

Interview 1: 4th December 2007

Interview 2: 28th July 2008

Interview 3: 3rd August 2008

Interview One:

Int George, thank you very much for your time.

GB It's my pleasure.

Int I wondered whether we could start by you telling us a little bit about your early childhood and your background and what brought you to the legal profession, so your formative influences.

GB Yes...well, Nadine Gordimer put it rather well, that the gales of war brought me to South Africa. The late thirties were turbulent times in Greece. My father was an elected mayor of the village, but in 1936 a dictatorship was established that he was forced to resign. My family were...my grandfather in particular who lost his first son in the First World War, and George (Bizos), my grandfather, insisted that I shouldn't adopt...shouldn't christen his name of his lost son. We were an anti-tyrannical family who didn't take kindly to dictators. My father although he was defrocked was nevertheless considered the leader of the village, and when Greece fell to the Germans in April 1941, seven of the aligned troops from New Zealand, Australia and the UK, took refuge in the bushes outside our village. My father decided that he would help them get out of Nazi occupied Greece and go to Crete without knowing that Crete was busy falling to the German paratroopers. We set off until the third day we were picked up by the British navy, HMS Kimberley, we were told that Crete was falling; we were taken to Alexandria in Egypt. I was put in an orphanage. My father was put into a camp with 4000 odd other Greek refugees, and Egypt was in danger from the Italians who were in Libya at the time and doing quite well against the allies. And the Middle East command as a sort of thank you to my father included him in a group who...of parents who had children to get them out of the refugee camp and we got a first class passage on the Isle de France, the second biggest liner at the time, and we were brought to Durban. From Durban we were brought to Johannesburg. Didn't go to school for two and a half years. But I was...my father's picture and mine were in the Sunday Times and a young Wits graduate teacher, Cecilia Feinstein, recognised, two and a half years after the photograph appeared, set out and raised hell with the people that I was working for that they can't...it was not a place for a boy like me to be in. she took me to her school...

Int How old were you, George, at the time?

GB 13. By the time she found me I was already fifteen and a half. I had passed standard 6 equivalent in Greece at the age of 13, but I had to start again, at standard 6, so I matriculated when I was almost 20. And she...it was a junior high school but she became engaged to be married and she arranged for me to go to Athlone High, a particularly good school at that time. And I defied my father by not doing medicine, which was his...but I went to Wits. It was a very special time in 1948. Those of us who were too young to fight but old enough to understand what the war was about, believed that it was to end all wars, and that fundamental human rights were being universally applied, as decreed by the United Nations. And here right slap bang in the middle of it all, the Nationalists came into power. The student body was a mature body...because many of the students had fought in the war, interrupted their studies and they were the leaders. Fellows like George Clayton, John Coaker, and a number of others, who were insulted by this Nationalist Party victory because they were considered Nazi supporters. And I could identify with the anger that was expressed by the senior students and...there were a sprinkling of black students like Nelson Mandela...(Ismail) Meer, Nthano Motlana, and a number of others, a very small group. They were all youth leaguers, the Africans that is, and I could identify with their cause, we became friendly with Nelson (Mandela) and others. And...

Int This was at university, at Wits?

GB At Wits. And then I became very friendly with Duma Nokwe, who eventually became the first African advocate at the Bar. And we were friends at the university, we shared chambers illegally from 1956 onwards. With the Bar council giving us some support. The arch conservatives at the Bar threatening to report (Duma) Nokwe to the Group Areas and Urban Areas inspectors, but it never came to pass. He was then arrested in a treason trial in the December '56 and I did quite a lot of work for (Nelson) Mandela and (Oliver) Tambo with Godfrey Pitje, Douglas Mokhele. And the present treasurer of the ANC, Msimang.

Int I was wondering whether I could take you back a little bit, George. You know when you were growing up in Greece and...when you left, were you separated from other members of your family?

GB Yes, of course. I had 2 brothers and a sister...

Int And your mother?

GB And my mother, and my grandparents. My grandparents and my mother who were very concerned about my joining my father, but I was quite precocious and I insisted quite a lot and I threatened to swim behind the boat if they didn't take me with them. And I was separated from my mother, the family, for many years.

Int Many years?

GB Many years. I first saw my mother in 1962 that was 21 years after I left, when she came to South Africa. I didn't have a travel document, I didn't have a passport and I couldn't really confide in her that I...that there was a file on me and this is why I couldn't...I was refused citizenship. So...and I started doing political trials almost immediately after I came to the Bar.

Int I was wondering why political trials in particular? What attracted you to this type of lawyering?

GB You know you don't really choose. Sometimes things are chosen for you. I mean, I was friendly with Joe Slovo, Ruth First...Ruth (First) while she was an activist, she was a reporter on the New Age. She was in touch with people that got into trouble. She found it easier to ask me to do it and to ask Joe (Slovo) who did his fair share, but...obviously, Ruth (First) found it easier to ask me to do the odd trial, some of which were done without any payment. You know, I thought...they were very involved both of them in politics pillow talk. (laughs)

Int What did your father think about all this, George, about you going to Wits? I mean, I know you said, he wanted you to do medicine and you did law, so you defied him (laughs). I was wondering what he thought of your political interest?

GB Well, what happened was that I was elected on the SRC in my second year of study. And we objected strongly to the quota system to medical school, and the university authorities in fact...the memorandum written by Professor McCrown, who actually became deputy vice chancellor, said that we were a bunch of communists who really wanted to destroy the university. And the matter was raised by (D.F.) Malan in parliament who said that he was informed that there were a group of leftists at Wits who were making all this trouble that was being reported in the papers, but he was sure that reasonable students would soon kick us out of the Students Representative Council...would kick out these leftists. And the next day I made a speech in the Great Hall, and didn't have mikes but I was told that I hit a high C (laughter) and said, let me tell the Prime Minister Dr Malan, that wanting equal treatment with my fellow students makes me a leftist, I'm proud to be one. The next day the headline, front page of the Transvaal Internationalist Party newspaper, had a headline, '*links gesind en trots daaroop*'. Left is still proud. And my father could hardly read English, certainly not Afrikaans, but members of the Greek community took this newspaper to

my father, and told him that I was bringing the Greek community into disrepute, and would he see to it that I was reigned in. He just reported to me. (laughter)

Int Why do you think that was?

GB He was a democrat to the core.

Int Sounds like it.

GB And he didn't tell me...and in fact throughout my life, neither from my father, nor my mother, nor my wife, nor my children, had I ever had a caution that I must stop or I must be careful. I had their full support.

Int That's fantastic. So you took on political trials, could you tell me about prior to joining the LRC what were some of the significant cases you took on, prior to joining the LRC?

GB Yes...well, there were lots of cases in the fifties which were significant in their time. Because South Africa was not for whites, at any rate, a totalitarian state. The administration of justice, the courts, had the support of the whites, and the rule of law had the support of the whites, because they wanted a proper judicial system for themselves. They didn't realise that we would make use of the gaps that there were in order to declare delegated legislation invalid. There was quite a lot of that in the fifties. Setting aside proclamations, prohibiting gatherings, setting aside banishment orders, defending 'school teachers' in inverted commas, 'teaching' in inverted commas, the eight odd thousand people that were excluded by Verwoerd's decree who did not turn up on the first day that Bantu education was...so there were all these cases which were of some significance. There were cases among the Mafelutsie tribe in the Western Transvaal as it were. There was...and the Sekukuni in the North-Eastern Transvaal, in which both were (Nelson) Mandela and (Oliver) Tambo, **inaudible**, Jack Leviton, Ruth Hayman and other attorneys were involved. And there were people at the Bar, Joe Slovo, David Sontag, myself, Jack Unterhalter and a number of others who would do these cases which did help a small number of people, but very often the legislation was changed. This was the work that really inspired Sydney Kentridge, Arthur Chaskalson, Felicia (Kentridge), in the...past the mid seventies to form the Legal Resources Centre, which really did this work systematically and regularly. And of course with Arthur (Chaskalson) at its head and together with other very bright young people from the universities. It was a privilege to come and work at the Legal Resources Centre. Particularly the leftie students. And that was in the fifties. In the sixties things became tougher because of the formation of Umkhonto we Sizwe, the introduction of detention without trial, the intensification of the number of banning orders, the exiles of tribal leaders that did not co-operate with the authorities. All these things...until of course the treason trial came: Duma Nokwe,

Nelson Mandela, and 154 others were arrested on the 5th of December 1956. I wasn't in that trial. But because Nelson Mandela and Oliver Tambo were accused in a preparatory examination... and because Nelson Mandela and Duma Nokwe were accused in the Supreme Court trial eventually...and they had a committee of lawyers to advise the defence team, I was close to Duma (Nokwe) because we shared the chambers and he would come whenever they were adjournments and on Saturdays. We used to work on Saturdays. I kept close to it. It was a mammoth trial. The government ...that the Freedom Charter was a treasonable document. They were eventually acquitted but it was a pyrrhic victory because of Sharpeville the year before their acquittal. And then of course the big trial was the Rivonia Trial in which Bram Fischer, **inaudible**, Arthur Chaskalson, Joel Joffe, and I were in...and you know about it, it's recorded.

Int I was wondering whether you could give us just a very brief run down for the tape.

GB Yes. The arrests in July 1953 were a great blow to the freedom struggle, and the government thought that it had struck a death blow to the struggle. It turned out that the result to be wrong because the 10 accused that were charged, particularly Nelson Mandela, Walter Sisulu, Govan Mbeki, Rusty Bernstein, turned the trial around. The accused became the accusers. They said yes, we may have transgressed the man made laws, but we were not obliged, because of the lack of legitimacy, to obey them. We went into violence but with a caveat that we would try our best to avoid the loss of human life. The propaganda of the State at the time, aided and abetted by ...during the course of the trial, was that these were gangsters, terrorists, no different to the Red Brigades, or the Baden-Meinhof of Germany. And what happened was the Nelson (Mandela) statement, Walter Sisulu's evidence; they actually got across what the grievances of the oppressed people of the country were. And they had no option but to go over to controlled violence after knocking on the 'door of the deaf' in the words of Albert Luthuli, for over 30 years and they had no option. The death sentence was on the cards but the local media, and particularly the overseas press, carried the message across and the government propaganda was really not believed anymore, even in conservative countries such as the United Kingdom and the United States. By many people there, particularly the student movement, the trade union movement and the liberal thinking people in the western countries. There were the conservatives all over who actually believed, right up to Mrs. (Margaret) Thatcher (laughs), that the ANC was a terrorist organisation. But the trial itself played a very important role in establishing the position of the African National Congress as a liberation movement and it helped those in exile to establish offices in many countries of the world. In fact there were more ANC offices than there were South African embassies and the consul...the consulate offices. And there were then subsequent trials there. The next...group of leaders: Wilton Mkwai, Mac Maharaj and others, and Bram Fischer going underground for whom I appeared together with Sydney (Kentridge). And his statement was actually, to a certain extent, not a carbon copy of Nelson (Mandela)'s statement but also a very strong statement from the position of a white Afrikaner who really set forth why he led the underground for nine and a half months, and that I couldn't really serve justice as a senior member of the Bar. There were many others that took part in the armed struggle who came back and who were arrested and convicted and sent to Robben Island were the leaders were. There were also other

trials, particularly the NUSAS trial, some of the trade unionists, where the thesis was that if you criticised the government, if you marched, if you protested, you in fact were calling for fundamental economic and political change which was an offence under the Suppression of Communism Act. And we had to do many of those trials. In fact, we had an argument which simplified along the lines that His Holiness the Pope calls for decent treatment for Italian workers. And Henrico Berlinguer, the secretary general of the Communist Party of Italy calls for the same. This does not make His Holiness a communist (laughs). Nor Henrico (Berlinguer), a devout Catholic. And we got quite a number of acquittals in that time. There were also of course the unfortunate deaths in detention which we represented the families of: Ahmed Timol, Steve Biko, Neil Aggett, and many others.

Int Was that at that time or did you represent them during the TRC hearings?

GB No, no, no, we appeared at the inquests. (Matthew) Goniwe, and others, during their lifetime in fact, Arthur (Chaskalson) on behalf of the LRC did the first inquest of the Goniwe deaths. I did the subsequent one when more evidence became available, at the request of the LRC, and this was the beginning of Arthur (Chaskalson) sort of drawing me in.

Int What period was this George, when Arthur (Chaskalson) began to...because the LRC in 1979.

GB '76, '77. The first inquest was almost 3 years later in '78. Goniwe. Sorry, I beg your pardon, it was the eighties.

Int So you'd known Arthur (Chaskalson) and you'd known Sydney (Kentridge) for a long time...

GB Yes.

Int And when they started the LRC in 1979, did you join them immediately? What was the process?

GB No, no. I remained an independent member of the Bar. I did political cases outside the LRC. I did a couple cases for the LRC in the eighties as independent counsel.

Int So you were in private practice?

GB I was in private practice at the Bar ...

Int And what sort of cases were you taking while you were in private practice?

