This is an interview with Justice Albie Sachs and it’s the 5th of August (2008), Tuesday. Albie on behalf of the SALS Foundation, we’d really like to thank you for your time and agreeing to participate in the LRC Oral History Project. I wondered whether we could start this interview, if you could talk about your early childhood memories growing up in South Africa under apartheid, and where you think your sense of social justice and injustice developed?

ON BECOMING A LAWYER

I’m going to tell the story in my way… I don’t know what led me to decide to study law. In high school when adults speak to you, the big question is: what are you going to do? And I had a reputation for being clever, based on the fact that I had a rather long sad face and got reasonable exam results. And I would say: I’m going to be a doctor, I’m going to be a doctor, I’m going to be a doctor… I’m going to be a lawyer. It was very late in my school career that I made that choice and to this day I don’t know what specifically prompted the switch, I’m sure my dad had a lot to do with it.

I grew up away from my dad, with my mom, Ray (Ginsberg) and my younger brother, Johnny (Sachs). And she left him to go to Cape Town when I was about two years old, it would be about 1937, and he was six months. And she went to Cape Town partly to get some personal peace, the marriage wasn’t going well, but also to work as a typist for Moses Kotane, who was the General Secretary of the Communist Party, and he also went to Cape Town to get peace. The Communist Party headquarters in Johannesburg had been a scene of total division and factionism, everybody expelling everybody, and the idea was to reconstruct the Party from a quieter base in Cape Town and Ray (Ginsberg) would be a typist giving him support.

My dad Solly (Emil Solomon) Sachs was the General Secretary of the Garment Workers’ Union, a very brilliant, passionate and effective trade union organiser. A controversial person in as much as he seemed to find himself in conflict with, not only the bosses and the government but also in the Communist Party. He was expelled for right-wing deviationism in 1931, on the basis that looks ludicrous looking back now, and then had difficulties in his personal life as well. And one result was that he was constantly involved in litigation. He seemed to love going to court. I think he accounted for something like twenty-six different court cases, many of which are
reported in the law reports today. And…(I'm saying this in brackets now...not for the
transcript, but I'm closing my eyes, I'm shutting you out, it's like a private thing, a
reverie that I'm conducting in your presence but not with you), and the...he had a
kind of huge respect for the judges in Johannesburg. It was partly he saw the courts as
a battleground. He could fight for the workers on the basis of legislation in their
favour. If he was arrested by the police he would try and get the best legal support.

One of the very first cases he was involved in dealt with restrictions that were placed
on him by a dictate of the then Minister of Justice, Oswald Pirow, I think it was, who
went on to become a great supporter...avid supporter of (Adolf) Hitler. And my dad
challenged the restrictions order on him in the courts and it went to the Appeal Court
and the Chief Justice said: Parliament can do anything it likes in relation to the life,
liberty or property of any of the subjects of South Africa, provided it follows proper
procedures. It was the high watermark of positivism and the citation that's often used
as an example of the extreme deference of the courts to Parliament. Other cases in
which he was involved concerned free speech. He criticised a magistrate for being an
ally of the bosses and he was sentenced for contempt of court but he won on appeal
on the basis that what he said could be interpreted differently. And he had many cases
of defamation against the Dutch Reformed Church, and various trade union bodies set
up by Afrikaner Nationalists to counteract the influence that Solly (Sachs) had on
Afrikaans speaking women who joined the Garment Workers’ Union.

The very last case he had was when I was a second year law student and he’d been
placed under banning orders by the government and he defied the banning orders,
spoke at a very big public meeting on the City Hall steps in Johannesburg, about ten
thousand people attended. The police waded in and smashed the heads with batons of
many white workers and Solly (Sachs) was marched off to Marshall Square, I think it
was called, police station, and the joke afterwards was that the hundreds of women
followed him, shouting with a strong South African accent: we want Sex, we want
Sex! And his challenge was to the validity of the banning orders and I think he
thought that he had a fair chance of having them struck down. The case was...his
defence was presented, I think, by Norman Rosenberg QC, one of the top advocates in
South Africa, but he decided to argue the appeal himself in Bloemfontein, and he got
me to go along as his junior. And I remember going to a clothing factory in
Johannesburg to get my first suit and I don’t think Solly (Sachs) would ever take
presents from the bosses but he was willing to buy wholesale and I wore the suit and I
sat in Bloemfontein and all his books were lined up and he asked me to pass the
books, and as a second year law student, I couldn’t tell one book from the other. It
was a bit of a publicity idea, I think, that he had. And he argued himself partly
because I think he fancied himself as a lawyer, but partly he wanted to convey to the
judges how vague the banning order was, particularly the one restricting him from
attending any social gathering. What was a social gathering? And if the order was
struck down then it would be invalid and the charge against him would fall away.
He’d been sentenced to, I think, three or six months imprisonment, and in the end the
Court of Appeal rejected his appeal, but complimented him on the objective way in
which he had argued, and suspended the sentence. He claimed to be very angry at the
suspension of the sentence, he said he wanted to either be acquitted or go to jail. But
he then left the country, he couldn’t function as a trade union leader, he wasn’t
equipped for doing work in the underground, and he went to live in exile then in England where he helped establish, as it happened, the Anti-Apartheid Movement.

One of the young lawyers whom he employed fresh at the Bar, was Sydney Kentridge. And that was in a Commission of Inquiry that had been set up into the alleged abuses of office by Solly Sachs in the Garment Workers’ Union. And he…it dragged on for quite a long time and they were able to expose the mole who had been sent into the organisation as a fraudster and a crook, and in the end the enquiry more or less collapsed. But I think that was the beginning of quite a strong legal and friendly relationship between Solly Sachs and the young Sydney Kentridge. And Sydney (Kentridge) apparently advised my dad to give me a copy of a book called from *Hammurabi to Holmes: Extracts of great Legal Documents and Statements*. And the book reached me. And I never looked at it. It wasn’t the kind of book to give to…being fifteen, about to do my matric, it didn’t have the drama, the passion, the intrigue, the interest, it was for somebody who was already a lawyer to read what other people had written about law. But I did read *Darrow for the Defense* and I suspect my dad had a hand in that as well…Irving Stone…and that was a gripping narrative about this wonderful lawyer fighting for the poor and the marginalised. Interestingly enough I came to loathe the Darrow’s of this world who projected themselves as being the centre of the drama, the clients merely being the vehicle for their prowess. Individualising and turning the whole theme of the fight for justice into the theme of the knight in shining armour. Very egotistical. Maybe my reaction was a bit too harsh and too strong and at the time it did have meaning but when entering legal practice later I discovered the importance of disdaining the Darrow type approach but at the same time not turning one’s back on the possibilities of getting publicity for the client for the case, and so for the issues.

My mother claims that I was a wise child and I certainly had that reputation with her sisters, my aunts: auntie Becky, auntie Frieda and auntie Gertie, who used to knit jerseys for us. And being the oldest of the children my jerseys would be handed down to my brother who would hand it down to their children afterwards. Being General Secretary to the Communist Party, being his typist, meant you didn’t get a very big salary. I mean, his salary would have been minute and my mom’s salary would have been a minute fraction of the minute salary. So we lived modestly but we never went hungry, and we didn’t care much about clothing and we would take the bus to where we had to go and there was some support from my dad for school, schooling, and a number of years at boarding school which enabled my mom to do her work.

I went to SACS, South African College School, so I was SACHS from SACS for ten years and the boys would, in quite a friendly way say, SACHS, bags, bottles and rags. And I enjoyed school, I enjoyed boarding school. I enjoyed the conviviality and I knew that my lifestyle was different from that of the other boys, but everybody had a story. There were lots of boys whose parents lived up country, they had a shop or a hotel, and they would send the kids down. Their accents not being quite as English as the accents of the rest of us. And they were…I just remember the warmth and the conviviality and not very great concern about who came from wealthy backgrounds and then who not. One way in which I was different was, there was a local tuck-shop around the corner run by Mr Kaplan, Kappies, and the parents would pay some money
so that we could go there, we didn’t have money ourselves. And I was allowed to spend a tickey a day, a thrupence a day, but on fruit, not on sweets. And all the other boys were buying sweets and I was buying fruit. Different. But I didn’t regret it, I enjoyed the grapes and the peaches and the apples, and seasons changing. My mom claimed that…she told a story that when I was about six years old, seven years old… I started school at the age of six and ended at the age of fifteen, and we were pushed ahead because many of the teachers, the main teachers went up north to fight, and so the classes were joined together and those of us who were seen as a bit brighter were pushed up, which meant I matriculated age fifteen. And I’ve grown up in a home with lots of books. So I must have learned to read fairly early on, and the imaginary world of books was very important. And it was a world of ideas and a world of values, and these things certainly counted for lots. Whereas possessions were…wouldn’t say counted for nothing, but they were almost disdained. They were the enemy, they were something you weren’t proud of, you’d be ashamed of being rich and wealthy and having lots of material goods.

So my mom when she, in her late eighties, did a narrated, what we call, the memoirs of a revolutionary typist, they told the story, when I think I was in standard one aged about six or seven, I’d broken up a fight between two of my classmates. One had accused the other of stealing something from him, and I’d questioned them both and I’d established that he couldn’t have stolen whatever it was, and the fight ended and the innocent person apparently bought me a sherbet with a liquorice straw. And my mom said it was my first legal fee. Another story she told was of Shaheen Gool, the son of Cissy Gool, when I must have been about four or five, and I think he was about sixteen or seventeen, and he’d climbed up into a tree and he wouldn’t come down, and according to my mom I spoke to him and persuaded him to come down. And none of his family, nobody else could get him to come down. So these were all seen as signs of a persuasive talker. I remember at boarding school I would catch a bus from outside the bank in Adderley Street to where my mom was staying in Clifton and she had moved to Clifton, it was a relatively cheap area of wooden bungalows where people passing through, bohemians, poets, painters, would stay. And my mom had…when she’d come down, had stayed with Cissy Gool and Sam Kahn in their bungalow in nearby Glen Beach and just developed a love for the sea so she stayed in this…she went nearby to Clifton and we would stay for six months of the time, which was the maximum letting period allowed by the Council who owned the land, in a basement, and then we’d move on and move on. And this embarrassed me very much because my report card was full of addresses, and when I was like in standard two or standard three the card was already full and the teachers would comment: oh, Albert I see you’ve moved quite a lot.

And one day I came home and I said: look, mummy I’ve still got the penny, I didn’t pay on the bus. And I felt very, very proud that I hadn’t paid. And she was furious with me. what do you mean you didn’t pay? This is public transport and everybody must contribute! And I said: well, I’m sorry mummy, but the conductor was upstairs all the time, he didn’t come down. She said: you go upstairs and you find him before you get off the bus. And I never forgot that, and decades later when I was in London…

(interruption)
Decades later when I travelled with my younger son, Michael (Sachs), on the underground in London, on his third birthday I bought a ticket for him. Now no-one buys tickets for their children until they’re about seven. Three is the age when you’re supposed to get a ticket. But this idea was so deeply implanted in me that I bought the ticket without any sense of not paying. In fact I would have felt very uncomfortable if I’d smuggled him on to the train without paying.

My biggest existential problems at school didn’t relate to being different in terms of lifestyle and values, and certainly not to the fact that my mom worked for Moses Kotane. That was a source of great strength for me. Tidy up, tidy up, uncle Moses (Kotane) is coming! And the respect and affection that she had for Moses (Kotane) was…it was so much part of my growing up that it saved me from the struggles that many white kids had later in their lives to overcome the instilled racism. Which was not to say that I wasn’t affected by the world I lived in, the ambience, and in different ways, but at the core was the sense that racial oppression was unjust, it was wrong that people had been conquered and dispossessed, that workers had their rights but were being exploited, and that the poor shall inherit the world. And that was just like round and about. It wasn’t ideological, it was a practice of life. What was hard for me at school was religion. About half the boys were Jews and half Christian. And then there was me. I was a Jew in the sense that my family were of Jewish origin, both spoke Yiddish to their parents and the connection with Judaism through culture and history was very strong. But not through religion. And they both rebelled against their parents and my mom told me the story afterwards where, very reluctantly, when they decided to marry, my dad agreed to a ceremony under a chuppah in someone’s garden with the traditional Jewish rights, and when they got there my dad just grabbed my mom by the arm and said: enough of this rubbish and stormed out. Another controversy in his life.

So at kindergarten pre-school…first there was kindergarten that was quite important for me, with Mrs Tischauer, ‘auntie’, we called her. I discovered afterwards it was using the Montessori principles and she was a refugee from Germany. Her husband had been killed in a concentration camp, and auntie became quite an important figure in my life. My brother and I spent quite a lot of time with her. Again this permitted my mom to do work for the Party, for the people, for the struggle, for the revolution. And I remember the ambience with a lot of affection, and especially auntie singing us a Brahms’ lullaby in German, which gave me an affection for the German language that I mightn’t have had otherwise. And eventually that ended when there was a fear…the place was in Seapoint, of Japanese submarines coming and shelling Seapoint which was more accessible than other parts of Cape Town, and she moved to a sort of farmstead, a place called Klapmuts, near Paarl.

Now at school in this setting where religion was spoken about a lot and the Jewish boys would follow a rule that you didn’t eat milk with meat. It’s a dietary prescription that obviously had its origins in experience in the desert that sometimes rituals that are totally dislocated from practical rationality have greater power than pragmatic rituals that are embedded in practice and greater longevity. And then we used to argue about whether you could eat…have something milk after meat, forty-five minutes afterwards or some would say, no, it’s an hour, and some would say it’s two hours,
and then there would be a reigning principle for a while and then another boy would come in and say, no, it’s another period. This all seemed rather ridiculous to me. And the big battles came over…not big battles, the big problem for me came when my date for possible Bar Mitzvah came near. Albie, when are you going to have your Barmy? Now I was younger than all the other boys in the school because I’d been pushed up, so one by one they would have their Bar Mitzvahs, and it was an important moment in their lives, and there was a Mr Kuperman who ran what was called a cheder and he would train the boys, prepare them for the Bar Mitzvahs and he would be on the lookout for Jewish boys. We’d all scatter. ‘Chips, chips’, we would say, ‘Kupie is coming’, and we’d hide. And the date for the Bar Mitzvah got closer and closer and closer. There was a chap also in my class, relatively young…his name might come back to me in a minute…I only remember him in relation to this, from a totally secular German-Jewish family, but even he had a special short course, like ten days before the date of his thirteenth birthday. Albie, Albie when’s your Barmy? Flush, and mumble something. And my parents had said to me, if you want a Bar Mitzvah it’s totally your choice, it’s up to you. But they didn’t encourage me, but they didn’t say I shouldn’t have. They really left it to me to decide. And the peer pressure was just like enormous and yet I just felt it would be so undignified and I felt it would be a violation of my conscience, and disrespectful to God if God existed, that I would go into the shul and recite something that I didn’t believe in, and I just felt I couldn’t do that. So my conscience, the connection between values and conduct was shaped over little decisions that I made, and looking back now it was pretty heavy for a young kid, who had to work it out on his own. I couldn’t get help from the other boys, I couldn’t discuss it with my parents. I knew what they wanted or didn’t want but it wasn’t on the one hand, on the other hand, it was something I had to sort out for myself in my own head.

And one consequence has been that for me, when I was asked after returning to South Africa: well, Albie Sachs, what would you say is the most important right to be in the Bill of Rights? I said: the right to conscience. They were shocked. They thought I would refer to education or to food or to the vote. And I said: to conscience. It’s the foundation of dignity; it’s the foundation of equality. Respect for the individual conscience. And the right to make decisions for yourself. And…school wasn’t brilliant. SACS had been the leading school, the first former school established in South Africa, and proud of the prime ministers it had produced and judges, and being there during World War Two was also very important. The war dominated everything. It was that, what’s now called ‘the elephant in the room’ if you like. It was the point of reference, and particularly for young boys, whose fathers, uncles, were going off to fight in the war against (Adolf) Hitler. And the theme of courage…courage under fire, became the dominant personality trait that one wanted. To be brave, not to cry, not to be afraid, not to be a coward. To be a coward was the most terrible thing.

And I have very mixed feelings looking back. These were ideas based on a militarised society. One picks up similar ideas in African societies, in European societies, all over the world, where the soldier becomes the prototype of the man, of the human being. And the virtues of the soldier, obedience, loyalty, honour, became the creed of the school. And I have such ambivalence about those qualities because they do presuppose human solidarity, interconnectedness, honour….yes, this connection with others. And when I wrote about it years later, I found myself saying the freedom that
capitalist society brought autonomising individuals, it destroyed concepts of honour, of loyalty, of fidelity, atomised individuals, of people, and destroyed a lot of what was very organic and valuable in society. And in a way it was necessary because honour was always honour and fealty and loyalty to some superior being based on birth. And courage would involve a blind subordination to a superior power. So all these qualities were given a narrow significance. And yet we needed courage in the struggle, we needed honour in the struggle, we needed integrity, we needed loyalty, and we couldn’t be each one on our own, and it was actually destructive. And when I came across the concept of Ubuntu many, many years later, I could see how it picked up on the positive aspects of these old feudal principles. Well, all of these were ingredients coupled with reading stories, probably more influential than the books for children that I read, and Jules Verne, I think, was important for my imagination. I was never much into Rudyard Kipling and Captain Marryat. There were lots of stories about ships and sailors and fighting at sea, but these were now replaced by fighting in the air, and we used to get…we called them comics…would come out from England, and there was a huge trade in them, we would swap, and we loved them much more than movies and their trailers and…And I still remember one character called Rockfist Rogan, who was a boxing champion and an air-force pilot, so he combined these two things, and his plane was shot down in Germany and somehow or another he captured a German uniform and pretended to be German, and got into the ring with the German heavyweight champion and knocked him out, and then escaped and got onto a plane and flew back to Britain, and the plane was shot and the one wing was down and the engines were failing but he landed again. And this became the sort of prototype hero. Biggles was another one. So all this stuff gets mixed up in a kind of fantasy imagination of this young boy growing up, enjoying being part of the team, of a crowd, getting on well with the others, but feeling different all the time. I played sports…I would be captain of the second team. Not good enough to make the first team but dependable enough to be the captain, I think, of the under-15B rugby team and of the second cricket team.

