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Interviewee: Arthur Chaskalson

Session #1 (video)

Interviewer: Len Morris

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Q: Good morning, and thank you for bearing with all the delays.

Chaskalson: Good morning to you, too.

Q: Let's start with the establishment of the Legal Resources Centre [LRC]. Could you give me some background on how the Centre was initially proposed and set up?

Chaskalson: Let me tell you what I know about it. I wasn't one of the persons who made the initial contact with the funders for the Centre. I think that the driving force in the establishment of the Centre was Felicia Kentridge. She was a Johannesburg lawyer, husband's a lawyer. She made the initial contact with various potential funders, and there were a series of preliminary meetings at which the talk of setting up some form of a law center was broached, and they had discussions and had some provisional plans.

Those plans actually changed when I became involved. I was invited to dinner by Felicia. My wife and I had dinner with Felicia and Sydney Kentridge, and David [R.] Hood of Carnegie Corporation was there. And during the course of the dinner, there was talk about public interest law, what had happened in America, what Felicia was concerned about and trying to do. When it was over, after the dinner, that night my wife and I -- I spoke to my wife and I said, "That's really something I would like to do."

And the next day I phoned Felicia, and I said, "If you're interested, if there's a place for me, that's what I would really like to do." At that time I had a fairly successful practice in South Africa. I was an advocate, a barrister, a senior barrister. I was chairman of the Johannesburg Bar Council. I had been in law for many years. My involvement came from then. Felicia was very keen that I should join.

And what happened as a result was that the project, which had originally been contemplated as a single project, changed and became two projects. What I might say the court side of the project was what I was interested in and wanted to become involved in, became an independent project to be known as the Legal Resources Centre. The research side of the project was to become a separate project and become known as the Centre for Applied Legal Studies [CALS].

They were both meant to be launched at the same time, but what happened was, I was involved in a treason trial at the time. I was defending people in Pretoria, and the judge who was presiding at the treason trial, which was a long trial, died before the case ended, so the case had to start all over again. As a result, though it was contemplated that I would be able to get out of my practice and start at the Legal Resources Centre in 1978, I could no longer do it because the case resumed. And at that stage it was decided that the Centre for Applied Legal Studies' launch would go ahead first, and that the Legal Resources Centre would then only start when I could get out of it, when the treason trial was finished that I was then engaged in.

So the launch of the Legal Resources Centre was put back by some six or nine months, and it was actually structured somewhat differently at that stage, that there were separate proposals made. Proposals were written for the Legal Resources Centre and for the Centre for Applied Legal Studies, and when the Legal Resources Centre was deferred, the Centre for Applied Legal Studies' proposal refers to the fact that the Legal Resources Centre will be established in due course.

There was never any direct relationship between the Legal Resources Centre and Centre for Applied Legal Studies. They were totally independent and separate projects. I was asked to sit on the board of the Centre for Applied Legal Studies, which I did, but we operated completely independently of each other, and though we worked, in a sense, supportive of each other, in the sense that if there was anything we could do to be of assistance to CALS, we would do it. If anything CALS could do of assistance, to be of assistance to us, they could do it. And we had discussions with each other and were involved with each other, as indeed we were involved with other people who were engaged in what one might call in a very broad sense human rights lawyering.

There was a community here in Johannesburg, at any rate, which became quite a vibrant community during the eighties, where lawyers who were concerned about human rights issues, anti-apartheid litigation, would meet each other and meet regularly and have discussions. So the relationship between CALS and the LRC was always a close relationship in that sense, but they were totally separate structures and they remained totally separate ever since they were established.

Q: How would you distinguish the mandate of CALS from the work of the LRC? Could you, just in simple terms --

Chaskalson: It's difficult to talk about a mandate, because in the nature of things, projects go their own way once they get set up. They have a particular dynamic. They're related to the demand which is made upon them. The original conceptual basis was that CALS would really engage in research writing and do a little bit of litigation if necessary, whereas the Legal Resources Centre was always going to be litigation-driven. It was going to be its principal basis. There would be a little bit of writing and research and outreach in different areas which did, in fact, develop. We developed training programs which became terribly important. But one was really a litigation project and the other one was a research project.

What happened at CALS was that some of the younger people who joined CALS were very keen in engaging in litigation. They started to do litigation from within CALS, and it created a number of practical problems. In the end, they set up a firm of attorneys known as Cheadle Thompson & Haysom. [Michael] Halton Cheadle -- I don't know whether you've had an opportunity of speaking to Halton Cheadle, but he was one of the people who was very anxious to be involved in litigation. Fink Haysom, I don't know whether you've seen him, he was the legal advisor to President [Nelson] Mandela. He was one of the partners in that, and he was part of the Centre for Applied Legal Studies. Halton Cheadle was originally the assistant director. I can't remember his name. He was John Dugard's deputy. Later, Fink Haysom took on that position.

They were always interested in litigation, and so they established what was in fact a firm of

attorneys, and took on paying clients. They did a lot of work for nothing, but I mean they handled work on the basis of a fee basis, fee charging. They would act for unions and for other bodies who were engaged in struggles against apartheid. They would defend people charged with treason and other matters, and they would be paid, whereas our work was always done on the basis that we would not charge for it. Our services were rendered without charge.

In the end, it was really a question of funding, too. I mean, the clients who went to Cheadle Thompson & Haysom would invariably receive their funding from abroad, from various institutions who were willing to put up money to defend people who were charged with offenses against apartheid, or to provide legal assistance to unions and others who needed it, not necessarily in cases which involved criminal prosecutions, but in civil litigation which might be of importance to them. So they were, in a sense, funded cases as well, and the people concerned would not necessarily pay for it. But the structure was different. They were a practicing firm of attorneys charging fees and rendering accounts. We were a public interest law center undertaking a variety and range of work for which we didn't charge, and our status within the profession became somewhat different.

Q: One of the stated purposes of the Centre in the initial proposal was to provide free legal services to poor black people.

Chaskalson: The Legal Resources Centre, yes.

Q: The Legal Resources Centre. Yes. What kinds of barriers would present themselves to

the poor with regard to the law at the time that you were just getting started?

Chaskalson: There were enormous barriers because, I would say if one wants to try to simplify it, first of all there's ignorance. Secondly, there's money. Lawyers cost money and it's very difficult to get access to a lawyer if you've got no money. Ignorance in the sense that if you don't know what law can do for you and you are ignorant of your rights then you're quite helpless in the sense that you are subjected to a power structure which you can't meet on your own, you need to know that there are people to assist you. In the nature of things, most poor people don't turn to lawyers. Rich people have lawyers. They know about lawyers and they go to lawyers for advice, but poor people don't.

And I think in South Africa, if you look at the extraordinary network of oppressive legislation which existed, if you look at the impact that apartheid had on life within South Africa, it was extraordinary. When you're talking about poor people in South Africa -- a euphemism largely for black people, of course -- the overwhelming proportion of the poor in South Africa were black, and there's absolutely no doubt that as far as the Legal Resources Centre was concerned, over ninety-nine percent of our clients were black. We always contemplated that that would be so. We always understood that that would be so. In fact, one of our purposes was to start bringing services to people within that community, to enable them to assert rights which they did have, really to resist what was being done to them.

Q: And you'd have to find a way to get those services to them, because transport would, again, translate as cost, wouldn't it, I mean a cost that they couldn't meet?

Chaskalson: Yes, in a sense, but, you know, when we started, when we started we were in Johannesburg. Johannesburg is a very big city. People come into Johannesburg to work. There was a huge community within Johannesburg itself who would need access to lawyers and who would turn to us. And so I don't think that transport at that particular level was a major issue. It became much more complicated later when we started doing work in rural areas and different parts of the country. But I think initially transport was important. We wanted to be able to place ourselves at a location where people could easily reach us, but I don't think that transport was a major hurdle.

In those days, you know, there were very few shops in black living areas. Part of the regulation, part of the apartheid regulation was to prevent people establishing businesses in black living areas. Places like Soweto didn't have anything, so people came into town to shop. In the nature of things, people came to town to work, to do their shopping, and certainly all the unions, all the community organizations, the political organizations which were coming up, the organizations of civil society all had their offices in Johannesburg. We sort of related to them in Johannesburg. In that way we were part of a network.

Q: Whose support did you seek for this notion in order -- not notion, but this undertaking in order to insulate it, if you will? How did you go about setting it up? Who did you want to be certain to involve and get on your side, essentially?

Chaskalson: There was a very deliberate policy started out at the beginning that the venture was going to be very vulnerable. What it was going to do was going to, in a sense,

be threatening to the power structure. How it was managed would influence how it would survive. It had to place itself within the situation as it existed in South Africa in a way in which there could be a long term future for it and it could be viable to do exactly what it needed to do. On the other hand, it had to do it in a way which would make it difficult for the authorities to stop it.