GB The majority of the cases that I did were political. But also some civil and other criminal cases, which paid much better and I would do them from time to time to pay the bond or the children's education. But there is an amusing story, in August 1985, I received a brief to defend the 22 Delmas trial accused: Terror Lekota, Popo Molefe, Tom Manthata, Moss Chikane, and others...Malindi. And I was about to leave for our annual holiday in Greece when this indictment was served. And because Arthur (Chaskalson) had worked on the quashing of the indictment of the Rivonia trial, I went to him and I said, Arthur (Chaskalson) I'm going, this is the indictment. I can't draw the further particulars to the indictment. I've asked Karel Tip and Zac Yacoob, who were in the trial, to do a draft request for further particulars. Would you mind having a look at it? He said, yes, sure, of course, you go and enjoy yourself. I came back and the further particulars had been given and I read them, and I phoned Arthur (Chaskalson), and I said, Arthur (Chaskalson), how does the indictment look now? He said, it was worse than it was in its original form. I said, well, we must give that as an exception as we had done and defeated the first indictment in the Rivonia trial which gave us time. And you know the trade unions all over the world protested to release them. The indictment was quashed but nevertheless they were recharged. They were going to do the same. So he did a notice of exception, and I said, Arthur (Chaskalson) you know, you're a master at this legal argument stage, wouldn't you come and argue the exception? He said, yes, of course. And then on about the Wednesday before the Monday the argument was to take place, I said, Arthur (Chaskalson) you know it would look odd for you not to have met the accused and stand up, can't we go over on Saturday to the jail in Pretoria? We went and without his authority I introduce him as the leader of the team. So he was really impressed with them. He said, well, come and argue, he came to argue, and then he became involved in the trial on legal matters which is his forte. And I did the cross examination, he did the legal argument. In the main. Although one particular witness that required the soft approach he made a great success of it. And he at my 75th birthday he related this story of how I had entrapped him to get in it. But he was head of the LRC. From which he took leave, quite a number of days, but not on a continuous basis. But then he said, after the Delmas trial, he said George Zimmerman (?) has retired. The young people haven't got this sort of paternal oversight that they had during his time. Do you mind if they phone you once in a while and come to your office with the problems? I said, yes, of course not. And then he said, could you do a said afternoon when they could come? So I said, yes, of course, we can do that. And then he said, George, instead of them coming up why don't you come down?

Int (laughs) It sounds like a real reversal.

GB Well, this is precisely. He said he taught me how to get people in, and then you see, in 1991, where there were not going to be political trials except the Goniwe one which

Mahomed Navsa and I did on behalf of the LRC. And I became a little disillusioned with the private practice, because people with a lot of money thought that they...you can be the gladiator whether there was justice in their case or not. And I felt a little uncomfortable with some of the things that the rich clients, they briefed me by this time. Because with the change of regime as well, you know, people in business they want...they think that we have political influence and things and they brief you...and I did a case which is...for a young boy that was shot in the neck in Kimberley. He said, George, this is a case for you. Before, I was still in private practice. And there were 7 policemen, all of whom lied, but expert evidence that the Cape Town office, Lee Bozalek and Steve Kahanovitz had put together. There had been so much good preparatory work and such a pleasure for me to actually get seven policemen not believed, and to get what was a record sum for this youngster of 1.4 million for his injury, a result of a pellet in his neck. That I thought that this was possibly a place, and Arthur (Chaskalson) of course repeatedly requested me because he knew that he was going to go to the Bench. And he was concerned some person with a feeling for the work that he had started should come. And then I had objections because I said, you know, Arthur (Chaskalson), I can't do what he did. First of all for you, for the administrative work that you do, which I consider a waste of time for a person of your calibre to have to settle or have enquiries about squabbles with different employees, and also I find raising funds per se, I'm not for those too, and this is why I don't want to come. And he said, well, we can take care of that. We'll write a letter of appointment, we'll say that you don't want...won't have to do that. And this is what happened. And also I couldn't really afford to confine myself to an LRC salary. And he said I could do what he had done, that I could take time off. So we agreed that I would only work for seven months for the LRC. Well, it hasn't been. (laughs) It hasn't been that way but somebody keeps a record of the private work that I do. And I then started and...

Int This was 1991?

GB '91. And I'm enjoying it. I have enjoyed it. Did a number of cases. But I did in the meantime, in my private capacity the death sentence case, the certification of the Constitution. With Arthur (Chaskalson) sitting as president of the Constitutional Court. And we are still very close friends.

Int So prior to joining the LRC 1991, you'd obviously been close friends with Arthur (Chaskalson) and other people like Sydney Kentridge and Felicia (Kentridge), and you'd obviously also had long association in terms of public interest work as well as political trials. I'm wondering coming to the LRC, what was different about it?

GB That you could actually do a case properly. Financial constraints in private practice for people who cannot afford expert witnesses, travelling expenses for witnesses who are not within jurisdiction. In fact Raymond Tucker, he said, you know George... when I was in private practice and I did the NUSAS trial with Arthur (Chaskalson), in which two people that had worked for the LRC were the accused.

Int Charles Nupen and Karel Tip.

GB And Raymond (Tucker) said, you know George, I'm going to give you a middle name, 'Get me', he says, because you say, get me this and get me that, and get me the other, you don't ask. is there money? Is it possible? You know my answer was, that in order to build a good house you need good bricks. You either give me the bricks or you don't. If you don't, we may not do the case properly. And...I have enjoyed the LRC, because if you start a case you can do it properly. We don't charge the client fees, we don't waste their funds, but you can do a case properly. And not only do it properly, because even though you had colleagues, or we called them juniors, in private practice, if they were really good they were very busy, and you couldn't sort of get their full participation. But at the LRC we had very bright people, like Mahomed Navsa and other counsel and other very good attorneys, and good attorneys in Durban and good attorneys, particularly in the Cape where they're the much senior...they stick...the Johannesburg and Pretoria and Durban, to a lesser extent Grahamstown, there's a movement of personnel. The people in Cape Town seem to stick it out for some reason or other, and they're very good, they do very good in the cases, and of course there were people like Geoff Budlender who became the Director in my first years. A great lawyer, a great administrator, a friendly person, became a very good friend. And it was much more pleasant to practise and to prepare work. And also, I think, that thanks to Arthur (Chaskalson)'s pioneering work, which we tried to emulate, I don't know to what extent we achieved the pinnacle that he had risen to, we are to a certain extent respected by the judges and magistrates, even though there are some who find us a little tiresome, we remind them of what their duties ought to be about a fair trial. But it's good, it's been a good part of my life.

Int Right, I want to come back...during the...

GB What is the time by the way?

Int Do you have to go? It's ten past eleven.

GB Another 20 minutes because there's prize giving ceremony by sons and daughters who expect their...my grand-daughters to receive prizes. And that's at 12 o'clock and I have to leave at 11:30.

Int Okay. I wondered, during the 1980s...well, right from the fifties, sixties onwards, you'd really sort of defended ANC aligned clients...

GB Not only....

Int Sure, sure...

GB PAC, Black Consciousness, youngsters from Soweto who didn't really have an organisation or affiliation. So yes, it was mainly ANC but I defended leading PAC.

Int Ok. So by the time you got to 1991, it's on the cusp of the last transition really, and the ANC then comes into power, did that then not create a conflict in terms of working for the LRC and knowing that you would be in effect having cases possibly against the government which was effectively the ANC?

GB Arthur (Chaskalson) took care of that. We gave a farewell party where he stepped down as a director. The Braamfontein Hotel, now Parktown. And he said this, there are many of you here, Nelson Mandela, (Cyril) Ramaphosa, practically the whole... That wasn't the cabinet yet. But the ANC National Executive. He said, 'we in the LRC gave the government a difficult time and are continuing to do so. Many of you here are going to be in government in the not too distant future, don't expect any favours from us'. So we don't have to apologise. What we in fact do is not only act against the government but also help it. Mahomed Navsa and I helped with the drafting of the Truth and Reconciliation **inaudible**, because the draftsmen, I don't think they had any women in at that time, just had no idea about human rights friendly legislation. I mean there were provisions there that you could search premises at any time, day or night, without a warrant. Seize whatever thing... And we had to put that in too. And we also did quite well I think, we drafted section 20 of the act as to what is an act with a political objective and what exceptions there would be and...Moray Hathorn for instance has helped the government in relation to the Land Reclamation legislation. We, in particular me, have appeared on behalf of the ANC, sometimes with Vincent Saldanha or Steve Kahanovitz or others where the parliamentary committees sits, where we actually draw attention to the fact that proposed legislation is unconstitutional. And we have had considerable successes, because I go there and perhaps unfairly for these parliamentarians, I've said, let us remember where we come from. You want to introduce detention without trial because 9/11. Remember what happened during the detention without trial? And they withdrew the Bill. Eventually they drafted the Anti-Terrorism Act, the Protection of Democracy Act which is a human rights friendly piece of legislation. They wanted to pass a legislation which would interfere with the independence of the judiciary. Together with the other people here we drew a devastating memorandum showing that...devastating may be the wrong word...a very comprehensive memorandum showing them that we could try and pass this legislation, the Constitutional Court is going to declare it unconstitutional, and give them reasons for it. So they withdrew that Bill, now they've got something new which is more palatable, not absolutely perfect but...so we are not necessarily anti, but it doesn't mean that we are compliant.

Int Ok, fair enough. I'm wondering in terms of the TRC, what sort of work did you undertake within...from the LRC perspective?

GB Well, I having done the...inquests, where they lied, they committed perjury, they defeated the ends of justice, they now apply for amnesty admitting the very things they were accused about, which they denied under oath. And I acted for the (Chris) Hani family, I acted for the Goniwe family, I acted for the Aggett family, acted for a number of other families to oppose application. I failed only in one...(Craig) Williams who got amnesty for killing the way that John Kani picked up and put it in his play, this great spy with an international reputation, what did he really do? He killed two women and a child. But that was one of my failures, it was a very weak committee. We actually interviewed it, or rather we applied to set it aside, but the Slovo girls had had enough. And the other was that he offered to make a payment for the education of the surviving child, which we got judgement for it, but I don't think he's got any money because he's tied up all his money in trusts. But you know that the TRC was broadcast live and all these high profile cases, which really brought home what went on and...I did those on behalf of the LRC, but a couple of them, like the (Chris) Hani one, I think the Communist Party wanted to do the ...I think that I... yeah I had a brief from Caroline Nicholls, a private attorney, and I think she got funding for it from somewhere. But this was very important work that was done, because whatever blemishes there may have been in the TRC, it serves what the record of the Nuremberg trials do. People deny things. You can say it to them, but just go and look at what they admitted, never mind what we accused them of. What did they admit? Which is bad enough. And that is the importance of it I think. And although...I wrote a book called *No-one To Blame*

Int Clinton Bamberger gave me a copy.

GB Ok, and one of the American reviewers...what is his name...Steve ?(Stephen Ellmann) ...I forget his surname...he was at Columbia, he's now at law school, New York... said Bizos doesn't like amnesty, which is true. But I have always justified it on the basis that had it not been this compromise during the negotiation stage, there may not have been a settlement of course. The senior police officer threatened during the negotiations that unless there was provision for amnesty, the 'manne' would not accept a settlement. And it's true that it's not perfect justice, it may not be even justice. But how much more in justice would there have been if we had a race war? And how many innocent people would have died in that conflict?

Int George, one of the pleasures of interviewing people in South Africa certainly, has been the remarkable stories you get about the LRC and people in the LRC, and I had the pleasure of interviewing for example, Imraan Haffjee this morning and Achmed Mayet yesterday, and other people, and they've all told me about your...the wonderful role you played as a mentor to them. And I'm wondering in a sense what that has meant to you in terms of having done this kind of public interest law work for such a long time, and then getting relatively, perhaps, inexperienced or young people from different race groups, cultural groups, different – as you know under South Africa, under apartheid – levels of education...and working with them that closely in the LRC? What's your perspective on...?

GB Well, most of them are bright young people. Most of them. Because the ones that come out of the university seek either articles of clerkship or jobs at the LRC. Well first of all we choose and we have a large pool from which to choose. They may lack experience but they are enthusiastic. I'm computer illiterate and they're not. And they actually get things out. I do training sessions with them from time to time and they are very appreciative of the guidance and experience that I...but you know, I have never claimed to have done anything alone. I have always been part of a team. And I give credit for that, because the *Odyssey to Freedom* I dedicated to all those who allowed me to walk with them. Because there are many. Not only the political leaders but the colleagues. I mean, had it not been for Arthur Chaskalson the LRC would never have got off its feet. Because it was his reputation, his tremendous...his tremendous commitment to it that really enabled even the Nationalists in the law society and in the Bar to say carry on.

Int One of the questions that I've asked people, is that you know, even though you weren't involved with the LRC until 1991, certainly you were involved in political trials, I'm wondering what do you think is the reason for the LRC having had significant legal victories against the apartheid state and if parliament was supreme under apartheid, what actually made those victories not get overturned?

GB Some of them were overturned. But some of them...

Int Like the Rikhoto case.

GB Like the Rikhoto case. They would not dare do it because here was an ex Broederbond chief justice who actually during the course of arguments said that the government was guilty of fraudulent conduct. You know, and very often they rectified it but the Rikhoto case, the Group Areas case, what was it called? For the urban areas in terms of the Group Areas Act. It was a judgement of Richard Goldstone who said that you can't eject people if you convict them for being an unlawful occupation, if there is no other accommodation. And that for all practices and purposes brought the Group Areas Act to an abrupt end, because a man called Dangor...I forget his first name...may have been Achmat (reference to Mohammed Dangor), but I may be confused with the other (Achmat) Dangor who's the head of the Mandela Foundation. But they formed an association ACTSTOP and then the LRC and members of the Bar would go to the magistrates court and if he was convicted and say, no, no, no, where is the alternative accommodation? And then they would lie and they would call an inspector and say, he's on top of the list and he can get a house right away. But he would say, look I've never asked to be put on a list, I don't know why...and then they would say, well, when did he get onto the list and what happened to the others that applied years ago and never got an answer? How does it come to that? And the Group Areas Act became unworkable. And then also the LRC in the...claims that it did and got damages, and those were in private practice, for police excesses and torture in

detention, other violations, they couldn't really cover it all up, because there was that little bit of space in the judicial system to expose it.

