The child is not dead
not at Langa not at Nyanga
not at Orlando not at Sharpeville
not at the police station in Philippi
where he lies with a bullet through his brain
The child is the shadow of the soldiers
on guard with rifles saracens and batons
the child is present at all gatherings and law-giving . . .
the child peers through house windows and into the
hearts
of mothers
the child who wanted just to play in the sun at Nyanga
is everywhere
the child grown to a man treks all over Africa
the child grown to a giant travels through the whole
world

Without a pass

Translated by Jack Cope

ISIE MAISELS

'The only weapon we had was to fight by law, and we used every legal stratagem which we were entitled to do.'

Isie Maisels was born in Johannesburg in 1905, grew up in Fordsburg (a Johannesburg suburb) and was educated at Marist Brothers College and the University of the Witwatersrand. During the Second World War Maisels served as a major in the South African Air Force.

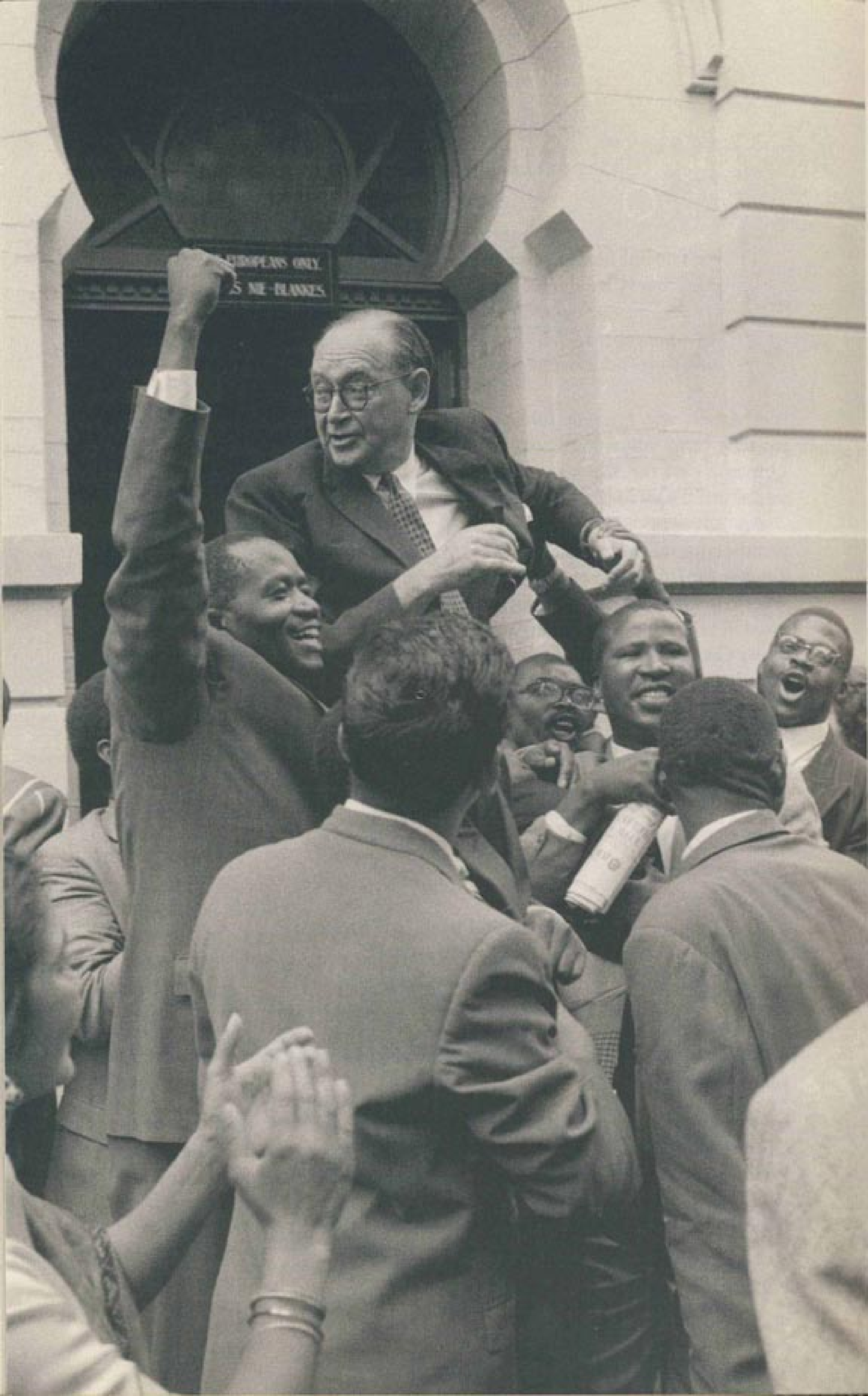
An advocate and an observant Jew, Maisels first achieved political prominence when he successfully led the defence team at the famous Treason Trial in 1957-61, where a large group of activists, including Nelson Mandela, were charged with plotting a communist takeover of the country. He also acted in other important cases, such as the Timol inquest, the David Pratt case, many Group Areas cases, and the Farm Prison Scheme case. He was a judge in Rhodesia for three years, as well as President of the Court of Appeal of Botswana-Lesotho-Swaziland. In the mid-1970s he represented the Zimbabwean ZANU-ZAPU parties at the negotiations at Victoria Falls. He was politically aligned with Helen Suzman and the anti-apartheid Progressive Party from its inception. He was 89 years old at the time of this interview, and shortly after giving it had a stroke from which he never recovered. Isie Maisels died on 8 December 1994.