A little story from my youth that seems to fit into this stream…being a very dependable person in the rugby team I was allowed to take the rugby ball home after the game and I used to put it on the front door to surprise my brother when he came in, and I remembered it hit two comrades who came in. And the one was furious and upset, and the other, Wolfie Kodesh, went on to become a great friend of mine, he laughed, he thought it was very, very funny. In event, one day, my brother got hold of the ball and he took it out into the street and he kicked it over the wall of the house owned by the most horrible person in the street who had huge dogs, and who was always chasing us. And he came to tell me that he’d lost the ball. So he had no right to take the ball and he’d lost the ball. And now on the Monday morning I had to go back to school and announce that I’d lost the ball. And I went to Mr Stierlin, who was a very tough guy with a cane; we used to get beaten quite a lot. And I said: sorry, sir, but I lost the ball, I’ve got no excuse. He said: ok. And he waved me off. My brother had spent the whole day quaking and he was pale when I came home, and I said, nothing happened.

We used to be caned a lot in…my last two years in the junior school we had a teacher who insisted on having a class for two years, and all the boys prayed that they wouldn’t be in his class. Nobby Knowles, he was an Englishman who had been
affected by gas in the First World War. And the teachers weren’t allowed to cane us at the school where we were taught, only the Principal could, but being a boarder he could cane me at the boarding school. And every day he would find a pretext and give me six of the best. And for three months I would bend over, pull my pants down and he would give me six. We didn’t know about psycho-sexual things in those days, and I just…I never complained to my mother. The world was full of injustice, you put up with it, you got through it. I had the sympathy of the other boys. And that was part of becoming a man. And then one day I decided I’m not going to cry anymore and he beat me, I didn’t cry, and he beat me, I didn’t cry, and I didn’t cry for about another fifteen years over anything. And then a friend of mine died and then I cried for the first time. I remember one day in class we decided to loosen the joints of his chair and he came in, this tyrant, and he sat down and collapsed, and we all roared with laughter, but like hysterical, nervous, and then he came walking towards me and he chose the guy sitting next to me, and he said, why are you laughing? We were all laughing. He was sure this guy had been responsible; he hadn’t been. He was a brilliant teacher, a pedagogue, and I still remember, ‘friends, Romans, countrymen’, he got us to declaim Shakespeare and…I was given…I was a quite a good student, not a brilliant student, and I remember I got a prize for Geography, and my mother came to the school and I didn’t want her to be there.

When I read a book by Bernice Rubens about this genius pianist who didn’t want his mother around I could identify completely. Shame, you know, my poor mom, but I just didn’t want her to be there. And I go up onto the stage and I’m given my book and I walk down from the stage, and I sit down, and the boys say, what’s that, what’s that? And I’m trying to hide the cover. It was Alice in Wonderland. How can they give Alice in Wonderland, a book about a girl, to me. And it took me years before I read it. And of course I loved it when I eventually read it.

School was intellectually a bit of a disappointment. I was quite good at Latin and at one stage was the only guy in the class who could follow what was going on. There’s a logic in it. And I used to help the other guys by, when we wrote exams, I would leave my book open so they could copy. So those sitting around me would copy but they’d all make a couple of deliberate mistakes, otherwise it would be obvious. But the deliberate mistakes would be copied by the persons further out on the radius, and the teacher couldn’t understand why out of a class of twenty-five, twenty-two would make the same mistake, it wasn’t a real mistake, it was, you know, it was a mutilation of the whole thing. And the teachers weren’t special but I did enjoy working on the school magazine and I became the Editor of the magazine. And the other schools had magazines, our rival schools, with pictures of victorious cricket teams and rugby teams, and we had short stories and limericks and jokes and sentences from our text books with double meanings, photographs and poetry. We had quite a good debating society and I was very active in the debating society. And again looking back, possibly the most triumphant moment of my whole school career was in the finals of a competition, a quiz competition, I think it was against Ellerslie Girls School, a live SABC radio...we were tying and the very last question was: why do firemen wear red belts? And I knew the answer: to keep their pants up. You’ve got it, he said. And the team won. I’d read it in a quiz book. I used to read these quiz books. It was like a trick question. So I can’t remember any great tries that I scored or
bowling somebody out or hitting a six, but I do remember the debating and the quizzes.

So I decided to go in for law and it had a social mission. I hated my parents putting their politics onto me and assuming that I would support their views and go along with what they did. But I did read some books by a writer called Geoffrey Trease. One was ‘Bows Against the Barons’. And this little boy joins Robin Hood. Another was ‘A Call to Arms’, set in Latin America where they’re fighting against dictatorship. I loved them, absolutely loved them. And this wasn’t being a great hero in front of the German machine guns and killing people and saving people and bombing people, this somehow linked up fighting…I mean, it was a noble cause to fight against (Adolf) Hitler, but somehow the killing was detached from the cause, it became a thing in itself. This was very much involved with a sense of justice and the meek, the weak, the impoverished, the marginalised, fighting against the rich and the powerful. Any event, whether it was reading those books or Darrow or whatever, I decided to become a lawyer not a doctor.

UNIVERSITY

University, I thought that’s where it will all be at. School wasn’t intellectually sparkling. You learnt enough to pass the exams and to do reasonably well. And I thought it would all be at university and I discovered university wasn’t intellectually sparkling. You took your notes and you studied to pass the exams. I think in five years there were only two really brilliant pedagogues, and the one was Jack Simons, who taught…who converted, transformed, what had been called Native Administration and Law into Comparative African Government and Law. And in a very different way Professor Denis Cowen, a great believer in natural law, with a very beautiful way of expounding, he loved expounding ideas, on the most technical topics. He would give them a resonance and speak with a bravura. But for the rest it was pretty pedestrian. Some were better than others, you’d get good notes, you learnt enough to pass exams. But for the whole of the first year I was completely uninvolved in university politics. I would go to the stack rooms, I read poetry, I came across…I liked…the other German poet…who wrote about the tree in the frozen north dreaming of being a palm tree in the south…do you know any German poets?

Int No…

AS Early nineteenth century…Ok, the name will come back in a minute. (Heinrich) Heine. Much more sardonic, very witty…my dad loved. And connected with revolutionary movements. I joined the Mountain Club, went on some quite dangerous climbs. Played a little bit of cricket. I didn’t even know who to vote for in the student elections.

And then in…must have been towards the end of the year…my mother told me of some lectures that were being given by Uys Krige in a little meeting room in Electricity House, in Strand Street, where the Sun Hotel is now, and before that was the Alhambra Cinema had been…maybe it was near the Alhambra Cinema. And Uys Krige had owned one of the bungalows in which my mother had stayed and I
remember asking my mom, well what does he do? He’s a poet. What does a poet do? He writes poems, it’s words. And I couldn’t understand that. I could understand engine driver and a pilot and a doctor, but a poet I couldn’t understand. Anyway so I was quite intrigued and she knew I was reading poetry and so I went. And he spoke about three poets who wrote in Spanish and the one was called Lorca...Frederico Lorca. I didn’t even know they had poetry in Spanish. Poetry was (Percy Bysshe) Shelley and (John) Keats and (George Gordon) Byron and (John) Milton. And Uys (Krige) spoke in English, Afrikaans, Spanish, a bit of French. He walked up and down, he declaimed the poetry, he told us about Lorca’s life, and about Lorca being assassinated by the Franco forces. And it was an astonishing period for me and the next week was on Pablo Neruda. Latin America have poetry? It had sambas and Mexicans with big hats who were sleeping all the time and saying ‘manana’, and one of the longest rivers in the world with alligators, not crocodiles. And again he told of the poet involved in revolutionary struggle and the diplomat and who wrote about life and...about mountains and about the people. And the third was on a Cuban poet, Nicolas Guillen, but for some reason hasn’t stuck as strongly in my mind because I haven’t picked up subsequently on them. And what Uys (Krige) did for me was to connect up poetry with the great events of the world. Before that poetry was introverted and very subjective and you analysed it as the interior private thoughts of isolated individuals. And I feel some indignation now. I mean, Shelley (Percy Bysshe) was an activist, a troublemaker, a klip gooier. And Byron (George Gordon) was directly involved. But all of that was wiped out of our English literature syllabus. And even when we learnt about ‘Ozymandius’, this was projected as though it was about the ancient pharaohs, when he was speaking about the kings of England at that stage, but we were never given that connection. It was about power in abstraction.

And so it was poetry that set me up for politics. And people asked me afterwards: Albie, what made you bring culture into politics? And I told them, it was actually the other way around. And not long after hearing these lectures I met somebody at an air show in Johannesburg who said he was from Cape Town and he belonged to a group in Cape Town called the Modern Youth Society, who used to have musical evenings and were interested in politics. And I went to Cape Town and I attended the musical evenings. We took them very seriously. These were the days of the 78 records. And we’d sit in the darkness and you would hear a whole Brahms symphony and you weren’t allowed to speak or to move, and the records would be turned over. So it would be like 35/40 minutes of silence, but dead serious listening, with a tremendous degree of intimacy, you know, in the music. And I think some couples would take advantage, you know, for a little bit of a hanky-panky, but very quiet sedate hanky-panky in the darkness. But this wasn’t all, they had musical evenings but they also had debates, and I discovered that some of them were connected with people on the campus where there was a Modern World Society, and from then onwards I got very active and very involved.

And not long afterwards was the Defiance of Unjust Laws Campaign. And my first political action, in fact, was going in a procession to present a petition to the American Consulate on the impending execution of the (Julius and Ethel) Rosenbergs. I was terrified, what do you do, you know, when you go there? And it was nothing. We just went, we went to the building, we put it under the door. But just the thought, I’m going on a demonstration, you know, was quite nerve-wracking for me. About six
months later I’m in the Salt River town hall and my friend Wolfie Kodesh is telling me: you must be there, something important is happening. And Wolfie (Kodesh) loved to be privy to a secret. And we’re sitting there and it’s a rather boring meeting, and suddenly the chairperson, who then we called the chairman, is looking at the door, and in marches Johnson Ngwevela. Now he was in the ANC, in the Communist Party, underground Communist Party, which I didn’t know then, I wasn’t in the Party yet, and he’d been banned. And he was the representative in Langa of Sam Kahn & Co., a very, very active firm of attorneys in Cape Town, who did all the big…a lot of the big political cases. And he would channel loads of people to that firm and many of the cases they would do for nothing, some they would be paid. And he’s a very prominent person in African society, and now he was voluntarily defying the banning orders. People jumped up and started singing and the Chairman said: and now we call for volunteers. And one of the songs was: ‘volunteers obey the orders, be ready for the action now. Dr Moroka, Dr Dadoo, JB Marks, Kotane, Bopape, dah dah dah, be ready for the action now’. And the people are rushing up…I’ve seen it in revivalist films, you know…and I’m dying to join, and I’m holding on to those cheap wooden seats we were sitting on, and I’m saying to Wolfie (Kodesh), why can’t I go? Oh, no, you can’t go it’s black people who are struggling and doing it for themselves. Yes, but it’s a non-racial society that we want, why can’t I go. Shh! Wait, wait, wait! And it was very hard for me. And we had a bit of an argument afterwards and he said: do you want to join? I said: Yes! So he said: alright, we’ll pass on the information. And it took about six months before permission was given. And the feeling was it’s now right, it was important that this be black led until then.

And of course looking back now, I don’t see any problem at all but at the time it was very hard on me having to wait. And then I was asked to find out if there were any other white people who would join. And it was quite an interesting thing, the sort of thing you see in a theatre, you go around and…I won’t mention names, but so-and-so was the big revolutionary, well-known on the campus for his fiery speeches. Oh well, in fact he can’t join in because he’s going to a wedding, his cousin’s wedding. And other disappointments…

(Interruption)

And then some surprises…in the end there were four of us and Mary Butcher she was, from a very…a pretty wealthy Durban family who were in fact Christian Scientists and…Arnold Harrison. Arnold (Harrison) was working class Englishman, a very timid person but with a lot of very quiet courage. He was a typographer and he’d been expelled from the union when it was proposed that the chairman be given a big salary increase: All those in favour, and lots of hands went up. All those against, one hand went up, his. And he was expelled from the union, being expelled from the union he lost his job. And Hymie Rochman. And I still see Hymie (Rochman). He’s in Chicago now. And I still see Mary (Butcher). We have a wonderful friendship going back to the days when we sat on a bench in the general post office in Cape Town, marked non-whites only.

(Interruption – end of first interview)
Interview 2:

If I can go back a bit to explain the apparent disjuncture of always feeling comfortable growing up in the family that I did and accepting the values but also not wanting my parents to assume that I automatically followed their values or believed in the things that they did or simply did the things that they expected of me. And I’m sure it was part of my own autonomy, my own deciding for myself, and possibly the weight of it was just too much. I had so much to feel in the world, I was subject to so many influences: the kids at school, my close friends at school, the general school environment, the country I was growing up in, and so I wanted something more than just what my expectations of my parents might have been. But then when I met with the Modern Youth Society I could get those same values but from my peers, from people, they were all a little bit older than me, and the contrast with other groups at university was so startling.

There the big issue was the date for Saturday night, going to what we called the ‘bioscope’ and you would phone the girl you were interested in and if you... Wednesday night was the key night, but if you wanted to make sure, you phoned on Monday, she would stall, and Tuesday she would stall in case somebody better came along and Wednesday everybody was phoning so you couldn’t get through. Thursday might be too late, she might have wanted you but she couldn’t take any chances that she wouldn’t have anybody to go with. And I didn’t have a car. I didn’t have much money, I couldn’t buy chocolates, so I wasn’t good at that whole thing. And yet that was what in a young boy’s...at school and then at university, what was top of our consciousness. And I thought, is this what life’s about?

And with the Modern Youth Society, I met a crowd, we used to climb Table Mountain, we had all-night parties, we used to argue about: if god exists can god be so powerful that he can make a stone so heavy that even god can’t pick it up. I mean, in some ways, crazy brain straining idea like that, but just for the sake of testing logic. And would there be one language for the whole world? Would that be good for humanity? And we all believed that it would be, it would unite the human race. With just a few voices saying, well maybe, it’s not a bad idea to have a few languages, but we couldn’t agree on which the privileged languages should be. And we did things very much as a collective, we didn’t break into couples, and I could have wonderful women friends without the ‘will she, won’t she’ dimension coming into everything. That was the binding factor and humanity in general thorough the world but specifically in South Africa, it was anti-racist, and although we were a largely white group, we weren’t exclusively white and our social functions would be open to everybody and we defied the colour bar. And it was a very... it was personally dramatic, it was personally involving, there was great vivacity and perhaps a bit of luck that we had was through the passing of the Suppression of the Communism Act, it banned any overt debates, discussions, material on Marxism, which meant it excluded all the heavy dogmatic stuff all the previous generations had been exposed to, and forced people to articulate what they wanted in ordinary straightforward clear English. So indirectly, it was a boon.

I remember we had a study group that we wanted to study Marxism but to do that straight off would be very risky, so we said, well let’s do the history of philosophy,
and we started with pre-Socratics. Wow, that was so interesting. So instead of one session, we had two, and then the Socratic and then the birth of dialectics, and I think we didn’t even get out of ancient Greece, but just debating the ideas and their relevance for contemporary society. So we never reached Marx. We didn’t even get close. I think Aristotle was as far as we got. Now this to me was far more dramatic and exciting than ‘would she go out on Saturday night or not?’ And I must say to this day I’m not very good at dating. So it was parents’ values and ideas but expressed by my own generation in their terms that resolved the desire to be autonomous on the one hand and the desire to do what I believed was right and correct. And I might say sometimes you read about or hear about people belonging to groups like Jehovah’s Witnesses, and I have great ambivalent feelings for the children. On the one hand respecting their right to follow their parents with the fidelity and a strength, and I would imagine if the homes are homes based on warmth and love and just happen to have a particular belief, it makes the continuation of those beliefs very, very meaningful. If it’s based simply on terror and obedience and fear, of course, then it’s very ugly. But in my case there was no terror, there was nothing demanded of me, but I did want my autonomy and I felt that quite strongly.

And I know afterwards my parents worried about me, I was in and out of jail, I was blown up, but my mom visited me during my ninety day detention, I think they were hoping that she would break me down, and she came there, she told me afterwards she bought a dress specially which she’d never worn subsequently, she had her hair made up, and she was determined to be strong and supportive when she came in there. And we stood in a little prison courtyard, and I started speaking and she sort of put a finger up to her lips as if to say, you know, be careful, Albie, we might be listened to. And instead of telling me to co-operate with the police, which is, I think, what they expected, she indicated something that she expected me to be brave. And it must have hurt her terribly, you know, to see her son in that situation. My dad, after getting to England, wanted me to follow him to England, go to the Bar there and get into Parliament and become a leading British politician. And he could never understand fully why I just felt my struggle was totally in South Africa and I had no ambitions at all to follow a British political or legal life.

Int I’m wondering, Albie, you speak about how you steered away from politics early on at university, but there came a point where you really wanted to get involved, and I wondered whether you could talk about what was the impetus for this?

AS Well, it was listening to the talks on poetry, and meeting this young group. I was ready. And it was connecting up the private, the personal, the subjective, the intimate, with the grand events of public life. Which came through…obviously I was ready for it but it came through, through those lectures on these Spanish-language poets. That provided the emotional intellectual bridge, and then the chance meeting with this person who happened to belong to the youth group, I was absolutely ready, and once I got in, you know, there was no turning back. So it was like a reconnection for me. I should mention too that the…my mom’s friends, many of them were women, frequently living on their own, and they were independent and bright and full of vitality and there was a lot of laughter and energy and doing things together. It was
inevitable that I would grow up pro feminist. And not based on anything ideological but just on the world in which my consciousness emerged.

And…it was complicated with my dad because an enormous number of people owe a huge amount to him, to the union, and the Medical Aid society and provided employment and structure, discipline meetings, electing shop stewards, the practice of democracy, and started primarily with Afrikaans-speakingspeaking women, whom he called rebels’ daughters. And then many women from the coloured community and from the townships, African women joined, and Lillian Ngoyi being perhaps, one of the best known examples. And all of them became active in the broad political struggle afterwards. And there was an integrity, he was totally un-corrupt. He used to play cards with the bosses who had come out on the boat with him as a kid, and they’d been tailors and they’d now become factory owners, and people used to say: Solly (Sachs), how can you play cards with the class enemy? And he’s say: class struggle is class struggle, and poker is poker. But the fact is he would play cards with the bosses who accepted the industrial agreements and pay the workers properly and respected their rights. And his political ideas were too radical for the broad liberal intelligentsia at the time, but not nearly revolutionary enough for the left. So he spoke about progressive capitalism and he favoured black workers being organised in separate branches which was seen as a terrible concession to racism. He said, until they are strong and independent, if they join in with the white branches they will be seen as junior, and what they need is to develop the capacity and strength. And in a way one sees today when public sector workers go on strike, the whites are joining in what are basically black unions. I mean, in that sense his timing was all wrong but many of his ideas have arrived. The progressive capitalism seemed to be a repudiation of socialism but he felt South Africa didn’t have a sufficient industrial base to develop a true socialist movement.