Int Since, you know, you've been here for well over a decade, I'm wondering what your sense is of the LRC? Has it changed tremendously? What are the difficulties now of functioning in a post apartheid context, if any?

GB Well, we still have many people who are still disadvantaged as a result of poverty, as a result of the lack of housing, as a result of lack of jobs, as a result of facilities, discrimination, and although we don't do labour related matters, nevertheless I think that there is enough work to be done although slightly different kind, which justifies its existence. It may not be as popular a cause amongst funders of old. It nevertheless probably understood still is a very necessary organisation. Arthur (Chaskalson) again, right at the beginning said, that you can have a wonderful Bill of Rights, if there are no lawyers in order to make sure that they...to enforce those rights, then they are not very helpful. And the people that knock on our door very often are effectively assisted. We also have a reputation with the Constitutional Court and the High Court, and very often like Richard yesterday and today he's in *amicus curiae* in this case that's going on, about the limitation of water in the township. Because almost invariably NGOs that were really interested approached us and said, well you apply on our behalf to be a friend of the court. And we are almost never asked to be a friend of the court by rich people because they can afford the expense accounts, or very often...well sometimes the very rich people complain that the last Constitution the lawyers worked for us for nothing (laughter). You know like Wim Trengove and Gilbert Marcus and (Karel) Tip and Paul **inaudible** and others, worked for us for nothing. Sometimes get costs on a contingency basis. From the other side when we win. And we do win most of our cases.

Int George, I realise that it's been a very rushed interview and I realise family comes first, so I understand that completely. What I'd like to end the interview with, given that it's nearly 11:30, is perhaps with you sharing...I know you have many memories of your time at the LRC...and I'm wondering maybe sharing one or two stories or memories...stories that remain to be told as such.

GB Well there are so many that you see, I have to be selective. One of the stories that I like a lot about the LRC, is that after 1990, there were joint councils formed of apartheid officials and NGO representatives and they would have a council and they would have to have some sort of consensus, like the housing forum. And the story is told that the new person coming from the liberation struggle said that there is a...a problem was had that the municipality of the Durban was doing something or other, and this liberal said, well no-one says, let's do that! And the apartheid representative said, hey, you try and do that and the LRC will kick you up your arse! (laughter)

Int Like a guardian.

GB You know, because he had the experience of what the LRC was capable of doing. And I've always liked that story. I don't know of any others that come to mind. But that's the sort of thing that...and also, you see, very often prisoners, or unrepresented people come before a judge, he reads the papers against them but they're unrepresented. And he doesn't want to give a judgement without the side of the disadvantaged being properly argued. So what judges do is to phone us and say, you know sometimes they phone me because they were friends at the Bar and things, they say, George can you help them? I say, ok, stand the case down until 11:30 and an attorney will go over and he will get the papers. Very often there's something to be said. And when it is we actually prepare a good case against them. Much to the disappointment of landlords and others who are well able to employ good counsel. But in the beginning actually we had a great advantage because their lawyers of choice knew so little about administrative law and human rights law, and...so we had...the other...a lawyer from one of the towns phoned me and said, Mr Bizos I want to go to the Constitutional Court. Why do you want to go to the Constitutional Court against the Legal Aid Board? Why do you want to go against the Legal Aid Board? You know, he says, I'm the best attorney in town and all the women who wanted divorces in our town would go to the Legal Aid Board and say, appoint me to represent them. He says, now they passed a practice regulation, the Legal Aid Board that has got to be a list of all the attorneys in the town and the attorney next on the list will be appointed as the advocates come. He says, isn't that completely unconstitutional? You've got to have the right of choice of your legal representative! I said, oh, which section of the Constitution says that? no, he says, I haven't read the Constitution but I just know that this is it! I said, well, you know, let me just tell you that it's section so and so dealing with criminal trials only and it's got...ah! He says. So we are the sort of fountain of knowledge for all those who don't bother to read the Constitution, which is a reputation which we are prepared to accept.

Int Thank you so much for your time, George.

Interview 2: 28th July 2008

Int The last time you went off in the middle of the interview because you had to go to your grand-daughter's prize giving. So I said it was very important that I come back and I interview you again. I wondered whether we could start the interview...it's hot on the heels of your publication of your book, which is really impressive and I very, very much enjoyed reading it. I wondered whether we could start...the previous

interview had really spoken about your cases before you joined the LRC, the political trials, and you'd gone into details about those, NUSAS trial for example. And then you spoke about how Arthur had enticed you to come and work at the LRC. and I wondered whether we could start at that point in terms of this interview really being about the stories of your cases, the clients and also the changing nature of a public interest law organisation like the LRC in South Africa in a post apartheid context.

GB Well...the LRC had to really redefine itself in the beginning of 1990 with the release of political prisoners and particularly Mr Nelson Mandela. And that played a role in my deciding eventually to Arthur (Chaskalson)'s request to come to the LRC.

Int Did you come before...

GB No, I came post '90. Because I did a couple of cases for the LRC, like Desmond's case that we spoke about last time. And then the second inquest of the Cradock Four, which was a case done during the apartheid years by Arthur (Chaskalson), but then new evidence came to the fore after...it started off with a brigadier in the Eastern Cape in the army sending a telex to the secretariat of the State Security Council that (Matthew) Goniwe and his brother-a cousin, they were not sure precisely of the relationship, (Fort) Calata and two others, should be permanently removed from society. Which was corroboration of what Arthur (Chaskalson) had argued in the previous inquest in which there was no one to blame because there was no evidence, but here there was this evidence. And it was the in-between period where the African National Congress did not really have statutory or legal powers but it was an interim period during which there were consultations and Mr. (Nelson) Mandela and the ANC called for a new inquest to be presided over a judge, and Judge Zietsman, the Judge President, of the Eastern Cape Division of the Supreme Court, was appointed and Mahomed Navsa who was counsel in the LRC and I and the Grahamstown office, Clive Plasket as the attorney, and Nicolette Moody who was a candidate attorney. The four of us spent a lot of time preparing in order to challenge both the army and police officers who had been responsible for the killing of the four, known as the Cradock Four. It was in Port Elizabeth, it was a difficult case away from home but I had tremendous assistance from my colleagues, Mahomed Navsa, a very good advocate, Clive Plasket, a very good attorney, and of course as I had to do most of the cross examination of the policemen in Afrikaans, Nicolette Moody not only took part in the preparation of the case but also became my Afrikaans tutor (laughs) in the preparation, and there was also of course the Johannesburg attorney...I suffer from ? what was her name again...I'll think of the name...she'll kill me if she knew that I... but when I stop thinking about it I will think of the name...so we were a strong team and we took them on. It wasn't easy living in a hotel in Port Elizabeth but...there was also a colonel in the army that had made the telex available and gave evidence that he took the telex down at the instance of the brigadier and there was no doubt in his mind what was meant by permanently removed from society – Colonel du Plessis. And there was counsel from...independent counsel for him from Port Elizabeth. He did very well. And we had very senior and experienced colleagues acting for the army and the police. There were unpleasant scenes between us or amongst us. But it was nevertheless a turning point, because up to then there was no-one to blame.

Everybody was exonerated, (Steve) Biko, (Neil) Aggett, (Ahmed) Timol and everyone else, but here there was evidence. We worked hard at it. And the eventual result was that the judge actually found that it was done by the Security Forces, but he could not...there was no evidence to identify the individuals that actually did it. We had to wait eventually for them to apply for amnesty in order to learn as to how precisely they had done it. Which...it was really remarkable because, I don't know if you have access to the record, it's at Constitutional Hill at Wits. Arthur (Chaskalson) had made a tremendous speech at the first inquest from which he tried to infer that it was of course quite obviously, without mentioning the police or the army, but only the people who were confident that they wouldn't be stopped. That they wanted to be discovered...but the magistrate had no option but to exonerate them at that stage. That was a very important case for the LRC, and I think it was a turning point at which people started speaking about the wrongs that they had done. And it was high profile case. We sued on behalf of the families. But you know, South African courts are mean in relation to compensation. And we had to settle for an amount which took a long time in coming because we sued the army for initiating the killing before the amnesty applications were made, and we got about just over a million rands, I think, which when distributed to the four widows, on the basis of their earning capacity, they were only entitled to support. And of course if they had lived I am sure (Matthew) Goniwe, in particular, would have been a leading member of the government. But their answer was well, you know, at that time it wasn't clear whether they would die in jail because of their alleged involvement in the struggle or whether they would be high ranking government officials.

Int I'm wondering, George, from what I can understand, the Cradock Four case for example, is continuing in some ways because of the prosecutions case that's ongoing.

GB Yes, we then did the amnesty application where they came clean and we succeeded in proving that they were not entitled to amnesty, partly because they lied about it during the inquest and they continued lying about it. Although they admitted the killing they couldn't tell the whole truth and we exposed that and you had to make truthful disclosure. And their real problem was that they were not prepared to say from whom they got their orders.

Int The other thing that I'd like to ask you is that, you have a long standing history of defending ANC political activists, there's Madiba (Nelson Mandela), or anyone else, but when it came to the Truth and Reconciliation Commission, you took on cases for families of activists, but that was really contrary to what the ANC wanted publicly.

GB I don't understand.

Int Well, you know, the ANC was concerned about, for example, the Biko family taking...

GB Well, no...the ANC was not against the opposition of...to applications for amnesty. But one of the things that Mahomed Navsa and I did actually was to help put together the Amnesty Act and more particularly, section 20, the grants upon which amnesty should be granted or refused. Because the first draft was done by drafts-people that had been brought up in the apartheid regime, and there were things in that Bill which were quite inconsistent with the democratic dispensation. So together with others we did that out. But we also set out a criteria. So...at that stage the ANC was not...in fact supported the idea that there should be amnesty, it was part and parcel of the settlement process at CODESA.

Int At what point did that change?

GB There were people, the Biko family, the Cradock Four and AZAPO as a political organisation, said that the granting amnesty was contrary to the provisions of the Constitution. The LRC did not participate in that challenge because we were...it was a constitutional challenge but we took the view, and as it turned out correctly, that you can't say that what is in the Constitution is unconstitutional because there was provision in the Constitution that there would be amnesty in the postamble of the Constitution. So we didn't take part in this, but as you probably heard from Richard, we are concerned about the lack of prosecution of those who were refused amnesty and pre-eminent about, or amongst those cases, are the people that killed the Goniwe Four. We are concerned about it, we say that the policy may be unconstitutional, the excuse of the prosecuting authority is that time, witnesses, money...the prosecutors lost their appetite for prosecutions against apartheid people particularly because of the 2 reversals. The generals in Natal where they were acquitted, and (Wouter) Basson who was acquitted here in the Transvaal. There are unfortunate cases, I think, that there should have been convictions, but I think that the prosecutor didn't have a stomach for it in Natal and the judge in the Transvaal was...I'm critical of his judgement, but we just have to accept it.

Int The other thing George, is that when you started at the LRC in post 1990, you mentioned to me in the last interview that Arthur (Chaskalson) said that it would be very viable for you to actually do private work. How did you then...what sort of cases did you take on specifically for the LRC or was it all ended up all being private work.

GB No...I...the salary provided for by the LRC...was not adequate and I also wanted to do some private work and wanted to earn some money, and Arthur (Chaskalson) said, ok, he would give me a letter of appointment, I only have to work for seven months of the year. I haven't kept record, they are...I think they owe me quite a lot of time (laughter). But I do private work and I report what private work I do. But I didn't want to confine myself to acting only for the indigent, which for all practical purposes was a requirement. It would have prevented me from doing cases where I actually felt strongly about but the people could afford to pay. It took almost a year of my life to do the Tsvangirai case on a charge of treason in Zimbabwe. The LRC couldn't take

that case. I'm careful, because of my identification with the LRC, not to take work which is completely alien to the LRC's work.

Int In terms of conflict of interest.

GB In terms of reputation and, you know, there are people who are charged with serious fraud or murder, and I'm offered these cases, which I say I'm sorry they're not germane to the work that I'm doing at the LRC and I don't want to do it. And it's now for me to decide what is germane and what is not, (laughs) and it gives me a good excuse not to take the cases that I don't want to. But for instance, very recently, as you might have heard, I in my personal capacity did a constitutional case for the Chinese community. That they are unconstitutionally excluded from previously disadvantaged people, and we put up a very good case, and despite his public statements, the Minister of Labour, didn't oppose it, he actually consented to an order within...but then he made some intemperate comments afterwards. But the Chinese community had their own attorneys and they had money and the LRC would be hard pressed to take it itself, but it's consistent with my conscience and what people expect of me, I think, to do that sort of case. And there are also a few cases which were done by me like at the insistence of Denys Reits, Richard's mother actually, Kate Owen against (Eugene) Terblanche, which also took a long time. I didn't take money myself but once we got an order for costs the money went to the LRC, but Kate (Owen) said, that she needed counsel that could stand up to the bullying tactics of Mr (Eugene) Terblanche, the right wing sort of kingpin. You know, that's the sort of cases that I do. And there are also sometimes friends whose cases may not fit within the LRC mission statement, but I find it difficult to say, I'm sorry, I can't act for you.

Int What about cases for government, do you take cases for government?

GB I have been offered a couple of cases for government and I have done them. The latest one was that I acted for the Intelligence Services in the commission before Judge (Sisi) Khampepe, which was a difficult one because there were differences between the Minister and the Director-General and I had to sort of try and walk a tight-rope, but I did exercise some independence and I did that. I did the death penalty case for the government and I did the certification of the Constitution as the leader of the team.

Int I wondered whether those cases I've read in your book, they're very interesting and for the sake of this interview for someone listening, I wondered whether you could talk about the death penalty case, because it's one of the first foremost cases that came forward.

