

Kate O'Regan

LRC Oral History Project

30th July 2008

Int This is an interview with Judge Kate O'Regan and its Wednesday the 30th of July (2008). Kate on behalf of SALS Foundation Washington DC we really want to thank you for taking the time to participate in the LRC Oral History Project. I wondered whether we could start the interview...if you could talk about your early childhood memories, growing up in South Africa under apartheid and where your sense of social justice and injustice developed?

KO Yes. I was born in England and my family moved to South Africa when I was seven. And I was one of a very large family, I've got 4 brothers and a doctor father and a dentist mother. I certainly remember growing up with a sort of family with a strong sense of disapproval of apartheid. And during my school years I did quite a lot of social justice outreach kind of work, and then when I went to university I did as well. so I don't really have a kind of really formative sense of when I first became aware of the injustices in South African society. I do have a strong recollection of...during the forced removals on the Cape Flats in...would have been the autumn of 1977, there were informal settlers living in an area off Modderdam Road, one settlement was called Unibel and the other was called Modderdam Road. And the settlers were forcibly removed. And I remember my father hiring a truck and sending us all out to go and assist people moving their stuff. And that was a devastating sense of what the loss people had experienced. So at university I became quite early on involved with Legal Aid, and I was always...my sense was it would be useful to use my skills to be of assistance if that was possible. I did start out studying journalism, and was then advised to do law, and then when I got into law I enjoyed it. So, as I say, I was very involved in the student Legal Aid Clinic and a variety of other things while I was a student. And in fact it was while I was a student that the Legal Resources Centre was formed in my, I think my penultimate year in 1979, when I was a student, and Arthur Chaskalson came to teach us in our...I think it was in our final year, Legal Aid class actually. That's the first time I became aware of the Legal Resources Centre. But there was obviously an enormous need for public interest work at the time. So I think we were all delighted when we heard about the formation of the Legal Resources Centre.

Int I'm wondering whether I could take you right back, because you have a different history from most people I've interviewed in that your parents came from another country, you were born in England, so that in some ways takes on a unique dimension, in that the discourse in your family might have been different from people who for example, had grown up here and were more entrenched. And I was wondering whether you could probably elucidate where you think the differences arose in terms of family discourse?

KO Well, I don't really know, I mean...I suppose I am from a long line of immigrants because my father's family emigrated from Ireland and my mother had emigrated from Ireland. My mother had grown up in a very political household in the west of Ireland during very troubled times in Ireland in the 1930s. And so that...that certainly made her anxious and distrustful of Nationalism, all sorts whether Afrikaner, or

frankly African Nationalism. You know, she always felt that the individual... the rights of the individual were generally subjected to the rhetoric of Nationalism. She felt it served invisible interests. So she was always very sceptical about what you might call the rhetoric of Nationalism. I don't know that it...I mean, it's hard to say, I only grew up in one family (laughs) so I can't really say how other families are different.

Int In what way would you say your family was different from your peers for example, at school, etc?

KO Certainly my family were more expressly opposed to apartheid. My father was always involved with the Catholic church, and I remember, you know, quite early on him being opposed to *humanae vitae*, which is the papal encyclical, which forbade contraception in Catholic families, and he did a huge amount of work in the poor communities in Cape Town, poor Catholic communities, around trying to assist people to deal with the need to have family planning. And so, you know, we always came from a sort of, I suppose, slightly eccentric family. And I suppose...it's very difficult for me to say how different it would have been...I mean my...I just...it's hard to know, especially as a small child, because it's just not sort of something one has a sort of debate about really. I can't put my finger on anything.

Int And in terms of family discourse, was there some sense of understanding about the apartheid system? Did it come from the family or was it more observation?

KO Well, I think...I think my parents hadn't really realised...they came to South Africa because my mother's sisters had all settled here. They'd originally wanted to go to Canada. But my mother's sisters were all here and I think my father, funnily enough, more than my mother, felt that it was important that they came to South Africa where there was other family. I don't think they had really fully sort of understood the evils of apartheid before they got here. I think once they got here and certainly my mother felt quite distressed about, in a sense, having been there. My father on the other hand felt well, there are things one can do, and it's better to contribute than not contribute. So they had differences of opinion on that. But, you know, as I say, I can't really say how that differed...I think every family is different and I don't think one really understands what the discourse is in other families are, in any (inaudible) way. I mean, my closest friend when I was growing up, actually was the child of Dutch immigrant parents who had immigrated earlier than my parents and she'd been born in South Africa, so they emigrated in sort of, I suppose the early 1950s but it wasn't that unusual to be a child of immigrant parents. Another close friend of mine the parents had immigrated in the 1940s. So, you know, it wasn't that unusual to have parents who had immigrated. Perhaps a bit more unusual to myself having been born abroad. But lots of people emigrated, I think, to South Africa in the 1940s, early 1950s.

