charles (Nupen) brought a case, with the support of Arthur (Chaskalson), and also with the support of Halton Cheadle, who wasn't inside the LRC, he was at CALS at the time – I now work with Halton quite closely of late – and they challenged this as an unfair labour practice and the laws had been passed, which on one interpretation gave the Industrial Court, as it was to be, very considerable powers, but there had been an earlier decision a couple of years earlier which had excluded any realistic jurisdiction, and they decided to have another go. And on the other side, I remember was Martin Brassey, who also became, probably already then was, quite involved in trade union...pro trade union work, but he was acting for the employers in this case, asserting the proposition that they'd been given an hour's notice and that was all that the law required and there was nothing that could be done about it. And I remember Halton standing up and arguing that: the Industrial Court should take cognisance of the ILO Conventions and Recommendations on dismissal; That dismissal should be both substantively and procedurally fair; That we should apply an interim interdict test when we're determining interim relief and these types of things. And the case succeeded. And that case was the foundation practically of everything that comes. I mean, if you look at our LRA today, in large measure it's founded on the principles established in that case.

Int And it's called the Stobar case?

AF Stobar. It will be reported, I mean, I could find you the reference here. One of the very earliest cases. Stag Packings, which was another case that I was involved with, also with Charles (Nupen). There had been, probably for a hundred years, the accepted doctrine, that in the field of employment, and this is a doctrine we inherited from England, in the field of employment the only remedy for a wrongful dismissal was damages equivalent to notice pay. And in this case the court accepted the Transvaal Provincial Division of the High Court, that reinstatement was a competent remedy. Radical judgment. So there were some very important decisions that came out of the labour law side of it at the LRC. I do recall that Arthur (Chaskalson) was quite ambivalent about whether the LRC should be doing labour work at all, because...it wasn't that he was hostile to labour interest, he just felt that other people would do that work and that it shouldn't really be the LRC's work. That the trade unions and their lawyers should run with it. But as it happens those two cases were cases where they were quite influential. Although thinking back I'm not sure that Stag Packings was an LRC case, it might have been but it might have been a CALS case. But I mean CALS and the LRC worked very closely together at the time.

Int I'm also wondering...you were there at a time where there was a huge...emphasis based on the NAACP legal defence fund, the idea of test cases...

AF Yes, very much so.

Int ...and so this must have been the period around which they were thinking seriously about the pass laws, and Rikhoto, Komani cases...

AF Yes. I was involved in those days. I don't think I worked on any of the cases that became particularly famous. Although I think, if I'm not mistaken...one of them I was. I think what happened was this...you know the pass laws under Section 10 (1)(d) of the Urban Areas Act, the migrant workers who came in on fixed term one year contracts. Although they'd never been conceived of really as contracts. What was a mechanism for saying you could not acquire urban residence rights and therefore you will come in for a year at a time. If you read the paper work was dressed up in the language of a contract. Never been enforced as a contract. And so one of the things that the LRC did, and that I was involved with, was to try to find a test case to establish that proposition. Because of course if you dismissed an employee on a one year contract, the end of the first month, as happened to thousands of people, if that was wrongful at common law, in other words if on the facts you didn't have a repudiatory breach by the employee, at common law would give rise to a claim for the balance of the year's payment. And that had never happened. And so we were looking around for such cases. And one of the cases I had at the Hoek Street clinic was of that type. And as I had been trained to do, I wrote a letter, didn't get a response, phoned the employer and had a conversation where he made some very damaging and revealing comments, all of which I wrote down in the letter, saying I confirm our conversation, this is what you said, you know, if I've got it wrong, please say otherwise. He didn't say otherwise. I then left the LRC, went eventually to London, and I remember Charles (Nupen) telling me that that letter had won the case (laughs).

Int That's great. That must have been a landmark case?

AF I don't know if it was a landmark case but certainly it was one of those cases that established the proposition, and I don't even know what case it was but...I did hundreds of those cases. I also was involved at that time, and thereafter, with the IAS, Industrial Aid Society, which also ran...in fact that would have been after I left the LRC. When I was now in the routine legal world.