GB It was a first case done by the Constitutional Court. I have been a vocal opponent of the death penalty during the apartheid years. And I was a member of the anti-death penalty body that was headed by Professor Kahn at Wits University and I spoke about

it, and I was also made a Deputy President...one of a number...of an Italian organisation which had European Union assistance and works very hard in persuading governments and the UN and the European Union to advance the abolition of the death penalty. Mr (Nelson) Mandela was the president of the country and the Attorney General thought that the penalty should be retained. But the cabinet decided that the Attorney General was independent and he was entitled to go and submit to the court that it should be retained when the interpretation of the Constitution, but that the cabinet supported the abolition and they asked me to head a team in order to argue it. We had a lot of assistance by the leading anti-death penalty people in the United States headed by Jack Greenberg and who was the other...I forget...there was a memorandum signed by four of them that we handed in about the situation in the United States. And we produced a lot of evidence for the...in support of the two condemned men, who were represented by the way, by Wim Trengove who had a background in that (laughs). So there were two teams and we persuaded the court that the Constitution couldn't be interpreted in any other way and it was a cruel punishment. And it's an important landmark in world jurisprudence because the all eleven judges gave judgements, and there were different aspects of it, and you know, it was one of the most important cases at that time in my life, I think. The other was the important case, it was also not done on behalf of the LRC but in my private capacity as a leader of a team with four others, including Wim Trengove as my colleagues, where we failed the first time. The first draft was rejected for a number of reasons, but we succeeded the second time around and there was a declaration by the Constitutional Court that a Constitution complied with the 34 democratic principles gathered at CODESA. And the first appearance was not an easy one, even though some of the judges were my friends, like Judge (John) Didcott and Judge Johann Kriegler. There was a banner headline, *Bizos clashes with judges*, particularly in relation to some of the provisions as to what would happen in a State of Emergency. You know, that was really a very important constitutional law exercise, and the second time around it was certified.

Int In terms of the actual certification cases that you took forward before the Constitutional Court, I wonder whether you could talk about that process?

GB Yes...the process really came about as a result of this. The whites, in particularly the Afrikaners, but they were not alone, the whites generally, thought that they would be swamped by the black majority. And a solution had to be found at CODESA that would give an assurance to minority groups that the mere fact that there were no group rights enshrined in the Constitution, the fact that individual rights were in fact enshrined and that we had the right of association. But that you're political and your economic rights were to be the same as everyone else so that there would be no privileges in relation to that. But in relation to your language, your religion, your freedom of association, there would be enough guarantees. The fear was that the ANC would get a sufficient majority to write a Constitution which would be a one-sided Constitution. And this is why it was agreed that, yes, a constituent assembly in which it was assumed that there would be an ANC majority – they didn't realise that it would be almost 66% - but they thought well, the constituent assembly had to have guidance as to what it could do. It didn't have carte blanche. And what was put together with these 34 constitutional principles and in passing the Constitution,

putting the Constitution together, both the interim and the final Constitution, they had to have regard to what was generally accepted in accepted democratic countries. So that a lot of research had to be done during the Constitution writing process, where the constituent assembly itself had actually appointed nine independent constitutional lawyers in order to advise the assembly and to warn it against undemocratic practices. I wasn't one of the nine, I was the advisor to the African National Congress. A lot of research had to be done, what is generally accepted, democratic. And there was a fine line between what is generally accepted on the international democratic jurisprudence and what was left to a political option. For instance, as to whether or not you could cross the floor. We found that a lot of people crossed floors in democratic countries. Therefore floor crossing was not an undemocratic option. The fact that how it was used and the trouble that it caused, but the Constitutional Court is blamed for it but the Constitutional Court when the objection came was correct in saying that there's no universal practice in democratic countries against it. So this was...and we had some wonderful researchers, particularly from the universities, Kate O'Regan and Christina Murray and Kate Savage and others who were of assistance to us in bringing the information. And eventually we had to justify some of the controversial provisions to the Constitutional Court. There was a lot of trouble about provincial powers. The issue was provincial unity...rather a federal or a union, a united union. Inkatha and (Mangosuthu Gatsha) Buthelezi wanted provincial powers. They actually put a so-called Constitution together that they wanted a constitutional court of their own. They wanted independence of their police force. They really wanted almost the Quebec type of thing so that they could secede if they wanted to. And the majority of the 22 parties of CODESA did not agree. And also one of the reasons why we failed in the first instance was that the police powers given to the provinces were more restrictive than was necessary. And also they wanted financial independence. One of the problems of federal Constitutions is that there is competition among provinces for these national slice of the cake. And we failed the first time. But we succeeded in the second time around because the budget is in fact not written by the National Minister. There is a finance body that really works in consultation with him and it's a consensus budget. We were guided by historical examples like in Nigeria and other countries where actually they can't have a census because they are crooked, because the national budget is divided in accordance with population. So they push up their population figures. So we tried to avoid that sort of thing, which we did succeed, and eventually the Constitution was...

Int George from 1997 onwards, you see a flurry of cases before the Constitutional Court that's actually LRC cases that they took forward. Is that continuing to be a tradition with LRC's taking on more and more constitutional cases or has that...?

GB Oh yes. We are probably the premier Constitutional Court litigator. Either on behalf of clients. We don't litigate ourselves. We are a client based organisation. But either we bring a case ourselves on behalf of an NGO or quite often we are asked, or we volunteer to be a friend of the court, again on behalf of some association, like a women's right group who says that there is a case about abortion. And we go in as friend of the court. There are cases about inequality as a result of the application of traditional law. We go in as a friend of the court. Housing, the same thing. And the Constitutional Court I don't think has ever refused our application to be joined as a

friend of the court because they want to be informed of what the law is, they know about their own judgements, but in terms of the Constitution they're entitled to take cognisance of constitutional law and judgements throughout the world. And they rely on us as friends of the court to deal with that. And it also has another beneficial effect. The court wants the sort of equality of arms and sometimes one of the sides is poor and it's fighting the giants of commerce, industry and mining. And one of the ways in which the court tries to balance that out is to have the LRC representing the...it makes submissions not fully supporting the one side and condemning the other side, but generally speaking we want to be on the side of the poor and disadvantaged, and in order to balance the forces that are against the people that we act for. And we do reasonably well I think.

Int You know, you're part of the Constitutional Litigation Unit. In terms of the Constitutional Litigation Unit, within the LRC, how does it function? Is it completely independent? Does it work across departments? How does it fit?

GB No, we're part and parcel of the LRC...I'm the most senior lawyer. I don't consider myself...I never turn away any of the attorneys, or the candidate attorneys, just because it's not a constitutional case. Although we consider the Constitution to be our client, but nevertheless those clients that haven't got constitutional causes, nevertheless they are seeking justice and access to justice is a very important constitutional or quasi constitutional precept. And we're helping that in that regard. Not only...well, even though we are in Johannesburg, we are available to the people that are in Cape Town. Even though Cape Town itself has got more senior attorneys than the other, and also in the last few years Geoff Budlender is down there and, you know, even though he's in private practice, he nevertheless helps us out. So they have easier access to Geoff (Budlender) and...but the Durban office and the Grahamstown office and the Pretoria office, when it was in operation, come to us.

Int When I interviewed Jack Greenberg he described the Constitution as the most advanced Constitution in the world. And having come to South Africa recently, the newspaper media reports about the Constitutional Court judges being described as counter revolutionary, and when I do interviews most people talk about the judiciary being in crisis and the Constitution under threat. I'm wondering whether you could talk about whatever you feel is permissible in the public domain, about what your concerns are about these kinds of statements and...

GB You know that Arthur (Chaskalson) and I made a statement about the independence of the judiciary, it's available...will give you a copy. Because one of the COSATU people made a statement that there isn't a judge independent enough to give (Jacob) Zuma a fair trial. And Arthur (Chaskalson) and I made a statement about those concerns. That this was an attack on the judiciary and...it was well received and actually the ANC made a public statement, in effect endorsing our statement, and there were a lot of...there of responses in the media. And in fact I went on a television program together with (Pierre) Rabie, the general secretary of COSATU. And when I

said on air that the reason why we made the statement was that there was this statement by Mr. Craven in Natal that there would not be an independent judge, that we were concerned about and that people should be careful about making statements of that nature. He responded, he said, well, you know, he's only a provincial official and he went over the top. Which we thought was a good response and a satisfactory response. And a lot of people used this statement in order to express their own views that (Arthur) Chaskalson and Bizos are concerned, what are you doing about it? But Vavi (Zwelenzima) was asked on the same program, if a court convicts (Jacob) Zuma would you accept the verdict? It was quite a difficult question for him, I think, but the net result was, yes, I would accept the verdict. But more recently of course, we've had intemperate language in relation to the (Jacob) Zuma matter and also in relation to the...an attack by the secretary general of the African National Congress that judges are counter revolutionary. Well, I don't know what that means other than possibly in the minds of some that it's a swear word (laughter). Politicians get onto soap boxes and they say some outrageous things and their defence is, well, either I was misquoted or it was taken out of context. Well, when you tell them, what is the context? If you say I'm prepared to kill for a particular individual, does it matter what context? But it is worrying, it is worrying. But I do believe that there are enough people in South Africa who actually do not agree with these intemperate and unworthy generalisations in relation to our judiciary. We keep on appealing to people to really be temperate in the language that they use, and they must respect the independence of the judiciary as one of the foundations of a democratic state. We'll keep talking and acting and cajoling people to move away from that.

Int George, in the interviews I do, particularly since I've been here, there's a lot of concern for whether South Africa's Constitution will survive and whether there is sufficient respect for the rule of law from government. What's your sense?

GB They say that they respect the rule of law. They say that they support the Constitution. But one or other of their office bearers, when things don't go the right way to their mind, they make intemperate statements. But what does happen is that our political conflict puts pressure on the judiciary because people are divided, people accused of crimes have got supporters. They think that by demonstrating and criticising the judiciary they may help the persons that are said to...or alleged to have broken the law. And it is inevitable even in the most democratic of countries. During the period of political fundamental differences or conflict, for judges to be accused of partiality and sometimes there are threats of violence, even questions as to whether democracy is the best form of government. But I think that our Constitution has got enough checks and balances for these matters to be resolved at the end. And I don't think that the judges that we do have and the prosecutors that we do have will buckle down to expressed or implied threats.

Int In terms of those checks and balances, 50 years from now, do you think that those checks and balances will still hold? Especially if you have different judges?

GB Yes, well...you know, the Weimer Republic was thought to be a great experiment in democracy until Hitler came and wiped it all out. I don't know. I don't know whether it will be written in stone forever. The only thing that I know is that it is a Constitution which is very, very difficult to avoid its provisions, even with great majorities because, you know, Chief Justice (Ismail) Mohamed, who was also a philosopher and very articulate, said that there are certain things that you can't change in a Constitution even by a hundred percent majority. You can't pass a law and say, there'll be no more elections and still have this Constitution. It's not an amendment to the Constitution. It's uprooting the very roots and foundation of it, and it may be that the court will not allow it. But courts have no armies and they have no guns, and no regiments, no generals. Only their judgements. And one cannot avoid coups just by having a Constitution. But I do believe that there is a new trend in the world at large, and particularly in Africa, that yes, there are unconstitutional things and there are corrupt acts, but fundamentally, in principle at any rate, and to a certain extent in practice, they said if there is a coup, no African state is going to recognise it. And it looks as if what is happening in Zimbabwe, the non recognition of (Robert) Mugabe as a newly elected president by the African Union and SADEC, will prevent that sort of behaviour and that sort of coup. And...I think that what has happened in Europe, the 20s and 30s, and to a lesser extent the 40s, dictatorships in Western Europe thrived in about half a dozen countries. Dictatorships in Eastern Europe thrived. But what Europe has done is that if you want to be part of our family you are expected to behave in a particular way, and if you don't behave in that particular way, the benefits that you would expect to be...to you are not going to be there. So that there is a...and to a certain extent that sort of culture, I think, is being inculcated in relation to the continent of Africa, and if anyone were to tell you in the late forties that there would be a united Europe in sixty years time, a democratic Germany, and a democratic Italy, and a democratic Spain, and a democratic Greece, and even a democratic Bulgaria and now the former Yugoslavia wanting to be a democracy. And the erstwhile satellites wanting to be democracies. So one only hopes that that tendency will continue. Because there are benefits. There are great benefits to it and the Mediterranean countries which were the poor sisters of Europe. Ireland, one of the poorest countries of Europe has flourished. So there are benefits to really behave in a democratic manner and one hopes that will be in so far as it has been transplanted and I think to a certain extent it has been well transplanted into South Africa. That it will be nurtured by the people for their common interest.

Int George, you know, you've brought up the issue of Zimbabwe and that's something that often comes up in interviews, people have different takes on Zimbabwe, but you actually represented Morgan Tsvangirai. I wondered whether you could talk about that, because in your book you say how the LRC gave you that opportunity to go there. I wondered whether you could talk about that case a bit?