Int In terms of actually going to school, and you mentioned this forced removals, at what point...did you then engage in terms of issues of apartheid and difference...did you become politically conscious early on or was it really at university?

KO No, I mean, I think at school, you know again, there were a group of us who were very conscious of...I remember following the events of the...kind of, you know, political events in the country. I suppose from my high school years...and I remember we had a family holiday, for example, we went to a language centre in the Eastern...we just passed through it, but it was a language centre in the Eastern Cape, what I suppose is now the Ciskei I think, near Herschel, which was, you know, obviously a fairly activist sort of a place. So you know, I had those kind of links and my parents were very staunch members of...I suppose one of the very few self consciously non-racial religious parishes in Cape Town, where we used to have kind of picnics and outings with families from different racial groups and my parents felt very strongly about that. So I can't really say there was any kind of particular moment of awakening but it seems the injustice of South Africa was definitely communicated to me by my parents and the way they lived their lives. And even at school, I mean, many of the people who taught me would have been openly critical of apartheid in the Catholic school environment. Not openly, but would have been...but many of the nuns came here because they wanted to be missionaries. They did not want to be dealing with spoilt white upper class, middle class brats. And so they...and they expected us to be sort of understanding of the environment in which we came from. Lots of the families of the kids who were at school wouldn't have been very sympathetic to that, but mine was. So, I can't say there was a particular moment of political awakening in that sense.

Int You mentioned that you wanted to become a journalist, and I was wondering what the impetus for that was really?

KO Well, I loved writing, I still do. And I knew I didn't want to be a doctor. I came from a terribly medical family. I knew I didn't want to be a doctor. And I was going to be a professional of some sort. And journalism seemed to be something that I would enjoy. And I'd worked briefly at the Argus when I was a student. In fact, with Zubeida Jaffer, she and I were there at the same time. And it was the end of '76, so we covered quite a lot of the political events and what were happening. And that's when they said, you know, better go and do a law degree. You know, I set off to do a law degree fully intending to be a journalist. But I did actually find the law very interesting.

Int I'm also wondering in terms of...the point at which the decision to do law, was that prompted by an individual or set of circumstances?

KO No, it was a very strong recommendation given to me by sort of editors and journalists that it was a good qualification if you were going to be a journalist. And you know, I didn't know any lawyers so...but it seemed to me to make sense that, you know, in a highly regulated oppressive society, if you wanted to be a journalist, understanding how the legal system worked would be important. And also a huge amount of political developments were playing their way through legal processes. So that convinced me and I thought well that's really sort of...so it was...I'd started off doing sort of psychology and English and sociology and maths, and it had felt kind of without direction and so I changed.

- Int So did you initially do a BA and then move to LLB?
- KO No, I moved straight after the end of my first year and managed with a bit of an overloading of my curriculum to complete the law degree, and I did a BA LLB in five years.
- Int And that was at UCT?
- KO Yes.
- Int So the period you were there...in terms of NUSAS and the political environment, how involved were you?
- KO I wasn't...I mean, I was...I never saw myself in sort of leadership capacity. I was familiar with NUSAS and student politics and knew quite a lot of people who were quite involved in student politics. But, I...I was involved in a Young Christian Students, which is a Catholic society for a while. And then I became very...I mean, I really spent a huge amount of my sort of spare time as a student in running UCT Legal Aid, which is a big set of clinics, and through that odd SHAWCO but largely from a perspective of Legal Aid.
- Int And what period were you at UCT?
- KO I first enrolled in '75, and I graduated in '80.
- Int So in that period the NUSAS trail was ongoing and a lot of the people who actually went to the LRC came through the ranks of NUSAS and I'm wondering what your interaction was with any of them? The lawyers?
- KO You know, I didn't overlap with Geoff Budlender for example. I think (Fink) Haysom was a final year law student when I was in my second or third year...I can't remember exactly. So, you know, that kind of generation I didn't get to know until I moved to Johannesburg really. But certainly it was a very political place, the university, and...for example, there was a very powerful debate happening about whether it was appropriate to be running things like SHAWCO and Legal Aid in the context of wanting to encourage revolution or something, which I felt quite appalled by. That you would leave people to suffer for the purposes of some revolution which may or may not occur. Seemed to me an extraordinary denial of human dignity and I engaged in quite fierce arguments with various members of those activist student leaders who were more committed to politics, I thought, than sort of practical social justice. I had a very firm view on...I also felt quite strongly that, you know, being somebody from a privileged...service was more appropriate than grandstanding, so I thought.