Int So you did articles?

AF I did articles in a commercial firm, and while I was doing that I kept doing my LRC type of work through the Industrial Aid Society and did a huge amount of labour cases: Workmen's Comp...I did a lot of Workmen's Comp at the LRC as well. But Workmen's Compensation and dismissal cases. And we had a lot of volunteers in the IAS but also...probably a list of probably ten young lawyers, of whom I was one, who would be available. And that was also very, very successful. That was in a slightly different tradition, you know, that was...that had come from Neil Aggett and Liz Floyd and much closer to what then became FOSATU and later COSATU.

Int And did you work with Moray Hathorn?

AF Moray?

Int Moray Hathorn. He was also on the Industrial Aid Society...

AF I don't think so. I've known him subsequently. But I don't think I did work with him. If anything, I think he might have come after me, but I'm not sure.

Int Ok. So...you do articles in a commercial firm, and then you continue to do the kind of labour law, public interest work...

AF Yes, well, what I did, I was at Denys Reitz and initially I was keen to get involved with their labour law work, but it soon became clear to me that that put me in an impossible position. Firstly their clients were all employers. Secondly, the only other team in town were John Brand and my wife (Kate O'Regan). So it constantly threw me into litigation against them, which I wasn't prepared to do. Either one of us had to pull out. And so I got out of that and I got involved in insurance and crash and bash and insolvencies and other stuff. But in that period, and thereafter, I was involved with IAS. I imagine I might have done some stuff with the LRC but I don't think much. But that was also a time when I was more politically involved than at any other time. Not as an activist but as a support person, a legal support person. So Peter Harris and myself and others for example, were involved with advice on detentions and detainee groups...with things like the End Conscription Campaign...I can't remember what the other various groups were...but doing a lot of labour support stuff as well. And what then happened, to just complete the story, when I left, after two years at Denys Reitz...I mean, I knew I didn't want to stay there...I thought I might go to the Bar but my wife and I then both decided to study overseas. I had a British Council scholarship, she also had a scholarship that covered her. So while I was waiting to do that I went off and taught at Wits and I was involved...although I wasn't employed by CALS, I was in the CALS corridor and working closely with those people. And then we went off to London for a few years, and thereafter back to Cape Town.

Int Ok. You also mentioned before the interview started that when you got back and you were in Cape Town, you were much more closely aligned with the Cape Town office.

AF Yes.

Int I wondered whether you could talk about that?

AF Yes. You know, the Johannesburg office had had in the time that I was involved in-house, top class counsel. I can remember working with Charles (Nupen), I mean, with Arthur (Chaskalson), with Paul (Pretorius), with Karel (Tip), very able in-house counsel. The Cape Town office had not worked that way. They were predominantly staffed by attorneys and when they used counsel, they briefed counsel, and I'm sure that when you were a successful counsel he would have done it at a substantially

lower rate than your routine fees. But with junior, junior counsel like I was, they were paying me not very differently from what any other labour client would have been paying me, trade union client or the like. And I did quite a bit of work as counsel with the LRC. As it happened I already knew all those people anyway. People like Steve Kahanovitz and I were contemporaries at UCT before he went to Wits. Angela (Andrews)... (William) Kerfoot I met through the LRC. I'm just trying to think who was there in those days...

Int Henk Smith?

AF Henk Smit I knew well, although I think he only came to the LRC slightly later, I think. He was an attorney at Mallinicks when I first met him. But through the Cape Town LRC, I did quite a diversity of work as counsel, external counsel. Land claims work particularly with Angela (Andrews) and with Lala Steyn. Labour work I did with Wallace Mgoqi. With...who would have briefed us in those days? I think Matthew Walton. Who incidentally had been my sister's boyfriend. But we took some landmark labour cases particularly on retrenchment issues. And took them right up the court system. Consumer work, debt collectors, we took some quite leading cases on reigning in the debt collectors. So I did a fair amount of legal work with them also I socialised a lot with those people in those days. And I was very fond of the Cape Town office people. I was very fond of the Jo'burg office people, but the personnel there changed. And the personnel in Cape Town stayed constant, or at least the people I knew stayed there. And to this day if Kate (O'Regan) and I go to Cape Town, we often just pop in on Greenmarket Square and just say hello, how are you? And, you know, people are always very happy to see us. So I have a quite different relationship today with the Cape Town office than I have with the Jo'burg office, where the personnel has changed completely and where I have very little to do with them. I occasionally bump into them and occasionally they threaten to send me work or I give them a little bit of advice, but I don't have much to do with the LRC in Jo'burg today.