GB Yes, well...I'd thought that my treason trial career had come to an end (laughter). But my wife and I were on holiday in Greece up on a hill in a house on property that was my grandfather's dowry, by the sea. We do have a telephone but no fax, nor email. But we use the post office fax. And a three page letter came from the colleagues and attorneys and two members of the Bar in Zimbabwe, saying that this case was coming up and they were unanimous that...they went as far as to say, they looked at the UK

and South Africa and elsewhere for a leading counsel to take the treason trial and they came to the conclusion that in view of my experience, would I do it? Well, you know, it was difficult to decide. I showed it to my wife. I expected some discouragement (laughter). And she said, well, there's the telephone number, just give them a ring. And do it. I did just that. And I've been very fortunate in having family support, practically everything that I've done...well, in everything that I've done in my life. And it was going to be for about 4 weeks they told me. Ok, on and off it started. It was a travesty of an allegation against him. They'd paid a lot of money to an international crook to try and entrap (Morgan) Tsvangirai into admissions, and to record them quite amateurishly and quite stupidly, but it took a long time to wear it down, because when you are in a system of law where there is some semblance of justice but nevertheless the odds were weighed against you. And you actually have to prove your innocence before...beyond any reasonable doubt rather than...and those were difficult cases because you can't say that I've done enough. You've got to do whatever you possibly can in order to expose every lie, every trick, every bit of chicanery that there was. And it was there by the ship load. So it was a difficult case. There was some difficulty in my being admitted, because I couldn't really become a member of the Bar there without a Minister of Justice consenting. And it took some time for that to come forward. And it was a satisfactory result at the end for the three accused. They were all three of them, even though Tsvangirai and Welshman Ncube now has split up into sections of the MDC, they were nevertheless good men, honest men, democratic at heart and brave, prepared to take the consequences. (Welshman) Ncube in particular who was a member of the Bar and a teacher of law was a very useful person to act for. Yeah...and I got a passport full of stamps from and to Zambia every weekend.

Int That must have been...was it at any level very frightening for you?

GB ...you know...I...try...to put fear out of my mind. I...you can't really work...I didn't have guards, and I went into the hotel in and out and...the hotel actually is primarily owned by Zanu PF people, because it's...there was another independent hotel in the centre of the city, but this one was just outside the city and I need the space in the morning for about half to three quarters of an hour for a brisk walk. And I went there and...the ordinary people, the people in the hotel were very kind and they were very anxious about their leader they considered Morgan Tsvangirai as their leader...the people that took me to and from court were...he was actually the driver of (Welshman) Ncube because he was a member of parliament and he was getting fuel (laughs). My colleagues couldn't get fuel to come to the hotel to fetch me. And I had very good solicitor and very good associates, two members of the Bar, one a senior member, and another, a middle senior and a very experienced attorney. And it was ok. It was ok. But there was always doubt as to what the result would be and there is no greater concern for defence counsel than you actually have reservations about the judge because it was well known that he was accused of having received two farms from (Robert) Mugabe, and he said, no, that was false. He had only received one farm, the other was given to his wife. But the assessors I think, played a very important role. You know, they were men in public life, and they could outvote the judge...I think eventually they probably did outvote him and he just made the best out of it and there was a unanimous judgement.

Int I'm aware that you have to meet Arthur (Chaskalson), so I'm wondering whether we could stop. I would like to interview you again, because I think I'd really like to ask you about questions around justice and lawyering and your love for the law, and that may take a while.

Interview Three: 3rd August 2008

Tail end of Conversation

GB You know what she did, the cross examination was to be prepared and we worked until about 11:30, and the vital cross examination was to be the next day. And what they did in these hotels, I didn't take the large room with the lounge because the person that dealt with the documents and everyone else's, and so Miriam had that room and I had a separate room. I get up at about 6 o'clock in the morning and I go there to find Miriam in front of the typewriter, 6 o'clock in the morning, in the very clothes that she was wearing the night before (laughs) and she said, in about half an hour I give you a complete document of everything we discussed. She didn't go to sleep at all. Very committed.

Int George, thank you so much for taking your Sunday morning to do this interview.

GB It's a pleasure.

Int I wondered, you know, we've had two interviews and we've spoken about the Legal Resources Centre through your trials over the years and your involvement. I wondered really if we could focus on the 1980s in particular and the primary cases you've had particularly with regard to human rights cases and political trials, and then if you could talk at some length about your involvement in the Delmas trial, which as you say in your book is the longest trial.

GB Well...the 1976 uprising and the death of (Steve) Biko in detention and other excesses made the fundamental change of attitude to the regime in South Africa and the world community. So by the time that the United Democratic Front was formed in August 1983, prompted by what had happened in the late seventies, the banning of 19 organisations, the tactical change that was made that we would have local organisations throughout the country. The united in a front, which made it very difficult for the authorities to deal with all. They could ban the UDF but there would be the hundreds of organisations that were around. Local organisations, regional, provincial organisations, the resident's association, the women's association, the youth association, scholar's association, and all these was a well defined centre of attack, motivated by the government's introduction of the tri-cameral system, which excluded the majority of the African people in South Africa. The UDF became a very vibrant organisation protesting, demonstrating, passive resistance. The government thought that it was so diffuse a body that it would just disappear, which was a fundamental mistake. The tri-cameral system was discredited for the Indian house candidate got two votes, his wife's and his. So the thing was not working. And all this led to the emergency declared in '85, '86, and also to two mammoth treason trials. One in Natal before Judge (John) Milne where the national leadership was on trial and

that had a very satisfactory result because of good advocacy and because there was a good judge, John Milne. But the second UDF trial became known as the Delmas trial.

Int And that was 1985?

GB It was 1985, the first consultation that we had. I was not in the Legal Resources Centre then but Arthur (Chaskalson) was. I was about to go away to Greece as I do in August when the indictment was served and Karel Tip was now a senior member of the Bar. Zac Yacoob, who's now a Constitutional Court judge, were appointed my assistants, and I asked Arthur (Chaskalson) whilst I was away whether he would be good enough to have a look at the draft request for further particulars of this long and complicated indictment of 22 accused and about 700 named co-conspirators. Arthur (Chaskalson) agreed. I went away on my holiday. On my return the further particulars were furnished. And...all the accused were in custody in Pretoria, 22 of them, including the three national leaders. Messieurs Terror Lekota, Popo Molefe and the third one...(Moss) Chikane. Not the brother of...

Int Frank (Chikane)

GB The brother, cousin or whatever. And I asked Arthur (Chaskalson) how did the indictment look, when I came back, and he said it made the case worse for the State than it was originally. And I said, well, you're the man to argue that the indictment is vague and embarrassing because we were not told precisely what each of the accused had done. And particularly what each of the 700 odd co-conspirators had done. You can't go into a trial that you conspired with so-and-so without knowing what the allegations are. And Arthur (Chaskalson) said that as the National Director of the Legal Resources Centre, said yes, he would be happy to help, just with arguing the invalidity of the indictment. And then I said, you know, Arthur (Chaskalson), it would be better if we visited the accused in custody, in jail. It would look strange if I introduce you to the accused. I hadn't seen them in prison. Wouldn't you like to come with me on Saturday? He said, yes, of course. And he's on record of not forgiving me for getting him involved in this mammoth thing, because as soon as we went into the waiting room in prison – there were no chairs, the 22 were sitting on the floor. Some attempt was made to bring chairs for us but in sympathy we stood. And then I said, gentlemen let me introduce you to the leader of our defence team (laughs). Well, he couldn't contradict me could he? And this is how Arthur (Chaskalson) became involved because there is no one that argues law more convincingly and more authoritatively in his quiet way. I have a reputation of being the street fighter. He's a gentleman's... (laughter) he's a gentleman lawyer. And that's how Arthur (Chaskalson) became involved. He took leave, not for the whole trial but for selected portions of...and that was of great assistance...and we had the benefit of his advice and his representation, questions of law. The acquittal during the early part of our trial of the people in Natal, which was a National leadership, except for 3 trade unionists who were later in any event acquitted, gave us a lot of hope...

Int And that trial was run by someone else?

GB Yes. It was Ismail Mohamed, later the chief justice, was the head of that team in Durban together with...primarily Natal lawyers, led by Ismail Mohamed. And the trial collapsed because of the collapse of a so-called political philosopher who was cut to bits by Ismail Mohamed. He assumed that the Transvaal and Natal Indian Congresses were unlawful organisations, which was not so. And also he had read the documents and not understood them. Didn't know the law about the freedom of speech. The common law, irrespective of the statute law that the government had introduced in parliament. And the case really collapsed because Ismail Mohamed put to this expert that they were not banned. They said, well, you know, part of your thesis is that if you condition the population in this affection to relation to the government then you will have a violent revolution. Therefore you were guilty of treason in criticising the government, and criticising the Bantu authorities, in criticising the local councils, and the tricameral system and anything else. So when... when he established that they were not banned, just asked him, well, they are the co-conspirators, these organisations, tell me, what did they do? And he made, and a very offensive remark, to Ismail Mahomed, who was...very...with justification, quick to take offence of any generalisation about the Indian people, and this man said, well, they could have been at home making samoosas as far as I'm concerned. And that was a joke for some, but Ismail (Mohamed) stood there and said, please explain...please explain what you meant with that? Please explain, I don't understand your explanation? (laughs) And the guy just collapsed. And with the assistance of the judge, he said that his theory was not a valid one, it didn't prove that only violence would bring about change. That gave us a lot of...but we didn't have Judge (John) Milne, we had Judge Van Dijkhorst. And in the beginning we were...we thought that we could have done worse, because he was...he had taken as one of his assessors, a professor of law, retired, Professor Joubert, who was a member of the Progressive Party and a reasonable person. We thought well, he's choosing an assessor like that may have been a good omen, which turned out to be wrong because the two of them disagreed about the facts and the law, and he eventually sacked him. But the indictment really repeated the thesis of the Pietermaritzburg trial, that the violence that had occurred – and they identified 32 areas throughout the country – was due to the malicious propaganda and defamation of the UDF, which directly or indirectly incited people to commit acts of violence. This judge thought that this would be quick trial. He was actually anxious to be promoted to the Court of Appeal and we heard that he said that, the State thought that this trial would last six months and he said, no, give it to me, I will finish it in three months, I don't stand the sort of nonsense that lawyers in political trials...well, how wrong he was. Because we...our defence was based on a case in which Duma Nokwe the first African advocate in South Africa was the first accused and a friend of mine, we shared chambers, illegally, his name up on the door PPD Nokwe, as a member of the Bar. That case said that the mere fact that an organisation which has not been banned has similar aims to the banned organisation doesn't make the unbanned organisation guilty of an offence. Even though there are similar policies and similar objectives. In order to be convicted you had to prove that what you did was fallen on behalf of the unlawful organisation, which would have made me guilty of the conspiracy. But not if they were similar. We had...Arthur (Chaskalson) was also with us, in the NUSAS trial in the mid seventies...for the student leaders, and we coined a phrase...I think I was responsible

for it because I knew (Henrico) Berlinguer as a student leader in the fifties and finished up as the general secretary of the Communist Party in Italy. And we would articulate the point of law in this way: (Henrico) Berlinguer the secretary of the Communist Party in Italy says, Italian workers must get a fair wage. His Holiness the Pope, says that Italian workers must get a fair wage. This doesn't make His Holiness a Communist, nor Berlinguer a good Catholic (laughter). So this was it. and in relation to violence it turned the table upside down. In each one of the 32 areas we collected from the local people how violence came about. And that the violence was originated by the unlawful and inconsiderate behaviour of the police. And we would show by way of example, they would say that the accused produced this pamphlet which incited violence. And I would say, no, no, let's examine how...and we would have local witnesses who's evidence they could not contradict. And I want to give you one very important example. There was a funeral in the small town in the Eastern Cape. A funeral went off very peacefully with about 4000 people there from the small town and its environs. And the police were watching it from a hill with its binoculars. And there were speeches made about the heroism of the man that had been previously shot dead by the police. And at the end of the funeral the people marched with a banner along the street to the house of the deceased. And as was the custom the...they call it a yard in African communities, but the front garden so to speak, a small space had been...had been set aside for people to wash their hands before they enter the house, and then there were tables with food on for thousands of people to partake, which was a communal effort. And then all of a sudden something very strange happened. The police came with a number of vehicles... *interruption* ... and the van came, stopped in front of the house, and started spraying sneezing powder on the water and the people and the food, especially, which was set aside. And there was a sort of snow cover type of thing. Well the people just attacked the police. They said, well, who caused the violence? The pamphlet or this? And they couldn't deny this. They couldn't deny that...they didn't call anybody to say that this did not happen. And this is what we did with one after the other areas that...in Sharpeville, the people in Sebokeng in the Vaal Triangle, held a march to protest against the increase of the rental by R5 odd per month. And the police shot at them as they were marching and the whole place went up. Nothing was happening in Sharpeville which is a nearby township. But they called a brigadier to really try and bury the Anglican priest Simelane, because he said he came there at seven o'clock in the morning and there was a large group of people with placards saying, Father Simelane is our leader, kill the counsellors, burn the beer halls, do this that and the other. And Simelane's sin was that he allowed his church to be used for the holding of meetings. The only condition he said, they mustn't smoke in church but the rest they could whatever they wanted. And what happened was that our instructions were that there was absolute peace in Sharpeville in the morning, until mid morning about 11 o'clock, when helicopters started flying over neighbouring Sebokeng, and when they saw fires and they found out what it was, and that there was shooting and a number of people died, and then the people of Sharpeville started. There was nothing in the morning. In cross examining this brigadier we tried to pinpoint him, when had he seen this? Because the main street in Sharpeville is about seven kilometres long. And he wouldn't commit himself at all. Said he came from another town, he was not familiar but he *definitely* saw this couple hundred people demonstrate. Nobody else had seen it. And we were not in hurry to finish this case because we knew that sooner or later things were going to change and this judge was going to convict, particularly the leaders and send them to prison. Which he did eventually, but there was an appeal and they were all released.