Now many people who once were socialists feel they’d be lucky if the capitalism is even progressive in this country. He was fairly sensitive, could be wounded very, very easily…and funny, terrific sense of humour, independent in his life style. I felt very sad for him in his last years, I felt he was isolated, lonely. He discovered Beethoven when he was in his sixties and he would phone up, and so I’m living with Stephanie (Kemp) and we have two little babies and I’m acting as a law teacher and Stephanie (Kemp) is doing anti-apartheid work and we are super busy, and the phone would ring: Oh, Albie, this is your dad here, I’ve got tickets for a Beethoven concert at the Festival Hall tonight, can you come and fetch me and my friend? And it meant forty-five minutes across London and thirty minutes down and another thirty minutes back. It was just impossible. I felt it’s great that he’s discovered this great musician called Beethoven, you know, late in life, and that he would take her there, his girlfriend, there on a date, but to expect me just to drop the children and take him, it was impossible. The phone would slam down and I’d feel his anger. And to this day I feel it even when I talk about it now. And I was in Tanzania when he died. I was teaching at the law school there and I couldn’t get a plane back for the…in time for the funeral. Somebody told me afterwards that the Sam Kahn, the lawyer, said at the graveside: he’s sure that if god exists, Solly (Sachs) is arguing with him right now. And I went to his apartment and I just felt such a sadness and there was old clothing there and it hadn’t been cleaned out clearly before he died even. And I felt for his loneliness. And then I saw the letters that he hadn’t answered and I just sort of opened them in case
there was something. And three were from different girlfriends. I mean, he was seventy-six and he sometimes used the name Emil. And one was: my darling, Emil, where were you, I was waiting. And there was another one filled with physical passion. And the third one a similar thing. All of them wondering what had happened to him. And I thought, gee, you old so-and-so, you know, here am I feeling a kind of solidarity for you that you’re leading this totally lonely life and not one but three…three, three, three, three girlfriends at the same time.

Right let’s move forward then to my studies. The biggest tension I felt, and it was a cleavage right down the middle of my legal soul, was between what I was learning at the university and what I was doing, particularly in little study classes in the shantytown area outside of hours. At the university it would be all the grand phrases of the evolution of the rule of law. Not much was said about constitutionalism in those days. That was seen as a rather odd American idea that didn’t have much relevance to the common law tradition based ultimately on the idea of having good chaps in charge is better than having a written constitution. And we had to learn these phrases to pass the exams and occasionally it would be taught with a bit of class analysis. There was one professor, Jean van der Poel, whom I discovered afterwards was what was called a Trotskyite…Trotskyist…and I believe living in a lesbian relationship. And she presented the evolution of the rule of law in England in terms of the merchant class wanting security against the imposition of taxes by the king and the absolute feudal power of the Stuarts. But that was the nearest to any kind of social history impinging on law. The rest would be starting with the Twelve Tables in Rome, going through the evolution of Roman-Dutch law and the clarification and adoption of certain Germanic principles in the Roman-Dutch law. The impact of some British ideas when the British took over in the Cape. As though ideas simply proceeded on their own. And then we would learn quite a lot of British constitutional history, battled to memorise all the kings and queens and the sequences and so on.

And that seemed absolutely remote from the study classes I would do at night in a little shanty with ANC comrades who just wanted, were eager to know about the world, and about justice and about how things worked. And they maybe had had two, three, four years of education, politically very active and we would sit in this little shanty and a candle would be burning and you would just see the eyes and the mouth, that’s so expressive, just the face and occasionally a hand, and the whitish palm of a hand. And the people spoke with such vitality and passion and commitment, and justice to them was life. And a willingness to give up everything for justice, even if they didn’t live to see it themselves. And up on the campus these rolling phrases from the ages, from the text books that seemed to have an autonomous existence independent of any lived experience of any actual human beings. And it tore me apart.

I passed the exams, I learnt the stuff, I tried to get inside the ideas, and when I started practice…I went straight into practice after leaving university. I’d taken off one year between my BA and LLB and I went to England and I had a very limited passport so I couldn’t leave the British isles. I stayed with my dad, I read…read, read, read. He said, you’re going to spend the rest of your life working, now is the time to read the classics. The classics for him were (Karl Heinrich) Marx, (Friedrich) Engels, (Vladimir Ilyich) Lenin and (Joseph Vissarionovich) Stalin. And I in fact read a lot of
(Fredrich) Engels. I found his writing the most acceptable. I found his tone the most acceptable. The writing by Lenin was full of pungent bitter polemics and I was interested more in the ideas and the Stalin would be rather simple text books that didn’t grapple with deep ideas. And the Marx was brilliant passages here and there but *Das Kapital* was just enormous and I just read little sections of it. So Engels was the one I read a lot, but I also read (Leo) Tolstoy, I read *War and Peace*, like non stop one weekend in Manchester. I remember it was very cold and we would put a shilling in the gas fire and I’d sit and my knees would toast and my bum would freeze and then I would turn around and my bum would roast and my knees would freeze. And I read it almost non stop…I used to cook porridge to keep alive. And I wrote a letter to somebody afterwards who was absolutely amazed: gee, Albie, I didn’t know you could write such beautiful prose. And I was just rolling with the (Leo) Tolstoy incandescence(s). And I saw lots of movies, I went to every Marx Brothers’ film ever made and I went to…it was the time of trilogies: (Vsevolod Illarionovich) Pudovkin did the Gorky trilogies from the Soviet Union, and there was the Marius trilogies from France. I got very much into film then. And sort of hobnobbed with students, young people, and it was a good year off for me.

And the highlight came with an invitation to go to China, and flew to Prague and that was all the Communist bloc then, so you didn’t need visas, and it was train from Prague to Moscow that was two and a half days. And I kept waiting to see the combine harvesters on these grand collective farms that I’d seen in all the magazines we used to get, and all I saw was women with black doeks…this is in Czechoslovakia, cutting the corn with sickles. I thought, oh well, this is Czechoslovakia, it’s only had socialism a few years, wait till we get to the Soviet Union. And we cross the border and I see the same women with the black doeks and the same sickles. Oh well, this is the part that was, of Ukraine that was…only became part of the Soviet Union after the war, wait till we get to real…we get there, oh this was the part that was occupied. Wait till we get the part that’s not occupied. And it’s the same women all the way through. So that was a little bit startling. And the beginnings of the puncturing of the idea of the socialist camp solving all problems and leading humanity forward. then the Moscow Peking train, the Trans-Siberian railway. It was a fabulous journey, I think it was thirteen days. And the music played, Moscova-Peking, Moscova-Peking, you would come to one or two big stations a day, and it was all about (Joseph Vissarionovich,) Stalin and Mao Tse-Tung. Stalin was already dead then, this was ’54, and I actually saw his body next to the body of (Vladimir Ilyich) Lenin, I think it was just for about a year. and I still remember one of the South Africans with the group looked and said, gee, he looks so dead. And I felt a bit strange. This didn’t seem like socialism …this was idolatry, you know, of an embalmed human being. But I thought, well, maybe it’s got special meaning in Russia, and so on.

And the week I spent in Peking, Beijing, it was quite marvellous. It was a time of openness, it was a time of the end of the Vietnam war, that’s the war against the French. And the beginnings of peaceful co-existence…I met Zhou Enlai, we all stood in line and I shook hands with the Chinese prime minister. And I was absolutely enthralled with the Peking Opera, with the way the Forbidden City was now opened up to everybody, and the interpreters were the children of the old bourgeois class, totally enthusiastic about the new China, China coming together, dignified China. And I afterwards felt bitterly disappointed by the Cultural Revolution and the
destruction of all the things that I’d found so admirable. And I never supported it in spite of the demagogic statements.

While I’m on this theme the split between the Soviet Union and China was a big blow to many of us, because we’d seen the world advancing to socialism, it seemed like the inevitable course of history, the poor, the oppressed, would rise up and establish socialist societies and take over the world. And now we were discovering they were fighting each other, they were bitter, they saw the world differently, and then came the Kruschov Report. And we divided in Cape Town. I remember one house we went to and one group said it’s a CIA fabrication, and a much smaller group said, no, these things happen. And there was a lawyer named Lionel Forman, who’d lived in Czechoslovakia for a couple of years with the International Union of Students, and he’d seen lots of things were going badly wrong. And he wrote an editorial in the New Age newspaper explaining that people complained that they didn’t have razor blades, they didn’t have contraceptives, and Govan Mbeki fired back a super cannon from Port Elizabeth, we are fighting for socialism to transform the world, we’re not fighting for contraceptives and razor blades! And Lionel (Forman) felt very, very distressed by it, you couldn’t get a good debate going. But the bit that I had seen made me realise that we were being carried along by a fantasy. And then when the Kruschov Report came out it was highly credible as far as I was concerned. It was complicated in the sense that the Soviet Union gave enormous support to the anti-apartheid struggle, internationally and in training people in various forms of technology and medicine and in different ways. And the West just saw the ANC as a terrorist group and often we often couldn’t even travel to many countries and a lot of support for racist South Africa came from the West. But the fact was, and we heard this from ANC students, that they were saying, comrades things are not like you’re reading in the propaganda, and there’s corruption at the universities and there’s racism here. And so when the final collapse came I was totally ready for it, it didn’t come as a shock or a surprise. The importance of it for us of Perestroika, long before the Berlin Wall fell, was it opened the way to seeing South Africa as a problem of racial oppression and not as an extension of the Cold War.

Well, to go back again then, at university I was banned in 1955, so that’s after I’d come back from England, and newspaper headline, first white student banned. Everything was done in terms of race. And I got a summons to see the Vice-Chancellor of UCT, Dr. Davie, TB Davie. I was quite nervous, I wanted to finish my law degree, what was he going to say? And he was very gracious and warm, he said: I just wanted to see the student, if I can help you in any way, please ask. So it was total unconditional support, it was very lovely. I’d been elected to the Student Representative Council, we could get one out of fifteen, a lefty, directly onto the Council, and like one and a half, and the other half would go to someone who was quite progressive but who wouldn’t be an outright leftist. And I was on, which meant I couldn’t carry on serving on the Student Council...SRC anymore. And when it came to taking our photographs in the presence of the Chief Justice of South Africa, who was the Chancellor, I said, I’m sorry I can’t attend because I’m banned. And to have a photograph of me attending a banned meeting, and provide the proof, I don’t think that I would have been prosecuted but I wanted to make the point. So my picture appears with me cut out and stuck on with the others. In some ways being banned at that stage was not all that bad. It cut out millions of meetings. You were just meeting
all the time. Meeting in the underground, meeting in the over-ground, meetings about this, meetings about that, and now I couldn’t attend any of those meetings except the underground ones, where they’d been illegal all the way through. And then came the raids and I must have been raided many times. And I’d often be asked to speak on the Grand Parade and we would have a lorry there and a microphone at the top and sometimes we’d have fifty people, sometimes five hundred, occasionally five thousand, and the ANC were very keen for me to be there. They said: Comrade Albie, we can’t just speak about non-racialism. If you’re not there, if someone like you isn’t there, people don’t feel what you feel, they’re not going to believe it. And so they would insist that I came and spoke there.

And I still remember one occasion where I spoke about world peace against the atomic weapons and I said very, very kind of seriously that we have to combat the militarisation of the…we didn’t use global community then, but of the world and it’s in the interest of the oppressed to have peace. And only the militarists and the people who produce the arms benefit from war. And Archie Sebeko was interpreting, and I made like a short statement, and he went on and on, and people were roaring with laughter, and I said afterwards: Archie, why did everybody laugh? And he said: Comrade Albie, our people are not against war, they think if there’s war we can overthrow the whites, so what I had to explain to them was if there’s going to be another war and the Russians send an atomic bomb to blow up Dr. (Daniel François) Malan, who was then the Prime Minister, over there at Groote Schuur, it would blow him up, but it would blow us up as well. And that’s when everybody laughed. Atomic war doesn’t distinguish between the oppressed and the oppressors. And that was a good lesson for me.

Another lesson I learnt then was when Johnson Ngwevela, before he was banned, spoke, he kept referring to Moses crossing the Red Sea, and I said to him afterwards: Johnson, I’m surprised, you know, you’re quoting so much from the Bible. And he said: Comrade Albie, there are things that you can understand in terms of politics but there are other things beyond that outside of that, that belong to another kind of a world. And it was a big shock to me, because growing up in my secular world and fighting for a rational ordering of human society and abolishing superstition, and obscurantism, backwardness, here was this leading Communist quoting from the Bible and doing so, and somebody who was so honourable and so good, it was clearly meaningful. And it was a good shock for me, a very good shock, because it reduced my intolerance and opened up my thinking to a much broader, more inclusive view of the world and other people’s world views.

Int How did you come to be the first banned white student?

AS Because of speaking on the Grand Parade. And it made me stand out quite literally. And it would be denouncing apartheid and…that was a five year banning order, and it was a relatively light one. And then it expired in the…latish in 1960, it was a very dramatic year and by then I was at the Bar, I’d been at the Bar for three years, and I’ll speak a bit more about that.
Int Albie, had you’d also done your Articles with Sam Kahn?

AS No, I didn’t do Articles.

Int No, you didn’t do it at all?

AS I went straight to the Bar.

AT THE BAR

I didn’t do legal Articles, I didn’t do pupillage, which wasn’t required then, so I was twenty-one, turning twenty-two when I started, and the first case I had was a murder case with the potential death sentence. Because they felt it killed two birds with one stone, it trained young advocates and it meant that everybody got representation. And of course I was terrified and I was absolutely sure that...it was a woman who had stabbed a man to death, she would get the death sentence, and she, in fact, was acquitted in the end.

But before I get there, just to recall the Grand Parade, I had a window period when I could speak on the Grand Parade in late 1960, it was when Albert (John) Luthuli got the Nobel Prize. And I said: and today he gets the Nobel Prize, the next prize he must get is to be the Prime Minister of South Africa. So of course the press carried the story: advocate says (Albert John) Luthuli for Prime Minister. And at the Bar tearoom all my colleagues are nudging and laughing and teasing me, you know, it wasn’t easy. Not unkindly but just like joking. Again you’re standing out, you know, as if to say, we admire you for your courage but we think you’re a little bit bonkers. And it’s not going to be good for your career and you’re courting danger.

When I started practice then, the first year was terrifying. If my phone rang I would get a brief, I would get into a sweat. If my phone didn’t ring I would be depressed because I’m not earning anything. And every time I went into court I was convinced the judge would say, Mr Sachs, what about rule so-and-so, or section so-and-so. They never did. But I was convinced there would be like an upper cut coming from nowhere, but it never happened. And so it was from January to December, I had a month’s break, I came back the next January, I never felt that fear again. At times I even had to drum up some adrenalin otherwise I’d get lazy. And the years from ’57 to ’60 we won all our cases. I did a lot of work for Sam Kahn. He would give me a magnificent brief, he would have cases that were relevant, he would suggest a strategy, he would know how to say things in court that would get into the press, that would create an ambience, that would be important for the client. He would know when you prepared a case in the trial court for an appeal, and in the High Court, then called the Supreme Court, or in the Appellate Division. It was superb training that he gave me and I owe a lot to him.
And then there was another firm, a left-wing firm, Frank, Bernardt & Joffe, Himie Bernardt. And they would give me political work but also some other cases as well. I made a very modest living but by 1962 I was probably the busiest person at the Bar. I was defending 62/63 mainly PAC people, groups of migrant workers who had been brought together in little groups to attack police stations, and sometimes there would be a little sketch and often they’d be abandoned by their leaders and they were just decent, hardworking people who were eager to do something to fight for freedom. And sadly some of the lawyers who proclaimed themselves to be PAC supporters wouldn’t take the cases without getting fees, and here is this white advocate, you know, defending them and I didn’t take any fees. That was something I’d learnt from Lionel Forman.

In ’56 he was put on trial for treason and he knew it would go on for a long time, so I was looking for chambers, so I took over his office. And I still remember it had very rudimentary furniture, because if you know you’re going to jail you don’t want to spend a lot of money on furniture. And some years later when my friend, Michael Richman, who used to...younger than myself...dress very beautifully, young firm setting up, came to give me a paid brief, and when he got up his trousers hooked on a nail, grr, I could hear the tearing. I reminded him of this the other day. I’d remembered it all this time, he didn’t remember it. And there would be lots of chairs and a couch because we had people coming from the townships and often have ten, fifteen, twenty people, and they were so eager to hear from the lawyer, to know, they didn’t want you to boost them up, they just wanted to know what the prospects were, how to conduct defences. And I never told, even in the most horrendous political case, I never invented defences. I never even if I felt the prosecution was totally unjust, ...I would explain the possible defences, the issues, what the law meant. And then they had to take the decisions and inform me and then I would represent them as best I could. Then I had an ordinary general practice, I even understood how the internal combustion engine worked for one day, which I needed for some case for defect in a motor car. A lot of criminal work.

Probably in my nine years of practice I had between thirty and forty capital punishment cases. The dread, the stress was enormous. Two were sentenced to death. One was executed. And even that was painful, the one who was executed, because my job was...it was a young chap who’d been given the gun by the son of a relatively wealthy shopkeeper, from what used to be called the Malay Quarter, to conduct a robbery. He’d shot the owner of the store to death, the gun had been traced to him, he was clearly guilty, and my job effectively, as it turned out afterwards, was to keep him from incriminating the shopkeeper’s son. And it seems that a deal had been done, that his family would be well looked after. When he came to me, he told me already that he didn’t want to go into the box, he had nothing to say. And I just stood up and said, my client doesn’t wish to testify, and he was sentenced to death. And, you know, looking back there was an injustice, in that case, the law was manipulated. And there were cases of rape where two accused got capital punishment, the person I was defending didn’t because he might have been the person who tried to stop it. But there was so much arbitrariness in the whole thing. And we all knew in practice that what determined the outcome...there were two crucial determinants of the outcome. It had nothing to do with the brutality of the crime, the premeditation. The first thing you looked at was the race of the victim and the race of the accused. That was number
one. The second you looked at, who the judge was. And if it was white on white, you’re ok, black on black, you’re ok, white on black you’re ok, black on white, that’s what we called a potential swinger, it was a terrible term used. And then there were some judges like Herbst, never imposed the death sentence. I discovered afterwards that John Didcott never imposed a death sentence. Other judges later on...Judge Braam Lategan, six a year would be nothing. Now to say that that’s statistically random, and not indicative of the importance of who the judge is, you know, is ridiculous.