Int Sure, right. I'm also wondering, you really practised the kind of law you've been talking about during the 1980s and those were particularly horrific times in terms of repression, etc...What were the... the kind of restrictions on you in terms of Security Police, etc?

AF You know, to be honest, not enormous. Some lawyers were the victims of repressive measures. I mean, I think particularly I was close to Fink Haysom in those days. And I remember Fink being in and out of detention, and I'm sure that is true of a few other lawyers. And it's conceivable that that related to legal work, but it isn't generally my impression that it's so. If as a lawyer you played the game by the lawyer's rules, the fact that you acted for...certainly that you acted for trade unions, I don't think got you into a lot of legal difficulties. Might have been a bit different when you were acting for the...for guerrillas. Might have been different, but I wasn't doing that work very much. I did very, very little of that. The closest I got to that was a little bit of public violence and so forth. I didn't do the...the trials of the captured ANC soldiers and the like, that was never my practice. So no, I don't think it was that hard. And of course it was a very curious moment in history. Yes, It was repressive, but it was also an era of reform, and so...I mean, why was it that certain South African businesses assisted the

funding of the LRC? It may not have been a material financial contribution but that it was there at all is indicative of a climate, which was that there was a whole class that said, no, actually we have to reform our way out of these problems and so those sorts of people would not have been against the notion of lawyers doing, for example, labour work. In fact on the contrary. There were important business leaders who were pushing for the emergence of legitimate trade unions. I mean, the Bobby Godsells of the world. So to be candid I didn't think that there was terrible threat. I think there was some threat, certainly you had a sense that you were followed by Security Police, they knew who you were, they were watching you, you knew that you were exposed, you could be detained without any possible recourse. But if you ask me did I think I was going to be detained, the answer is, no, I didn't think so, although I thought it was possible.

Int Sure, fair enough. So, after that you were in Cape Town and the type of law you were doing...?

AF Well, firstly, just to look back a bit, I was interested in labour law from university days when there was no labour law. Influenced by people like Dennis Davis, who was then a young law teacher at UCT. Then did as much labour work as I could at the LRC. Then post LRC and in Johannesburg, kept doing labour work for the unions and for the organised workers. But then when I went to England, by then I knew that's what I wanted to do. So I did an LLM in three different labour courses, and a fourth course. Then while my wife was doing her PhD, which was on labour law, I worked in London for two years, really specialising very much in labour work. I made a living as a, you could call me a journalist, writing about labour law issues. British, European, international labour law issues. So that when we came back to Cape Town, which would have been in '88, I was highly, highly specialised, and there wasn't another person in Cape Town who had that expertise. So when I came to the Cape Bar, I immediately was flooded with trade union work, which was good for an advocate because you made a living. It was bad for an advocate because it means you never learned the other skills that all other advocates learnt. You had a very...

Int Specialised...?

AF Specialised practice. And I did trade union cases and some other things I used to do...I can remember doing cases on criminal prosecutions of squatters and land cases and whatever. Very little straight commercial work. Practically no criminal work. Very much a labour law practice. And that pretty much stayed the case until we left Cape Town. We left Cape Town in '94 when Kate (O'Regan) was appointed as a Constitutional Court judge. And in my life that was a big break...I suppose since then I've made more money, but I've become far less involved with that world, and far more involved in the ordinary life of, you know, run-of-the-mill advocates. Because of course by that time a whole lot of other things had happened. '94 obviously was important politically. Secondly, trade union money had dried up. Thirdly, trade unions had developed their own legal infrastructure of running around cases. And so, there wasn't that much trade union work for me if I wanted it. But as it happened I think I just got tired of it too. There's only a hundred ways in which you can dismiss a worker and I've done each a hundred times (laughter). And so my practice changed

quite considerably and I've retained quite a labour law, pension law, specialisation, but only in sort of unusual cases, not run-of-the-mill cases, and I now do a lot more administrative law, constitutional law, and then some commercial work.