But Caroline Nicholls, an attorney, she fell in love with one of the accused, and when he was out on bail there was a child...well, she was pregnant but he was sent to Robben Island and I became the godfather of Lindi their first daughter. Caroline Nicholls was a very good attorney from a sugar baron family in Natal. But identified from her days as a student at Cape Town University the cause of the people. So I said to her, Caroline, go and find a witness from any one of the blocks along all the streets whether there was such a demonstration at seven o'clock in the morning. So we called with the first witness, what were you doing at seven o'clock in the morning? Yes, I get up early in the morning, I have to make sandwiches for my children to go to school, make tea for my husband to go to work, and about seven o'clock I was sweeping my stoep, my front patio. Any demonstration? No! any trouble? No! When did trouble start? When the helicopters went up at about 11 o'clock. And there was an inane cross examination such as, how do you remember the date? She said, there was so much trouble that date how could I forget it? And we carried on, and we called eight or nine witnesses along those lines. And the judge impatiently asked, how long is this going to go on? And I said, for as long as the State stops cross examining these witnesses (laughter). So they called a few more and then the last one they didn't ask any questions, so I said, well I think that that's enough, that this was the imagination of the brigadier. So this was the...they also couldn't call the expert that they had in Pietermaritzburg and they called a so-called expert, his name was Pruis, he was in charge of the doctrinal program of the University of the Orange Free State on a subject called 'the determinance of revolutionary warfare'. By that time our relationship with the judge was very poor. And he came in for a day and a half, spouted about this theory, saying, speaking in Afrikaans, and quoting (Valdimir) Lenin, (Karl) Marx, (Joseph) Stalin, the intellectual sidekick of Che Guevara, a man called Debray, who had spoken about the revolutionary theory in a book. We asked for the matter to stand down for us to prepare for cross examination. The judge was reluctant to give us any real time. We eventually forced the issue and we got Tom Lodge, who was the politics expert at Wits, and we had to translate the evidence into English because he didn't speak Afrikaans. But he said, hey, Debray who was arrested in Bolivia and spent four years in jail, after his release wrote a book published by Penguin, disassociated himself with all theories that he had expressed, and which this expert, who is now by the way, the deputy commissioner of police, this Pruis...he was pathetic, absolutely pathetic, because we had enough information to bury him. And their theory was that this extravagant language used by the people in... about their cultures and things, was revolutionary. And Matthew Chaskalson, you know him, the son of Arthur (Chaskalson), found two letters written by (Jan) Smuts, (Jacobus Herculaa (Koos)) de la Rey and Botha, the three generals of the Boer war, rejecting an offer by (George) Milne that they should join the Transvaal council. And they wrote a letter to (George) Milne, using the very adjectives that our clients used, that we were not prepared to be seen as sell-outs and betrayers of our people by taking part in your structure. And then even worse, a letter written to John X Merriman, a political opponent of Cecil (John) Rhodes, who was for the war and imperialism. But John X Merriman actually was sympathetic to the Boers and he actually tried, and eventually succeeded in the union agreement in Vereeniging in 1902. And there they were talk...(Jan) Smuts had written the letter for the three generals, used even more insulting language, because he was writing to a friend. And I just asked him quite innocently: and then there is a letter to John X Merriman...by the way, who was John X Merriman?...for an Afrikaner, and to the shock of the Afrikaner prosecutor, the Afrikaner policeman, (laughs) he said, I don't know. Well, this was absolute...I think,

gave you an example of fundamental changes called revolutionary without violence. What about (Jawaharlal) Nehru and (Louis) Mountbatten in India? And the judge who was obviously well informed, he said, well, it is said, Mr Bizos, that Lady (Edwina) Mountbatten had something to do with it. You know what that was an illusion to? There were rumours at the time that Lady (Edwina) Mountbatten had a relationship with...he was the viceroy of India. But that (Jawaharlal) Nehru and Lady (Edwina) Mountbatten had an affair (laughs). And you know this is the sort of trial that it was. But eventually the fundamental error by the judge is that he sacked Professor Joubert, because they disagreed and he lied about it, the reason for it, and we exposed the true reason because (Professor) Joubert made an affidavit, a very unusual thing for members of the court to be split and give different versions. And he didn't have the power to sack an assessor just because they disagreed. And that was the reason why the convictions were set aside eventually. Now, as far as the LRC is concerned, its resources and the leadership of Arthur Chaskalson were concerned, were absolutely vital for this. He argued the appeal, he insisted that I should come back in '89 from Columbia to be there because he said, you know, there may be questions about the trial which he was not familiar with, and I had to be there and...it cost a lot of money to fly me there and back for a few days. But I did come and the Court of Appeal acquitted everybody.

Int Is that in history the longest trial in South Africa thus far?

GB I believe so, yes. I believe so. The arrests were in mid '85. The final acquittal was in December '89.

Int I'm just curious, do you think that the sort of changes that were happening towards the late eighties may have had something to do with how...the final outcome, or do you think that kind of...the lessening of apartheid controls wouldn't have had an impact regardless?

GB Well, we were fortunate that the Chief Justice (P.J. Rabie) that was more law and order orientated than a government itself, (P.J.) Rabie, had come to the end of his term, and Judge Michael Corbett became Chief Justice. Earlier he would probably not have been appointed Chief Justice. But from the mid eighties, in the State of Emergency, the faith of many influential Afrikaners who called themselves '*verligters*', enlightened ones, made it quite clear that apartheid wasn't here to stay forever. And there were negotiations at a very low level in which I took part on behalf of Nelson Mandela to go and see Oliver Tambo. I deal with it in the book. And all those things brought about an atmosphere which wasn't there before. I mean, we were quite cheeky in '89. We were already discussing what sort of Bill of Rights would we have and what sort of Constitution would we have. And there was even a conference outside Oxford, where four judges came, against the will of the Department of Justice, and they took part.

Int And these judges were?

GB John Milne was one. Richard Goldstone was another. There were two others. I think Friedman was another one that came. But they're matters of record, but four of them, and they defied...we are judges, we do what we want to do. And the two conferences were what sort of Constitution are we going to have? What sort of Bill of Rights are we going to have? Whether there are going to be group rights or individual rights? So from...the '85, '86 sanctions, particularly in relation to the currency, brought home to a lot of Afrikaner businessmen they were no longer the poor whites and revolutionaries of 1948. They had done very well in the meantime in mining and business and commerce. And they saw these things going down the drain. And things were different. Although the dawn of freedom had not really broken. You know, the sort of pre dawn twilight that you get was there. And I'm sure that it played a role.

Int The 1980 years is always regarded in South Africa as being one of the most repressive times in the country's history but also the most...the time of great resistance. And I'm wondering in terms of human rights and human rights law, what do you think were the kind of fundamental approaches to resisting the state through the axiom of law?

GB You know, that in an absolute dictatorship there's hardly any room for lawyers or any aspects of the rule of law that you can do anything about. In completely totalitarian states if a lawyer raises his head, he's either put in prison or he's put on an airplane and dropped over the sea, or disappears. The South African society under apartheid was not an absolute dictatorship but rather an oligarchy. Whites respected democracy, albeit for themselves. And the common law had some deep roots in the society. Like for instance, if somebody dies in detention in a totalitarian state the body disappears. As it did by the way in the late eighties, because of the embarrassment in the inquests of (Ahmed) Timol and the Goniwes and (Neil) Aggett and the Cradock Four. And what they did was that this business now was no good, somebody died in detention and they formed hit squads in order to eliminate people. And this was as a result of seeking another solution because of their failures in court. Not so much because there were adverse judgements because the senior magistrates and judges were specially chosen to do these cases. But the publicity that was given...I speak in my first book, *'No-one to Blame'* of how Sydney Kentridge was absolutely desperate about the exoneration of the doctors and the policemen that killed (Steve) Biko. And he wanted to...he said he was going to quit because of the exoneration and...I spoke to him and I said, you know, Sydney (Kentridge), the magistrate may have exonerated them but the world jury has convicted them. So there was room...there was room, for a demand in justice for the oppressed. And the LRC played a very important role in that regard under the leadership of Arthur Chaskalson, Geoff Budlender, Felicia Kentridge and others that were...and also the newly qualified lawyers who are leaders in the legal profession now, the best of them. Who were anxious to work for the LRC in order to do this work. And you may know that we now have 19 or 20, I'm not so sure of the exact number of people, with an LRC background, who have become judges. I don't think that any other organisation can claim that sort of impact. But the impact litigation in the Rikhotso and other cases had a tremendous effect. What the legal profession did is to make use of that little space that there was in order to have impact

litigation. For instance, when the Legal Resources Centre won a case about the ten year period that you had to be in the city before you could bring your wife and children, when they by regulation tried to subvert that provision of the Urban Areas Act, an apartheid law, but they said, well, nobody really worked for ten years. They only worked for 11 months of the year and then went back home, therefore there was no continuous employment. Well, Arthur (Chaskalson) succeeded in persuading the Court of Appeal that that was a fraudulent proclamation in order to defeat the provisions of the law. They invariably amended the law by an act of parliament, but there was such disgust about this fraudulent conduct that had such an outcry, even among Afrikaner supporters of the Nationalist Party. Because, you know, many of the Afrikaners, saw no injustice in the broad policy but they could identify with their gardener's problem that couldn't have his wife and children in the city. They could identify with that. So that sort of litigation was important. The Group Areas Act was defeated as a result of two judges: Richard Goldstone and another, saying that you couldn't order the ejection of anybody that contravened the Group Areas Act unless there was alternative accommodation. And what happened was that the legal profession, under an organisation called ACTSTOP, would go pro bono every time somebody was charged and they would say, may be he contravened the act but you can't eject him. You can give him a small fine for the contravention but you can't eject him because there is no alternative accommodation. And they tried to say, well, we will give him a house. But then we would go and say, please bring the list, this person hasn't even applied to be on the list, how come he's on the top of 4000 people all of a sudden, in order to defeat the result of this case? So although there were some, particularly academics...some academics said, that the Legal Resources Centre and the rest of us, even though we weren't within the Legal Resources Centre, like myself at that time, did nothing more than lend legitimacy to an illegitimate regime, we should rather not act so that things get worse before they get better. This palliative.... was of no importance. I had a public spat with one of those academics, Judge Davis by the way...

Int Dennis Davis?

GB Dennis Davis, who actually at the end apologised after the thing that he did play a role, because I said, you know, Dennis (Davis), the people that I act for do not understand and they can not afford your logical correctness. We will stop defending people when they stop asking us to do so. So the exploitation, if you will, of that gap that existed, was made good use of, and the worse things got the more important was the activity of trying to exploit the little space, the loophole if you will, that there was available. And the Legal Resources Centre was in the forefront of all this because of the personality of the people involved, like Arthur (Chaskalson) and Geoff (Budlender) and (Morris) Zimmerman, and others, who really believed in what they were doing and did it particularly well.

Int George, just to go back to what you said, there are two very important things that one can address. One is that when I interview people, particularly in the United States who are SALS board members, they often talk about having visited South Africa and

watch the court proceedings, and almost the idea of there's this kind of anomaly about the kind of respect for the rule of law from the Afrikaner judicial establishment.

GB Some of them?

Int Yes, some of them.

GB Some of them, yes...

Int And you speak here about how it's about democracy and protection for white rights...

GB Yes.

Int But when lawyers like you and others effectively challenged them on rule of law basis, it seems to me that judgement was passed down in favour of you?

GB In some cases. In some cases. Because, you know, first of all, you're required...with respect to ourselves...legal acumen, perseverance, commitment, enthusiasm, belief in what you were doing was right. And our visitors were sometimes pleasantly surprised, that they would come and we would be putting the police officer through his paces and tear to shreds the false case that they were putting up. There were lots of other cases of course that people didn't have that luxury of legal representation, particularly in the rural areas where a police officer was really the master of the situation. But there was this small gap, there was a small number but an effective number of lawyers who were prepared to do it, and there were judges who could not bring themselves to believe in political justice. That you're entitled to the vote, you're entitled to do the job that you want to do, you're entitled to live where you wanted. I mean...Judge Holmes from an Anglo Saxon background and in some respects a just man, when John Dugard went to the guts of it by saying that the proclamations under the Group Areas Act were invalid because of unreasonableness, and because of racial discrimination, this very good judge in many respects came to write a judgement that apartheid is a social experiment which should be given an opportunity of succeeding and the court would not interfere. So for political justice we had very few takers, but what was important was that for individual justice nobody would...among the Afrikaners, would condemn detention without trial because we had to deal with terrorists in that way. But when a young medical student like Essop was found comatose in a hospital without his parents having been told anything, a judge said, no, no, this is not acceptable, and he made an order that the father had rights of visitation and other rights. But don't talk to me about the wrongs of detention without trial. But young Essop could have been my son, which was the...wasn't an unreal...because a lot of the children of white people particularly at the liberal universities, were questioning the validity of the system. And also they didn't look forward to taking up

guns against the people in Soweto and elsewhere, nor did they want to go to the Angolan border to fight the fight against the people of Angola assisted by Cubans. They said, you know, this is not our business! I mean...and the...we argued in the Toyavoya case, Toyva that the mandate to South Africa by the League of Nations had been revoked by the United Nations. All these things coming together brought about some room in which you could actually touch a cord. And particularly Afrikaners, you know...and Bram Fischer of course, was involved in the Rivonia trial because Arthur Chaskalson and I persuaded him that he was the only one that could say in the Rivonia trial that these people did nothing more than we Afrikaners did against British imperialism. And you know, you would get people...some of these...our grandmothers and...were part in the concentration camps and died of terrible diseases. Our people suffered and we can't understand the suffering that the government is... and you know, the mid seventies, in the Biko inquest, the Timol inquest, the deaths in detention, and eventually the terrible thing that came out in Aggett where I was accused of actually not conducting an inquest but a commission of enquiry against detention without trial. And I said, yes, I was. This is true, because what we did was...you see, we would exploit the provisions of the law in order to...there is a rule of law which says that if you accuse me of slapping you, you can't bring other witnesses that they were also slapped, unless it was done as a system or a design peculiar to you. If for instance you slapped only people with a dark skin and flowing black hair like me (laughs) whenever you saw them...we saw such a person...then I can get as many witnesses in. And the torture was the same. And we filed 18 affidavits to say that what (Neil) Aggett complained in his statement of being shocked and being made to stand for over almost 80 hours and things, is what happened to them. Things that could not be denied. The magistrate disbelieved all the witnesses but nobody believed the magistrate. Even the Afrikaner newspapers' relation to the Biko inquest said that the Security Police made our country the polecat of the world. Actually in Afrikaans it's skunk, which is even more...I think it's used in English as well. So you know, all these things came together, and Sydney Kentridge said that when the history of the country is written, there were three groups of people that can hold their heads up with some pride, and that was the legal profession, some of the judges and those that were insistent on a free press. And this was also...you see, the press played...or sections of the press, played a very important role, particularly the Rand Daily Mail. Where your cross examination would be reproduced and the ridicule of the liars exposed. So, this was the situation, particularly in the eighties. Where many Afrikaners began to have doubt about the correctness of the policy and doubt about the leadership of PW Botha and his close associates.