And we decided that there were two things which we would do. The first is that we would -- the Centre itself would do only law. In other words, that we would handle cases, and the cases would obviously have a very strong political overtone, but we would handle only law. We would not, as the Centre, get involved in anything else. Individuals working at the Centre could join any organization they liked, but if they wished to engage in particular community activities, they should go through the organizations, political organizations, not through the Centre. We didn't make the Centre a political organization.

Secondly, we actually adopted quite a low profile. We didn't rush to the newspapers to tell them what we were doing. The newspapers came to us after a while, but we adopted a fairly low profile. We just simply got on with what we were doing, building our structures and doing work which we thought was very valuable work.

Thirdly, at the very beginning I really -- those initial approaches were approaches that I made personally. I went to leading members of the profession and asked them to serve as trustees of the Legal Resources Trust. We decided on a structure, that we would have a trust, which would be the funding instrument. The trust would appoint the director of the Centre. From then on, the Centre would function autonomously. So the trustees would



have a control over the funding in the sense that the money would be located in the trust, and they would have a say as to who the director was, but they wouldn't be engaged in the day-to-day activities or the running of the trust. That seemed to me to be a way which, in a sense, would offer some protection for the trustees if we ran into trouble, and if the government banned the Legal Resources Centre, it wouldn't affect necessarily the trustees, it would only affect the people who were working in the Centre. It also gave the Centre the independence to function on its own as it wanted.

The initial trustees, there were six trustees. The six who were approached -- we have a divided profession in South Africa, legal profession, like the British do. We distinguish between barristers and solicitors. Here we call them advocates and attorneys. I approached three leading advocates and three leading attorneys from Johannesburg, because we were going to function in Johannesburg.

I don't think we ever contemplated that the Centre would grow as it did. It started with three or four of us. If you look at our first proposal, we were talking about something like 200 and -- I can't remember the figure. I think it was just over 200,000 rand, and I think our expenses for our first year were about 180,000 rand. When I left, we had over 100 employees, over fifty lawyers, a budget of around about fifteen million rand. I mean, nobody ever thought it would develop quite the way it did.

We focused on Johannesburg, and I approached three leading members of the bar. One was Ismail Mahomed, who is now chief justice of South Africa. The other, second, was Johann [C.] Kriegler, who sits with me on the Constitutional Court. He's a Constitutional Court

judge. Third one is Sydney Kentridge, who was a leading barrister, who subsequently -- he was Felicia Kentridge's husband. They've subsequently left South Africa. He's established a practice in the United Kingdom. He has recently been knighted for his services to the law in the United Kingdom, and the English bar is honoring him at a dinner as one of the two great advocates of our generation.

Amongst the attorneys, I approached Charles Solier, who was a senior partner in one of the biggest firms of attorneys in Johannesburg. I approached senior partners in the three biggest firms in Johannesburg. Charles Solier was senior partner. Carveth [H.] Geach wasn't then the senior partner, but he was a very senior man in a firm known as Webber Wentzel [Webber Wentzel Bowens], which were, in fact, Anglo-American attorneys, a very big firm. And the third one was Basil Wunsh, who is now a judge of the High Court, and who was a practitioner, a partner at a firm known Edward Nathan [&] Friedland. They're probably three of the biggest firms in Johannesburg.

Those six people became the first trustees, and I was also a trustee, because I was to be the director of the Centre. And the idea then was that we would report to them as to what we did, and we did. We were absolutely meticulous in our reporting. If one went to the archives at the Legal Resources Centre, you will find regular reports to trustees saying exactly what we were doing and how we were managing the money. The trustees would meet from time to time. Initially when the trust was fairly small and we were setting up, we would meet three, four, five times a year. As it got bigger, the meetings started getting less, and we had to change our structure to have an executive committee of trustees. The trustees, as a board, would meet only once a year. By then there were large numbers of

trustees, twenty to thirty.

The purpose -- one of the purposes was to get the support of people who were sympathetic to what we were doing, who were people of great standing within the legal community, and really who it would be difficult for the government to interfere with. And they were very willing to do it. They were all good people.

Q: I was wondering if any of them looked at you over tea and said, "Arthur, you've lost, you've lost your mind here."

Chaskalson: Yes. A lot of people said that to me at the time. They said to me, "What are you doing? You're wasting your time." I think people -- not the trustees. I think they also were -- I think we were all amazed at the growth of the Legal Resources Centre and what happened. None of us anticipated it would be -- it would grow and become, in effect, as successful and effective as it turned out to be. We were all taken a little bit by surprise as far as that was concerned. But certainly within the profession, a lot of people said precisely what you say, "What are you doing? You're wasting your time. You're mad. Why don't you do real law?" They don't know what real law is.

Q: Your friends probably would also be concerned for your well-being. It seems to me that you're moving from a comfortable practice and putting yourself in some jeopardy.

Chaskalson: I don't think so. You know, first of all, this was all done -- as I said, after that dinner my wife and I spoke, and our children were still quite young in those days. Gosh, I

can't -- they would have been -- the older boy would have been about fourteen or fifteen.

The younger boy would have been about ten or eleven. But we spoke together, and it didn't take long, because that's what I thought I wanted to do. Lorraine thought that's what I should do. So as far as the family, the immediate family, nobody -- there was no problems.

I'd had a very successful legal practice, so I had a home. I didn't owe any money on a bond. We had what we needed. It wasn't as if I was paying off debts. I was able to take a substantial reduction in income because we were able to live perfectly comfortably without having to earn a lot of money.

Q: But it's a very different practice of law.

Chaskalson: The subject matter is different. Law is the same. Subject matter is entirely different, and I had to learn parts of that law all over again, because I really didn't know it, because I had acted for corporations. My practice had been one of defending people on political cases and representing large corporations. I would sort of veer between the two.

All it really meant was giving up the corporation side, which had been the lucrative side of the practice, and concentrating now on social issues. I mean, as I said, the irony of it was that the whole thing was set back because of the treason trial. It was a terrorism trial, as was called. It was before they were charging people with treason. They initially started off with treason. Treason became too difficult to get convictions, because under the common law treason is difficult to prove. You've got to have two lines of evidence, and there are all sorts of practical problems in proving treason. So instead of having treason, there are --

statutes were passed called terrorism, and the law was then changed to make it much easier. There were all various presumptions and the onuses of proof, which became different in different instances, became much easier to get a conviction.

The trial I was engaged in at the time -- yes, the man I was defending at that time was Mr. Sexwale [Mosima Gabriel "Tokyo" Sexwale] who subsequently became known, the first premier of the Gauteng province. He and others were on trial there, and that was when the judge died. So being engaged in what you might call political cases had been part of my life at the bar. The friends which we had were friends who felt the same way about the society as we did, so within our own circle of friends, there was nobody -- nobody ever -- I never had any suggestion that what I was doing was wrong or that I should be ostracized in any way for it, because that was the community in which we lived.

Q: In your experience at that time, was the government banning attorneys doing this type of work?

Chaskalson: No, not really. There were some attorneys who had been banned.

Q: Black attorneys?

Chaskalson: White attorneys as well. At that particular time in the sixties, there were very few black attorneys who were engaged in this. There were very few black attorneys. Very, very few. Even today, if you look at the profile of the legal profession in South Africa, I think that the legal profession in South Africa -- gosh, I think it's still about ninety

percent white today. Maybe the figures -- I haven't got the latest figures. A lot of younger people are coming into the profession now, younger black people, and coming out of the law schools there are lots of young black people. You look at the top of the legal profession, you'll see a very distorted picture heavily dominated by white men.

Q: Certainly [Oliver] Tambo and Mandela were banned.

Chaskalson: Yes, but they were banned -- they were certainly banned, but they were very active politically in the African National Congress [ANC]. You know, the banning only came in in the -- we only had banning from about the mid sixties, legislation which came in in the middle sixties for banning. But you take someone like Bram Fischer, who ultimately died in prison, he was never banned. He was a listed Communist, which restricted him in certain activities, but he wasn't banned. And a great deal of his work had always been in -- he was the leading counsel in Mr. Mandela's trial in 1963. He had been a member of the South African Communist party, been actively involved in politics. He wasn't banned.

Banning started to increase much more during the eighties. I don't know what the numbers were in the sixties and seventies. But there were different sorts of risks. Organizations were stopped and were banned, and the risk was much more for the survival of the organization. Of course, if you were part and parcel of that, you could run into trouble yourself. You could be prosecuted. You could be put under certain civil restrictions. But in the sixties and the seventies, the bans were much more of organizations than individuals.