Int ...I interviewed Jack Greenberg who described the South African Constitution as the most advanced document in the world. I'm wondering, in terms of the rule of law in post apartheid context, what are some of the concerns about rule of law in relation to the Constitution and how that would be enforced as such?

AF Well, I think that's right that it's...I mean, I don't know if it's...let me put it in my own words. It's a very transformative Constitution. It not only restrains and fetters the powers of the state, but it mandates the courts to completely revise the common law and to put a particular gloss on statutory law; it is hugely transformative. The positive side of that is that it's a tool to realise the foundational objectives, and therefore a lot of progressive decisions are made. But therein lies its danger as well. Because it confers on judges fantastic powers. And it constrains the power of government very considerably. And I have a sense that government is more and more conscious of that in the last few years, and is frustrated at the fetters on their own powers. And that's a source of tension as to, you know, where that's going to go, I don't know but I think there are some people who feel that the constraints on government power are being bridled against. And that's in very different areas. Some of it is quite illegitimate. Some of it is the corrupt and the dishonest not wanting to be held to account. But some of it is more legitimate. I mean, there's been a recent case on water in Johannesburg. You know, I wouldn't be surprised if the decision is overturned on appeal or at least watered down. But it's illustrative of the extent to which the courts are rightly or wrongly becoming involved in social delivery issues. And that causes huge tensions. There's another area. I do a fair amount of advice to government on constitutionality of legislation. And on issues where many people would agree that the essential aim of government is legitimate, they find it quite difficult to draft legislation that it can't be struck down for some or other reason under the Constitution, and that causes a tension. Now as it happens, if you take skilled advice, you can probably draw legislation which is not attackable. But that brings you into the question of resources, and expertise, and also some of the racial issues about from whom do you take advice? So there are pressures and tensions.

Int Sure. The other thing that's been said...about the LRC in particular, is that it's really...you were there at a very important time in its history, but subsequently, particularly in a post apartheid context, it's unable to attract good quality, particularly black lawyers, because they're...snapped up by corporate law firms. What's your sense of that argument? Do you think that's fair?

AF I don't know because I'm not close enough to the facts. I wouldn't be surprised if it were true, but that's because it's...that's a nationwide issue. We struggled even at the Bar to hold on to good black lawyers. Certainly the Bench is not attracting some of the very best black lawyers. And the opportunities for highly skilled black lawyers, the commercial opportunities, are enormous, and highly tempting. And there are not that many of them. There are quite a few people coming out of the law schools, we're talking of people with ten or twenty years post law school experience. Not that many

of those. So I wouldn't be surprised if that's true even though I have no idea whether it is true or not. I also, I'm not close to the LRC today, I don't know what their day to day work is. I occasionally have dealings with them. But I think it's quite difficult to forge out a different role. It was actually quite easy for us because, you know, the bear in the room was very visible. I suppose the LRC today must be a loyal opposition. It must find the things to fight about but must do so in a way that's constructive and not destructive. And...I mean, I have a sense that they do...they take some important cases that are successful. I mean, I'm aware of cases that they litigate in the realm of constitutional law, with I think an enormous amount of success. But sometimes it's quite hard to work out these days, who are the good guys and who are the bad guys. Who should you be fighting for and who you should be fighting against? I mean, I do a little bit of work in the field of municipal development of the cities. And, I mean, sometimes I shake my head at some of the propositions that are being argued for and think, no, I think we're on the wrong side of some of these debates (laughs). But I understand why. I mean, you know, they are excruciating dilemmas some of them.

Int I'm also wondering...there have been recent attacks on the judiciary and that's in the public domain in terms of newspapers, etc. How does a public interest law organisation like the LRC for example, then function in an environment where it does actually in fact have to challenge government, albeit an ANC-led government?