But I did a certain amount of commercial work, occasionally divorces and it would be a very broad practice, half of it not exceptionally well paid but, earning a living, and then the other half, that times became more than a half, the political work. And I remember sometimes I would go into court and there would be, say, thirty-two accused, I didn’t have an attorney, I would draw a piece of paper with the names, and who gave evidence and who corroborated and I’d try and get some of them off. There was one case, I remember it vividly to this day, the Jewish Old Aged Home, the workers there had apparently formed a cell, a POQO (PAC) cell, and were now tried before the regional magistrate, and the matron was dying to testify on their behalf, she said they were so wonderful these workers with these elderly, mainly women, men and women, looked after them with care and kindness, and their minds might have been blown away for a moment but they did nothing. And everything...she was willing to testify and she did testify in mitigation, and the accused said to me: we’ll go to jail, fair enough, but there’s one old man, he’s got TB, he’s never been in prison before, see if you can keep him out, that’s all. And I made my whole plea just for this one old man, with TB, and the magistrate sent them all to jail for the maximum period, you know, to Robben Island. It was exceptionally hard.

And the other hard thing was the racism in the court. There was certainly in, what was called the Supreme Court, a fair degree of decorum. The head of the court, the Judge President Beyers, could be very rough and very un-gentlemanly in his voice, and loud, and he kind of mocked the whole thing, though he could have a generous heart. And some of the judges would be very tight. But the basic norm was a politeness and correct forms of presentation. Yet even the most polite judge referred to a white woman as Mrs Smith and an African woman, the same age or older, as Rosie. And they’d speak about five Bantus. Now what do you do when you’re the defence counsel and...you don’t want to alienate the judge. You’ve got a client and the client shouldn’t serve a longer sentence because you’ve rubbed up the judge the wrong way because of your principles. On the other hand for me to call Mrs. Shabalala, Rosie, or to use the word Bantu, you know, I just couldn’t. So the mental gymnastics were quite extraordinary, to find a way of not appearing to be picking a fight with the judge on the one hand, but not using language that stuck in one’s throat, on the other. And the sense of whiteness, and it would be a white judge, and white assessors, and a white registrar, most of the police evidence would come from whites, and the only black person who would be an official, might be an interpreter. The stenographer would be white, almost all the journalists were white, and you really felt this was, as (Nelson) Mandela said, a white man’s court. And on the other hand there would be, at times, marvellous legal arguments and debates, and we’d walk down the passage in what we then called the Supreme Court, those little mosaic stones, my gown would be flying and I’d feel like Superman. And the cut and thrust, the drama of a trial, the
The first time was a murder case, an appeal where the accused had been sentenced to death. I advanced some technical arguments. The Chief Justice was presiding and they hammered me, hammered me, hammered me, and I never felt they’d cracked me, and at lunch time I’m sitting having lunch at the Bloemfontein club with my attorney, and the Chief Justice walks past and says, well done, Mr Sachs…something like that, and it was a dream, the young advocate, in front of the attorney, being praised by the Chief Justice. And then the attorney goes on, he said: you know, I’m having lunch with you here today, last week there was an advocate from Johannesburg, an Indian, who was an absolute spellbinder in court, and when it came to tea-time, you remember they gave you tea, he didn’t get any tea. When it came to lunch, I wished I could have asked him to the club, I just couldn’t. He went down to his motorcar and he had some coffee and sandwiches. And he said: I just felt so ashamed. And that was Ismail Mohamed. So all my floating up to the sky, just crashed, just crashed.

And then a couple of years later, it was that same Chief Justice who gave the decision in the case of Rossouw v Sachs about the right of access to reading matter and writing material. And I’d been detained the 1st of October 1963, it was Spring, but I was still wearing a winter suit, not a very good one. I’d persuaded myself that rather exotic looking heavy material by a tailor, Gierdien, who was in the struggle, was what I needed. And it got hotter and hotter and hotter and I’ve still got this thick, heavy, slightly loud winter suit as the detention goes on. And the Special Branch people arrest me, they take me up to my chambers, they go through all my documents, I sort of protest, this is privileged, and they’re going through everything, and they come across a heavy wrapped-up parcel in the bottom drawer. And their excitement, they crowd around, they open it and they see it’s a bottle of brandy. So they think I’m hiding away some brandy. In fact it had been an exhibit in a murder trial; that’s another whole terrible story that led to a death sentence that wasn’t carried out. And I’m whisked off to jail, to solitary confinement. I’ve described the whole thing in the Jail Diary, so I’m not going to go through all that now.

But the point I would refer to though, that’s relevant, that you might look at, and you might include snippets, the rage I felt at the Bar and the legal profession and the courts, that here is somebody whisked off, going into chambers and nothing happens. And it’s all done in terms of the Ninety Day law. Total rage and anger and all your emotions get exaggerated when you’re in solitary confinement. And then I’d been in twenty-seven days when the station commander, in my second set of police cells, comes in and he’s waving a piece of paper: if they’d listened to me this would never have happened. And: read it. And I can’t read it because the only book I had was the Bible and the Bible is in columns, and my eye’s going down and this goes across the page, so my eye won’t go across the page. And it says: in the Supreme Court of South Africa, Cape of Good Hope Provincial Division, in die Kaapse Hooggeregshof van Suid Afrika Afdeling, before van Vincent J and Banks J, in the matter of…and I’m trying to make sense of it. It is hereby ordered that the applicant be allowed reading matter and writing material. It’s not sinking in properly, and then I realise that in fact the terrible feeling…my colleagues who just abandoned me completely, in fact were

preparing the arguments and appeals, I went three times to Bloemfontein to the Appellate Division.
fighting for me and this horrible judiciary that is totally impotent and unwilling is... and so now I feel the legal system is the most marvellous thing in the whole world. And I exaggerate my enthusiasm. Because you can’t control your emotions in this situation. But in fact it did save me, having reading matter and writing material. And I wouldn’t be here today if it hadn’t been for that. You know, if I’d really cracked up I would have been so destroyed, so demoralised, and it meant that when I came out eventually after 168 days, I had the guts or the chutzpah to run to the sea and project it as a triumph, you know, of holding out, although I was very destroyed inside.

And I went back into legal practice but I never recovered my élan. I couldn’t go to jail to interview clients, I identified too much with them. And there was even less work than before. I remember I used to go to my cousin Bennie Rabinowitz for one good meal a week. I looked forward to it, they had a very good table. But apart from that... and they... I was their cousin, and they admired what I was doing and I felt at home there.

But then I was detained a second time. You don’t get better, you don’t get stronger with each detention. And this time there was torture by sleep deprivation, and that I’ve described in *Stephanie on Trial*. It’s not a very well known book but, you know, I’ve been through it quite extensively. And I used to get a meal... I learnt this afterwards, it was on Wednesday when the Union Castle Boat arrived with the girls’ comics from England, and Bennie’s wife, Shirley, would get a car to... with her two little daughters... to stop off at the newsagent, pick up the comics, and while her daughters read the comics, she would take curry or whatever, some food into me at Roeland Street prison. And I mention that because when I came back from exile, that would have been twenty-five years later, the daughters were now grown up and Susan Rabinowitz had become a strong supporter of the ANC, and she’d remembered going to sit outside the prison reading the comics while her uncle Albie was getting food. And she actually worked for me for a while as my assistant.

While I was in my second detention, after they’d finished with me, with the sleep deprivation, they moved me from Caledon Square to Roeland Street Prison, and keeping me as a witness, and this time I partially broke. And it was the most humiliating experience of my whole life. Much worse than being blown up by the bomb. And I made... in the statement that I made, I said, I’m making this statement under duress, I’ve been kept up day and night and I collapsed on the floor and they poured water on me and propped me up and prized my eyes open, I collapsed again, and so on. They wrote it all. But I was so tired and so exhausted and I wasn’t in complete control and I was just signing papers and... and I worked out afterwards that they’d somehow shuffled the pages around and that bit with the complaint had been removed, you know, completely. And I felt even more defeated that even my complaint, you know, had been removed. And this time when I came out, people thought: what are you going to do now, climb Table Mountain? And I said, no, take me home. It was much more destructive.

I had got a newspaper which said that one of the people who’d been in the struggle in the underground, Bernard Gosschalk, had whispered to his wife, who had been
allowed to see him, that he’d been subjected to torture by sleep deprivation, and she said, he looked like a ghost, she couldn’t recognise him. And she went to court and a temporary restraining order was given, I think by Justice (Michael) Corbett who went on to become the Chief Justice. And I read this in the newspaper and I wrote the second most important legal document that I’ve done in my life on a tiny piece of paper. It was my little statement. It had to be very small so that I could smuggle it out, to the effect that I had suffered very similar treatment, you know, to support what he was saying. And the effect of that was to save me from further interrogation. And again they would have gone on and on and on, and possibly destroyed me. And again if it hadn’t been for the courts’ intervention, I mightn’t be sitting talking to you today.

But I was very crushed. Badly crushed after the first detention and severely crushed after the second. And I said to myself, during the first detention, I made a vow, if ever, if ever, if ever, one day I’m in a position of authority I will make quite sure that no human being treats another human being like this. And I can explain it in psychological terms that when you’re feeling so disempowered, you want to imagine yourself in a position of power and not subjecting someone else to what you’re getting. It gives you an enormous sense of superiority in relation to the condition you’re in. But it was more than that, it was a deep vow to myself. And when it came to drafting the text of the Constitution, I insisted on the phrase ‘no detention without trial’ going in. It wasn’t enough simply to say everyone has the right to freedom, and no-one should be detained for more than twenty-four hours. No detention without trial. It was in the Interim Constitution which I participated in the drafting of and it survived into the final Constitution.

Int Albie, I’m aware of the time and I know you have another interview, so I’m wondering whether this might be a good point at which to stop?

AS I just want to add my one other…two other dimensions that were relevant, that won’t take too long.

Int Sure, fine, go ahead.

AS The one is the creation of the Defence and Aid Fund. And it was mainly Black Sash women who were responsible, and funding was coming…some was collected locally but mainly coming from abroad, and during the period before I was banned again, this time a very severe ban, I worked with the Defence and Aid Fund Committee in Cape Town. And I still remember money being…a discussion about money for people who were painting up VJM all over the southern suburbs on beautiful garden walls. And it just appeared everywhere, and Mrs Stroy said to Mrs Stott, or Mrs Stott said to Mrs Stroy: tell me what do these letters actually mean? And then she whispers back: Verwoerd, jou moer.

Int (laughs)
Oh! And now the question was, can the Defence and Aid provide money for people who are not fighting for a conscience, because they’ve broken banning orders, but who are destroying beautiful garden walls. And there was a lot of reluctance to do that. And I found myself in the particularly awkward position, I’d heard that one of the two people doing this was in fact a police informer. But I couldn’t reveal that I knew he was a police informer so I had to fight for him to have funding. It was cruel. But out of these little foundations, very important structures for a later period came in which funding could be received.

I never took any money, that was because of what Lionel Forman had said, it would have been even worse to be on a committee of the Defence and Aid Fund and then to take money from it. And I must say life was much easier for me not taking any money at all. Now Lionel (Forman) told me, I said, Lionel: what deduction do you give for political cases? He said: I don’t give a deduction, I don’t take any money. They’re being prosecuted for fighting apartheid, they’re more in the front line than I am, I can’t take a penny. And the other thing he taught me was: the client is the centrepiece. Most advocates felt the clients are usually stupid, they don’t listen to them, they direct them what to do, it’s their own fault because they’re so stupid. And he had a totally different philosophy, that you listen to the client, it’s their life, their liberty, their responsibility, you empower them…we didn’t use the word empower then in those days…as much as possible so they can make the choices and they become agents of their own future and destiny. And I learnt that from Lionel (Forman) who was supposed to be this big Communist, heartless, instrumentalist person.

The other thing I wanted to mention was my relationship with Donald Molteno and the Black Sash. The Black Sash…it would have been easy and it was easy to criticise wealthy, white women, who had husbands who could support them so they didn’t have to work themselves, and they had enough money to employ servants to look after their own children. And they were brave and they were tough and they went out into the streets, and they set up advice offices, and through meeting with African women and learning it firsthand, or not at first hand but directly, the experiences, they were conscientised and they became good fighters against apartheid and committed people with a limited remit but working very hard in that area. And they would often invite, in a period between my banning orders, Donald Molteno, a QC, and Albie Sachs, to advise them and to speak at meetings on the rights…dwindling rights, but remaining rights of African women.

And a very good friendship developed between me and Donald Molteno. He came from a totally different background, English, liberal. I did a couple of cases with him. He’d had a severe drinking problem at one stage in his life. He was hated by the Nats, he hated the Nats, and his legal practice wasn’t booming. A very honourable person, a very good lawyer, and at one stage he became the author of the Molteno Report. And this was produced by liberal minded people…I’m not sure of the name of the Party, I think it was before the Liberal Party…anyhow he wasn’t in the Liberal Party, the Progressive Party…on a future for South Africa. And he had three main principles. It was qualified franchise, devolution, and a Bill of Rights. We attacked it like mad. This was simply a recipe to allow a small black middle-class to be incorporated into the white super structure. And although it was anti-apartheid, and broke the racial
divisions, we just saw it as a constitutional trick, a device to prevent any significant transfer of power and to freeze existing property relations. Our response...not our response...our earlier position, had been the Freedom Charter...[I haven’t spoken about that but I went to Kliptown, I was there, saw the police come in with the sten guns, the horses, took part in the singing, very dramatic, very wonderful moment. When the raids for the Treason Trial took place, the police said, you don’t know how lucky you are. I thought, why am I lucky being raided at four in the morning? I was on the reserve list, like if anybody was injured then they could put me in, you know, as an extra. They took loads of documents, but I was never put on trial then.] And we saw the Freedom Charter as the vision for South Africa with full equality. And so we denounced the Molteno program for its extreme limitations. Years and years and years passed and I come back from exile and we’re now planning a new Constitution, and...ok, a qualified franchise is out, but we saw a qualified franchise and a Bill of Rights as being part of the same thing. And devolution, federalism..., all part of the same thing, to make sure that there’s no black majority. And I’m sure that was what was in their minds. But the fact was we did need a Bill of Rights in South Africa and we did need a fair degree of devolution. It was important to prevent an over-centralised State. And for me it was a huge lesson, we were right and we were wrong.

And so much of legal process is, to my mind, based on acknowledging we were right and we were wrong. Right to demand universal franchise, right to have the broad vision of the Freedom Charter, wrong to dismiss the technical arrangements of a Constitution, with instruments to control governmental power. And we could only learn that through negative experiences, living, in my case, in Mozambique and seeing at firsthand, what had gone wrong without a Constitution to protect fundamental rights of the people. There lots of marvellous things were done. There was just a lack of legality and it affected poor people more than the better-off people who could buy their way out of trouble. So it was only when it came to...when it came to making the Constitution, that the two sides of me that had been torn apart as a student, came together. The grand phrases of the ages suddenly had intense meaning for South Africa. We needed them for our country to unite. But at the same time, the passion, the commitment, the vitality of the people in that shanty, gave the energy and the meaning and the true universal quality to the Constitution. It was a very healing moment for me as an intellectual, as a lawyer, and when we got the Constitution and I came on to the Bench, I was united, I was ready, I wasn’t a person fighting to defend people against unjust laws, using the law as an instrument of defence as a shield. I was somebody seeing the law as an emancipatory instrument guaranteeing everything that we had been fighting for. So I’ve told you everything, except about the LRC.

Int  Well, to be continued hopefully.

AS  And we can save that up for a complete thing.

Int  Albie, thank you so much, not just for a very thoughtful interview but also for your reflections and for sharing those moments with me, thank you.
Interview 3: 14th August 2008

Int  This is the third part of the interview with Justice Albie Sachs. Albie, thank you very much for again giving your time so generously to participate in the LRC Oral History Project. The last time when we spoke, we really left off at the point where you had left for England, and I wondered whether you could talk about how that came about and then your arrival in England?

EXILE IN ENGLAND

AS  It was a very bitter decision for me to leave. A sense of abandonment and defeat, and yet an eagerness for survival. The political structures seriously resisting apartheid seriously had been crushed in South Africa. The period '62 to '66 was a period of terrible setbacks and political trials, a triumphant apartheid regime bragging that they’d broken the back of resistance. And at a personal level I was subjected to very severe restrictions. It wasn’t house arrest my second banning order. So I could climb Table Mountain and swim in the sea on the weekends, it was like a confinement to Paradise, from that point of view. My legal practice was just fading. People expected me to keep them out of jail and not to go to jail myself. And there was a measure in Parliament to have a law that would enable the Minister of Justice to prevent people like me from practising. I couldn’t even park my car close to chambers because the so-called Malay Quarter had been designated for coloured people, and I wasn’t allowed to go into an area that wasn’t classified as a white area. I was sure my office was bugged, I was being watched, I was being followed, and felt myself becoming a rather pathetic creature, with an idealistic will to resist, but no capacity to do anything meaningful about it. And people I’d been working with in the underground were in jail, many had escaped, had left, I was totally isolated. And I’d become emotionally deeply involved with Stephanie Kemp who had been one of the accused in a trial for furthering the objectives of the African Resistance Movement, the ARM, involving sabotage on pylons and other similar activities in the Western Cape. And it was the isolation and the eagerness for some personal happiness coupled with the will to be able to function in some meaningful way, that finally made me decide, on my own, that I was going to leave. And that involved applying for an exit permit, which was extremely humiliating, in effect entreating the government for a right to leave. It meant leaving on a one-way ticket that you could go, you’d become stateless in terms of South African law, and it would be a criminal offence to return. I applied and the permission was eventually provided, took a long time, and the further humiliation was writing repeatedly to get permission to do something that I hated doing. Stephanie Kemp had been sentenced to several years imprisonment, some of it suspended and she’d been released, we were meeting sort of clandestinely. She warned me that she’d been informed by one of the interrogators that the police were going to crack down soon in Cape Town, and I was detained the second time. And it was much worse in terms of the treatment I got. I think I’ve described it earlier, the sleep deprivation. And when I came out of detention after three months of this…this period of detention, and my friends said: well, Albie, you’re going to climb Table Mountain, you’re going to run to the sea? I said: no, just take me home.
It was a very, very hard period for anybody and everybody involved in the resistance, and I was no exception in that regard. The choice was really, full-time underground, or leave, these were the only effective choices, and there was virtually no underground to link up with at that stage in Cape Town and I just didn’t have the moral and physical guts at that stage to do it.