[END TAPE ONE, SIDE ONE; BEGIN TAPE ONE, SIDE TWO]

Q: In terms, again, of insulating and protecting the organization, was Carnegie helpful in that regard, the fact that they had done the Poor White Study? Their history, their name, any of that of any use, practical use, in your opinion?

Chaskalson: I don't think so. I didn't see it that way at all. I suppose the source of funding must have had some importance, but in those days, you know, Ford Foundation was regarded as a subversive organization by the South African government. At one stage some of the people from Ford had difficulty in getting into the country, and they were one of the initial funders of the organization. I think the fact that funding came from the United States of America and not Eastern Europe might have been of some moment, in the sense that it wasn't seen as a direct Communist plot; it was seen as an indirect Communist plot, using left-leaning people in the United States, who were really either surrogates or fellow travelers of the Communists to do their dirty work for them. But I don't think it was very important.

Q: But Carnegie had this history going back to the turn of the century. It had the --

Chaskalson: I really don't think that it mattered at all.

Q: Could we take a look at the goals of the Centre as it was envisioned? I'd like to ask you to comment about what was done in each of at least the three primary areas that I'm aware of. You may have others. But the first -- and this is not necessarily in order of import -- is

providing the free legal services to poor blacks. What steps did you take?

Chaskalson: Well, we always -- when we started, one of the things which we had in mind was that we should look for what I might in very broad terms describe as being impact work. In other words, that we would try to look to manage issues which would have an impact upon people beyond the particular clients that we were representing, so there was an attempt to identify issues of importance within the communities and to deal with them.

We also realized that there would be a large number of people who would need legal services, and it was important to get people to -- you know, as soon as people start asserting themselves and demanding rights at any level, it has a very important impact upon their own psyche, upon their own living, if they can do something. Nothing is worse than feeling absolutely helpless in a situation. And we realized that there were very many people who were being exploited commercially, who were being exploited at the workplace, and it was important to start generating, as it were, a culture of asserting yourself against powerful institutions.

So we, at the beginning, decided we would set up a clinic to which people could come off the street, and I think within six months we'd established that clinic at a small building near the Johannesburg railway station, called the Hope Street Law Clinic. We brought in students from the universities to work there, under the supervision of -- ultimately it was run by a man called Morris Zimmerman, who was the most remarkable man. He had formerly played rugby for South Africa. He was a man nearing retirement from his profession. He was in his sixties, seventies, and he was a remarkable man. And he ran



that clinic for some years before the clinic closed and we consolidated in one building. He then came across to the building when it was consolidated.

We also started looking for what I might call impact cases. One of the first areas of our work was the pass laws, which had the somewhat euphemistic name of influx control. Shortly after we had been established -- in fact, I hadn't yet moved out of my chambers -- we set up our offices. Geoff [Geoffrey] Budlender and Felicia were in the small offices which we had in a building close to where my chambers were, and I remember Geoff coming up to show me some papers he'd got from the Black Sash in Cape Town, dealing with the question of whether a wife got -- I think it was the wife had been prosecuted for living with her husband in Cape Town.

Q: Is this the Komani --

Chaskalson: Komani case. He showed me the papers and I read the judgment of the Cape court, and I looked at it, and they had argued in the Cape court that on a construction of the particular regulation, person only referred to a male person, not to a female person. I thought that argument was hopeless. I looked at it and I said, "Well, I don't think we've got any chance, but let's take the case on, because it will give us an idea of what room there is." And there were certain arguments which might possibly be advanced. I can't remember them now. I'd have to look at the papers again. I remember seeing that there were certain areas which we might try and get a feel of the appeal court and see where it was going.

We took it on, and then we started working on the case, and then we realized actually that

there was a totally different argument which hadn't been advanced in the Cape court at all, and that was that the regulation itself was invalid. So when we went on appeal, we challenged the validity of the regulation, not the interpretation of the regulation. And we won. It was really quite a remarkable case, I remember.

What I remember about it was that going into court for the first hour and a quarter, the then-Chief Justice Rumpff, he didn't keep quiet for the first hour and a quarter. He was asking a series of hostile and angry -- not completely angry, but very hostile questions.

What was so remarkable about the case was that when our opponent stood up to argue, he asked them a question which was at the heart of our argument, which they couldn't answer, and he just turned on them. Really, he then dealt with them almost as he had dealt with me. When we left court, I thought we were going to win, which we did. We won the case, and that had a profound impact upon the Legal Resources Centre and led to a series of other cases.

We also -- it was very interesting at that time. Benjamin Pogrand, who was then the deputy editor of the *Rand Daily Mail*, was a good friend of ours. He knew about the case and we talked about it. He planned ahead. He started running articles about the case. He studied the case. When the judgment came out, the *Rand Daily Mail* gave tremendous publicity to the decision, its implications, and what it meant. There was a whole series of -- you know, it made a very, very big impact.

What happened following that was that the administration boards, which were really terrible institutions -- you're seeing Geoff Budlender later today. You should speak to Geoff

about it. He did a lot of that work around that. Really terrible. They were at the heart of apartheid. They were run by people who were ideologues committed to keeping South Africa white, which is a ridiculous statement if you think of it, because ninety percent or eighty percent of the people in South Africa are black. But they didn't uphold the judgment, and we had to go to court. A series of applications were being brought to court on behalf of people who were entitled to protection under the judgment, who weren't getting it.

Then we moved from there into the next stage of what was really a litigation campaign, because we realized that the second stage of it -- the implication of it, the government didn't interfere with the law, and I think the only reason it didn't was that it had launched -- it was one of the reasons why there was actually a little bit of space at that time for the Legal Resources Centre -- is that it had launched a campaign to try and cast itself as a reformist government in the late seventies. P.W. [Pieter W.] Botha was the President, but he was trying to suggest that the government was going to change some of its labor laws, it was going to change some of its policies, it was not going to be as harsh as it had been in the past.

I think, actually, to go back and to, as it were, strengthen the past laws, make them harsher than they had been, was contrary to the image which it was producing. It also would have had quite serious social consequences which they were reluctant to encounter, and they didn't interfere with the law, which was one of the first times that that had happened. Usually when you won a case dealing with a matter like that, in the next session of Parliament the law would be changed.

And as there was no constitution then, there was no way of challenging the law. You could challenge regulations, because there was subordinate legislation that had to be made in terms of a statute. There were certain controls over regulations which you could challenge. But a statute of Parliament couldn't be challenged. And so when everyone found spaces in the law, the response of government had been to change the law by statute. But this time they didn't do it.

We then embarked upon a campaign with the Black Sash to deal with another aspect of the pass laws, and that was the question of permanent residence. The laws, as they stood at that time, allowed people who were born in the city and who had lived in the city continuously to remain in the city, but if you weren't born in the city and you were born in a rural area, you could only enter the city for the purposes of work and for the purposes of being there for more than forty-eight hours if you had a job.

So, basically, black people living in rural areas -- and at that time I would say probably sixty to seventy percent of the black people lived in rural areas -- had to function as migrant laborers and leave -- only men were allowed into the city, and women and children were left in the homelands. And the men were only allowed legally into the city if they had a work permit. And if they were found in the city without a work permit, they would be prosecuted, sent to work on farms for two or three months as convicted prisoners, and then sent back to the homelands.

There were continual pass raids going on, looking for people without permits. Police would

just arrive, stop people in the street, say, "Where is your pass?" Look at it. If it didn't have the endorsement showing that you had a job, you would be arrested and taken to jail, sent off for a couple of months. They would raid homes. They'd go into the domestic quarters of people's homes, looking to see who was in the domestic quarters. If you didn't have the right documentation, you'd be arrested. Very often you'd be arrested even if you did have the right documentation. But leave that aside for a moment.

One of the bases upon which you were entitled to get what would amount to permanent residence rights is if you had worked continuously for one employer in the city. So if you'd worked ten years continuously for one employer, you then got what amounted to residence rights. What the administration boards did -- I can't remember when they started the policy, but I think it must have been sometime in the sixties or the early seventies -- they would only allow people to come into the cities on a one-year contract. And you would work for one year, and at the end of the one year, you had to go back to the homeland. And you would then have to enter into a new contract for another year. And so it was a series of separate contracts.

But commerce and industry found that very disturbing to them because they would train people, they wanted the same person back, because you couldn't train a person for a job and then only have that person for about a year, so they had a system whereby the employer could indicate that the employer wished to reemploy the person. And the person would then go back to their homeland, would have to stay there for a certain period of time, usually during the annual leave, three to four weeks, and then with the certificate from the employer to say that the employer wished to reemploy, a new twelve-month contract would

be entered into, and the employee would come back again.

And because the labor market was so rigid, because people really had no freedom to seek employment, and because the jobs were very valuable, people stayed in the same job for very long periods of time, even if the employment conditions were deplorable, because they couldn't really move into another job. They had no residence rights in the town, no legal right to be in the town. They were tied to the particular employer, and if they lost that job, they lost their living. So they had to stay with the employer.