Int The other question that comes up is that, from what I can gather, I spoke to Albie (Sachs) who I'm going to be interviewing and he said...that initially he was very opposed to the setting up of the Legal Resources Centre but he's changed his mind of course subsequently. I'm wondering within the ANC circles, particularly in exile of course, was there resistance to the setting up of the Legal Resources Centre? Did you get a sense of that?

GB On the contrary (laughs). I think that people were...well, certainly the people that were caught, that said that if you were caught these were the people that you must tell your relatives to approach. And when I saw Chris Hani in '87 on my second trip to

Lusaka, he told me that part of the training of the comrades was, if you're caught ask for Bizos (laughter). He promised me, he says, come liberation and we will honour you for this. So I said, well thank you very much...and of course the police knew that and they...that those were the instructions and they asked people who they kept in solitary confinement for about 9 to 10 months to a year before bringing them to trial, who is your lawyer going to be? And then they would tell them, is it Bizos? They say, well you know, that's a very bad choice. He's not interested in you, he's interested in the ANC and the Communist Party and he does their bidding and you'll get a bigger sentence if you get Bizos. But I think (laughs) it had exactly the opposite effect. I mean, you know, if the person that has tortured you gives you advice who is the best person to defend you, you're not likely to follow their advice, but...no, the ANC had no problem. They actually made our life a little difficult indirectly and unwittingly because they had a magazine called 'Sechaba', which particularly in relation to the UDF trials, they claimed it as their own, not knowing that it would be put in as an exhibit to say, well there you are, the ANC lauds the UDF activity. but we say, well you know, that's not our business. We didn't authorise them to say this. But it did make our life difficult because a whole batch of Sechabas would be handed in, in order to prove the State case. And of course Radio Freedom, which broadcast...

Int Oliver Tambo's messages.

GB Oliver Tambo's and the other's messages. And they tried to lead the evidence where Ernie Wentzel was a great liberal lawyer, also part of the team. And a very conservative judge said, Mr Wentzel, you know these things, it is an offence to listen to Radio Freedom? He had a very good response, it may be a punishment but certainly not an offence (laughs).

Int George, you were brought by Arthur (Chaskalson) into the Legal Resources Centre to offer mentorship really, to young upcoming lawyers, and I'm wondering over the years, you've worked with a range of young lawyers at the Legal Resources Centre, I wondered whether you could talk about some of those young lawyers...for example, I understand when you were there, Mahomed Navsa was still there, and he'd obviously been at the Legal Resources Centre for a long time...

GB Yes.

Int I wondered whether you could talk about him, who's now on the Bench and other people.

GB You see, Mahomed Navsa is a very clever lawyer. He was one of the first products of the University of the Western Cape. They were other what were called bush colleges. Which may have had some reasonable people in them, but the Western Cape really produced good product. He was one of them. Because you know his father was an

Indian and his mother was a Malay, and Malay culture is a very strong one and his mother was a very strong person. And there wasn't a school that he could go to because he wasn't an Indian and he wasn't a coloured, and the only school that would really have him was a school at Kimberley where there were not enough Indians and not enough Malays so they had a joint school. He had a very good education, very good legal brain, and he was like most people that are highly intelligent and disadvantaged, like Ismail Mohamed and Duma Nokwe...not Nelson Mandela, he took it in his stride, but the sheer injustice of discrimination made them a little bitter and they tried harder to do it. Mahomed (Navsa) was in some ways, over-respectfully, would ask for guidance and ask for the benefit of my experience. But if there was hard research to be done he said, you know, you go home without any papers, leave this to me, and he would produce the goods, if there were heads of arguments, you call them briefs in the United States, to be done. He would not present a draft unless he was completely satisfied that it was near perfect. He appeared as my junior, as we say in the profession...I avoid the word, I say associates...and I had faith in him in actually...you know, there are some top people who do not give an opportunity to young people that they work with to actually do the cross examination and do the argument, any portion of the argument. And I would avoid that and I would actually give an opportunity to the young people. We would discuss the matter and particularly in the Goniwe inquest, Mahomed (Navsa) had a clear advantage over me because his Afrikaans was perfect, and nothing impresses Afrikaner judges and Afrikaner prosecutors more than a black man speaking their language fluently and they really admire them for it. And he did an absolutely marvellous job and I insisted that he should act ... at the Legal Resources Centre, he should do varied work, I insisted that he should become senior counsel and I promoted him...you know, you've got to have references from...and I said that he was ready to do that because it was a precursor to his becoming a judge and I realised he was good judicial material. And he did very, very well as a judge in the High Court and is doing very, very well in the Court of Appeal. He and I, whenever here in Johannesburg, take an opportunity to have lunch together. He takes me to good Indian restaurants for good curries and things. And we talk about things, about his work and the LRC work. And he is of course on the board. And he hasn't forgotten us and he played a role in the Legal Aid Board. He is a rounded person, committed to access to justice and really takes himself quite seriously about his judicial administrative functions.

Int Some people would also say that Arthur (Chaskalson) and Mahomed (Navsa) had a very close relationship and...

GB Well, you know he is like that. I mean, you know, he regarded Arthur (Chaskalson) and me as sort of father figures. It may be self-serving but...you know, I'll do it the other way...Ismail Mohamed was my friend, he was a young student. I was in student politics quite senior and I promoted him to become a member of the SRC, Students Representative Council...

Int This was at Wits?

GB At Wits. In his first year of study, because I met him for the first time. He looked like a school boy, and here he got onto the platform and made an outstanding speech, and we were actually looking for changing the all white face of the student council. And there was a highly organised amorphous left at the university, and if you got the nomination from this amorphous left, of which I was a part, then you were sure to be elected because (laughs) you know, it was well organised and you only put in a number of candidates that could be elected , no votes, splits and things like that. Here was a young man in his early twenties, with a degree in Arts, a degree in Law, an honours degree in Philosophy. And I moved his application for admission to conservative Afrikaner judges. And I handed in his original certificates. And Hiemstra when he saw these documents said he looked at this kid (laughs) at the back of the court newly robed with starched collar, he turned around to his fellow judge and he said, he's not mad, hey? (laughter) But one of the leaders of the Bar, knowing that Duma Nokwe was my friend, who was admitted before Ismail Mohamed, came to ask me, what was (Ismail) Mohamed like, because there was publicity that he had been admitted? And I sang Ismail (Mohamed)'s praises. Oh, he says, from what you tell me, when he comes here and he listens to us, he'll do quite well. And I said, you know, Gerhard, it may be that we should listen to him once in a while. He says, no, no, no, he comes with that sort of attitude he will be a terrible failure. I relate this story because Arthur (Chaskalson) and I did not believe that we were the fountain of wisdom and that we had to be listened to. And I think we became sort of father figures for Mahomed (Navsa). Incidentally, I refer to him in my book, both Ismail Mohamed and Mahomed Navsa, and the editor very careful, says, there are two spellings of Mohamed. Yes, I said, well you know I've got it from the records and this one spells it this way and the other...he says, no, no, it will be queried, said the editor...this is my first book...can I please have clarity? By that time Mahomed Navsa was on the Bench and I said, Mohammed, what is the correct spelling of Mohammed? This is how you spell it, this is how Ismail Mohamed spells it. Which is correct? He says, I spell mine the way the prophet did (laughter). He says, but I've raised it with Ismail Mohamed and he says, no, no, no, the prophet spelt it his way (laughter).

Int (laughs) That's an interesting form of interpretation.

GB Ja, ja It isn't all serious...I spell it the way the prophet does. (laughter)

Int You know, George, again, the fact that you were brought in, you were supposed to provide...they were supposed to access you young black lawyers...not just young black lawyers, but young lawyers at the LRC, fellows, etc. In terms of people accessing you over the years what are some of the like leading lights in terms of people who have come through the LRC and that you've sort of offered advice to? Can you talk a bit about, like the 1990s period and...

GB The star of the period of course is Mahomed Navsa. There were others. I think that the fact that Arthur (Chaskalson) was a founder and he wanted an experienced person. He

knew that he would go away in the early nineties and...you know how he got me to accept it, it's in the book. because he did to me what I did to him in relation to...

Int Exactly. And you mentioned this in your, I think, the first and the second interview as well.

GB Oh yes, ok. So he didn't want the LRC not to have a senior person there in order to attract. I'm sure that Wim Trengove, who's a young top constitutional lawyer, took into consideration that I was there. First of all that Arthur (Chaskalson) the president of the court was the founder, that I as a leader of the LRC brought him into the LRC for two years but he gave us four years. We appeared in the same case, in the death sentence case in the certification. It's not for me to say, but I think the fact that I was there as Arthur (Chaskalson)'s successor, as the senior person, may have influenced him to come... *interruption* Patric (Mtshaulana) is also one of these fellows that came and stayed for a number of years. A very good young lawyer. He's now the president of the General Council of the Bar of South Africa and with a leading practice. He was also there. Sometimes they embarrassed me by sort of representing me as a father figure of...he has a picture of me about this size (laughs).

Int In his office.

GB Did you see it?

Int I did, yes. It was at the TRC hearings. It's a wonderful photo.

GB But you know what I was busy doing?

Int What were you doing?

GB The man that...the chapter in my book is a *Passion of Steve Biko*, in the first book. Here was Snyman who according to the medical evidence (Steve) Biko had been smashed. He was incontinent. He had to be fed by a spoon by a sympathetic prison warden. What he did in the interrogation is to use handcuffs to put him up on the grill of the interrogation room with his arms out like this, being held up with handcuffs and his feet not touching the ground, put together with leg irons at the bottom. So, you know, my Greek Orthodox...I don't want to discuss my personal religious belief at this time of my life...but my bringing up, the Passion of Christ was a very vivid thing. I went with my father every Sunday to mass. And I said, what did you do with his arms? So he said, well I put them up like this. I said, like that? Or like that? Or like that? Or like that! Or like that! He said, yes like that. You see, this is how his arms... obviously quite unwittingly I was thinking of the crucifixion scene. And a

photographer picked it up. Unexplained, I don't know what that means to people but that's how it happened.

Int Well, Patric (Mtshaulana) pointed that photo out to me and there's also another wonderful photo of you with Kameshni Pillay in the background, who helped you.

GB Oh yes. Well, Kameshni (Pillay) was there. Now, you know, they would come in, you see...they would come...and these are people...you know I always tell the young people that we give tutorials to, listen to your client. Don't interrupt, even though it may appear irrelevant to you. Listen to them! And very often they are the ones that have suffered in similar situations. They may tell you things that you would never have thought of in cross examining. Be a good listener, encourage them to talk, how they felt, how they were treated by the people that are against them. And here where you've had black people, they bring a dimension to you which, of course, your own background, everything else, everything you've learned and everything you've read and everything you've experienced, plays a role in your assessment of a situation of the probabilities, how people are expected to behave and how it contrasts, or the manner in which they have behaved. And to have worked with people who have had firsthand experience about people who are seeking justice is enriching for me. And I don't agree with the first person who said that Ismail Mohamed will be ok if he listens to us. Let's listen to them and it has been enriching for me to work with such people. As one would expect Kameshni (Pillay) was a passionate gender equality advocate and what appears to be far fetched to me are very real issues to her, and she's able to articulate it and very often where, you know the word reasonable is used 31 times in our Constitution?

Int Yes.

GB Although I'm computer illiterate I know how to use people like Catrin (Verloren van Themaat), say just pick up the words reasonable and give me the section in which, and then I look at them and I say, you know, this reasonable this, which is the answer incidentally a platonic philosophical content, and I don't know to what extent we will influence, but you know, the law applies reasonable tests. Now, where you have to apply the law of reasonable, reasonable to whom? And having this diverse...people's diverse origin and their cultural and upbringing, is very useful to a lawyer that really is interested in helping people to get access to justice.

Int George, do you feel, say, after Arthur (Chaskalson) left and, there's been so many leadership changes at the Legal Resources Centre since then, do you feel that the young lawyers that are now being attracted to the Legal Resources Centre are really in fact able to utilise your experience, etc...do you feel that...?

GB They're very keen, with exceptions. With various exceptions. You know, people are different. There are a couple of the women there that I want to tell you are ahead of me. (laughs) But you see, they feel it...take...to give you by way of example, a recent thing. The status of Diagonal Street, you know about this case?

Int No.

GB Diagonal Street is a Diagonal Street. Actually that's where it got its name. It has always been for over 150 years almost, the Indian quarter, business wise. And practically all, with a few exceptions, who are Africans, no whites, have these Victorian buildings across 3 or 4 of them, and they are tenants...

Int And this is in the city centre?

GB The city centre. Very near Anglo American headquarters, the banking institutions. And what are the shops? Vegetable shops, grocery shops,...shops, bags of spices with the scoop. And Anglo American bought it.