- Int I'm wondering, in terms of the Legal Aid Clinic at UCT, from what I can understand, there was also the Legal Aid Clinic in UWC, and what was the relationship, because I know Mahomed Navsa...
- KO Mahomed Navsa. We met when we (the two university legal aid clinics) jointly opened a clinic in Crossroads, it must have been 1979 or 1980. And, it was a difficult relationship because, I mean, for them, understandably they thought, you know, these kind of privileged white kids kind of swanning in and thinking they're sort of God's gift to people. And I was terribly sensitive of that. I understood that. But I also felt that ones, you know, sort of class position doesn't deny one the ability to try and make a contribution. So, you know, Mahomed (Navsa) and I are good friends now...and we got on reasonably well then but we had moments of tension.
- Int In terms of the work that you did at the Legal Aid clinic, would you talk a bit about that in terms of the kinds of cases? Was it primarily political or consumer?
- KO Very little political. I mean, ordinary people's lives were the things that we dealt with. So it was violence against women, divorce and a huge amount of consumer stuff. Housing, unemployment insurance, worker's compensation, all sorts of areas that we had barely touched on in our classes at university. Oh of course, an enormous amount of influx control, particularly when we went to Crossroads. And we did...you know, we always had attorneys to try and ensure that, firstly, we weren't sure what the advice would be that they could assist. Some cases were litigated...I can't remember it exactly now...we took a case...it related to the elections around the first sort of local authorities, (inaudible) big conflict of...I can't remember the exact facts of it now. But mostly it was just ordinary people's lives' stuff and that was devastating because you just realised how, firstly, how education is such an important part of giving people an ability to control their lives, and secondly, just how at every turn people were unable to get out of problems of a variety of sorts. And...I remember going to see the authorities in...it was called then the Bantu Administrative Affairs Board, about what was going on in Crossroads, a group of us (inaudible) can't remember exactly who it was now, but we went along and we got given this lecture about how what we were doing was quite wrong and the (inaudible) and the whole government policy sort of set out for us. We also worked quite closely with other people doing similar work, like the Black Sash and various other...and that's where, I mean, the link with UWC where a very principled sense that it was important for university students across the peninsula. We had some links with Stellenbosch though their Legal AID Clinic was much smaller than ours. They operated basically in farming areas and was quite different in terms of experience. But we did seek to have those links with different organisations.
- Int Being a student and especially doing an LLB, I wondered where your real sense or impetus came from for you to actually engage in that kind of public interest law work and to become really involved. Earlier you mentioned something about how important practical service was for you. Could you talk a bit about that?

- KO Well, I just think it's so kind of...an ethic of personal life really. That's just how I felt really. And obviously, you know, one meets students with other students who feel the same. And even though for example as chairperson of Legal Aid I sat on the Law Students Council and I was actually very good friends with my year, the other people who sat on the Council. We just came and things from different perspectives. I was willing to spend a lot of time to do things, which I thought...and it did take an enormous amount of time. We ran something like 9/10 clinics a week. And they had to be moderated. They were every evening of the week except Friday, and Saturday mornings. And then after, you know, you finished a clinic, there was a huge amount of follow-up work that had to be done. And once I no longer worked directly in the clinics but was a varsity student, I mean, I spent my life in the office. People would come to me with queries, I don't how to deal with that, I don't know how to deal with this or whatever. I just spent an enormous amount of time at it.
- Int Do you think you'd attribute part of that type of work maybe to your...Catholic background in terms of service, etc?
- KO I do think that was influential. I do think that kind of quality Christian ethic underlays probably...and also just that kind of a personal sense that...I, you know...there's always an enormous amount of frustration and stress to be had because of a huge number of problems you could not resolve. But every now and again you could. And that was a huge sense of achievement that you could actually finally sort out somebody's house or get a firm acknowledgement that they were in fact Section 10 1b and not Section 10 1d, or whatever it was. There was a sense of personal achievement from that. You know, mitigated against all the darn misery. And also the kind of way in which people approached us and sought assistance was...I didn't feel that people felt we were trespassing or shouldn't have been there. They were grateful for whatever assistance we could give. But I mean, one certainly did learn that by and large the problems of poor people are complex, multifarious and often irresolvable.
- Int I'm also wondering, the period when you were at university and you were actually engaging with UWC was in 1979/1980, and that's really when the Legal Resources Centre started. Did you have much knowledge during...?
- KO We did...I remember...I mean, one of the issues we had a long debate about in our Legal Aid Clinic, was whether...what happened was, when the LRC started they effectively removed the control of the university's Legal Aid Clinic from students into the hands of practising lawyers, into the LRC hands. And we had a long debate about that and we were quite anxious about that not happening at UCT. At the time we felt that it was a student initiative and a huge amount of student energy was going into it and that we felt that should be maintained rather than turned into kind of part of the curriculum, which is what happened. Of course that's really what's happened to most Legal Aid Clinics now, is that they have become part of the curriculum. And, you know, my sense would have been, if it had been part of the curriculum we would have been told, no you can't open a clinic in Crossroads, and, no, you can't do this and so on. And I would accept that at times perhaps our advice would have been better if we'd had the kind of experience of practising attorneys. It would be an interesting question. But certainly had debates about that. But the notion that there was a good

ability to be able to...the idea of the kind of class picking the case, the test case, struck us as very wise, that there were cases that could be run to make a whole group of people's lives better. That seemed to make a lot of sense.