What we decided to do was to challenge the proposition that ten separate contracts didn't give you residence rights, and that was our next case. We spent some time looking for the correct facts. We wouldn't take on the case until we had the best set of facts that we could possibly have. I remember Charles Nupen, who was working at the Legal Resources Centre, kept bringing cases to me, and I'd say, "No, we'll wait. You'll find a better case."

Ultimately we found what we thought was a really good set of facts, and we went ahead with that case and we won it in the High Court, which was then in Johannesburg, on the basis that in substance there had been continuous employment and the breaks were totally artificial. We won it again in the appeal court in Bloemfontein. We won five-null there. We won Komani five-null on the appeal. And this one we won in all the courts.

Now, this had actually a profound effect on the whole influx control system, because people have -- they now have residence rights. And having done that, they are now free to look for another job. And they were no longer -- slavery is an illusive concept, an emotional concept,

but, in fact, the workers were really tied to a particular employer.

Q: Could the government then use the Group Areas Act in some way to still maintain the racial barrier in the urban areas?

Chaskalson: Group Areas Act was something quite different. Group Areas Act was to do with where you lived. You were allowed to -- Group Areas Act always had exemptions in favor of employees. If the business was in a white area, designed for white under the Group Areas Act, a bona fide employee could go and work in the white area. Otherwise, the white businesses couldn't function. But what this now meant was that whereas previously the idea was that everybody who lived in the -- all blacks in the cities were temporary sojourners who could be moved at any time, and what now happened was a huge class of persons were now getting what amounted to permanent residence rights, and that really did trouble the government enormously.

And there were huge debates going on and a suggestion that the law was going to be changed. They did modify it very slightly at that stage, but they didn't do anything to undermine the case, which was a case of Rikhoto, and that had a profound impact.

And in the following year, we took a case where people had had long breaks. Somebody had gone back to the homelands and stayed away for more than a month, had had interruptions of three months, two months, seven weeks, eight weeks, all for good reasons. And we won that one, too. And once that had happened, the whole influx control system became very, very difficult to administer, because if you looked at it historically, people who got jobs

remained in jobs for the reasons that I've said, and because the period of time had now gone from ten -- large -- there were hundreds of thousands, if not millions of people who had been in the same job for more than ten years.

And I think that that was certainly one of the reasons which led to the whole collapse of the influx control system, the pass law system. It would be quite wrong to say that it was the only reason. It certainly wasn't. There were all sorts of different pressures at work at the time. But the fact that the law now had become very unworkable and then the government had then to face it, a situation of devising a totally new system at a time of what was considerable public disturbance going on. There was the rise of the United Democratic Front, the rise of resistance within South Africa. The eighties were very crucial. The collapse of the system, at that stage, would have been -- the consequences, the social consequences of attempting to put in place a new law would have been profound, and they didn't and, ultimately, their appeal to pass laws.

So that whole litigation strategy which lasted for some years and there were other aspects of which we were part of groups. All the human rights lawyers had met, decided one day that we must now defend all the cases that were going on in the magistrate's court. They had commissioner's court. People used to come in on pass charges, and they would be given -- like a sausage machine. They'd walk in, and the charge would be read, and the mayor would say, "Guilty or not guilty?" And the interpreter would usually tell them to plead guilty. Of course, everything was usually done in Afrikaans, actually, in those courts, and it was all interpreted. And the people would be sentenced.



Then teams of lawyers started going in, saying, "We're appearing for this person," and the whole system stopped, because you couldn't run a proper trial. You'd have to call a witness. They didn't have the witness, usually. The witness would have to be cross-examined. You'd have to prove certain things which they couldn't prove. Instead of being able to process hundreds of people in a day, they could do four or five. Started disrupting the courts. And there were different strategies which were being pursued. Also the union movement was growing much stronger at that time. And I think that there were lots of pressures from various regions which were putting pressure on the government to let the pass laws go, and ultimately they went. But I have no doubt that the litigation played a very important role. How you would evaluate that in retrospect, it's difficult to say. You really need to get into government, get government people, people who are inside of government to find out what they see as being the important factors there.

Q: Two quick points of clarification while the Air Force passes over us. You mentioned the Black Sash, and I'm not certain that the audience for this tape would know who you're referring to.

Chaskalson: The Black Sash was a community organization consisting then largely of white women who had established themselves at the time of a constitutional dispute which, when the -- it's quite a complicated story, but it was really at the time of a constitutional dispute when the validity of certain legislation was being challenged in the courts in the 1950s, where there were certain people who were the so-called colored people of the Cape had limited franchise rights, and those were taken away, and it was said to be contrary to the constitution, of an entrenched clause in the South Africa Act, which said that that could

only be done with a majority of two-thirds of the Parliament, of both houses of Parliament, and that hadn't been achieved.

The Black Sash were formed as a protest against that, and they remained in existence for many years, becoming more and more radical and taking up positions, actively involved in being of assistance to victims of apartheid, particularly poor people amongst the black community. They did an enormous amount of work with black communities, particularly people who were affected by the pass laws. And so they were a source from which we derived work, and they were the people who provided some of the cases which we dealt with.

Q: The other thing I wanted to ask, when you were first describing the Komani case, I think I actually spoke over you. Could you name the case again without my interrupting, and explain what was at the heart of the matter again? The black worker who -- there was a suit because -- he brought suit because the law barred his wife from living with him, wasn't that it?

Chaskalson: Yes.

Q: So if you could just set the stage for the discussion that followed again, because I think I interrupted you.

Chaskalson: Well, the Komani case was one which concerned the validity of what was known as a location regulation, which made provision for a wife to visit her husband for a

limited period of time, and you needed to have a location regulation permit to get in, into the location. And if a wife stayed longer than the proscribed period, that became a criminal offense.

The question at issue was whether that regulation which was applied against wives -- it was a regulation dealing with visitors generally -- but whether that regulation which was used to prevent families establishing themselves. You had to be a visitor, and you were a visitor for a certain period of time. You couldn't live together longer than that period of time, and you needed the permit, and a location superintendent was the only person who could give you the permit. That was the issue. Prosecution was really -- it became a civil case because the validity of the permit was challenged and of the action of the location superintendent was put in issue. And it ended, finally, with a challenge to the validity of the regulation.

Q: So initially you challenged the fairness of its application?

Chaskalson: No. In the Cape court, we didn't appear; a private attorney had appeared. And they had challenged the interpretation of the legislation, and they failed because the regulation, certainly I thought when I looked at the papers, applied to Mrs. Komani. You couldn't really interpret it in a way that it didn't. What we did was we challenged the validity of the regulation, which we were entitled to do because it was a piece of subordinate legislation, which has to comply with certain requirements.

Q: I see. It sounds like you took particular satisfaction in helping to derail the pass laws

and the influx control, but were there other cases that you remember, other work in which you took particular satisfaction?

Chaskalson: Oh, yes. You know, what happened was that as we worked with community organizations, we always related to organizations, because it seemed to us that once a decision were given or a litigation strategy were devised, it was important that it would go back into the community where people would be able to take advantage of what the outcome was, if it was a favorable outcome. So we always had links with community organizations.

If one were to read the reports, the annual reports of the Legal Resources Centre over the period it was started -- we started functioning in January of 1979. If you look at the annual reports each year from then on, you'll see a shift in the work as issues become of more and more importance to the community.

We were engaged -- we were one of the groups who went in and did a lot of work in the labor courts in the early stages of the labor law, developing fair labor practices, and helped in a way to set the law. We did the first big strike case where the mine workers struck against the -- they had a national mine workers' strike, and the question was whether the workers who had taken part in the strike would be dismissed or not. And we won that case, and we won it in the Labor Court and then we won it again when they went on appeal.

We were involved in campaigns dealing with the Group Areas Act. John Dugard will speak to you about one particular case which he took to the appeal court, without success in the

appeal court, but which attracted a great deal of public attention. But again it was part of a group which had been set up, a community group had been set up known as Act Stop, and we had played a part, the Legal Resources Centre, actually helping to set up Act Stop, because there was no purpose in doing individual Group Areas Act unless there was a cohesive organization behind it.

And then there was a campaign to start running defenses to stop Group Areas Act prosecutions, and again a team of lawyers went into court. What the prosecution authorities thought they would dispose of very quickly in a short space of time turned out to be absolutely impossible. Of course, they'd set down about ten or fifteen cases for one day, and they were going to do them one day after another. On the very first day they discovered that there were lawyers in each one of the courts, and the witnesses wanted in court one couldn't go to court two because it was a Group Areas Act inspector. The lawyers were taking points. Ultimately somebody took a point challenging the validity of some regulation. That stopped all the prosecutions.