Interviewed by Geoff Sifrin
7 October 1994
Johannesburg

Can you tell me something about your upbringing, your parents and the home life you grew up in.

I was brought up in an Orthodox Jewish home. We were members of the Great Synagogue. In fact my maternal grandfather was a member of the President Street shul of Dr Hertz.[1] I actually heard Dr Hertz preach as a little

1 Joseph Herman Hertz (1872-1946) was invited to South Africa by the Witwatersrand Hebrew Congregation in 1898. He was expelled by President Paul Kruger for expressing pro-British sympathy during the Boer War. In 1913 he was appointed Chief Rabbi of the British Empire.



boy. My father and grandfather were members of the Park Station shul and then they transferred to the Wolmarans Street shul. So I went to the Wolmarans Street shul. The first rabbi I recall was Chief Rabbi Dr Landau,[2] who had a great influence on my life. He, in fact, asked me to stand for the executive of the Great Synagogue, and I was the youngest member of the elders of the synagogue.

My father was born in Lithuania, my mother was born in Lodz [Poland] — the marriage was regarded as a form of 'marrying out' [laughter]. My father emigrated to South Africa in the early 1890s, from a little town called Pokroy, near Kovno. My grandparents came from there, although my grandmother always insisted she came from Kovno. My maternal grandparents came from Lodz.

When you say you came from an Orthodox religious background, what did this mean in terms of your value system, politics, etc?

Well, I can't remember my parents being interested in ordinary politics. The main interest was in rabbis and so on . . . it was fairly inward-looking, no question about that.

Do you think this inward-looking quality is something that is characteristic of the Jews, or was it just that time and context?

It's a very difficult question to answer. I think . . . the life was hard, and people had to make a living, and I think that that resulted in them being inward-looking. They really had no time to engage in outside affairs.

Would you say that Rabbi Landau was a mentor for you?

Certainly! He was a great man! A fiery preacher sometimes. My father would not let one word be said against any rabbi or person . . . you know, it's an old Jewish custom to criticise the rabbi . . . but my father wouldn't allow it, and I grew up in that atmosphere of respect. And the rabbi's son, Felix Landau, was one of my best friends. He became a judge in Israel.

2 Judah Leo Landau (1866-1942), Orthodox Chief Rabbi, Professor of Hebrew at Wits University, established the Johannesburg Beit Din (ecclesiastical court).

Left:
End of the Treason Trial in 1958. Isie Maisels, on the shoulders of supporters, reaches for his pipe. The woman clapping on the left is Amina Cachalia, and the man with glasses on the extreme right is Andrew Mlangeni. Note the 'Non-Europeans Only' sign just above Maisels's head (Photograph: Alf Kumalo)

What are the values that Rabbi Landau passed on to you?

It was a sort of general influence. I grew up with respect for Dr Landau before I was able to think for myself. My parents had a kosher home, although I went to a Catholic school, Marist Brothers. It was a very liberal Catholic school. The Jewish fellows had a wonderful time there. For instance, on erev Sukkot [the afternoon before Sukkot — Tabernacles — began] they got a half day off to go and have a bath, and so on . . .

I obtained a bursary which enabled me to go to university. In my student days at Wits I was a member of the committee of the Students' Jewish Association and the first chairman of the Students' Zionist Association. I was at Wits from 1923 to 1927.

I understand that you were also close to Chief Rabbi Louis Rabinowitz.[3]

Ah . . . he was a wonderful chap. He was a fearless and marvellous orator. I've never heard a better orator in my life. We were contemporaries, and he used to consult me. You see, my wife and I went to England in 1939 to the Great Synagogue in London, and a young man came in and delivered a marvellous sermon. So I said to the young man next to me, who is it? And he said, don't you know him . . . I go to hear his sermons every Friday night. His name was Rabinowitz, and I was partly responsible in bringing him to South Africa. He was an arrogant fellow in many ways, but he was courageous. For instance, he condemned the Bethal Jewish farmers [for maltreatment of their black farm workers] in his sermons in shul, and there was a helluva row.