Int That's always held in tension between the everyday concerns, the person comes in, and then of course looking for the high impact cases...clearly in the Legal Aid Clinic that you were running, it was really the everyday cases...

KO Absolutely. And the sense that, you know, that...that service was something that was important and should be maintained. So we wouldn't have wanted that to close down. But the idea that we could...that if there were legal possibilities you could select out through the clinic cases that could be won...did seem to us...well, certainly seemed to me to be a good idea. But on the other hand the need to continue to, you know...little things that weren't going to change the legal system, you know. Making sure that somebody's Worker's Compensation claim was paid out...was also terribly important.

Int Absolutely. Clearly you didn't go back to journalism, Kate...

KO No, I didn't. No, I didn't. After I finished my degree, I did a master's degree in Australia and...where I also worked in a Legal Aid Clinic actually, and then came back to South Africa and started my articles in Johannesburg at Bowman Gilfillan. And again joined the Industrial Aid Society, which was a local workers' advice bureau dealing basically with the unemployed. Also Saturday morning, kind of legal aid thing, where we really specialised in UIF and Worker's Compensation...to some extent we did a bit of work in influx control, but it was 99% UIF and Worker's Compensation.

Int Did you work with Moray Hathorn at the Saturday morning clinics?

KO I didn't. Well, in fact I did, I think. I did, I think. But I think he came quite later on. The people who were there when I was there were...I'm going to try and remember this...were...my husband Alec Freund and I both worked there. Liz Floyd. I can't remember all the names now. Rob Reece and Judy Favish. And we used to have a roster. We used to do every second or third Saturday morning. We also did a long report on the rights of farm workers. We did a...because even though we were right in the centre of Jo'burg...in fact, the same building as...right next door to the LRC offices in Pritchard Street, we did get quite a lot of farm workers' issues. And that was the sort of thing...that farm workers report we did with people from the LRC and so on. So right...and my husband worked for the LRC in 1981 as a Fellow, so...and there were a variety of initiatives that started around Group Areas, trying to oppose applications under the Group Areas Act, you know, criminal prosecutions, and also in due course the Pass Laws. So it was the ACTSTOP campaign and the anti-pass laws, and the courts campaign. Worked closely with the LRC lawyers and CALS lawyers and so on. And then very quickly I became, basically doing a lot of trade union work. And there again, there was quite a lot of liaison with the LRC and CALS.

- Int So you did your articles, it was 2 years? And then what did you do?
- KO I stayed on at Bowman Gilfillan. I was originally asked to go to Cheadle Thompson, but I decided I didn't want to and I stayed at Bowman Gilfillan and John Brand was there and we were doing a lot of work for both COSATU and CUSA trade unions, a lot of work for NUM and MAWU, in particular, but also quite a few of the other unions. And I did a range of other things. I did a lot of work for the Citizens' Advice Bureau, I did a lot of work for TRAC, which was the Black Sash overall advice group, dealing with forced removals. So I found that I was able to...and I was still able to operate pretty efficiently in terms of getting the kind of fees in that the firm wanted me to do and to do all the outreach work I wanted, so it was a very good place for me to work from.
- Int You mentioned that you could have gone on to Cheadle's, and I wondered why you decided against it?
- KO Because I felt I had a very good working relationship with John Brand who treated me as a fully fledged human being despite the fact that I was female, and I wasn't entirely sure how it would work out at Cheadle Thompson...Clive Thompson is a very close friend and had been...we'd been at university together. And I was anxious about...I just didn't want to take on all the risks of...the financial risks of being partner in a firm with (inaudible) and Clive, so I just...and I felt I'm doing all the work I want to do here in an environment I'm happy in, why take on all the stress and strains? It was a stressful time anyway. So I was very happy and I stayed at Bowmans and was very happy.
- Int And Cheadle's has a reputation, particularly during the 1980s, for really being at the forefront of legal activism in terms of the political trials, etc., and I wondered whether that in some ways was not the kind of lawyering you wanted to do?
- KO Umm...I never felt the urge to be the forefront of anything. I wanted to do work which I felt was worthwhile and over which I felt was making a contribution. And yeah...you know...it seems to have happened to me before. As I say, it's a service ethic rather than a leadership ethic, I think. It sounds maybe a bit ironic but it's true.
- Int In terms of staying on in Bowmans what was your relationship with the LRC? I know that the with Legal Industrial Society you actually had an interaction with the LRC but then at Bowmans how much of that was still in place?
- KO Um...it was...I mean, you know...just one worked hard, if you had problems, if I had issues, and there were people, either LRC or CALS who had views, I would speak to them. Because I did a lot of labour work...labour work was really how I generated my fees basically. I did some straight...a variety of things, very **inaudible**, but by and large it was through labour work. There the links were much closer with CALS. But it was obviously quite a sort of network of lawyers who were doing this kind of work. I