And then finally, Judge [Richard] Goldstone, who actually sits with us on the Constitutional Court now, gave a judgment in which he said that an order of eviction in a Group Areas case should not be made without an inquiry as to whether there was alternative accommodation for the persons concerned. That had a huge impact, because, in fact, there was no alternative accommodation. The reason the Group Areas Act was breaking down was because the living areas -- you know the segregation of black, colored, Indian, white. The Group Areas Act mainly implicated coloreds and Indians, whose living conditions were controlled. Whites, you know, had all the best areas. The coloreds and

Indians were kept in colored and Indian -- I forgot -- townships, they were called. And they were grossly overcrowded. People simply couldn't live there. I mean, families -- people with enough money to pay for rents in houses didn't have the land or the accommodation to live.

So just through sheer pressure, they burst out of these areas and started living in parts of Johannesburg. Hillbrow was the first place they went. And by the time that this campaign started, about half of Hillbrow had become colored and Indian simply because people had moved there. There was just -- they had no choice. When they couldn't actually get the eviction orders, more and more people were moving in. And when Judge Goldstone gave the order saying you can't get an eviction order without an inquiry into alternative accommodation, that also collapsed, and, de facto, Hillbrow became a colored and Indian area.

[END TAPE ONE, SIDE TWO; BEGIN TAPE TWO, SIDE ONE]

Q: I wanted to ask you about empowerment in terms of training black lawyers or giving them an opportunity through the clinics to gain experience, basically, that would have been difficult under normal circumstances.

Chaskalson: Yes. Well, one of the early projects which we established was something we called a fellowship program. I'm not sure why we used the word fellowship. But it started on the basis that we would look for people coming out of law schools to spend a year working at the Legal Resources Centre. Now, at that time, to become an attorney, as

opposed to becoming an advocate, to become an attorney you had to serve articles of clerkship, which is really a form of apprenticeship, with a practicing attorney for two years.

For a series of complicated reasons, the attorneys who worked at the Legal Resources Centre didn't qualify as principals for taking on article clerks. It was a very complicated issue. I don't want to go into it. But it's one of the ways the Legal Resources Centre was able to establish itself and to have advocates and attorneys working together, which was -- had never happened in South Africa before and still doesn't happen, was because of a series of structural -- structures which we put in place and a funny meaning to be given to the word practice in the legal -- in the attorney's act. We said, "Practice means practice for award. We're not going to practice for award. Therefore, the attorneys who work here are not practicing attorneys. Since they're not practicing attorneys, there's no obstacle to them working with advocates. And as long as you, at the Law Society, and you, the Bar Council, agree to this, there's no legal obstacle to it." And they agreed.

And so -- but that meant that the attorneys that worked for the Legal Resources Centre weren't practicing attorneys. Since they weren't practicing attorneys, they couldn't take on article clerks. So we couldn't article people. But what we did do is we started a training program which was to try and perform a bridge from -- a lot of black law students were coming out of universities with very bad education. To try and provide a bridge from the background of education into what would be a much more demanding task in legal practice, and at the same time to offer training and interest in what we were doing at the Legal Resources Centre, show younger people what law could do to change society, and also use our influence within certain firms to try and find people positions as article clerks. And

that's how the program started.

And over a period of time it grew, as our offices grew, where we started with one office in Johannesburg, we then moved to a second office in Durban. And by the mid eighties, we had six offices. We had started with, as I told you, originally with about four people. By the mid eighties, we had fifty staff attorneys and over a hundred employees, six officers. It had become actually quite an important legal organization and had quite a bit impact on law in the country.

And at each office we started taking on fellows. By the mid eighties, the law society changed its regulations and allowed us to take on article clerks, so the Centre could then take on article clerks and give people articles, either to spend the entire two years with the Legal Resources Centre, but more preferably to spend a year and then to move on to another firm.

Now I think over the period of time that -- gosh, I'm sure between two and three hundred young lawyers have passed through the Legal Resources Centre since it was established in 1978. The overwhelming majority of the people in that program have been black. It's run as a nonracial program, but simply because the goal was a nonracial society and it was felt that there should always be some whites in the fellowship program. But if you look at it, I would say about eighty to ninety percent of the people who've been through the fellowship program have been black.

And it's also been a gender-balanced program as well. We're sensitive to try to bring in as



many women as possible, because, again, women were disadvantaged within the legal community, which was heavily dominated by white men. That program has been tremendously successful. I don't have the exact figures, but it would be terribly interesting to see where the people who have gone through the fellowship program are today. I know that a large number of them are now judges. Certainly as far as the Legal Resources Centre itself is concerned, people who've either been staff lawyers of the Legal Resources Centre or have been in the fellowship program, there are today sixteen, seventeen people who have been judges or acting judges, who were either LRC staff lawyers or LRC fellows.

Two LRC lawyers sit on the Constitutional Court, which is the highest court in the country. The president of the Land Claims Court, Fikile Bam, was an LRC lawyer. The past president of the Labor Court, Sandile Ngcobo, was an LRC lawyer. He's now on the Constitutional Court. He's been succeeded now by an acting judge president as head of that court, Ray Zondo, who was an LRC fellow.

They are all over the place and they have done extraordinarily well. I think it's been one of the great successes of the LRC, introducing people, bringing them into an environment at that stage which was hostile. Things have changed quite extraordinarily in this country. You can't imagine what it was like ten years ago and longer, coming here now.

Q: Did you find yourself imagining that at times, or were you just too engaged in the work? Did you think you'd see this measure of change in your lifetime?

Chaskalson: Well, you know, you've got to ask at different times, because this has been a

society which has been subjected to such profound political changes over periods of time. I certainly -- I always thought that apartheid would collapse, because it seemed to me, just looking at it, it was quite impossible for ten percent of the people to impose their will on the rest of the community, and that if you had to rule by force, you'd get more and more repressive, as they did, until ultimately the thing would just fall apart. That it would end the way it did end, I think surprised most people.

I'll give you an example of myself. In 1989, I was at a conference in Europe, and I was speaking and I described apartheid. The emergency was still in force, but there were signs of the whole structure collapsing at that stage because of the internal contradictions within it and because of the pressures under which it was functioning. And after I'd finished describing exactly how it worked, what the legal structures were, what methods were used to keep it in place, the repression, the emergency, and everything, I said, "But it's not going to last, and change is going to come, and it will come much sooner than some of us think." That was in June 1989. And afterwards a lot of people came up to me and said, "It's hopeless. You know, that's that. It's not going to change." I said, "No, it can't continue like this for very much longer."

But the day that [F.W.] de Klerk made the speech, I was at the LRC office and somebody said to me, "De Klerk has said that he's going to unband the ANC."

I said, "No, that's nonsense." And I looked out and said, "Nobody's dancing in the streets. Everything's quiet. It can't possibly be correct. It's a rumor." And that reflected my mind. You know, it came as a very big surprise to me that it happened in February of 1990. That

it was going to collapse, it was inevitable, but I thought it would be a much more drawn-out -- it was a violent process. The emergency years were quite terrible, and there was an enormous amount of police violence and counterviolence during that time. It was a dreadful period in the history of the country. But I thought that it would come much more with the society running down slowly, with the infrastructure going slowly, with everything eroding until there was really very little left, and the thing would then fall apart and would have to be built from nothing. I was very surprised when the change came the way it did.

Q: In fact, when you were at that conference suggesting that it wouldn't last, the negotiations with Mandela were well under way.

Chaskalson: Yes.

Q: The back door.

Chaskalson: Yes.

Q: So let's get our funding -- our question about funders out of the way. But who funded your work and did they work together or did they work separately?

Chaskalson: Let's go back to the beginning. The initial core funding was provided by three foundations: it was the Carnegie Corporation, New York; Ford Foundation, and the Rockefeller Brothers Fund. My recollection is that Ford and Carnegie put in the same amount of money, which was the major part that Rockefeller Brothers, which is a smaller

foundation, put in less. They said that they wanted us to get some funding from South Africa, and we started off by approaching Anglo American [plc]. Went to see Mr. [Nicholas "Nicky" F.] Oppenheimer and we got together about -- you know, I bet you it was very small. I think our first year's operation expense was something like 180,000 rand. I think we had about 20,000 rand from South Africa. The balance came from the United States.

What happened was that the initial approaches -- Geoff Budlender was actually involved before me. He'll be able to tell you a bit more than I know. The first person I met was David Hood, at the dinner. The subsequent meetings I had with, very often -- certainly we had meetings with the funders together, with representatives of Ford, Carnegie, and Rockefeller Brothers together in South Africa, and subsequently we had meetings with them separately.