Politically he was quite progressive, wasn't he?

Oh, very much so! I remember when the government passed some restrictive law, he took as a text for his sermon, 'They know not what they do'. He was a fearless opponent of restrictive legislation.

Can you tell me a bit about the Bethal farmers case in the 1950s which you handled, which concerned the abuse and assault of prison farm labourers by farmers.

It was not only the Jewish farmers. The non-Jewish farmers were also very much concerned with it. In fact, the applications we brought were against non-Jewish farmers. Potgieter and others. The attorney Joel Carlson briefed me. It was his life's work, he devoted himself night and day. George Bizos was my junior, and we were successful. They were compelled to release the labourers immediately. You know what the system was? A black would

3 Louis Rabinowitz: Orthodox Chief Rabbi from 1945 to 1961. See Ben Isaacson interview, pp 565-596.

walk in the park, and a policeman would ask him for his pass. He would say, I haven't got my pass, I'm engaged in dirty work and my pass is in the compound. So he was given an option — either to serve as a farm labourer, or to go to jail . . . and this was the scheme. They'd arrest a bloke on a pass offence, and send him to the farms to work. It was unbelievable!

The Jewish farmers' record wasn't very good in how they treated these farm prison labourers, was it? There were two Jewish farmers named Hirshowitz and Mann who were taken to court.

I don't remember the name Hirshowitz. The names I remember were Afrikaans. The Bethal Jewish farmers, however, were castigated by Rabinowitz . . . Hoo, boy! I remember he condemned them in the shul very strongly. And the first reaction of the Jewish farmers was to say they wouldn't give money to the IUA,[4] for Israel . . . Eventually the whole farm prison scheme was put to an end. There was a Jewish farmer by the name of Mann who was defended by a man named Morris Franks. It was a notorious case, somewhere out near Springs.

Do you think that politics has a place in the shul, that it's OK for a rabbi to make political statements in shul?

A complaint I have against certain rabbis is that they don't have an ethical basis for their sermons. I'm not saying all of them — for instance Chief Rabbi Harris [the current Chief Rabbi] is very good. Rabinowitz was very good. He was outstanding in this respect. Rabbi Casper, on the other hand, was a very nice chap, a gentlemanly fellow, but very rarely did he stress the ethical side of Jewish values . . .

Do you think the rabbis could have made a difference as to how the Jewish community might have behaved if they had stressed political issues more in the synagogue?

It's a very difficult question. I can only tell you that in our home on Friday night politics was a regular topic of conversation. I can't speak for anybody else . . . I'll tell you a funny story about Rabinowitz. It was either at the end of the war or during the war, and he delivered a marvellous sermon. The late Sonny Etlinger, who was on the Johannesburg Bar, had stood on the *bima* with me during the sermon . . . and when Rabinowitz had finished talking, Sonny said to me, 'Jesus Christ, this fellow can talk!' I repeated this to Rabinowitz at a lunch and he laughed like anything!

4 Israel United Appeal.

Do you think that in the light of the history of Jewish oppression in Europe, the pogroms, the Holocaust, etc, Jews have or should have greater sensitivity to oppression than other people?

Well, I have always said that the Jewish community is chameleon-like. It takes on the colour of its surroundings. If you get a fellow who grows up in Bethal, he will have a different mentality to the person here. I'm not saying it's always the case, but by and large they take on the colour of their surroundings.

You were once chairman of the Board. How do you feel about the criticism that has been levelled at the Board for being silent about apartheid?

For many years the Jewish Board of Deputies adopted a more or less neutral stand on apartheid, but for some years now they have adopted a more positive approach *vis-à-vis* the Africans. The Board really trod a very careful line, no doubt about it. I, for example, when I started defending Mandela and the others at the Treason Trial, I absented myself from the Board as a deliberate act.

Do you think the criticism of the Board is justified?

I think so. On the whole, they were open to the criticism.

What do you think are the reasons for the silence of the Board in those times?

Because they couldn't speak with one voice. There were National Party supporters and there were United Party supporters in it. And they said that everybody must think for himself.

So they were unable to come to a consensus on the issue of apartheid, and taking a position would have split the community.

Yes, it might have... I remember that David Mann,[5] after 'Jolly John' Vorster had made a visit to Israel [1976]... on his return, Mann made a very good speech at a banquet [held in Vorster's honour] saying that Vorster's visit was not a good thing.