knew people in LRC ..., people who were fellows, and attorneys and so on. And there were a variety of ways in which people used to come together. Perhaps the work that brought me closest to the LRC was the work I did with TRAC, because I worked...that was forced removals work which was not done very much by CALS. (inaudible) for instance eventually ended up (inaudible) but it was a case that a lot of us talked about and had various involvements with over the years. And similarly I did a lot of work in Vryburg and in Huhudi in the Free State for people around that, and then I...I did quite a bit of political work. I acted for the families of the Pebco 3 in Port Elizabeth. So just...it was a kind of legal community really.

Int I wondered whether you could talk about that particular case that you mentioned just now, the Pebco 3? And the TRAC case.

KO At Vryburg and Huhudi. Well, Vryburg was not so much a case as a clinic that we ran down there, organised by the Vryburg's township civic. No, hang on, I'm getting it wrong. Vryburg, the township was called Huhudi, and we used to go down there on, I suppose, about a monthly basis and deal with the issues that had arisen. Once again, all the same stuff, you know. Influx control and housing, and people would bring problems and where we could we would write letters and we would seek a good result. It wasn't so much consumer stuff there. Because it wasn't being filtered through the civics, so they would largely bring problems of the apartheid state and various sorts. The other case I'm thinking of was in Sasolburg, where a whole series of people had been assaulted in vigilante violence and so I did work there. I was really documenting, taking statements, documenting. Not very much I can tell you. Very distressing. I worked with Gill de Vlieg who was a photographer. Photographed all the injuries people had experienced. And then the Pebco 3 was the...Pebco 3 went missing. And now we all know as a result of the TRC Hearings that they were abducted and murdered. But we brought an interdict in the Port Elizabeth High Court and there I worked closely with Molly Blackburn who's an activist.

Int So you stayed on at Bowmans until...?

KO Till the middle of 1985, and then I went to London to do a doctorate. Which I did at London School of Economics and it was on Interdicts Restraining Strikes in Labour Law. And that took me 3 years and I finished that in the middle of 1988 and then I took a job at the Labour Law Unit, which had just been established by Clive Thompson, from Cheadle Thompson, in Cape Town as a senior researcher. Where it was a sort of a labour specialist CALS type about it...in Cape Town, and I worked there for several years. Doing a whole lot of sort of trade union training work and some litigation and quite a lot of consulting. And writing, and teaching. Because we also taught the labour law course at UCT. And then I went into the faculty proper and... in fact, the Labour Law Unit is still going well, but there was always a question how many professional people would we be able to afford? So when the job came up in the faculty I thought it would be a good idea to take it. And I continued teaching labour law and continued having very close association with the Labour Law Unit. And was then also involved in setting up the Law, Race and Gender Research Unit. Which was really looking at the intersection of race and gender. And eventually came

to look very closely at the judiciary and a sort of sensitivity training for the judiciary around issues of race and gender.

Int Sure, I'm wondering, during the 1980s and particularly early eighties, the LRC had these core legal victories and even though Parliament was supreme, these laws could have been overturned under apartheid, they weren't. What's your sense of what was happening in the legal milieu as such...

KO Well, you know, I think a lot of us spent a lot of time thinking about: what is law? And people who came from a directly Marxist tradition felt that law could never constrain power. But it became quite clear that that's actually not true. And there was a very influential writer at the time, E.P. Thompson, the Marxist historian, in Britain who wrote on a piece of legislation in 17th century Britain, where he looked at how law impacted on kind of social relations, and he came to the view that law is in some sense relatively autonomous of power. And that therefore law is a possible site of struggle and although it's not entirely autonomous of it, it is...and the precise character of its autonomy really depends on any particular time and place. So it's not something one can really analyse in the abstract beyond that, and you need to then look at each context to understand exactly what it was. And, I mean, there's no doubt that that was established, I think, by Rikhotso and Komani and the other great LRC victories. Of course they came and one would never be able to assert either the sequence or the causation but they came at a time when influx control was really dying. And...but probably dying because of the costs of enforcing it were becoming greater and greater in every possible way. But still, I mean, great victories and they certainly, I think, would be, you know, it's not inaccurate to say that they played a part in undermining the system. Both the legitimacy of the system and the efficacy of the system. And the same thing happened when we ran this sort of project in the Market Street court to defend everybody. We would send somebody down every day defending somebody and it just absolutely ground the system to a halt. Law is not just simply an reflection of the ruling class, I do think that it has...but it's a limited autonomy, it's a relative autonomy.