But the funding grew because the LRC grew, and as we started growing, we started going to look for more money. So, as I say, by 1990 I bet you it was over fifteen million rand, and we had large numbers of funders from different parts of the world. We had funding from America, funding from England, funding from the Scandinavian countries, funding from Germany, from different parts of Europe and from within South Africa itself.

So what I would say as far as Carnegie as a corporation was concerned, its great contribution towards what happened at the Legal Resources Centre was really the seed money that it put in and its early commitment to the Legal Resources Centre.

Alan [J.] Pifer, who became president of the Carnegie Corporation, always had an interest

in the Legal Resources Centre. He took a keen interest in it. David Hood, who was a project manager, left after a few years, and other people took his place. But Alan was the person who was very interested in the Legal Resources Centre, but Carnegie didn't remain funders for a very long period of time. I can't remember when they stopped being core funders. Ford carried on much longer than Carnegie Corporation did. I think Rockefeller Brothers Fund was probably the first to stop. Carnegie subsequently stopped being a core funder. Ford really carried on right the way through, and our funding base just grew. We just went out and looked for money.

Q: Did you deal with David [A.] Hamburg?

Chaskalson: Yes, I did deal with David Hamburg, but even at that stage, I think that Carnegie was starting to shift its interest much more into the scientific medical field and away from legal projects. But David Hamburg was always a very decent man, very supportive, and, I think, very interested.

But if you look at the annual reports of the Legal Resources Centre, you will see that over a period of time, whereas Carnegie's contribution towards our first budget must have been of the order of about thirty percent of the total budget, perhaps more, thirty to forty percent of the total budget. By the time it stopped being a core funder, its percentage had dropped to five percent, four percent.

I think one of the great things of the Legal Resources Centre was its ability to attract funders, and the fact that it could get such a huge and diverse funding base made it not

dependent upon one individual corporation. As I know, all foundations say theoretically what they should do is they should provide the seed money for a project, then move on to something else, which creates lots of problems for the project, because the project doesn't -- you get a good project going and if the funder says, "Well, now you've had the seed money. You must become self-sustaining," what might be a very good project might collapse for want of support.

But I think that the LRC, as far as Carnegie is concerned, would have probably made all its ideal requirements, that it helped start a new project, it was a major contributor towards it, it provided the seed money. The project took off and grew to be a very powerful project with, I think, a profound impact upon the society in which we function, and it gradually withdrew from it until the stage when it left there was this very viable and strong organization in place.

Q: Do you think that it moved away at the proper time?

Chaskalson: I can't answer that. As far as I was concerned at that time, any funder who left us was not the proper time for any funding to leave, from my point of view. [Laughter] The more money we had, the more work we could do. So I didn't enjoy seeing funders saying, "We're not going to continue."

Q: Perhaps we could get back now to some of the, again, work of the LRC, some of the areas that you raised, where important work was done, forced removals being the first.

Chaskalson: Yes. That was, I think, a very important area, because that was also at the heart of apartheid, was the relocation, was the moving of people away from the so-called white areas into homelands. And though it had been going on, it had always been the source of a great struggle. The process took time. It was done bit by bit. It wasn't done, as it were, that on one day every black person living in a white area had to be out of that area. It took time, and there were communities who resisted, some who resisted more than others, stayed longer. In the early eighties, we started working with communities who were facing forced removal. That's something you should speak to Geoff Budlender about.

One of the interesting things about the LRC is that there were certain areas of specialization, I might say human rights; land, which is terribly important in human rights; and labor. If you look where the young LRC lawyers are finished now, a lot of them are in very important structures in the present dispensation in land, labor, human rights, constitutionalism. And Geoff spent a great deal of time working on land. He's now Director General of Lands in the government, a senior civil servant in that position.

We started to devise strategies to help keep people on the land and to resist forced removal, and it involved an enormous amount of work, because one of the ways of getting people to move was to harass them, so that the move could be voluntary and there wouldn't be pictures of troops coming in at gun point to move people off the land. And so leaders were continually harassed in rural areas.

The farmers would -- the whole situation in rural areas was quite deplorable, and still in South Africa is bad. There are still parts of the rural areas, despite five years into a

democratic government, where whites are still effectively keeping blacks on their farms in the most appalling conditions and subjecting them to the most appalling treatment. But ten or twenty years ago, it was just unimaginably different. A lot of the work would be to support community leaders in those areas, to resist oppression, to start negotiating with structures in regard to keeping people on the land. And a very, very substantial part of our resources went into that, and again with quite remarkable success, because I don't think that any one of the communities to whose assistance we came or ultimately moved, they're now all on the land where they were at the time. I don't think any one of the communities whom we worked with over that period was ultimately moved off the land. Geoff will be able to give you some of the examples and some of the instances.

There was one particular case in Brits [in North West Province] where there was a case of attempting to get a community who were living in what was a black location which was very close to the white city, and that was not under the Group Areas Act, it was under the Urban Areas Act. And they wanted to move the black community away, because the white community was expanding and they didn't want blacks living next to them. And the community was expanding in the direction of the black township.

They tried to move the people. Now, the first thing that they did was they built another -- they built a new township about twenty or thirty kilometers away from the city, and they said, "This is going to be a marvelous township. It's going to have nice houses; it's going to have nice roads. Why don't you go and live there rather than this old place where you're living?"



And the people said, "No, we don't want to move. We've lived here all our lives." But more importantly, Brits was an industrial city. There was a great deal of unemployment, and people there, a motor trade had established itself there and there'd been a rundown on the motor trade, it was in recession. People said, "There are factories here. We can walk to the factory gate to see if there's employment. We don't want to travel twenty to thirty kilometers every day to try and find out if we can get a day's work."

"Don't worry," they said. "We will have very cheap transport. We won't charge you, you can go."

They said, "No, we're not moving. Once you've got us there, then you'll put up the bus fares and we won't be able to move. We've lived here. The rents are low. This is where we're going to stay." So they then started harassing the leaders. Geoff -- you should speak to Geoff. You have to defend a lot of people and get involved. It's the Oukasie. It's called Oukasie at Brits. They then devised a scheme whereby as soon as a house became vacant, they would knock it down. If a house became vacant because they had persuaded someone to go to the new township, they would demolish the house.

So I think our first of our court actions there was an order that the demolition was invalid, that the person next on the waiting list for a house should have got the house, that there should be an order to stop all demolitions and to start putting people on waiting lists into the house. And we won that case.

Then the next part of the -- what they then did was, following that -- and there were always

community groups to see that their people on waiting lists were moving into the houses, doing what was necessary. Then they said, "Well, we're going to stop providing services in the townships. There's going to be no water," going to be no this. Did that, and then they declared it an emergency camp under some very strange regulations, and they said, "Now that it's an emergency camp, we proclaim regulations," and they proclaimed regulations that actually would have made life actually unlivable. No visitors. Just about everything imaginable which would make it almost a prison camp.

So we went to court and we said, "Those regulations are invalid. It's not an emergency camp." And we won that one, too. Of course, they then said that -- the judge, who was a very conservative judge, in fact, said that wasn't an emergency camp. That's where people have lived all their lives and that that was their homes, and there was nothing emergency about it. That was their permanent place, and emergency legislation had nothing whatever to do with it. So that was knocked down.

The third thing that they did, ultimately they said, "We're now going to deproclaim the township so it no longer gives rise to these obligations." We then challenged the deproclamation, and this time we decided we'd do it by way of a court action, not by way of an application, which is a much quicker proceeding, and we alleged bad faith on the part of the minister, and a very complicated summons went out, which would take two or three years to get through the courts.

And ultimately I think that the case never really -- we engaged in correspondence. I can't remember whether we got to the stage of issuing the summons. Whatever happened is we

challenged the proclamation formally, and people just kept on living, and ultimately by 1990 they were still there and the whole thing fell away, and they're still living in Oukasie, which has now been upgraded.

There's tremendous support from communities, you see, not only from the community there, which was cohesive, but we also got a lot of support from foreign governments and from foreign institutions who started putting money in and establishing trusts and helping to upgrade Oukasie and doing things. And again, a lot of the work that we did we tied in with other funders, not funding the law, but funding the follow-through of the case, what happens after. Because once you've won a case, you've got to take advantage of that. Now, that's now the lawyer's job in the end. Other people must come in and do it.

But we had very good contacts with all the -- with many foreign governments. At that stage, foreign governments were starting to take a lot of interest in South Africa -- the European community, the United States government, USAID [United States Agency for International Development], a whole host of people with money to spend were willing to do things. They came in and they helped back up secondary projects and matters like that.

[END TAPE TWO, SIDE ONE; BEGIN TAPE TWO, SIDE TWO]

Q: It sounds like you sent the minister, in the case of that township, in your -- it sounds like you essentially sent him notice of how much work it was going to be, if he was going to pursue that to its ultimate --

Chaskalson: You have to come to court.