AF Look, I think there are different issues. I don't think there's anything wrong in principle in the LRC fighting litigation in the modern environment where the respondents or the defendants might happen to be government institutions, and I don't think that in doing so they're under any real threat, you know. Their litigation may be opposed, they may win or lose it, but I don't think there's any question of threat. I think the rule of law issues that we are seeing now are really much more in the realm of the political world. And...I have been...I mean, I remember having a lunch 3/4/5 years ago with a bunch of bankers and saying I thought that one of the great undersold successes of South Africa had been complete commitment of rule of law by the government. Not to be taken for granted in the African context. And I think that was true. And I think not only the Mandela government but also the initial Mbeki regime were much the same. I think it's different in the last 12-18 months. For the first time I perceive a threat and that's different from what I was talking about earlier. The frustrations of a government of goodwill with the constraints of constitutionalism. There's a healthy tension there. What's emerging is an unhealthy tension where **inaudible** for legal purposes some people are pushing to challenge the very notion that we're all equal before the law, that we're all subject to prosecution if we do wrong, and that disputes that can be determined by the application of law, in fact should be decided by the courts and not by somebody else. That's a new issue in the last period. And I don't think that poses great difficulties for the LRC, save that perhaps the LRC should make the obvious public, which is that presumably they are on the side of those who believe in the rule of law.

Int Absolutely. I've asked you a range of questions, Alec, I'm just wondering if there's something I've neglected to ask you, which you feel ought to be included in your LRC Oral History interview?

AF Not really, it doesn't immediately jump out at me. I think that the LRC made a hugely important contribution to a movement which itself was important in that era when I was involved. You know, the LRC was part of a movement that would have broadly included CALS, Lawyers for Human Rights, various advice offices, and frankly the private and commercial lawyers who fought a range of cases. You know, cases that clogged up the pass courts, and ACTSTOP...that whole movement, I think, was quite important in that particular era, and I think it achieved quite considerable things. The LRC today operates just such completely different terrain, and it's a story that I'm not very close to. I mean, I would be very sad if the LRC were to disappear from our legal landscape. I'm sure that they are doing good things and that there's a role for them but it's just such a different world, where, I think, you know, a lot of the policy advice work and...also being a bit of a watchdog, and barking sometimes, is itself an important role. But no, I don't know if there's anything that we haven't covered that should be of any concern.

Int Sure. I'm wondering if we could end the interview by you sharing a memory that particularly stands out for you in terms of...whether it's of Morris Zimmerman, or a client, anyone or anything that really stands out from that time when you were a Fellow or a vac student at the LRC.

AF You know there isn't anything that really stands out as a particular incident...perhaps one. I told you in the first six months or so of my fellowship, work that I was doing on the establishment of clinics...one of the places I went to...involved going into Soweto and trying to talk to some people there about the clinic to be established or potentially to be established. A particular woman that I had dealings with, had been one of the leaders of the Soweto students SSRC, would it be Revolutionary Students Council? I'm not sure what it was called, and...she had recently come out of detention and I remember being struck by, really how we had come from such...really what triggered it was I was asking her, we were actually on the streets where the students had been marching and students had been shot and very close to where Hector Pietersen had been killed, and I was asking her to tell me about things that had happened, and she just...she found herself unable to do that, and...she was quite willing to work with me and we got quite close, but we simply lived in such different environments and in such different worlds that as it were we could intersect to deal with our commonalities but in fact our differences were quite...quite marked. Of course today she's been the wife of a very senior successful businessman, and (laughs) what often strikes me is how different the world is today to the world that we were in then and how completely unpredictable the present world is. I never expected things to happen as they did. Or as quickly as they did, and...in the years that we were in London, we were very close to one of the Czech dissidents, from the Charta 77 and we used to talk about whether we would go back to South Africa, and whether he would go back to Czechoslovakia, and as it happened we all did. And within five years, ten years, the world was such a different place in a way that I had never dreamt, never thought possible. And I suppose the LRC, you know, played its role. I wouldn't want to exaggerate its importance but it played its role.

Int Sure. Thank you very much Alec.

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