Int So by 1989 where were you at in terms of the kind of work you were doing?

KO Well, I was at the Labour Unit in 1989. I had my first child in 1989. And in that year actually, we held a big conference of forced removals and the law in Cape Town, which I was one of the organisers of and then published the book. So that's what I spent a lot of 1989 doing. And that was looking both at urban and rural forced removals. And I was also doing work at the time for a community in the Eastern Cape in Storm's River. People were facing forced removals. I continued doing the same sort of work even though I was now based in a university. I remained a practitioner on the role of Cheadle Thompson as an attorney. So that if I needed to litigate I could. But I did relatively little litigation. But I did quite a lot of consulting. For the LRC in fact, as well as for others.

Int And the type of consulting that you did at the LRC, what was that in relation to specifically?

KO Forced removals in particular. I did a lot of opinion on this Eastern Cape matter for them. And, you know, also informally had good links with all the Legal Resources Centre lawyers in the Cape.

Int So you must have worked very closely with Geoff who was really looking at forced removals during that time. I wondered whether you could talk a bit about that.

KO I did. You know, one of the things that when I was coming back, I was asked if I would consider going to the LRC in Johannesburg, but we had really taken a view that we were going to go to Cape Town. So I didn't in the end. And...you know, I didn't work that closely with Geoff (Budlender). I mean, obviously I'd known Geoff for a long time but I didn't work that closely because he was in Johannesburg and we were in Cape Town. I came to know much better Henk Smith and William Kerfoot and Steve Kahanovitz, who I'd known for many years. In fact one of the things we did..., which I think both Steve and Wallace (Mgoqi) were involved, was the Charter for Social Justice. But that would have been in '92 or '93 when the Bill of Rights debate happened. Drew a team of Cape lawyers together to make a contribution. Lawyers had always been committed to social justice, which is why we called it the Bill of Charter for Social Justice. And worked on, just on the nuts and bolts of the law, as to what would be good provisions in the Bill of Rights. And that was with, as I say, LRC lawyers as well as others.

Int And then at what point did you leave the university?

KO When I was appointed to the court.

Int That was 1994?

KO Yes.

Int And how did that come about, the appointment and what were the...?

KO Well, it was really bizarre actually. I mean, quite a few people approached me to ask me if I would be willing to be nominated. I mean, I can't remember now but I was nominated by 5 different organisations. Including NADEL and the Black Sash and...I can't remember, but it was a wide range of people. And then initially when people approached me I said: don't be ridiculous. But then quite a few people came to me and said: well unless women make themselves available, we aren't going to have any women. And it wasn't convenient for me. I had a four year old and a three year old, or a three year old and a two year old or something. We lived in Cape Town, it was going to be in Johannesburg, and I had a lot of conversations, including actually with Geoff (Budlender), as to whether this was just an absolutely ridiculous idea. And you know, most people just said, no you must do it. So I did make myself available. And then I was short-listed for the interview, and then interviewed. And then put on the list

of 10. And there were only two women on the list of 10, from whom six had to be selected. Just Yvonne (Mokgoro) and I were there. And my husband and I thought, oh gosh this might actually come off, which was a slightly horrifying thought.

Int Were you the only woman that was selected ultimately?

KO Justice Mokgoro and I.

Int In terms of being a Trustee, that happened in 1991, how did that come about?

KO Well I was approached by the Cape Town LRC. I think it was Lee Bozalek who was then the Director of the Cape Town LRC, he approached me to ask if I'd be willing to do it. And, you know, again, there I was with two small children, I said: Lee, this isn't very practical. But, you know, they were quite keen that I would do it, and there's only one meeting a year, and he gave me a long 'spiel' as to why it wasn't going to be so burdensome. Which it wasn't truthfully. And, you know, I'd had this sort of long informal engagement with the LRC over the years and knew large numbers of people from all the offices frankly. And had always been a great fan of the LRC's work. So I was very honoured and delighted to be asked to do it. So I agreed.

Int And in your role as a Trustee, what were some of the issues, because at that point at which the organisation really started changing; Arthur Chaskalson was close to leaving and I'm wondering as Trustees what were some of the...?