Q: When you say you have to come to court, and you say two years, he probably looked at that and just said -- I mean, that's another way of doing it.

Chaskalson: I don't think they understood people's -- you've got no idea of the -- when there was a political world to dominate, those sort of things didn't stand in their way. It was their political dynamic at the time. It was during the state of emergency.

Q: They had much more --

Chaskalson: Oh, the pressures on the government at that time were enormous, as were the pressures on individuals within our society. It was a terrible time. [Interruption]

Q: There really were several additional areas that you wanted to talk about, emergency being one of them. Should we do that next?

Chaskalson: Sure.

Q: I can't recall how you -- what was the point? I just have a note here -- emergency.

Chaskalson: All right. Well, round about the middle eighties, round about middle eighties, a state of emergency was declared in South Africa, and the effect of the state of emergency was that there could be, in effect, rule by decree. The police were given enormous powers.

The emergency regulations contained an indemnity clause which said that no act done by the police in good faith in the discharge of their duties could give rise to civil or criminal liability, and the onus of proving that the police had not acted in good faith was on anybody seeking to hold the police responsible.

And from then onwards, right up until the -- really right up until the speech of February 1990, we lived under a state of emergency where the police were a law unto themselves. People were arrested, they were held in detention, they were beaten. Police went wild through the black townships, throwing tear gas about. At any sign of dissent, people were beaten, tear gassed, arbitrarily taken off the streets and put into jails and held there without trial, because there were no trials under the emergency regulation. It was just detention.

There were a group of lawyers in Johannesburg, and subsequently this was replicated elsewhere, we would meet regularly at the Legal Resources Centre to discuss what could be done in the emergency. Some of the early tactics were to apply to court for the release of people who were being held as detainees on the grounds that their detention was illegal because the police didn't actually have grounds under the regulations. The regulations were continually tightened. We didn't have a great deal of success. We did get some people released.

Q: Was the group that you're referring to the Lawyers for Human Rights?

Chaskalson: No.

Q: That was a different organization?

Chaskalson: It's a different organization. It was just people who -- human rights lawyers. I mean, there would have been someone from Lawyers for Human Rights who was there, but I'm talking about a much bigger community. By that stage, there were large -- you know, when LRC and CALS started, there wasn't a big -- there were always individuals who had been willing to take on work, a small number within the profession, both in the advocate's profession and in the attorney's profession, but a lot of the younger people coming out of the law schools in the eighties were much more active, and there was a much more vibrant commitment to human rights work. I think one of the things that LRC and CALS did was to promote that. I think their successes attracted younger people who thought that you could do nothing to change society through law, into law, because they saw it as a very effective means of challenging society.

The big debate was whether you were giving credibility or there's so little you can do, you give credibility to it, you shouldn't participate in the structures. I never agreed with that at all. I always thought that to challenge power and to assert your own position as an individual was in itself a valuable and essential part of any struggle, and that so much could be achieved by doing that, and that as long as there were people who wanted you to do that, you should make your services available to them.

And the community organizations in South Africa, the unions, the political organizations while they were lawful, and even the surrogate groups which grew up -- surrogate in the

sense that they would have loose links with the ANC and others, would support the same ideals without necessarily being controlled or directed by them -- always believed that you could do something by using the law. I think that the effectiveness of the LRC and CALS was it drew a lot of younger people into that field in the eighties.

And we started meeting at the LRC to discuss what could be done about the emergencies, and we did an enormous amount of work there, because there was a great deal of illegal activity under the shadow of the emergency. It was very, very difficult work.

One of the, ultimately the thing that largely came to an end when I lost a case in the appeal court where the appeal court gave a very conservative judgment, in fact, in my client there was a former minister of justice, Mr. [Dullah] Omar, and the judgment in that case has been very severely criticized by academics at the time and since.

I think what one's got to understand is that there was networking. There were people at the law schools writing. There were younger and older lawyers getting more and more involved in practice, challenging structures through the law. So there were different areas. There were people who would write about law. There were people who would be speaking about it. There would be people who would be practicing it.

And law became a site of -- a form of struggle, a very different form of struggle. It wasn't -- it was a different form of resistance. You were resisting authority through the law, because it was all put in place by the law. Everything was a legal structure. And since it was put in place by the law, it had to be enforced by the law, and therefore the law became a site at

which you could challenge it, and even the big political cases in which the treason trials and the other trials usually became a case of the accused putting the government on trial and challenging government policy through the courts. A great deal of publicity would be attracted. The press would report on it. So the media must also come into this.

I think it's a very interesting -- the study of resistance in South Africa is tremendously interesting because of the complexity of it, how the people inside of the country -- I think they were the absolutely crucial part in the actual change in society. I think the external pressure which came from countries which -- the isolation of the government, the curtailment of investment, the boycotts played a very important role. The armed resistance, the symbolic resistance, and leadership outside who promoted all of this played a very important role, crucial. It all hung together, and you need to look at it all in this very big, much bigger context.

Q: I'd like to ask you about your work defending Nelson Mandela.

Chaskalson: That was a long time before the Legal Resources Centre ever came into existence.

Q: I realize that, but --

Chaskalson: That was in 1963, yes.

Q: What were the circumstances?



Chaskalson: That was a trial -- that was the Rivonia trial at which the leaders of the African National Congress were put on trial for engaging in the armed struggle. I mean, that was the time when the armed struggle was launched. The armed struggle started in 1961. Before 1961, protest action had been peaceful -- engaged strikes, passive resistance, everything outside of violence that you could think of. In 1961, decision was taken to change to include violence, the armed struggle, as part of the resistance, and there were early attacks on -- they were largely symbolic, blowing up pylons, blowing up government buildings at night at times when people wouldn't be there. The policy was that the violence wouldn't involve loss of life or injury to persons. So symbols of government were attacked.

But there were plans being made, people leaving the country to go to military training, and preparations were being made for an uprising as part of a strategy. And that was what the trial was about. Mr. Mandela was the first accused, Mr. [Walter Max Ulyate] Sisulu was the second accused, and Mr. Govan Mbeki, the father of our present President, was the third accused. There were nine, ten accused in all, but those were the three principal persons.

None of them ever -- in that case, none of them ever denied that they were members of the ANC, that it was an unlawful organization, that they were promoting the affairs of the ANC, and that they were part of a plan to turn to sabotage. And there was some dispute as to whether or not an agreement had been entered into to stage an actual armed revolt, but that was a peripheral dispute. The main allegations were never disputed by any of those three persons.

And the trial was essentially -- it lasted for almost a year. The trial was actually a defense of justification, which is no defense at all. Just a political defense. And it was an extraordinary case. I mean, Mr. Mandela -- the decision was taken that Mr. Mandela would make a statement from the dock. At that stage, you had a choice. You could make a statement from the dock, which would carry less weight for the purposes of a conviction than would the giving of evidence, because the statement would not be subject to cross-examination, because one of your rights was to make a statement.

The tactic decided was that Mr. Mandela would make a long, comprehensive statement which would create a document, and he spoke in court, I think for about five or six hours. It's an astonishing speech. I don't know whether you've ever had the opportunity of reading it, but it's a marvelous speech where he takes the whole history of oppression of his own life integrated with oppression, with resistance, with what apartheid has done, and finishes -- and everybody knew the case was about the death sentence -- finished it saying that, "I've struggled throughout my life against white domination, and I struggle against black domination," that he believes in the right of all to live together in one society, and he hopes to live to see that achieved, but if needs be, it's an ideal for which he is prepared to die. He sat down. A huge silence in the court. An extraordinary speech.

What's extraordinary about it is, of course, when twenty-nine years later, twenty-seven years later, when he came out of jail, he did exactly what he said he was going to do twenty-seven years previously. He just moved on from there, trying, as he said, struggling against both white -- struggling for reconciliation, struggling for rights of all. It's an astonishing

episode.

Then the other, Sisulu, was the next witness, and he went in and he gave evidence. He cross-examined on everything that Mr. Mandela had said. [Laughter] But since Mr. Mandela's defense wasn't, I didn't do it. It didn't matter whether he was cross-examined or not. A marvelous document had been produced. And I think part of lawyering is actually the whole strategy of how you present your case, what you do, how you put it on paper, what letters you write, what they sound like when they're read out in court, everything like that.

Q: And so your role is to help provide that counsel throughout the process.

Chaskalson: Yes. I think what's very important as far as lawyers are concerned is they mustn't take over this type of dispute. I think where a dispute is essentially political or social in its origins, lawyers tend to take things over, and I think it's quite wrong in that field.

Q: Did you find that Mandela knew his own mind -- [Interruption] Did you find that your client in this case had a sense of his own of how to conduct, how he wanted to conduct this?