Int So in what period did you leave, Albie…what year?

AS So it would have been August 1966, or maybe July…July 1966. And I remember going to say farewell at the Bar common room. I sold my books, didn’t get a huge price. Somebody from the ‘locations’, as we used to say, came to see me and he said some very lovely words about me, the people’s lawyer, and hoped that I would come back. And I kept saying, yes, and feeling a certain sense of shame. And then he ended up by saying: and what are you going to do with your furniture? And I think he ended up with the furniture. Which wasn’t all that much, old rickety furniture of a people’s lawyer who’s preparing to go to jail at any time and not anxious to spend a lot of money on decent office furniture. So now I’m going to say goodbye to my colleagues and it’s a painful, very sentimental moment for me.

I had strong, close friendships at the Bar in Cape Town. Even people who detested my political views, in that kind of clubby way that you have in a professional institution like that, were warm to me and perhaps sad, and felt I had perhaps brought it upon myself. But I think they had a certain respect for the work that I was doing, for me as a lawyer, as an advocate, and would wish me well. And, I’m not sure if I’d started just saying a few words but that was the day when the counsel for the South African government in the South West Africa case, most of whom came from the Cape Bar, came to tea as well, to enjoy their triumph, because the International Court of Justice split, and I think the casting vote went towards South Africa, saying in effect it was a domestic matter and the UN couldn’t intervene. And they were there, I don’t know if they literally had cigars but that was the atmosphere. And it was headed by Dawid de Villiers, who interestingly enough, years later, ended up supporting the ANC and doing a lot of human rights work as a people’s advocate. A person of conscience and clarity, Jan Steyn was part of that team. He also was somebody who later showed great human concern, at least for urban poverty. Ernie Grosskopf, who became a Judge of Appeal afterwards. And we maintained a very dignified and correct, though very distant friendship in the decades that followed. So I don’t know if I spoilt their triumph or they spoilt my sad farewell, but it was a strange conjunction indicating the different currents in the legal profession, and made particularly interesting by virtue of the fact that certainly David de Villiers played a very, very progressive role some decades later defending people in political trials and doing so without looking for glory for himself or even money for himself. And Jan Steyn also showed very strong social conscience, using what prestige and authority he had as a lawyer, to try and at least alert his white fellow countrymen, countrywomen, to the fact that things were urgently wrong in South Africa.

And I was reminded some decades later, that Dullah Omar, who was an attorney, whom I’d known at the University of Cape Town, and who belonged to what was called the non-European Unity Movement, while I was associated with the ANC, and
we’d have a friendly, bantering, agreeing to disagree but agreeing on lots of things and disagreeing on lots of things, relationship. He said his phone rang and the voice said: Dullah, this is Albie Sachs, I’m on the Union Castle boat, I’m about to leave, and you’re the last person I’m speaking to before I leave, but I’m sure I’ll be back. And twenty-four years and a couple of months, and a couple of weeks and some hours later, when I came back, it was at the request of Dullah Omar, by then professor at the University of the Western Cape, a well-known ANC figure, and I stayed with Dullah and Farida (Omar). I’d forgotten that phone call, he’d remembered it.

It’s worth saying something about life in exile in England and Mozambique. In England I really felt in exile. I spoke the language, I had, I think, three books published, while I was there I did work on the BBC. I was on the very first program of BBC 2 produced in colour. It so happened that Stephanie Kemp, we were by then married, and I, were interviewed the very first time it went out. So it wasn’t as though I felt marginalised. I got a PhD at Sussex University, and I’ll say a little bit about that. We had two children, got integrated in the routines of childminding and pre-school and teaching in North London, while I lectured at Southampton University for a number of years. So it was a very active life. But I always felt in exile. The one way I put it was, in England, even when I was happy I felt unhappy. Whereas in Mozambique, even when I was unhappy I felt happy. It was just a connection with the country and why I’m there.

And in a way it’s easy to blame your host country for the fact that you are in exile in that country, and at times I would feel great anger at the British Empire that had had such a harsh impact on South Africa and basically had established the structures, the formal state administrative legal structures of apartheid. It wasn’t the Boer republics that did that. And I would feel an indignation that my whole vision of the world was colonised, was coloured by books about the English landscape and English character and the way the English pronounced the English language. I still remember a newspaper poster in Cape Town: Storms Lash Cornwall. That was the main lead story in Cape Town! With our own weather and climate. And so there was a kind of a huge ambivalence, a love/hate relationship with this country received me, England. And not everywhere in the world could one go as a stateless exile. This country enabled me to study further. I got support from, I think, it was the Rowntree Trust. We lived very modestly.

We had an Anti-Apartheid Movement that Stephanie (Kemp), who by profession was a physiotherapist, worked for, being paid a kind of a pittance and my stipend was very, very modest. But we managed. So the tendency to blame Britain for my being in Britain, was quite strong. We met great people there, many in the Anti-Apartheid Movement. The Vietnam War was a huge issue. I got to know London marching from Hyde Park to Trafalgar Square. I got to know the cities of the UK travelling to do anti-apartheid meetings all over, often at universities. So it was a very mixed experience living there. As far as law was concerned, well, I wanted to get out of law. I felt I’d become a lawyer because it was useful in South Africa. But people should have more than one major occupation in life, and this was my chance. And I remember arriving with one suitcase, it had four pictures, a couple of books and some clothing, not very much. And this was the opportunity to begin again. I wanted to
read, read, read, and I’m not sure how I financed it but I spent about four, five, six
months, just reading, which I hadn’t been able to do in South Africa. And it was
mainly…the books I remember: J.D. Bernal on the ‘Science in History’. And a book
by (Joseph) Needham on ‘Science and Civilisation in China’. There just hadn’t been
a chance to read stuff that wasn’t connected with work in South Africa, or directly
connected with the struggle. And I felt I’d been letting my mind become too
preoccupied with immediate interests, and now I should just catch up on some general
knowledge. And in the meanwhile I was thinking, what can I do? And I thought, I
don’t want to write another exam in my life. I used to be quite a good student, not
very hard-working, and at school and my first year university I had received
scholarships. I got a medal for English in my first year, and then from my second year
till I left, I don’t think I got any more firsts, because I was so politically active. And I
would leave my cramming for the exams right till the end of the year, and have two or
three terrible, horrible weeks of just total concentration and enough to get average
marks. I got through, I never failed anything, and I was one of the few students that
actually completed the five year course in five years. I think out of a hundred maybe
only five, at most, ten of us, did that. But the thought of going through that agony of
exams made me feel I’d rather do a PhD, I’d rather spend five years…sorry, three
years on a PhD than have to write another exam.

And I thought, ok, my PhD would be my act of closure as far as the law was
concerned. What was this strange creature, the South African legal system, so filled
with contradictions? On the one hand, using the law and the courts to drive people out
of their homes, to deny them rights, to insult and humiliate and degrade them in every
possible way. Race classification, Immorality Act, Group Areas Act, the courts were
directly implicated in all of this. On the other hand, one could speak with a certain
measure of dignity and rationality in the court, in a way you couldn’t do in any other
area of public life. And win small victories, find some people on the Bench, and
certainly a number amongst one’s colleagues, who had relatively decent values, who
were appalled at what apartheid was doing to the country, who were in many cases
hugely sympathetic to me as an individual, I suspected that many would say, you
know, Albie we admire your courage, we can’t do what you’re doing. They wouldn’t
encourage me to carry on, but I felt it was genuine. And some of the arguments that
one could use in court, based on the principles of equality, of fairness, of equity, how
could they be reconciled with the law being a major instrument of domination and
oppression in the country? And I was genuinely puzzled by that.

PhD AT SUSSEX

It was a huge experience that I’d been through that just didn’t make sense. So I
managed to get funding from the Joseph Rowntree Trust, I think, and it wasn’t a huge
amount, but to register at Sussex University for a PhD, and it was in a special section
of the university headed by Professor Norman Cohn, whose famous book was ‘The
Pursuit of the Millennium’, dealing with the Children’s Crusades in Europe in the
thirteenth and fourteenth centuries. One could hardly think of a more remote field of
interest but he was very influenced by psychoanalytical thinking, and this was a centre
for the study of persecution, and he felt that the way in which the law was being used
in South Africa, would be a field that would fall within their remit. So he gave me
support.
I thought I would just do one introductory chapter on background and history, but I found going into the history of the South African legal system absolutely absorbing. I did most of my research in London at the Royal Commonwealth Society. I’d go down, down, down, they seemed to have a library basement about…you know, near the centre of the earth and I swear there were books there that hadn’t been looked at for fifty years. One felt almost the dust, the age of books. When I read Umberto Eco’s book, the ‘Name of the Rose’, afterwards, it reminded me of the time I’d spent in the deep basement of the Royal Commonwealth Society. It had been the Royal Colonial Society, with a lot of books that were published in the 1880s, 1890s, the beginning of the twentieth century. I went through every edition of the Cape Law Journal just to see what was interesting. They claim to be the oldest continuing law journal in English in the world. I think it was set up in 1883 by a chap called Bell in Grahamstown. I went through the law reports, it was like trawling to see how the law dealt with the questions of race in particular and the role of the judiciary in general. I read all the obituaries of the judges, and I compiled a substantial mass of material, which led me to make the first half of my thesis a study of the evolution of the South African legal system, basically starting with the Dutch settlement in 1652.

It was the total Other, the opposite of the standard South African legal history book, that simply looked at the formal mechanisms of government and who exercised sovereignty…Hahlo (H.R.) and Kahn (Ellison), I think, were the authors of the main book, and mine was much more of a socio legal history. And when it came to the twentieth century the focus was very much on law as an instrument of racial domination. The material there was just crying out for being analysed and discussed, but it didn’t appear in legal literature at all. The statistics one could find, the imposition of capital punishment, the imposition of corporal punishment, the rising number of people prosecuted under race statutes, ... instead of industrialisation leading to a diminution of apartheid, in fact industrialisation led to an increasingly strong and intrusive role of the state in the lives of the people. And the material was, even for somebody who had been practising law in racist apartheid South Africa, it was overwhelming. There were Commission Reports over the years, and I tried to cram as much of all this material as I could into a readable book. It was the dark, alternative story of the law in South Africa. One chapter dealt with decisions of the Appellate Division, and now Supreme Court of Appeal, on questions of race. Some judges at certain periods had stood against the mainstream tide of white racist opinion up to a certain point, and yet manifestly racist thinking permeated, even the courts that had a reputation (and maybe not undeserved reputation) for a more liberal open-minded approach..

I did some research on traditional African dispute resolution. That really required full separate treatment of its own, and it was enthralling for me to read the materials from the nineteenth century showing how strong and robust, particularly in the Eastern Cape where the most documentation existed, dispute resolution was in traditional African society, and how humane it was in so many respects. And I came across quite a lot of material indicating that many of the great traditional leaders were strongly opposed to capital punishment - Montshiwa, Moshweshwe, Hintsa. This was very heart-warming to me and gave me a vision that corresponded to the humanism that I felt in the many clients, who had come from the townships to my office, and whom I
used to meet previously when I hadn’t been banned, in little study classes at night. There was something there. Today the term Ubuntu is used quite a lot. This was long before that term had the currency that it has now, but I could see that there was this strong feature of traditional African society that fed directly into the values of the Freedom Charter. It was a source of nourishment for the thinking of many of the leaders of the ANC. And so that was valuable for me. And I still recall at the end of the book I had to wrap up.

At that stage there were only two South African lawyers from South Africa… I think it was three… whom I used to meet when they came to London. The one was an attorney, Michael Richman, and his firm were doing a lot on Robben Island in particular, and I was always worried that his connection with me could get him into trouble and sometimes he would feel I was being a little bit offhand, because he wasn’t used to the world of clandestinity and phones being tapped and so on. But of the people who’d been at the Bar, Hannes Fagan would look me up as somebody, just a friend at the Bar, and he would say: well, Albie, it won’t be long, and twenty years later he said: well, Albie, it won’t be long, I told you it wouldn’t be long. And it was twenty-four years, you know, before I came back. And I appreciated that. And the third was John Dugard. Not very much, but we would have some contact. And in a way John (Dugard) became the person fighting inside South Africa to open up thinking, to introduce international values in a consistent way, not directly connected with underground resistance struggle, although he would help with the defence of people being charged, but developing progressive, anti-racist concepts and theories, while I was doing that little bit outside.

And it came to the end of the book… the thesis, and I should interrupt by saying, my one supervisor was Norman Cohn who was an expert on Children’s Crusades in Medieval Europe. The other was a colonel G. I. A. D. Draper, who had been a prosecutor at Nuremberg, and told me wonderful stories, I mean, extraordinary stories, about his experience there. The chapters I sent to him piled up on his desk, so he kept a neat pile, he never read one of them, and I felt really I had to take responsibility for the whole project. But he said: a good book makes a bad thesis and a good thesis makes a bad book. That was the only advice he gave me and I nodded my head and I said, thank you Colonel Draper, I’ll take account of that. And ignored completely what he said. I couldn’t see why a good thesis should be unreadable, or why a good book should be unscientific. And I wrote it from the beginning with the idea of getting it published as a book. The Other book about South Africa and the legal system in South Africa. It came to the final section of the final chapter and the thesis was now entitled “The Administration of Justice in a Racially Stratified Society - South Africa 1652 – 1970”. And how do I end?

What’s the closing note? And I recall thinking I had to say something about the judiciary, an all white judiciary with this very mixed record, at times in advance of the rest of the society and at times, and certainly by 1970, rather enthusiastically (with some individual exceptions,) justifying and what was called separate development, and turning a blind eye to the torture and the violence against suspects. And this was a period when critical legal studies were just beginning, critical criminology was emerging as quite a powerful intellectual force, and a fairly radical approach to law,
going beyond simply the realist critique of legal thinking. And the choice was, should I end up by saying that the judges are simply instruments of oppression, and nothing short of a radical reconstruction of South Africa can bring about justice in the country? Or should I take a line that was looking forward to the future and thinking in terms of transformation, building on those elements in the system of justice that could be useful for a future system? And it really was...I remember at school being told about Launcelot Gobbo in the Merchant of Venice, saying: should I, shouldn’t I, should I, shouldn’t I? I felt, should I, shouldn’t I, should I, shouldn’t I? And eventually I said, OK, I’m not going to end up with a total denunciation, I’m going to write something that judges serving then and young lawyers who might be judges one day could read and possibly be encouraged to think in terms of using what space was available in the judicial system to defend the rights of people, pending the total transformation of the country. So, it ended up saying...I ended up saying...that’s interesting how one, with legal thinking exclude your narrative voice from the depiction...it ended up...the book ended up...I the writer of the book ended up saying: not only must justice be seen to be done, to have a court that functions with punctilio and courtesy and respectful relationship between the judge and between the Bench and the Bar, but justice must be done. And that there’s a heavy responsibility on judicial officers to work in that way. In the light of what happened subsequently, I’m kind of amused that I took the softer rather than the harder line at that stage.

The next thing was having spent three years working mainly in London, going down once a week to the University of Sussex, outside Brighton, and attending seminars on African history in London, in Brighton, and presenting chapters of my thesis/book at various universities to get input. One was on the slave period in the Cape, and the emergence of the legal system there, another on the way in which the administration of justice became a major mechanism for integrating different communities into the one political order in the British colonial set-up. It was a fascinating study for me going into the materials then. Then looking at the Boer Republics, what material I could get there, the colony of Natal, the judges in the different periods. The book was published by Sussex University Press, together with Heinemann’s, and by University of California Press in the United States. So it was very satisfying to see it come out.

And I understood that copies would be smuggled into South Africa, as a banned book. It was banned because I was banned, it was banned because I had a chapter on black legal practitioners, so it quoted (Nelson) Mandela and people who were banned, it was banned because it spoke a lot about the role of the ANC, at different phases, in terms of South African history, and I think it was specifically banned as a book in itself.. So if a book can be banned four times, it was well and truly banned. Banned books in fact had a certain impact that they didn’t have when the ban was lifted. So people would smuggle it in and read it with great intensity in that period until the ban was lifted and then it became just another book.

So then I thought, I’ve done my PhD, now I can get out of law. It’s given me, bought me some time. And I thought of practising at the Bar in England. My dad who had left South Africa in ‘52 when he was banned from Trade Union activity, and went to England and established some niche and reputation for anti-apartheid work and supporting South African trade unionism, was very keen for me to go to the Bar in
England and became a member of Parliament. He kept saying I could do more for justice in South Africa that way than thinking of going back to South Africa itself. And I spoke to Stephen Sedley, who was a young barrister then, whose father had represented my dad in relation to housing problems. Should I come to the Bar? And he said, he wouldn’t advise it at that stage, he said I would find it a very hostile and unfriendly place. He said ninety percent of the barristers are shits, of the other ten percent about seven percent are very decent people, they’re very conservative but they’re decent people, and maybe three percent are people like me, he said. I might say that the Bar changed substantially in decades that followed and alternative chambers were set up, people doing anti-racist law, immigration law, law related to poverty. And who knows, if I’d arrived later on I might have been absorbed into the English legal system. But it was so class ridden, so stuffy, with a few very, very honourable exceptions, that in 1966 it didn’t have much attraction for me. So then what to do? I’m about to get my PhD and I’ve got a BA.LLB from South Africa and been an advocate at the Bar…not very employable outside of law. I had some invitations to join firms of attorneys where South Africans who’d emigrated were working. I think that attracted me even less than going to the Bar in England.