KO Well, Arthur (Chaskalson) was firmly there because he and I left at the same time. But, I mean, he had left as being Director and Geoff (Budlender) was now Director. I'm just trying to think whether it was when Bongani (Majola) was also Director. Bongani might have been National Director, yes, I think that's right. So, you know, the organisation was changing. Look, the key issues or the concerns at that stage were funding. Becoming a huge issue. And then how many offices there should be and the focus of the offices and the most effective way to make an impact. And it was in the days before the Constitution. But there was already a realisation that in all probability that's where we were going. And there was the identification of what the key issues going forward were. So there were those kind of debates. And the Trustees were extraordinary people, and...you know, I don't think we made a huge...I don't think I made a huge contribution but it was certainly very interesting to be there. And I think, you know, to watch how an organisation of that size worked and, you know, already very conscious of what was likely to be declining as a donor market for NGOs

Int When Bongani Majola took over, the LRC had been under Arthur's stewardship for a long time, and people were used to that style of leadership, and Bongani was a lawyer but not in practice; he was a professor. And I'm wondering how that may have impacted on some of the organisational difficulties that you may have been privy to?

- KO I don't really...I don't know, I think you'd have to talk to people who were there, because as an outsider, I would have been able to draw any reliable conclusions as to how the difference was. Obviously, you know, Arthur (Chaskalson) had great leadership capacity and vision (inaudible). He and I are very close. Arthur's a very powerful figure with a very clear sense of how his leadership style works. And so I'm sure that it was a challenge for the organisation and for Bongani (Majola) to take over from him. But exactly how it played out in practice I really couldn't say.
- Int As a Trustee were you at all frustrated in terms of not really being able to engage with the organisation on a much more practical level, or did you really feel that it was adequate, your role as a Trustee?
- KO You know, I do believe that the kind of principles of corporate governance which operate in the commercial sector are appropriate in relation to other institutions as well, one must let the Executive determine how they're going to implement the policy of the organisation. And even though it's very nice...we used to get excellent reports, I thought, excellent reports on what each office was doing and so on, it didn't strike me that it would have been appropriate for Trustees to try and tell lawyers in the LRC how best to achieve the policy that was set for them. They're on the ground, they know the shortcomings of it. You know, we were entitled to measure their performance but I really do believe in that policy-executive distinction in NGOs as well as in corporate structures. So it didn't frustrate me the notion that I could come in on a sort of four days a year basis and know better than those people who were there 365 days a year. It didn't strike me as a persuasive one at all. On the other hand, I think it was good to ask pertinent questions and try to ensure that where the organisation had been weak or not really performing to its full potential, to point that out. But not really to tell them what to do. But to say that that's what could be done here.
- Int You left the trusteeship in 1994 and did that coincide with your being ?
- KO Yes, all of us here, one of our first discussions was – there were several of us who were trustees – I mean, obviously Arthur (Chaskalson), Pius Langa, myself, Johann Kriegler, I think... there may have been others, but certainly those four were all Trustees and we discussed it and agreed it would be inappropriate to remain on as Trustees.
- Int ...when Arthur left the LRC, in his farewell speech he said that it was very important that the LRC continued to take on cases against government, even if it was going to be against an ANC government. And I'm wondering whether your sense, having been in the Constitutional Court, whether the LRC has really performed in that regard, whether it's taken on actively cases against the government?
- KO I think it has. I think that the LRC has been one of the visible NGOs taking on cases on behalf of the poor here. And I know how difficult it is to get a case here. It's not easy. And I think the LRC has done very well.

- Int I wondered whether you could talk a bit about the cases that have come forward before you, the LRC cases?
- KO I mean, I wouldn't want to talk on any very specific way because I would want to go back and refresh my memory, but what I would say is that the quality of the work that the LRC does, is always high. I think that's one of the things it's always had a reputation for. And the litigation here, you know, is evidence of the sort of deep knowledge and understanding of the issues generally which (inaudible) litigate, and that's outstanding.
- Int Besides funding, one of the problems the LRC has is being unable to attract good quality young lawyers, particularly black lawyers, because the corporate law firms can snap them up quite easily. What's your sense of that in terms of young black lawyers going through the LRC, is that because there's a reluctance to engage with public interest law or...?
- KO You know, I think that...I think that it's...for kind of young black lawyers today, they have a range of opportunities, particularly in the large firms, who are very, very keen to get them for reasons of transformation as well. And many of them are, you know, seeking to do kind of public interest work in the big law firms, which I think is terribly important. You know, it's...I'm not close enough to the universities to know how powerful notions of kind of public interest and social justice are amongst the student bodies. I think they're there and I think they may be resurging somewhat. I mean, I know an organisation at UCT now, which is Students for Social Justice which is really seeking to do work in this field. But you know, I think it is difficult, I think it is very competitive out there. And I think that there is greater ambivalence about work against the government than there perhaps would have been in the 1980s where things were very much clearer. So, you know, I think it's difficult. I think that's something just all organisations have to deal with and I don't know how much the Legal Resources does to try to promote itself on the campuses as a kind of a force,(inaudible) relatively little amount of time to do that but even getting a few university teachers to do it on their behalf might be a good idea. I'm sure that it's very good experience to work at the Legal Resources Centre. And what I say to my young law clerks, and by definition they're people who are interested in social justice, I don't appoint them unless they are, even if you give five years of your life, that's all you have to do. You don't have to say this is going to be my lifetime. You can go from there and go into a big firm and earn a lot of money if that's what you want to do. But give five years or ten years of your energetic top part of your life to make these contributions. But it's interesting that my...I don't think I've got anybody who's worked at the LRC. I've got a whole lot who's worked on the AIDS Law Project, people working for CALS, who have come out of my chambers who are social justice people, and I suppose that's just luck of the draw really. I think one of the...I don't know how much...so really I think it's difficult. It is difficult.