Chaskalson: Look. My sense is that clients always have a very good idea of what they think. What the lawyer's job is to do is to put the options, to discuss strategy and tactics, and let the client decide. And all decisions in this case were taken by all the accused together, with the lawyers. There was no decision which was ever taken unilaterally by one

person.

Q: Was it a difficult decision to decide upon the statement?

Chaskalson: I don't think so. I think that once it had been discussed and it had been put out and we had realized that that was a choice, everybody saw immediately what the value of that would be, because it's very different to actually to be able to have one document. As soon as you have questions and answers and interruptions and rulings and objections, you lose the thread. And this wasn't an ordinary case. I mean, this was a political trial, so the defense was a political defense. And I have no doubt that it was a very effective statement and it had a profound effect at the time. It was published and was used later extensively outside of the country, but at the time it had a huge impact.

Q: Getting back to and closing with the LRC, in the over twenty years, now, or in the twenty years since its founding, has its role changed? Has the introduction of the new constitution changed the work of the LRC?

Chaskalson: Well, obviously its role does change. Its role, if you look at its day-to-day activities and what it's doing, must necessarily change because society is changing. Even if you look at it under apartheid, if you follow the course of the LRC through its reports, you'll see as certain issues started to become more prominent as a site of resistance, so the LRC found itself being pulled more in that direction, because it was client-driven. It suggested strategies, it thought about strategies, put it to client communities, but in the end it was up to the communities to decide what they want to do, and where the pressure was greatest

would be where they would turn for assistance.

And so I think the role is different in this sense, is that this society is so different that you can't really talk about the role being the same. At that time the use of law was part and parcel of a struggle against an unjust society. Today the use of law is part and parcel of a struggle within an entirely new framework to make it -- I don't want to say to make it a just society, because I don't want to suggest that the society is unjust. Structurally our society is a just society. We have a marvelous constitution. We have in place every structure which would make for an open, transparent, and democratic society, but the legacy of apartheid is enormous. It hangs over the country, and you can see it. You're in a white area now. You can't pretend you're not. Blacks who have access to it -- it's like the famous statement that the Ritz Hotel is open to all, including those who have to sleep under the bridge at the Seine.

Theoretically, the apartheid structures have gone. They're not there anymore. But the society created by apartheid is still there. The distribution of wealth hasn't changed.

Overnight when apartheid laws were repealed, people who didn't have a home and didn't have a job didn't the next day wake up with a nice three-roomed house and a job and a family and a car and a television set and a stove and everything. It remained exactly the same.

And so lawyering now is to make use of these structures which exist -- the constitution, the legislation, the powers that people have. There are structures on the ground now of empowerment which can be claimed, and I think the LRC's role now is to use those

structures. I haven't been part of the LRC since I was appointed to the court, which was in 1994, so it's five years now since I haven't been part of it, but I still read the LRC reports and I still keep in touch with people at the LRC, in the sense that they appear in court from time to time and I see them there. One of my very good friends, George Bizos, is still at the LRC. I see him quite regularly.

But I think lawyering is different. But if you ask whether the substance has changed, I don't think the substance has changed in the sense that the idea of the lawyering is to use the law to advance the interests of oppressed, marginalized communities. Under apartheid it had a very specific paradigm within which it functioned. That has changed totally, but the role of using law to assist the downtrodden and the marginalized is still there. It's a question of definition.

Q: Is there something that you would like to add before we conclude?

Chaskalson: Well, I think, to me, looking back on it is the quite remarkable people who worked there. They were of quite astonishing ability, and found their way into the LRC and came and worked and committed themselves to it. And I think the LRC has been a tremendous resource in a way, despite its smallness and relative size, that people from the LRC have been pulled out into different parts of government to do different -- I mentioned the number of people who have become judges, but there are people who have been picked out of the LRC to go elsewhere in different government structures partly because of their skills and their ability, partly because of their commitment, as shown over the period of the struggle, and partly because of who they were. They found themselves there because of

who they were. I think that that's one part of the LRC which is very, very important: the people it has helped to produce over the twenty years that it's been there.

I think the second thing is -- and I've touched on it before, but it seems to me that it's had a -- quite a profound impact upon the culture of the law. You know, today the legal profession regards it -- holds it in very high regard. But, you know, nobody ever supported apartheid. If you come into South Africa, you'll find nobody who ever supported apartheid. It was one of those strange things which didn't really have any support and withered away on its own accord one day in 1990, just like nobody was ever a Nazi in Germany.

I think attitudes here are so different now to what they were then. I think the LRC, I think, counts. I think all the law projects had a very profound impact upon what law was about, how law could be used in society, to change society. I think that's important, and I think that has survived.

I think the other thing about LRC is it really did involve people in thinking about their rights. I mentioned it earlier, but to me it's absolutely crucial that people claim the rights that they have and that people stand up to the abuse of power. And if you claim your rights and you stand up to the abuse of power, you change your own society. And I think the LRC gave people the opportunity to do that, but the people who were really the brave people were the people who came to the LRC to ask for that to be done, because they were the people who were being victimized. They were the people who ran the repercussions if something went wrong. I think if you're looking at the story of the LRC, the client communities were the real heroes of the whole story.

And I think, in closing, and it's really not a matter for closure, but I should really mention it to you, and that was that there was one major case where the LRC in Cape Town became involved with litigation, suing the police for failing to do their duty to prevent the destructions of homes of a community in Cape Town which is known as the KTC community, where over a period of three days the entire community, an informal squatter settlement, was destroyed, where homes were smashed, people were killed, people were injured. The LRC sued the police, saying it was their job to stop it, that far from stopping it, they had connived it and they had stood by and they had protected the people who were attacking the squatter homes, to make sure that any resistance from the squatter side to the attack was cut back.

And it was a very long and terribly expensive case. We had to use lawyers in private practice, because it was just too much for us as an institution to take on ourselves. We didn't have the resources for it at the time. And we had to raise very substantial sums of money to run that case. It lasted for a year or two, until it ultimately settled -- a very, very substantial settlement was reached. I can't remember what the amounts involved were. A trust was set up.

During the course of that case, there were plans to ban the LRC, and they were quite far advanced. I didn't know that one of the things they had to do was to try and get rid of some of our trustees, because we talked earlier about the trustees, how difficult it would be. They put a lot of pressure on trustees, including some trustees who are now judges, to resign. Most of the people refused to resign, and that created quite an embarrassment for



the government, because it was difficult for them to ban an organization whose trustee was a judge.

The documentation became available during the Truth and Reconciliation [Commission] hearing on the KTC case, so it ties back to the point we discussed right at the beginning, was the careful structure. One of the people who actually came out at the request of Carnegie Corporation was a man called George Cooper, Professor George Cooper, who was then a law teacher at Columbia University, and who had been -- he came out and he subsequently wrote about this. He describes it as a heat shield, the structure, and he recommended it for use in some of the projects in other parts of the world. And it proved its value at this stage. The LRC would have been banned in the eighties but for it.

So I think you've got to see also the people who were willing to put their name behind it. They were willing to do that. They trusted the people in the LRC and they felt that what they were doing was valuable and useful. They put their name to it. They didn't come in day to day to do it, but they took on that responsibility and they saved us.

Q: It seems that when you're doing work of this kind, in this type of circumstance -- you tell me -- it feels like you're almost engaged year in, year out in racial reconciliation, in reconciliation. I mean, you're working with black colleagues, you're defending an unrepresented majority against a very determined regime, and you seem to prize the people that you've worked with, it's very clear. I mean, it must be very personal.

Chaskalson: Yes. Look. I think race in South Africa was a very central issue to the lives of

everybody who grew up here. You couldn't grow up in South Africa and not be aware of race. It separated people. It separated them not only economically; it separated them socially, culturally, in a whole variety of ways. White were advantaged, others were disadvantaged. And in your day-to-day relationship with people, there was always an embarrassment which comes from that.

I think one of the most -- for me, what was so -- you know, one of the things about working in community groups, working at a place like the Legal Resources Centre, is that you forget about race in a sense. You don't forget about it in regard to the bigger picture, but you cease to be aware of it in your day-to-day relationship with your clients and with your own colleagues. Actually there were times when people would say, "How many people are black?" You'd have to start saying, "One, two." You actually forget about it because it is really irrelevant. I think the fifteen--just over fifteen-- sixteen years that I was there, the LRC did more for me in my life than anything else that has happened. It was a great privilege to be part of it.

Q: I think we can stop on that note. Thank you for your time this morning. It's been incredibly enlightening.

Chaskalson: I'm just amazed at everything that goes into it.

Q: Of the scale of this operation?

Chaskalson: It's absolutely baffling to me.

[END OF INTERVIEW]