So I started looking for an academic job, and I think I applied for two posts. The one was at St Anne’s in Oxford, and with very strong support from Sir Robert Birley, …we used to call him Red Robert…who, after he retired from being headmaster at Eton, had taught at a school in Soweto, and really hated apartheid with a deep, deep, deep indignation and helped people who had been victimised by apartheid in different ways, and he was my promoter for a post at St Anne’s in Oxford. So they gave me an interview but eventually said, all things being equal they would strongly prefer a woman to teach there, and they had some very good women candidates. So they thanked me for coming, which was really a courtesy to Sir Robert (Birley), it wasn’t a serious interview with me.

SOUTHAMPTON LAW FACULTY

And then the other was at Southampton University, and they needed somebody to teach international law. I explained that we hadn’t even studied international law at the University of Cape Town. We had, I think, ten lectures but no exams, and it was exams that gave legitimacy to a course. But I think their feeling was because I was a foreigner, I could do international law, and I guess they felt that I could adapt to whatever. So I was given a teaching job at Southampton. And it was what I would call very much a middle type English law faculty, one of the red brick universities of the nineteenth century, with a sound approach to serious teaching. Not one of the self consciously high-flying universities, but very interested in concepts, theories, ideas, and they created a very amiable context in which I could work and could develop my own ideas. And so I taught there from 1970/71 till ’76. Was on the staff till ’77. And it was a very fruitful period for me. All the time I was conscious of learning whatever I could to take back to South Africa. I found in a paradoxical way that the total certainty that I would return to South Africa one day, made it easier for me to immerse myself completely in English society. Whereas many other émigrés felt torn: am I South African? Am I becoming English? I was South African but boy when I go
back home I’m going to extract all the juices of English society that I can. And so, I taught international law, I had to learn it to teach it.

I taught criminal law, which became my main subject. Criminology. I remember visiting prisons, there are quite a few prisons on the Isle of Wight. I hated it. British prisons were awful. Not that they stank and were overcrowded, the atmosphere of lethargy, of depression, the manifest tension between the prison officers and the prisoners. And it surprised me that Britain, this enlightened society, even in terms of legal rights was so backward compared to countries like Holland and Norway and other Scandinavian countries. So that was quite shocking for me. But I also did contract law. I did the law of tort. I did family law. And possibly of all the things that I studied and taught then, family law has been the most beneficial. This was a time of major changes in family law in England, from a very formalistic technical approach to family and marriage, to a much more substantive approach, and clearly a response to an emerging Women’s Movement which was really revolutionising English family law. And the judges in many respects were ahead of Parliament, in the manner in which they interpreted, applied and developed the common law, and interpreted statutes.

And then I set up the first course in the United Kingdom on Law and Discrimination. I was able to use a book by Bob Hepple, whom I’d known from the underground in South Africa, and who was now working, becoming quite a distinguished academic, and he wrote a book on law and discrimination. And I developed further material on gender discrimination, and wrote a book on sexism. Whereas Justice in South Africa, which was my thesis, was my eulogy, my tribute, my piece of angry exposure, my existential response to that strange life of being an advocate in the South African legal system, I wanted to write something that was a response to living in England, and the theme of sexism reached me more powerfully than anything else. It reached into my personal life, into my professional life, it was very much on the agenda. I came across a book by Sylvia Pankhurst, the daughter of Emily Pankhurst, a great Suffragette leader, and also of Richard Pankhurst, a very pro feminist advocate, or barrister, in the nineteenth century, and she had a little starred footnote, saying, “as I write this the Privy Council of the House of Lords has just held that women are persons after sixty years of denying that women are so”. This intrigued me, and I went back to the first case, which was of women claiming the right to be registered as voters in the 1860s, I think, where Richard Pankhurst had appeared and the statute said: any person owning a certain amount of property shall be registered. And women said, we are persons, we own that amount of property. And the judges responded: but you’re not persons. And so the persons’ cases continued for sixty years, all over the British Empire. The Bar refused to admit women barristers. There was a case about Edinburgh University allowing women to study medicine, provided that in the anatomy classes they had a screen in the middle of the room, so that the men and women wouldn’t look at nude bodies at the same time. But then the men students protested and the women were thrown out, and the Scottish court upheld the exclusion of women. A woman tried to be a town councillor and she was excluded. This was when Queen Victoria was queen of England and somebody said, women can hold the highest office in the land but not the lowest. I was particularly interested in the judicial ideology. Defining women out of the word ‘person’ was strong and generic, and they would constantly say it was not through disrespect, it was in fact through respect for women that we deny them the
rough and tumble of practising medicine, of being in Parliament. It was an astonishing reflection of bias and two things grabbed my attention. The one was, why were they so tenacious? And I tried to give an explanation, which ultimately came down to saying that these upper middle class men had no intrinsic objection to women doing heavy work -women scrubbed the floors, women attended to their wounds in hospitals, they did all the dirty work in fact, But they did have objection to their wives and their daughters and their sisters, particularly their wives being involved in professional work, because the wives were needed at home, not to be idle ladies but to be the managers of the home. And that was seen as part of the family relationship that made it possible for the profession to survive and the judges to judge. So that was the one thing that puzzled me, the roots of this obduracy. But the other was, why weren’t these cases better known?

There was a lot in critical legal literature, of exposure of the manner in which judges had manifestly sided against workers for employers, and in many ways against the poor, and that had been justly exposed. But why wasn’t there exposure where the violation of the English language, of the ordinary rules of interpretation was so manifest? I felt the sexism came even into the critical legal literature in terms of what stands out and deserves condemnation and what doesn’t. In any event, the book was published as Sexism and the Law. I think it was the first book of its kind in the English- speaking world. And that was my gesture to my life in England and my contact with progressive thinking.

EAST AFRICA

Then in 1976 I got an invitation to teach at the law faculty in Dar es Salaam. Tanzania was a country that attracted many progressive minds, particularly in the law faculty. Julius Nyerere was the President, it had been independent for a number of years. He had issued what was called the Arusha Declaration, and it was a bright point in Africa and in the world, and they worked out that I could come and teach during the summer recess in England. The break was so long that I could teach a whole term in Dar es Salaam and still have a couple of weeks over before coming back to teach in England. And so I accepted, and I went out with Stephanie (Kemp) and our two children, stayed at the Bahari Beach Hotel, a little bit of paradise. I would take a car over the most potholed roads in the world, I’ll swear, to the law faculty. And it was a very exciting time intellectually to be there. The Tanzanian teachers were fired-up and there were progressive-minded law lecturers from many parts of the world. We had almost nothing in terms of facilities, virtually no library, but ideas, debate, and we used reproduce notes and materials with these old roneo machines. It showed that you can have all the materials in the world, if you don’t get intellectual leadership and you don’t have an ambience of debate, very little comes out. On the other hand you can have virtually nothing, but if the leadership and ambience is strong, you can get terrific legal thinking. It was a very rich and valuable period for me, dealing with law from a perspective of being in an African country, with African needs, African expectations, African demands.'76, was a very dramatic year in South Africa, the Soweto uprising, the information coming through of further struggles, further massacres, the uprising following on the victory of Frelimo in Mozambique and independence for Mozambique and Angola. And I was curious to visit Mozambique.
Mozambique was strangely outside of our mental vision. The colonisation of Africa had divided the continent in quite profound ways, into the French-speakin sections, and the English-speaking sections, which had a certain measure of interconnection, through the English language, but also through the LSE and other universities in England where one would meet people from Kenya and from then Rhodesia. And I might mention we were very active on the struggle in relation to Rhodesia as it was then called in Britain. [In Kenya, that was in my first visit when I stayed with my dad, that was ’54, there was a Kenya committee with two Kenyans and three South Africans, and I remember we produced little leaflets protesting against the ill treatment of captives in the camps that the British had. And we would make three to a page, we would cut them out and standing outside an Holborn tube, in London, ten million people, and giving out to passersby a few hundred of these little, a third of a page, denunciations. But it meant something to us. And then Mozambique, a Portuguese colony, struggle in Portugal, struggle in Mozambique and Angola. We would read a little bit about it, we were excited and happy at the independence, we knew it would have major repercussions for us. But it was really a strange territory and I thought I should go there. And we took the Tazara Railway from Dar es Salaam to Zambia. The railway stopped a mile from the nearest town in Zambia, so we had to pick up our luggage and walk the extra mile after being on this wonderful Chinese built railway. Zambia was a very important centre for the ANC. Spent time with Jack and Ray Simons, and Jack (Simons) had been this hugely influential teacher at the University of Cape Town. And it was very interesting speaking to him about Zambia and his teaching at the University of Zambia, where he again had a very big influence. Seeing the Victoria Falls from the Zambia side with planes circling overhead and knowing there was a lot of blood in the Zambezi River, and the sense of danger, even looking at the Victoria Falls. And then flying to, it what was then still Lourenco Marques, Mozambique.

The minute my foot touched the tarmac I knew that’s where I wanted to be. Long before I’d met anybody. It was the light, it was the ‘welcome to the liberated zone of humanity’ in Portuguese. I couldn’t read Portuguese then but ‘zona libertada de humanidad’, one could make out what it was saying. Seeing a Frelimo soldier standing on guard with a gun. Oh, I couldn’t believe it, I thought, oh, this is fantastic, always the guns have been pointed at us, and now we have the guns on our side. And I gave three, four, five, six, I don’t know, a number of lectures at the university. So they paid for me to stay there. And the law faculty had just been set up. It was an important moment for me in terms of my own personal trajectory. In England I’d been very down and I remember going to ANC meetings usually in a draughty, cheap hall somewhere and broken windows, wearing an overcoat and we would start with: now, Comrades, we’ll sing the national anthem, and we’d stand up and the seats would go, clack, clack, clack, as we stood up and everybody would raise their right arm and sing Nkosi Sikeleli Africa, and my right arm just didn’t go up. I didn’t take a decision, I just didn’t feel that I could raise my arm, I was so affected by the detentions, by being in exile. And we go to a meeting in a football stadium in Mozambique, sixty thousand people, there in the distance, there’s Samora, there’s Samora, and he comes to the microphone and he sings a song and sixty thousand people join in, and then he says, Viva! And he speaks of the people united from Rovuma to Maputo, and sixty thousand arms go up, including my arm. My courage came back in Mozambique, unexpectedly I started discussing the possibilities of returning to the university. It was
agreed in principle, that I should. I went back to England, I carried on teaching, eventually it was arranged for me and my family to come out. Problems had developed between myself and Stephanie (Kemp) and in the end she decided not to come. And so it was: 1966 I came to England, 1977 I went to Mozambique. 1988 I was blown up.

**MOZAMBIQUE**

Between ’77 and ’88, I went up with the Mozambican revolution, I came down with the Mozambican revolution. From an intellectual point of view, the most important aspect was encountering people’s power, a different vision of the role of the law, the role of the state. The theory in Mozambique was of liberation being achieved through the gradual extension of liberated zones in the north of Mozambique, where a whole new culture, society, was being developed, to the rest of the country. And the idea was now to transfer the mentality and the practices and the forms of social organisation, the liberated zones in the north, to the whole of the country. And to the Constitution which the Portuguese had wanted to negotiate, Frelimo said no, we don’t negotiate with the former colonising power. You are leaving. We negotiate the terms of the transition in the meanwhile, the terms of departure any guarantees that you feel need to be made. But we create our own Constitution. And in fact it was the central committee of Frelimo that proclaimed the Constitution shortly before independence, on 25th of June, 1975. It was a people’s power Constitution, with Frelimo being the leading party. The Constitution projected the vision of uniting the people of the country to create a Mozambican nation, out of what had been a Portuguese colony. Bringing together people who had been treated as separate native entities by the coloniser, as a province of Portugal. The theme of ‘Mozambicanity’ was a very powerful theme. And that meant being against racism, regionalism and tribalism. And establishing the instruments of people’s power through the popular assemblies in the localities, in the provinces, and at the national level.

As far as the law was concerned there were only four trained lawyers left in Mozambique. Virtually the whole legal profession had come out from Portugal, trained in Portugal, and went back to Portugal, that was their country and they felt they were doing a temporary stint, a tour of duty in Mozambique. So you’ve got four trained lawyers, then maybe fifteen million people, a need for law. With old colonial laws on the statute book, and a new Constitution with a totally different vision based on equality and a common nationhood, what do you do? So...the law students who by then, I think, had had two years training were sent out to the provinces to act as legal officers, resolving the disputes but also writing up reports. It was a very remarkable experience. Something like twenty of them went out, and they sent in their reports every three months, every six months. And the idea was to create what were called Popular Tribunals, that would apply the codes of criminal law, criminal procedure, deal with other kinds of disputes, in keeping with the spirit of the Constitution and what law could be found applicable. And then they would establish local tribunals, not applying traditional law but applying law for the community in the spirit of developing a socialist society and respecting the principles of non-discrimination and equality.
The university would close down in July and people would go in for what we called ‘July activities’, which meant working in the countryside, getting to know Mozambique. And previously the students who could afford it would go to Portugal, to enjoy the European summer, and now instead of going to Portugal it was to get to know your country. But it wasn’t only students, it would be the students, the professors, the teachers, the technical staff, and some of just the ordinary working people, would go out in groups, live fairly roughly and do research. And I remember one Mozambican leader saying that we knew every railway siding from Lisbon to Oporto, we didn’t know the rivers of Mozambique. He added that we used to say our highest mountain is in the Sierra Nevada, in Portugal where they added a platform of eight metres to make it rise to two thousand metres. We didn’t know that we had higher mountains in Mozambique. And so the idea was to familiarise the law students, and the whole university, with the country. We sang songs, we worked in collective groups of study, and some of the study was very rich and we would meet every evening and put our interviews together and analyse the methodology. Quite valuable reports came out from these law students, now acting as judges, and acting as the constructors of the community courts. And a conference was held to bring together all these experiences and the students went out again with further research and experience and another conference. Eventually a law, it was called the Law of Judicial Organisation, was created.

The law faculty was a rather extraordinary place. We had leftist teachers there. Just a couple originally from Portugal, very steeped in the Portuguese jurisprudential tradition, based on French and German legal thinking. Extremely abstract. But from within that abstract mode, taking a left critical position. We had an American feminist lecturer. We had a lecturer who came out from Portugal, who’d been in the resistance there. We had one or two people from East Germany. We had one Russian. I think at one stage we had a Zambian. Myself from South Africa. I remember the Russian. We couldn’t agree on anything. We were all critical of imperialism and we wanted social transformation but we couldn’t even agree on the best system of marking papers! It’s amazing how invested law professors can become with your examination system. And I was used to marking percentages, and maybe classifying pass, fail, and third class and second, and upper second, lower second, and first. It turned out in Russia it was from one to twenty. And the Russian guy said they used to have at the university in Moscow debates about, can you ever give somebody twenty out of twenty? And the answer was, no, you can’t because only Karl Marx would have got twenty out of twenty, and (Vladimir Ilyich) Lenin would have got nineteen, and...I’m not sure who came below (Vladimir Ilyich) Lenin, maybe (Fredrich) Engels, but it meant that eighteen would be the absolute maximum that you could give a student. I think in Portugal it was five, four, three, two, one. And we’d spend hours just debating how to grade the students. There was no common system of pedagogy, so each lecturer would have his or her own style. We would try and find ways of getting some consistency and some equivalence in what was taught.

I taught family law and international law. And family law was undergoing total transformation. The Portuguese Code which applied, had been drastically changed in Portugal itself, it was heavily patriarchal, didn’t allow divorce, and so Portugal had changed it but that change didn’t follow through to Mozambique. The most significant thing was the great majority of Mozambicans were not married in terms of
the Code. And so you had a number of people married according to Catholic rites, others according to Muslim rites and tradition, others in African communities, in matrilineal societies, others in patrilineal societies, an enormous diversity. It was agreed that there would be the concept what was called a de facto marriage, it doesn’t matter what system you’re married under, if you’ve been living together as husband and wife, regarded as such by the community and by yourselves for two years, then you could go to court to get a regularisation of the relationship, effectively a divorce. And a very progressive approach was adopted to family, and the community courts were the ones who applied it.

And I recall flying to Pemba up in the north taking car, maybe a hundred and fifty kilometres into the interior, then going on a jeep through tracks that were barely discernible, arriving at a little village up in the north. The radio didn’t work because the batteries were flat, there were no newspapers, there was no communication with the outside world other than the occasional visit of a four-wheel drive or a jeep. And we looked at the books of the community court, dealing mainly with family law, and it was the local teacher who was almost the only truly literate person in the area, who kept that record. The court would consist of people elected because of their reputation for integrity in the community. Always at least one woman out of the three or more judges. And it could have been a court in London, or in Cape Town, or in San Francisco, in terms of the decisions that it made. Usually it was the man behaving badly, ill-treating, sometimes physically abusing, drinking, having liaisons with other women, abandoning the wife, abandoning the children. The court wouldn’t say, well, we are Makonde and our tradition is the following. The court would simply look at the fact of a man and woman living together in a family relationship, and provide practical solutions that were fair and just in the spirit of equality. And it usually meant decreeing effectively a divorce, and requiring the man to provide some kind of support. If the only support was grain that he was growing, or helping to build the house, that’s what would be ordered. And I think at the time, Prince Charles and Diana (Princess of Wales) were having problems, and a terrible phrase came to mind, ‘the universality of matrimonial misery’ that the problems are the same in this little village community deep in the bush, as they are in the Royal Palace in London. And the solutions were not all that dissimilar. Then Samora Machel closed down the law faculty.

Int Really?

AS I discovered this when playing bridge on a Saturday afternoon with what I jokingly called the remnants of the old colonial bourgeoisie who’d stayed on in Mozambique, very dedicated professionals. And we were dishing out the cards, and bidding: one trump, and two clubs and so on, and Tino, the heart surgeon, the heart specialist, said: Well, Albie, what do you think about closing down the law faculty? Four diamonds.” What! He had heard Samora (Machel) saying on the radio that we were creating bourgeois lawyers with the old mentality and it had to be restructured. So that was quite a shock. It turned out it’s very easy to close down a law faculty. It’s very difficult to restart one. It took years, and when it was restarted it was far more bourgeois than it had ever been when closed down.
I couldn’t go back to South Africa. I didn’t want to go back to England. I got a job working in the Ministry of Justice, Director of Research.