Int I was wondering whether you presided in terms of the TAC case...that came before the Constitutional Court? I wondered whether you could talk a bit about that and the LRC's role in that?

KO Well, again, it was obviously an important case, a difficult case. And I don't really want to say very much more about it; it was an important case, a difficult case, well litigated, and it...in some ways the hard work was done by Grootboom. TAC, legally speaking, was not that difficult a case compared to Grootboom. Khosa and Mahlaule, which was one of the cases that followed, I think was a harder case legally speaking.

Int And I realise because of your role that you can't say...very much about the recent problems against the Constitutional Court. But when I interviewed Jack Greenberg and he described the Constitution as the most advanced document in the world, Constitution in the world, I wonder whether you could speak to.... the importance of the Constitution in South Africa in terms of rule of law, etc?

KO Well, you know, obviously, this is more speaking as a citizen (than) as a judge, I do think that the Constitution is a kind of transformative document which has a vision of what South Africa should be and guidelines as to how to reach that. Which involved amongst other things a recognition of the rights of all South Africans, including rights to sort of social and economic issues like health and education and housing. Which is incredibly imaginative and important, and which I think there are relatively few South Africans who disagree with. I mean, that's one of the things that I find endlessly encouraging. It is also, like all Constitutions, a document, which delineates the extent of public power and the extent to which it is limited and that's very important; limited power is important. So I think that it's a very fine document. It does impose challenges upon all of us, particularly upon government, but not only. And I think that it's...it's quite an extraordinary document in being both practical, detailed, well drafted and visionary at the same time.

Int In terms of your concerns, if any, for an organisation, a public interest law organisation, such as the LRC for the future, what are some of your concerns?

KO Well, funding is a big concern. You know...the LRC has never really been able to generate much funding within South Africa, which is a dismay. Really one would like to see funding coming from within South Africa. I think that the kind of vigour and vision are generally not a problem and I think from time to time there may be issues here and issues there but a sense of what to do and wanting to do it is not the problem and I do think funding is an issue. And one hopes that...inevitably, I mean, the Legal Resources Centre was brought under pressure in the 1980s, but has always operated very cautiously and sensibly to avoiding unnecessary conflict. One hopes that it would do so in the future as well. But at times there are conflicts that are unavoidable.

Int Kate, I've asked you a range of questions and I'm wondering whether there's something I neglected to ask you which you feel ought to be included in the LRC Oral History interview?

- KO Not that I can think of. You know, I think we've covered the ground pretty fully.
- Int I wondered whether we could end the interview by...if you could talk about a particular memory that you might have, whether it was working with an LRC lawyer or a client, a case that came before you, something that was memorable about the LRC, or your reflections about the LRC in general.
- KO Well, I mean, there's nothing that really speaks to me about it, but one of the things that...just a very recent experience, because often ones recent experience are the ones that come to mind. I happened to be in Cape Town, I suppose it was about a year ago, and was in the centre of the city with my husband and daughter and we bumped into one of the LRC lawyers and we were right outside the LRC, and he said, why don't you come in to visit? And we did, and it was the day that they have the clinic for refugees. And, you know, as somebody who's sort of withdrawn after a long innings of doing a lot of Legal Aid Clinic work for clinics, you know, it reminded me again, firstly how quite often the subject matter changes because refugees wasn't a real issue in the 1980s, nobody in their right mind would have generally wanted to be a refugee in South Africa. But the extraordinary work was still being done and, you know, it is time consuming and toilsome, but you know, the sort of the kind of general sense that this work is being done day in and day out in the LRC offices for coming up to 30 years, and God knows how many people they have assisted, but one kind of forgets that sitting here because you see cases largely through paper not through people, and it was encouraging to see...to be reminded again of how much hard work goes into, effectively generating litigation in this court or any other court. And how many people are seen and assistance is sought to be given along the way.
- Int Kate, thank you very much for your time.
- KO Pleasure.

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Legal Resources Centre Oral History Project

PUBLISHER:

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

Location:- **Johannesburg**

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DOCUMENT DETAILS:

Document ID:- **AG3298-1-140**

Document Title:- **Justice Kate O'Regan Interview**

Author:- **Legal Resources Centre South Africa (LRC)**

Document Date:- **2008**