Int They bought the entire street or the block?

GB The entire block on which the...there are two blocks that runs diagonally across. I think that they were a little sensitive and they wanted to make it a commercial centre. They sold it to an unscrupulous developer. Without authority – the buildings are protected because of their age – without any authority they changed the façade. Part of the façade was lean-to roofs, because a lot of the business was done on the pavement, and the lean-to roofs protected it from rain. He did a plan that was going to change the whole character and it would have Exclusive Books – there is a book shop there, the only book shop that actually sells in the centre of the city...that sells books in the indigenous languages. This is the speciality of this book store. It was going to have Exclusive Books and it was going to have Woolworths, it was going to be like a shopping centre with closed walls on the street and entrances and passages within the block, a proper sort of shopping mall. One of our young attorneys was approached by the 30 odd traders, because some of them have received summonses.

Int To vacate?

GB To vacate. Now the owner can do with his property whatever he wants. The attorneys of Indian origin what is her name on the 7th floor?

Int Naseema Fakir?

GB Naseema (Fakir) has a relative involved by marriage or whatever, and we are seeking to establish a common law right for property declared as part of the heritage site. But you can't do this to property. You may be the owner but you can't override. Now having a person understand in the culture of this group, having a person as keen as her to help, is of tremendous importance to me, because I've been thinking about it...and you know, she came and we said, we must write a letter. And I said no, no, delete the word 'tenant' from the letter. Don't concede that they are mere tenants, don't concede that. We're going to work out that there is a different type of occupation based upon environmental law. Now, it's a novel approach, it requires a lot of research. I have the idea of...don't use the word tenants, then she smiles, she said, I see why we mustn't use the word tenant. And what has happened is that they've dropped all the ejection applications and they're now applying for the permission the Heritage Council, and they're going to have a tough job there, because they actually submitting to their jurisdiction. So the people are continually there selling their spices and their books and their vegetables, and you know, not vegetables in packets, you know, the beans are in a bag with...you know, the way it was in my village in the thirties. So...if you go to a commercial lawyer, they'll say, well, you've got no defence. Having young people who can understand what this is about, I don't know that we will succeed, but we will certainly have...that way I explained it to Naseema (Fakir) was, it may well be that this developer may be persuaded during the hearing before the tribunal that they can't get what they want, they can't get their Woolworths and their...and we may be able to say, look leave the façade, do improve the mess behind it, with proper plumbing and proper walls, give the first option to the people whose grandfathers runs those shops and make it a modern Indian market. You can give them enough trouble that they may find it necessary to sell to a landlord that may be more sympathetic to the environmental issues. And you know, our Constitution expects us to develop the law. It's only people that really have drawn the short stick in the past that actually know and understand what a short stick is about.

Int George, that alone gives me an indication of how important you are to the Legal Resources Centre and how young lawyers can access you, so Arthur (Chaskalson) was right (laughs).

GB No well, you see, they come in, they say, this is the problem. Have you looked at it from this point of view? And they say, no. Ok, let's look at it. And the other thing is...it may sound old fogeyish, often I have to question the youthful enthusiasm, because there is the idea of going to court as soon as possible on an urgent basis. If you don't think it out, if you haven't investigated the facts properly, if you haven't understood the law properly, you may come short. And we actually, in the LRC, proudly believe that we win most of the cases, because my mentor Vernon Berrangé, told me in the first case that I did, within weeks of my qualification, a political case, George, cases are not won in court, they're won in your office. Look at it, look at it carefully, prepare for it.

Int George, I've spoken to a range of people and they all come back to the idea that you are very different from Arthur (Chaskalson) and perhaps other lawyers, in the way you approach legal matters. And they often claim that you can, you know, without referring to law reports, etc, you can immediately sense, and you have this acute, very well developed sense of what's going to be right and what's wrong. And I wonder where you think that acute sense has come from? Is it just...?

GB Well, they are very generous in saying this, but there is...in ordinary medicine and in law, experience counts (laughter). You know, actually there's a Greek expression, you need an old doctor and a young lawyer (laughter). That's the...and I value their enthusiasm. On the other hand I think that my experience as an advocate and one that lost many cases, there is a thing that they call *Nous*. You know what that means? *Nous* is sort of know-how. You must be able to smell things out. Personal experience, they'll come and say, the defendant has done this, or that or the other. If it sounds improbable, you say, well, let's try and investigate whether we can actually get some corroboration for our client's version. And go along and ask what is...not every litigant that crosses our door is completely honest with us all the time. And we sometimes rely on the say-so and get into trouble. Experience counts, not only in the relation of the knowledge of the law, because I may not remember the cases, but I remember the principles that were decided and why that case was lost and that case was won. And what I do at these informal consultations when they come along and say, sit down, and they tell me what it is, I ask them whether they've investigated this or if they've investigated that, if they haven't, go back and do it. The other is very often, I insist that we do not sue anybody without...except in exceptional circumstances, giving them an opportunity to respond. If we have a well formulated claim, I say, put it down in the letter of demand, deliver it right away, give them 3 days to respond, and if they don't respond it strengthens our case. If they put up a very fanciful version we'll be able to knock it down. But be careful, don't rush into court.

Int George, in the post liberation and post apartheid era, what do you think are the key issues that a public interest law organisation like the LRC ought to be focusing on in terms of addressing public interest needs?

GB Well, you know, I have a broader view than most of my colleagues (laughs) and I say, anybody that knocks on our door shouldn't leave empty handed or if we're not going to take their case, we must have a good explanation why we cannot take it. I know that funders want to pigeonhole the type of work that they're going to do. I try and persuade the young people not to adhere to these pigeonholes too readily. And not to send people away because it doesn't fit into this, that or the other. We should really try and help people.

Int But from having interviewed a range of people, including paralegals, my sense is that the Legal Resources Centre, due to funding... there's always been this tension

between high impact litigation and the person who comes through the door, but apparently 95% of cases are actually turned away currently.

GB It upsets me when the Monday morning meetings, when I do attend them, when they say that after, they say a case, I turned them away and I turned them away and...and I say, well, you know...there are cases that I don't like taking and I take the mission statement and I read it to people and say, well, please tell me within what category of our mission statement. Because very often people regard us as the final court of appeal. They come to us when they've lost the case and that sort of thing. Their period for the appeal has...and this is why I think that we...and I think that Janet is supportive of this, that we should actually try and raise untied money. Untied money. Under the banner that it will be used for access to justice for people who would not be able to get relief anywhere else. Yes, they can go to the legal clinics, they can go to the Legal Aid Board, they can go to Lawyers for Human Rights. I say, well this may be, but why not us? Because we are the...without wishing to be arrogant...we are the primary litigation equipped centre. CALS is more for research, Lawyers for Human Rights for public education and...but we are the litigators. And I think that every effort should be made for us to get undirected money.

Int George, the other thing I'd like to ask you is, I'm given to understand that the library, due to funding, is under constant threat of closure. And it is a very historic library given that it has Bram Fischer's work in there. And I understand that you've rallied to ensure that the library doesn't get closed. I wonder whether you could talk about that.

GB Well, you know, this is a unique library, not only because it has the 3 generations of (Bram) Fischer's books in it, but we need money to recover and...but also a library is diminished the moment you stop subscriptions. And I think that the decision that they should stop subscriptions was taken by people that know a lot about finance but very little about legal tradition. If you stop a subscription, your law reports...for instance, the Indian Consul General in Natal gave us a set for nothing, of the Indian law reports. Now, there's a volume every year of the important constitutional cases in India, very instructive, particularly in relation to socio economic rights. They wanted to stop – what do we need the Indian reports for? Now, the fact that it is the only, outside the Constitutional Court, I think it's the only set that there is in the country, is of importance that we should keep it up. And they said, well, you know, it costs too much for the subscription. I said, well, have we asked the High Commissioner of India to please use his good offices and give them to us for nothing? Have we asked for funding in order to keep the...especially, because there must be people who are...I don't know, maybe the Law Society to keep the library...and I don't give up easily in relation to this. I raised a very strong objection and I understand that the decision has been temporarily suspended, but you know, we must get money for it. There are certain things that you don't say, I won't give my children soup tonight because meat is too expensive. You know, you just don't say it.

Int George, I wondered whether we could talk, and I realised that these are very sensitive issues, but I suppose given your role as the head of the Constitutional Litigation Unit, I think these are very important issues pertaining to the Legal Resources Centre but more generally in terms of the Constitution. You know, I read in the newspapers that Jacob Zuma will be taken to trial, but that the ANC then says that they will do everything in their power to ensure that he is not prosecuted. And two of the things I read recently, yesterday's paper, was that, one was that they would be willing to change the Constitution to ensure that he doesn't get prosecuted. And also that they would change the laws so that people involved in the Arms Deal wouldn't be prosecuted. It then raises huge concerns, as from today's paper in terms of Pius Langa's admonition that this affects the rule of law, it affects the Constitution, and you know, given history, we're not sure what will happen 50 years from now, but I wondered whether you could talk now about concerns you have about these changes or these sort of purported changes?

GB Are you aware that Arthur (Chaskalson) and I made a statement and have you got a copy of?

Int Yes, you've given me a copy and it's a wonderful statement, simple but effective.

GB Well, that really briefly says it all. But you know, it is inevitable that political trials, however you may define a political trial, particularly where leading politicians are involved, either as complainants or as accused, there is partisan behaviour of supporters on either side. That puts tremendous pressure on the prosecuting authority, on defence counsels, on investigators, on the judges. There are numerous unfortunate examples in the world history that you say, well, let us...let the judiciary and the rule of law do a tactical retreat in order to save continuity, peace and security, the good of the country, good public policy. There may be times, such as there were in the early 1990s where amnesty was thought to be the lesser of a number of other evils. The Security Forces threatened that they would not allow a settlement of a free and fair election to take place unless wrongdoers were not given an amnesty. They insisted on a blanket basis. The ANC resisted it and a compromise was made on the requirements that would enable to get it. now the Biko family, AZAPO said, that that was not justice. I agree that it was not justice. But the problem that arises is this: how much more injustice would there have been if there was a bloodbath on racial grounds if a compromise was not had? I therefore, with Mahomed Navsa, helped to put that act together in an acceptable form at the instance of Dullah Omar, the then Minister of Justice, who couldn't really rely on the drafts persons of the previous regime that were really in charge of parliamentary drafting. We were not alone. (Arch)Bishop (Desmond Mpilo) Tutu, the other person, the vice chairman of the TRC, Alex Boraine, and others, who really helped us. We had meetings with them, we had meetings with other lawyers, and we tried to get a sort of consensus. And I thought that it was...the Constitutional Court, where Justice Ismail Mohamed gave the judgement, who actually quoted, I think, (George Wilhelm Frederich) Hegel, that everything human is made out of crooked timber. You can't get absolute...it wasn't (George Wilhelm Frederich) Hegel, it was some other philosopher, but a German philosopher. May have been (George Wilhelm Fredrich) Hegel, I'm not sure, we have

to look at the judgement. But...and I also justify it on the basis of an ethological trial of Orestes, that there comes a time where you have to put an end to the blood feud. And **inaudible** influenced his daughter (inaudible) his wife, killed him, even though Electra said that it's not that, you jumped too quickly into my uncle's bed as soon as my father left the shores of Argos. But you couldn't allow the blood feud to go through. And in the play written by Aeschylus, the goddess Athena gives amnesty to Orestes, because he says, wash my hands in... I washed my hands in pigs blood. I did this, that and the other. But the mythological idea is that the Furies were to really drive him mad to kill himself, because they couldn't spill kindred blood. And the goddess Athena, the jury of 500 Athenians, they're equally divided. She casts the vote to amnestise. And the prosecutrix, the Furies, say, no father will be able to sleep at night, no mother, without fear that the children...and what she does is, she says, ok, I'm going to change your job description (laughter). You will no longer avenge the spilling of kindred blood, you will become the Eumenides, the doers of good, so that you can bless the crops. You can pray for rains and you can do this, that and the other. So, you know, there is a philosophical basis for it. Now...political trials against an illegitimate regime and as well as acting against an illegitimate judiciary, are not strangers to us. We toyi-toyid and we turned the tables around that the government should really be in the dock like we did in the Rivonia trial. But where you have a Constitution, where you have a duly elected and legitimate government, where you have an independently appointed judiciary, it doesn't mean that you should not protest or toyi-toyi, but I don't think that you should say what Mr Craven said, that there is no judge that would give (Jacob) Zuma a fair trial. That is the important distinction. As to what the future holds, I'm neither a prophet nor a clairvoyant. But I would like to believe that the institution of the judiciary is sufficiently strong and that the Chapter 9 institutions are sufficiently strong, with the support of the civic society to prevent the compromises that are being suggested. I don't know what the result is going to be, but the judge has got a Legal Resources background, I think he will beware of the toyi-toying of the thousands outside his court, but I think the probabilities are that he would look at the law and apply it.

Int Thank you for that, George. Now I know I've exhausted you on a Sunday morning, I'm wondering if there's anything that you feel really ought to be included, I've neglected to ask you...

GB I can't think of anything. No, you obviously know your business and have prepared yourself well for the interview.

Int George, thank you ever so much, you are a treasure, and I like to say that, not just to the Legal Resources Centre and the young lawyers there, but also...and more broadly to the legal profession, but also to South Africa. And your book, the second book especially, is testament to that. It's a wonderful, wonderful book.

GB They said that last night (laughs) but I came second (laughs).

Int Well, I didn't hear the speech so I think this is my observation. And it's as always a pleasure to interview you and I'm always struck by how, despite all your obligations, family and legal, you always give your time so generously, thank you so much.

GB My pleasure.

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