I found I actually had more freedom working in the Ministry of Justice than I’d had as a law lecturer, where every decision of what you can do and how you can teach were pretty controlled. And it was a rather wonderful period from an intellectual point of view. I worked with the head of that section, Gita Honwana, who had been one of my students, had become a judge, and was now my boss, and an extremely cultivated person, dynamic, thoughtful, she was marvellous to work with. Our team included an Italian professor, Francesca Dagnino. And the three of us did extraordinary research. The most important was on the future of family law, and we sent brigades throughout the country to do surveys about what people thought of families, what they wanted, the basic issues. Interestingly enough there was a very strong demand not for separate Muslim family law for Muslims, and Catholic for Catholics, and Makua for Makua. People everywhere wanted the courts to apply a uniform Mozambican family law. People could carry on with their traditions and their practices between themselves, that was seen as a social/cultural/religious thing, but as far as the law was concerned it had to be a uniform law, using the principles of equality. Even on things like parental consent, the tradition had been the consent of the father or the uncle would be required for marriage, even of adults, they felt no, when our children reach the age …I forget whether it was eighteen or nineteen, twenty, twenty-one…they must be able to decide for themselves. But they should consult with us, and they shouldn’t say, oh by the way, mommy, I’m getting married on Friday. So there should be some kind of cooling-off period, for thoughtfulness. The sense of family solidarity was very strong. But the idea of a secular and universal approach to family law was overwhelmingly supported throughout the country. The one thing where there was resistance related to adoption: the idea that you can allow a child to be removed from a bloodline family was seen as very harsh. And yet the war was developing, there were lots of war orphans, abandoned children. We clearly needed an adoption law. But there was resistance in African communities to the idea of severing all blood links that had to be dealt with in a very sensitive and a tactful way.

We had a workshop on intellectual property. The photographers and filmmakers and writers were actually very concerned. There was almost no money. Everybody had to have several jobs. But the idea of the moral respect for author’s rights was strong. I was friendly with an American lawyer, Peter Weiss, whose family had put up many of the FRELIMO leaders when they visited the United States, to address the UN. He was one of the great supporters for the Centre of Constitutional Rights in New York, but the other part of his life was defending Bugs Bunny, as an expert on intellectual property. He came out and led the workshop. We got some money; I think it was from Ford Foundation, that enabled us to bring him out, to produce some materials and to buy one Coca-Cola for each person attending, as a kind of a super treat from the Dollar Shop. And Gita (Honwana) and I went to the Mozambican Airlines to pick up the sackfuls of plastic cups that they were going to throw away, took them to my apartment, washed them out and used those second-hand plastic cups from the airline to provide receptacles for this one precious Coca-Cola. But the intellectual level was intense. Mozambicans presented papers and we came up with different concepts and resolutions, and produced a little book of conclusions.
We had a seminar on shipping law, and two of my former colleagues from Southampton, who specialised in shipping law, came out. Shipping law was of course very important for Mozambique because of the shipping trade. The Portuguese Code of the Nineteenth Century dealt with sailing ships owned by their masters, so English maritime law was applied in practice. It was a very productive period and it again showed that it’s not the number of books and materials and overhead projectors that you’ve got, or even the number of the people qualified in universities from abroad that count, it’s the intellectual leadership and the linking up with people eager to develop ideas in the area.

We brought out a magazine called Justiça Popular, totally different from any legal journal in the world. Lots of photographs of the community courts, some debates, some discussions, never long theoretical articles, but very much a body of knowledge, information, contestation of ideas, to be used by people in the justice sector, to enable them to see themselves and to take their work seriously.

One day I’m listening to the radio and I hear a report of a new law that’s just been introduced. It came to be known as the whipping law. I couldn’t believe my ears. It was introduced by Samora Machel to deal with the black market. In the early years we got used to rationing and we would queue up for bread, sugar, salt, oil and rice. And you felt very proud to be in line and getting equal amount to everybody else. You could go to the market and get tomatoes and lettuce, you could go to the fish market and get some fruits of the sea, and then there would be certain allotments of meat and butter occasionally, and milk. And suddenly the markets disappeared and the sugar disappeared and the rice disappeared and clearly there was a big black market. And Samora’s (Machel) response was to apply what he would have called people’s power. The community courts had been dealing with divorces, and also criminal matters purely on the base of restorative justice…There weren’t prisons in many of the rural areas, so doing useful community work, reintegration to society, was the mainstay. There were two prisons in Maputo, major ones. One was awful, Machava Prison. The other was an open prison that was quite remarkable. And I remember being taken around when I went there, I couldn’t find it because there were no walls! And the person, in for fraud, who was the manager of the working groups, was so indignant about the local population. He said: We grow the maize and they come in and they steal our maize that we grow in the prison! And so here was this guy in for fraud, angry with the people living in the vicinity because there were no walls, they would just come and steal the stuff they were growing there. Suddenly that very beneficent, optimistic, rehabilitation- kind of approach gave way to law as fierce repression. And I remember saying to myself, the first lash fell on my back. Soon after I met Gita (Honwana), and she said her brother, a senior person in government who said the first lash fell on his back. And there was one public execution. And it didn’t stop the black market. It was totally ineffective, but it created a terrible atmosphere in the society. And one was hearing complaints from people that if your husband or son or sister or neighbour was locked up, there was no Code, there was no system of going to court to get people released. You got them released if you knew somebody in government, or you knew somebody at the police station. The lack of legality became very clear, a sense of systems just not functioning.
And then came the killing of Samora Machel. We used to hear gunfire in Maputo from across the bay. Renamo were very active, supported first by (Ian) Smith and then by South Africa. We couldn’t travel outside Maputo except by airplane. We couldn’t even go to beaches nearby. You felt you were living in a city under siege. You could fly to Europe, you could fly to Pemba in Mozambique, but you couldn’t drive out to a nearby beach. And refugees were streaming into the city. The economy was struggling. And then Samora’s (Machel) plane came down, was brought down. We were totally convinced that it wasn’t an accident. To this day it’s so unlikely that at that moment that plane should crash. And there was so much manufactured evidence afterwards, which suggested a cover-up that we had no doubt at all. Interestingly I belonged to a group that would brief Jacob Zuma, who was the ANC chief representative in Mozambique, once a week on political developments in Mozambique. So we weren’t getting classified information on troop placements or things like that, just reading the newspapers, listening to people, about currents and trends. He would send our reports on to Oliver Tambo in Lusaka, just for the information. And Rob Davies, who’s now, a senior figure in government in South Africa, was part of the group teaching at the university, reported one week that he’d noticed a complete change in the propaganda broadcasts from South Africa early in the morning. Until then the line had been that Samora Machel was a captive of the Communists, and ways had to be found to enable him to express the true independence of Mozambique. He’d noticed that the line had changed completely. It was now saying that the power of Samora Machel had to be broken. We sent off that report a week before the plane came down. In any event, there was a sense of utter dismay and people were weeping openly. The funeral ceremonies went on. The first person to be buried was Samora’s interpreter who was Muslim, and so the burial had to take place very quickly. Thousands of us went to the cemetery. And women took part in carrying the coffin, because this was Mozambique over some objection from some of the Muslim men. There was a sense of utter, utter, total grief and disbelief. So that was a couple of years after the Nkomati Accord of 1985.

The Nkomati Accord hit the ANC grouping very, very hard. I remember seeing a film...we used to get films from all over the world, and this was from East Germany, and it showed the resistance to Hitler in the 1930s, and focused mainly on a woman prisoner who got very close to the common law prisoners, and a guard who used to jeer at her, says to her one day: well, your great Stalin has now entered into a pact with our leader, what do you say about that? And the heroine of the story couldn’t believe it. Absolutely impossible. And now there was a pact between Mozambique, Samora Machel, and P.W. Botha. It was very, very hard to believe. And there was a strong attempt by Samora (Machel) to proclaim it as a victory, a victory for peace, that Mozambique would be protected, they could build socialism in Mozambique, they could do more that way to help the freedom struggle in South Africa. But it was a defeat. We were told that when Samora (Machel) ordered Joe Slovo to leave, he actually cried, Samora (Machel) cried. But the ANC were pushed out in a rather unceremonious way, and just a few of us who were working at the university, working, not as ANC functionaries but helping with the development of Mozambique, were allowed to stay. And a number, I think ten, were permitted to stay, in the ANC office. All that had happened after commando raids to kill ANC people.
We lived with heavy bars on our doors, in a state of constant tension. I remember Franny Rabkin with the two little children, when they came back from school, she was in the same apartment block that I was in for a while, and the children would have to wait outside the doors because it took so long to unlock like three heavy doors, and they’re carrying their little school bags and they just looked so incongruous. And then somebody came to me, bleak, bleak face, saying, Ruth First has been blown up at the university. Ruth (First), she was our sister, our friend, we did seminars together, she wasn’t involved in the underground struggle, MK, she was doing intellectual work, brilliant research, writing, a team around her. Somebody had said once, when you want to say goodbye to someone who’s dead, it’s better to see the body, and I went and I saw and…I saw Ruth’s (First) legs and her arms and her body, very recognisable, and no face, it was terrible. And so we were living in a state of extreme tension and shock all the time. And then Samora (Machel) was killed. It was very, very harsh.

On the positive side the experience was exceptionally rich in a cultural sphere. And to some extent the legal sphere. And a very strong movement of our artists, a children’s dance school, headed by a ballerina in exile from Chile, did exquisite dancing that would be traditional African, that would be classical ballet and contemporary jazz. And every child would do everything. So the black kids would do dancing as a swan, and the white kids would shake their bums and do traditional African dancing. We had more artists earning a living from their art in Mozambique than earned their living directly from art in South Africa. Every public building, every school, would have Mozambican art, it was part of their expression of their personality. I wanted to record this, and we made a film, called the Deeper Image, on a country at war producing art. And not art about the war but art responding to the war. It included a group of bus workers who had been travelling up country, in a strong cultural group, who were attacked and five of the bus workers were killed. We filmed them singing a song in a format called Makwayele, that had been developed on the mines, because many Mozambicans went to work on the mines. So we recorded that. We recorded the making of a sculpture from a single piece of wood, a beautiful piece, of a man, weak and bent, cradling another man who’s on the brink of death, and the little bit of strength that this man has got goes to cradling the dying one. And we recorded paintings by (Valente) Malangatana (Ngwenya), a great, internationally known artist. And we hadn’t quite finished making the film, and I was looking at the sculpture, and I noticed that one of the limbs of the man who was doing the cradling had broken off, and I said, to the artist, well you can just put a little peg and restore the limb. And then I was blown up myself and lost my arm. And when I came back afterwards, and we finished the film, I said, no leave it like that, without the limb. We did slide shows on art. One was on the mural art in Maputo, and also produced a book, Images of a Revolution, on the mural art. My friend, Sol Carvalho and I also had a slide show with double projectors of one painting by Malangatana (Ngwenya), on how to look at a painting, to go out to schools, with seventy different slides in it. So the whole approach of the Mozambicans to culture was very rich and rewarding. Mozambicans didn’t get involved in heavy debates about Afro-centred and Euro-centred. They wanted culture that was people-centred. And they said, all the productive, creative energy of all our people should be brought in. And so Malangatana (Ngwenya) who would sing African songs, who set up a little cultural group, in the rural village where he’d grown up, and whose paintings would be based on African mythology and on
imagery and stories his grandmother had told him, would play Mozart while he was painting. He loved Mozart and he didn’t find any contradiction, it wasn’t the battle of one tradition against another. When it came to the music for the slide shows and for the film, we had a debate and only one person insisted we must just have traditional African music - he was a white person from Portugal. And Malangatana (Ngwenya) and the others said, no, we love the saxophone, we love jazz, that’s the music of the cities and the music that corresponds to the cultural work that we’re doing.

And it meant that when I came back to South Africa, I already had a very firm vision of what we could do in South Africa. When it came to the new public building called the Constitutional Court of South Africa, the idea that every public building embraces art that expresses the personality of the country, wasn’t a concept or a theory, it was a practice that I’d lived through and seen how valuable it could be. It came through very, very directly here.

When I was carried out on a stretcher after the bomb, [I’ve written about the bomb and the explosion and so on, in the Soft Vengeance of a Freedom Fighter,] I remember coming to the airport, in the evening, and seeing a Frelimo soldier with a gun, and I hated that gun. When we’d come in, that pride of guns on our side the first time, now it was just guns, guns, guns, guns, everybody killing everybody. And I wanted to live in a world without guns. I’d learnt that through hard experience in Mozambique, it wasn’t a conceptual idea, and it wasn’t just a notion, it was what we’d all lived through, the positive and the negative, and just too much violence. Mozambique would have to find another way forward, it just wasn’t coping and managing. So some years later after years of negotiations the Mozambican Constitution was transformed, and it was agreed to have elections, and freedom of speech was entrenched.

The courts were revamped. Sadly the community courts which were the one great fruit of the whole period of effervescent change, were more or less abolished, and Portuguese style, much more formal courts, were re-introduced. Nevertheless, the beginnings of an independent Bar had been created and there were a number of bright, thoughtful judges, starting with the…one of the four lawyers who’d remained on, who had become a Minister of Justice and is now head of the Constitutional Court, in Mozambique, Rui Balthazar. But mostly they were young judges of a totally different generation, the law students in 1975/76/77. Alert, bright, concerned, providing something of a judicial structure. It saddens me that we don’t have more contact between South Africa and Mozambique. That cultural divide still continues. Samora (Machel) used to joke that many people in former colonies in Africa, such as Zimbabwe and Tanzania, were proud they were colonised by the British and not by the Portuguese. As though they had a superior class of colonial oppressor. And there’s no doubt that the different modalities of colonisation and the different forms of resistance to it, produced different independent countries. Mozambique had a quality of respect for culture, for poetry, for the arts in a broad sense, far beyond anything I found in Zimbabwe, or for that matter, as far as intensity is concerned, that I find in South Africa. On the other hand to get money from the bank I would far rather do that in Harare than in Maputo. The resistance in the Portuguese colonies, the students and the small emerging middle class, linked up with the left- democratic underground
resistance in Portugal. They shared prison, ideas about culture and so this influenced the intelligentsia to a much greater degree than the former British colonies. It was the anti-colonial wars that ultimately brought down the dictatorship in Portugal, it gave the independence movements an authority and a self-confidence that was notable. If one imagines Oliver Tambo writing poetry, or Nelson Mandela expressing deep thoughts in poetry, one feels embarrassed. It’s so hostile to the culture of the Anglo world. And yet every leader in Mozambique wrote poetry. Even Samora (Machel) on occasion, and all the people around him wrote poetry. It was just a very different world. And for me a deep, intense, extraordinary experience, that I’m sure left its mark on my thinking as a lawyer. Another part that was significant on my legal vision was that I had been external examiner in Dar es Salaam… (interruption)

Int Albie, you were speaking about this deep cultural world that you were immersed in…?

AS Yes, but being external examiner…

Int …

AS …in Dar es Salaam, and then for a number of years in Harare.

I remember in December 1979 I was invited to a session of the National Assembly in Mozambique. Samora (Machel) was presiding, and I sat at the back of the converted old Officer’s Club that had very strong air conditioning. It was quite chilly inside. And Samora (Machel) kept looking at a door at the back, obviously waiting for something. They had their votes on different laws that were being passed, and he would say, anybody against? Not a single hand went up. Any abstentions? No abstentions. All those in favour? And everybody voted in favour. He looked so pleased. I thought, wow, they’ve had debates, it’s a good law, but no one against… that’s hard to believe. Eventually somebody comes in and Samora (Machel) picks up a piece of paper and he beams and says: a ceasefire has just been agreed in Zimbabwe. Everybody stood up and spontaneously sang one of the ZANU freedom songs. It was a very emotional celebratory moment. There had already been a lot of singing in the parliament led by Samora (Machel). And I started shivering. I was shivering because it was cold, but I was (also) shivering because I felt, you know, this is fantastic, but what about us? They’re going to get their independence, they’ll get democracy in Zimbabwe, but what about us in South Africa? We’re still under apartheid. But it did mean that I could go to Zimbabwe, and I went there as external examiner. The quality of work produced by the students, I found to be on a par with that of the students in Southampton, but much more interesting, and innovative courses were being put on. And again, this prepared me for my return to South Africa.

TO LONDON ON A STRETCHER

After being carried out on a stretcher, I had more or less come to in the London hospital, I’ve written about this in the Soft Vengeance (of a Freedom Fighter). But the question was: what do I do after this? Maybe now I’ll ultimately get out of law.
After several months in hospital and a week or two of recuperation in my brother’s flat I receive a visit from Shula Marks, who was the Director of the Institute of Commonwealth Studies, and Mary Simons, daughter of Jack Simons, a very excellent academic herself. I can barely walk, I’m very frail, and they said: Albie, what do you think you’ll do when you’re fully recovered? So I said: well, I’ve been invited to do a fellowship at Warwick and I think in Canterbury in New Zealand for another three months. And they asked: well, what would you like to do? And I said: I would like to work on preparing for a new Constitution for South Africa. And they said: fantastic, the Institute of Commonwealth Studies has a bathroom which we can convert into an office for you. I’m sure you’ll get money from Ford Foundation from the Swedish International Development Agency. Let’s go ahead with that. And a couple of months later I was in that office, aided with funds from Ford and SIDA, able to devote myself full time to thinking and writing about a new Constitution for South Africa. Now I need to record the whole experience of preparing for a new Constitution.

(interruption)

WITH OLIVER TAMBO IN LUSAKA

Being in Mozambique had made me closer to ANC headquarters. I was asked to help set up the legal committee of the ANC working with the Secretary General, I produced a document setting out what the functions should be, everything from providing legal advice to the ANC particularly in Lusaka, where they would have to buy houses, and attend to passports and marriages and things of that kind; to connecting with the international legal community, influencing them to understand better the struggle against apartheid; to linking up with progressive lawyers in South Africa. We created a structure and a number of people were recruited for it. One of these was Penuell Maduna. When I stayed in Mozambique, I got a lovely apartment, you couldn’t get any furniture, so it was rather sparsely furnished, with beautiful view over the sea and another view down into town. The lift didn’t work so you had to carry stuff up. It had heavy gates in front, and one lived in constant tension about being attacked there. One day Jacob Zuma comes to me and he says, a South African attorney called Penuell Maduna, who’s been working in Swaziland, is about to be attacked, can he stay over for one night? And I said, fine. Well one night became two, three, four, five. Eventually he stayed for several months, and his wife and baby came as well. It was lovely being able to hear from him, who’d come from home much more recently that I. He would hold court and the flat would be filled with lively conversation while I sat in a corner quietly writing reports in Portuguese. He now became one of the full-time functionaries of the legal department of the ANC. There was a chap Ted Pekane, who’d done a PhD in Bulgaria on apartheid as a crime against humanity. Very stable, very nice, decent person. Jobs Jobodwana, who’d been an attorney in Maseru for a while, was the secretary. And Zola Skweyiya, who had done a PhD in East Germany, was the head. It was quite a strong team and became the foundational group for the Constitutional Committee that was set up at a later stage.

Well before that, however, I got a phone call one day from Oliver Tambo. I was, sitting at my office. We didn’t have much or any air conditioning in Maputo, and “hello, it’s OR here. A polite enquiry about work and how things are going in
Mozambique and then he says eventually: could I come to Lusaka, matters have cropped up that he thinks I might be able to help with, and he knows that the work I’m doing is important but if it would assist he could speak to President Samora Machel to facilitate my coming. And he asked graciously and said he fully understood if I couldn’t do it. The usual thing would be for someone from headquarters to say, Comrade Albie, there’s a meeting in Greenland next Monday, get on the plane tomorrow and write a paper of twenty pages. It would be a command, and you’d find reasons not to go. Here the President of the organisation is making it easy for you to say no, and you want to say, take me, take me. And I arrive eventually in Lusaka, I remember he was sitting with a rolled up newspaper, there were lots of flies buzzing around, and he’s telling me important stuff, but he’s swatting flies, wah, wah, the President of the organisation, while doing so. He told me the problem: people sent by Pretoria to kill the leadership and to destroy the organisation, are now captives in our custody, and we don’t have any regulations dealing with their treatment. The Constitution of the ANC had aims and objects, and annual general meetings, and you pay your dues, and branches but had nothing about what you do with captive enemy agents. So he said: I imagine it’s very difficult to provide such regulations. In a very confident way I replied: well it’s not so difficult, there are international principles saying no torture, inhuman or degrading punishment or treatment. And he said: we use torture. I was stunned. He said it with a bleak face. I didn’t know then what he knew, and it turned out that he’d received reports about abuses by ANC security guards, he’d sent a team to investigate, the Stuart Commission it was called, and they’d interviewed people and they’d come back and said ANC security were in fact using torture against the people sent in to destroy the organisation. So to deal with this situation my task was to draft in effect a code of criminal law and a code of criminal procedure for a liberation movement in exile. I would say of all the legal work I’ve done in my life, that was the most important. Somebody else who’d been studying in England had prepared a code that dealt with difference between felonies and misdemeanours. Useful though it was it just had no relevance to the context in which we had to operate. So it was a question of starting from scratch.

And basically I decided to have a three-tiered system. Problems of discipline in the branches basically had to be dealt with politically in the branch. You don’t use the heavy guns against people who are disruptive, come drunk to meetings. Anybody who’s chaired meetings, knows you get people, who can be an absolute pain in the neck, but you have to deal with them politically. And then there were people who would smash up a car because they were driving drunk, or steal, or assault other comrades, who would go in for sexual abuse. It was serious but completely different from people sent in to destroy the organisation. And so the branches would deal with branch disciplinary matters, and we would have a regional tribunal to deal with people who would steal, rape, crash cars and so on, with a prescribed range of sanctions they could impose, which weren’t all that much. And thirdly, there were special tribunals to deal with the grave crimes against the organisation. At this level we would have a presenter, and a defender, we would have a system of appeal, and as much legality as was possible in the circumstances. I learnt afterwards that the whole of the security was transformed, new leadership was put in place, and that by and large the serious abuses did end, but not all the abuses in all areas. And I know Penuell Maduna was appointed a defender in one matter, and the security people said: what the hell are you doing? You’re defending this crook and this criminal. We know that he’s an enemy
agent. And he was a bit amused but a little bit worried. But the fact is that legality did come. And I think this was extremely important for the ANC and the future of the country, because it meant we had to grapple with the problems of fundamental rights in our organisation at that stage. And when it came to the Kabwe Conference in 1985, where the whole code of conduct had to be put to the membership and to the delegates, we set aside special time to discuss whether what was euphemistically called ‘intensive interrogation’, should be permitted in what is now called the ticking bomb situation. One by one the delegates got up, especially young people from Umkhonto we Sizwe, who had heard about the abuses, and they said, no. I remember one young chap saying: we are fighting for life, how can we be against life? And another saying: if you give the slightest margin of discretion to use physical ill treatment to the security, they will use it far more extensively. There has to be an absolute prohibition of torture in any shape or form. And that was agreed upon by the conference. It was very moving for me, I’m the lawyer, I’ve grown up in a relatively comfortable environment, I’m not facing these things on a day to day basis, and yet here were people literally on the front line, the ones who were most at risk themselves, demanding no torture.

Then in 19…it would have been about ’86, ’87, the Constitutional Committee of the ANC is established. Now gave a very extensive interview to the Mayibuye Centre at UWC on this, that’s been filmed, and transcribed, so I don’t think I will repeat it. It’s not directly relevant to the LRC, although in a parallel way it’s extremely relevant. So I’ll refer you to that. I’d be happy if you could get a copy and somehow include it in your archive. All the debates that we had on the constitutional principles, and on whether to have a people’s power constitution, or a traditional liberal type constitution or what was called a post-dictatorship constitution, should be used.

In 1989 I attended a conference in Harare, of ANC lawyers meeting lawyers from South Africa, and it was electric. The excitement was strong, and although there were attempts to create fairly formal programs, what really mattered was the dialogue and the interaction. It was extremely encouraging, the feeling that there’s a huge amount of common ground. It went well beyond the ANC and the ANC sectors, and the soil was very fertile for a new constitutional order in South Africa.

We also had a meeting of ANC cultural workers, with mainly Afrikaans- speaking people active in culture, writers, poets, at Victoria Falls, by Die Waterval, and that was extremely emotional. Antjie Krog cried so much when we said goodbye, I said that her weeping produced more water than the waterfall itself. One just knew that change wasn’t just ready, it was over-ripe, it was over-due. The yearning to live as equals in one country, coming from people right at the heart of the Afrikaans-speaking community, so willing, so eager, so responsive, made it clear that the door would be wide open in South Africa.

After I was blown up and recovering in England, the ANC Constitutional Committee did something very lovely for me, they decided to have their meeting in London so that I could attend. The meeting agreed to draft an ANC document for a future Bill of Rights in South Africa. And I was asked the first draft together with Kader Asmal. Again I’ve described this, and I think it’s at the Mayibuye Cultural Centre. So that
would have been a very important moment for me. And finally the meeting in Lusaka, and hearing about the February 2nd changes, I think I’ve described that too, and the fact that we could go back.

Int Were you expecting this decision by FW Klerk?

AS We weren’t expecting it. We’d expected it from PW Botha before the Rubicon Speech five years earlier there’d been a state of great expectation, and when that crashed, we became rather sceptical. Those of us who left for exile in the sixties, never dreamt it would take so long. We thought, five, ten, fifteen years and the struggle would bring us back. When the change came in 1990 we were taken off guard completely...completely. And it was a moment of huge jubilation. I was working in Lusaka, with a small legal team I don’t know why I remember it so vividly, but we had black tea and a stale roll of bread for our lunch. We worked right through and it was after three o’clock I think when Zola Skweyiya said, well, let’s listen to the BBC to see what (FW) de Klerk said. And it wasn’t on the hour, so it wasn’t the news, it was a commentator saying: “and because of the unbanning of the ANC”…wow, we could hardly believe it! And there was…I remember that moment, there was a COSATU trade union cadre and he was stunned. He had come there to learn to do underground union work, and now suddenly it was all legal. But some of us had been legal, we’d known the legal days, it was a return to something that had existed before. And we had a sense of complete jubilation.

Well, I’ve told you about everything. The only thing I’ve left out is Legal Resources Centre.

Int You had mentioned to me that when you’d heard about the Legal Resources Centre you were initially opposed to it…

AS Yes.

Int I wondered whether you could talk about that?

DOUBTS ABOUT THE LRC

AS Right. When I was living in Mozambique I got a phone call from the American ambassador one day, Professor Jack Greenberg, and his wife, Debbie Greenberg, who’s a law lecturer, and her son, are visiting Mozambique and we wonder if you can show them something about the justice system. And I spent a couple of days more or less continuously with the three of them, fitting in my other work as well as I could, taking them to courts and introducing them to people. A great friendship grew up, and Jack (Greenberg) said: next time you come to America, just get in touch with me. And I said: well it’s very unlikely that I’ll go there. I’ve been once in 1974, with problems of getting a visa, being a “terrorist”, from a “terrorist” organisation. But not
long after I’d spoken to him I got an invitation from Indiana University and I let him know…I’m not sure how we contacted each other in those days, certainly wasn’t email. And he was then the Director of the Legal Defense Fund or the National Association of Colored People, and he said: that’s wonderful, you must come to New York, you must stay with me and I can arrange other lectures for you to give. He in effect became my impresario. I must have gone about four, five, six, seven, times, and he would organise the whole nationwide trip. I would stay with him and Debbie (Greenberg) in New York. And the one tax that I had to pay was to speak to the Legal Defense Fund on what was going on in Mozambique and in Southern Africa. A tax I really gladly paid.

And he told me…it would have been about, not long after that, I think I first went in ’78, on this trip to Indiana and elsewhere...so around about then, he said there are plans afoot to set up a body called the Legal Resources Centre, to some extent modelled on the Legal Defense Fund in the United States. And he wondered what I thought about it - he was obviously very involved and very enthusiastic, and said Arthur Chaskalson would be the person heading it. I felt very awkward, and told him: Jack, I have very strong reservations. They were basically that the international community would be led to believe that you can bring about change, meaningful change in South Africa, through using the instruments of the law. This was a time when we were pushing for divestment, for isolation, not only for the arms embargo, but for cutting off cultural ties with all groups except those fighting against apartheid. To invest in bringing legal cases will be a soft option like water following the path of least resistance. And I thought people at home in South Africa could be encouraged to think, well the way to overcome apartheid is through litigation. What I did add was that if you’re going to have it, and it looks as though you’re going to have it, you couldn’t have a better person than Arthur Chaskalson. I’m happy to say now I was right about Arthur (Chaskalson) and wrong about my opposition And it wasn’t something that I fought against or campaigned over, I just expressed my concerns. But I think the LRC justified itself very early on. Not only did it bring important test cases, probing at sore points in the system and exposing extreme forms of injustice. It was training lawyers in a totally different philosophy of law, people who felt that their legal careers would be dedicated to the pursuit of justice. And they could do it on a full-time basis through the LRC, and see that as how they would identify themselves as lawyers. The impact was soon and strongly felt. LRC bodies were set up in different centres, and we had a nucleus of lawyers thinking in a different way, acting in a different way.

It’s not an accident that those are the people who provided a nucleus of the new judiciary, the transformed judiciary, we have today. So I feel that the LRC made not just a contribution, but a remarkable contribution towards democracy in South Africa. It had a bit to do with the experience gained over the years, of the manner in which one could use litigation. It was very much influenced by the kind of leadership that Arthur (Chaskalson) could give. Arthur (Chaskalson) was, and I saw that, as a judge on this Court, an astonishing legal brain. I once said somewhere internationally that I think we have the greatest legal mind in the world as the head of our Court. Possibly central to everything was his strategic thinking. More than that, he was an astonishing organiser. Again, I saw that at the Court, delegating responsibilities, working as a team, explaining things, keeping records and minutes of decisions taken, following up
on them, attending to all the practical things – we had to establish a court from nothing. I’ve made this joke many times: I say we had nothing at all when we started, and the correct myself: that’s not true, we had one chair. And we know that because when Arthur (Chaskalson) retired, Dorothy Fouche, his secretary, said, how terrifying it was sitting on that one chair being interviewed, with Arthur (Chaskalson) circling around firing questions. So we had to invent and create and establish a court from nothing. Arthur (Chaskalson) would attend to the finances, to the structure of the administration, to dealing with head office of justice in Pretoria, to dealing with visitors, to ensuring that we had good rules of court, attend to the library. He delegated extensively but always saw to it that things were done properly. So one could see the qualities that he’d had or that he’d honed, as head of the LRC. And I’m sure that was a very, very major factor. Although I was distant from the working of the LRC, I could see the product well enough.

JUDGES MEETING WITH ANC LAWYERS

Before I forget, I must mention the ANC – Judges conference in United Kingdom.

Int Which was when, Albie?

AS It would have been about ’89. I was approached by Ronald Dworkin, a famous law professor in America and England, who had got funding to promote a meeting between South African judges and ANC legal people with a view to looking to the future, and would I help him with the planning? We discussed it in Lusaka and most of the Constitutional Committee were against: they’re agents of oppression, they’re deeply involved, what will our people think, we’re meeting with these judges who are sentencing our members to death? And I think it was only Jack Simons and I and, I suspect, Oliver Tambo who favoured going ahead with the idea. Oliver Tambo was the one who had set up the Constitutional Committee and who was sounding us all …he would never say, this is what I think, he would always listen, listen, listen, and then try and get a consensus position. I just sensed he felt that a little breakthrough could be made here, but it wasn’t a majority position. But eventually everybody agreed, let’s explore it and see how it works. So I worked with Ronald Dworkin on the format of the invitations and who should get them. I was able to suggest certain judges and other people who should be approached. And the conference was fixed to take place outside Oxford on a particular date. Then about two weeks before it was due to start I get a message that Ronald (Dworkin) wants to see me. I was quite weak then, even travelling by the underground was difficult, so he came to see me. He was flushed. Something’s cropped up. he said: we’re getting a very good response, but some key judges say they won’t attend if Albie Sachs is there. This was so ironical, I was the one who had favoured the meeting. But they had their view of me, that was it. And I think Jack Simons was the other. And Ronald (Dworkin) said: we’ll call off the meeting, of course. So I said: no, don’t call off the meeting, this is a bit of a breakthrough, go ahead, it’s not about me and I support it being held. And it was. It created quite a stir in South Africa. The Chief Justice, Michael Corbett, had protected the right of judges to go, which was quite significant. And I believe it was a very productive meeting. I was able to meet a number of participants and the judges socially afterwards. Ismail Mohamed was there, Arthur (Chaskalson), a number of
judges, and I remember Oliver Tambo coming, I think he had a nice blazer, or a sports jacket on, he looked so well, and about a week later he had a stroke.

Int Albie, why do you think you in particular, were earmarked not to attend this meeting? Where do you think that stems from?

AS I would have been seen as the maligned white Communist, and maybe the Jew aspect didn’t help as well. They wanted to meet what they regarded as the authentic black African leaders, big legal thinkers, with whom they felt they could talk, but not with that Communist, Albie Sachs. In fact, I wasn’t even in the Party then. I’d been in the Party in the underground from late ’53 till ’63, a very important part of my life. But when I came out of solitary confinement I didn’t go back into it. I just wasn’t strong enough for further underground work. And when I went into exile, there was nothing in what was happening in the Soviet Union and East European countries that made me feel the Communist Party could give me that I couldn’t get out of being in the ANC. But I didn’t want to go around saying, I’m not a Communist. I had huge admiration for people in the Party who were really in the front line, who were carrying the struggle deep into the country, who were probably the principled cadres and leaders, accepting the greatest risks in Umkhonto we Sizwe, who were very active in the underground and the development of the trade union movement. But my political needs would be catered for by the ANC. And as I say, it was ironical, I was the one who supported the idea of having the meeting, but I was the one whom they wanted to keep out.

CODA

Int In terms of the Legal Resources Centre, quite early on, as you know, they had the Rikhoto and Komani cases, the test cases that helped end the pass laws, but…given that under apartheid Parliament was supreme, those legal victories could in fact have been overturned by the regime but they weren’t. What do you think were the reasons for that during that period?

AS Yes, I think that it had scope to achieve these victories that had certain impact, because of the general political struggles. If there’d been a similar outcome in the sixties, Parliament would have just changed it immediately and made an even worse law. So in that sense the LRC benefitted enormously in its legal work from the totally unlawful revolutionary activities of the time.

Int You’ve written about the unjust legal system in South Africa, but having interviewed other people they always point out this anomaly where Afrikaner judges in particular, had this almost strange reverence for the rule of law. How do you understand that, do you think that’s a fair and accurate statement?

AS Well, in the Cape I wouldn’t say it was the Afrikaner judges who manifested that.

Int Oh…
Beyers was the Judge President for most of the time when I was practising there. A very independent spirited person, he had represented the South African government at, I think, one of the earliest South West Africa... no, he represented the government in the voters’ cases and he was very much an Afrikaner nationalist from that point of view, but an independent person. And when he saw Public Works people wanting to put up apartheid signs in the Cape High court, he said, this is my court, get out! And there were never apartheid signs there. It was, I think, the only court in the country that didn’t have separate witness boxes for black and white, separate entrances, seating areas. So he had a certain spirit of independence of his own. But the more liberal type approach in the technical sense to statutory interpretation and so on was carried more by judges like Herbstein, Van Winsen, Banks, whereas those appointed as Afrikaner nationalists tended to be much more pro-executive, but somebody like Beyers could be very independent even in this respect. Michael Corbett, who later became a judge and Chief Justice, was an ex-serviceman and I remember him saying once, when the newspapers reported me saying at a public meetings: Advocate calls for new Torch Commando. I was being teased in the Bar Common Room, and Corbett said, you’ll have to do it on your own this time, Albie. So that was another tradition, that of the ex-servicemen who’d fought against (Adolf) Hitler. And some of the Afrikaners who had risked their liberty, resisting South Africa’s entry into the war against Hitler, wrote judgments in favour of liberty, Rumpff, for example. Somebody like Laurie Ackermann who was on the Bench in Johannesburg or Pretoria, although he came from the Cape, he would be an example of a person who took the rule of law very seriously at a deep philosophical level, I think he would have said as a Christian. He left the Bench to become Professor of Human Rights Law in Stellenbosch, and when he was appointed to our court afterwards, I think some of his former colleagues said: smart move, Laurie (Ackermann), as though he’d done that with a view to advancement in the future. And Johann Kriegler, brilliant legal mind and powerful sense of justice, supported Lawyers for Human Rights. I think it was more than just a kind of an old-fashioned positivistic reverence for the rule of law as such. It was much deeper than that, it was a hatred of racism and of treating people in an undignified and cruel way. John Didcott, from a very different background, NUSAS background, anti-authoritarian, liberal. A powerful figure on the Bench…

(Interruption and interview ends)
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