On the same subject, how do you feel about the connection between Israel and the

5 David Mann was then president of the Jewish Board of Deputies. In his speech he said, 'I believe that there is a new sense of urgency abroad in our land, a realisation that we must move away as quickly and effectively as is practicable from discrimination based on race or colour...'

South African government through the years? As you know, Israel has been criticised by the liberation movements, and the left in general, for selling weapons to South Africa at a time when apartheid was in full swing. How do you feel about that?

It's absolute bloody nonsense! The United States and Great Britain and France, the champions of democracy ... [did exactly the same]. The state of Israel is fully entitled to deal with South Africa in every respect. I'm really very strong about that!

The criticism that is made is how could the Jewish state participate in any way whatsoever with the apartheid regime ...

Well ... first of all, when the state was established in 1948 the atmosphere was quite different, and Israel had representation in South Africa ... I'll tell you a story about what happened in the 1970s ... Dr Hilgard Muller, the South African foreign minister in those days — a highly civilised person — met me at a dinner party at his embassy, and after dinner he asked me if I would undertake an unofficial mission because he knew that I travelled often to Israel. They didn't want to embarrass Israel by demanding diplomatic representation, and he asked me to ask Golda Meir, the prime minister, whether Israel would accept diplomatic relations.[6] It was a very nice gesture from the South African government's point of view. So I saw her, and she said no. She said they can have a trade consul or something like that. But later the Israelis agreed to have diplomatic representation. It wasn't an easy thing.

So what you're saying is that you don't have any problem at all with the South African-Israel connection over the years?

Absolutely!

How would you answer the same question from Joe Slovo if he put it to you?

Joe Slovo is a bloody bastard! [Laughter] I know Joe Slovo, he's a friend of mine. I remember Joe Slovo making speeches which were pro-Egypt at a time when Israel was at war with Egypt. The state of Israel counted nothing to Joe! That whole crowd of them cared nothing for Israel ...

So you think that their basic anti-Zionism delegitimises any claim they might have had on Israel's behaviour? In other words, if you are so intrinsically anti-Israel,

6 In 1960 Israel broke off full diplomatic relations with South Africa and made a small financial contribution to the ANC. In response, the South African government temporarily blocked donations to Israel by South African Jews. Israel only resumed full diplomatic relations in 1974, when it found itself internationally isolated after the Yom Kippur War.

then you don't have any credibility as an objective critic of specific Israeli actions or policies.

Absolutely! Absolutely!

Where would you place yourself on the political spectrum in terms of your political philosophy?

When Helen Suzman and the others left the United Party and formed the Progressive Party I was in Rhodesia, as a judge, and the moment I came back I joined the Progressive Party. I've been with them all the way through. I had the privilege of presiding at many meetings with Helen Suzman and other members of the Progressive Party. I am a Helen Suzman person.

That means a Liberal with a capital 'L'?

Oh yes! The main reason why I left South Africa after the Treason Trial was because I could see it wasn't the sort of atmosphere I could live in — detention without trial, Sharpeville, the arrests of all sorts of people. So I decided that I would accept a judgeship in Rhodesia.

Why was Rhodesia any better . . . ?

Because in those days, under Whitehead's government, Rhodesia was quite a different story. We thought, I thought, that the federation of Rhodesia would lead to a more liberal life. I [found out I] was wrong, when Smith raised his head.

The reason I'm asking about your political philosophy is that in the Treason Trial you were defending people who were on the far left. Of course, this is what advocates do . . . there is no necessary connection between their political views and the people they are defending.

Yes. I was dubbed a communist for defending these people. One of the judges told me that a very senior civil servant said, 'Of course he's a communist.' It's a very interesting thing, if somebody defends a chap on a charge of murder, they don't think he's in favour of murder . . .

But if you defended communists, you automatically became a communist . . .

That's right.

The Treason Trial was one of the landmark events in South Africa's political and legal history. When you look back at it now, and your key role in it, how do you view it . . .?

It was very meaningful to me. It was substantially a victory for the legal system. The essence of the charges, overthrowing the state by violence, was just not something that could stand up in a court of law . . . However much we felt for the accused, we won the case on purely legal grounds. That was not to say that we weren't damn sorry for the people who were sitting there in court.

Vernon Berrange, who ran the defence in the preparatory examination for the Treason Trial . . . did it on political lines, bombs, sabotage and so on . . . I maintained that we would fight the case on legal grounds, that we had a completely legal defence, never mind about politics. And we were fortunately successful . . .

Your attitude was a purely legalistic one. Is that what you are saying?

Absolutely.

Hypothetically, if it had been a bunch of right-wing terrorists on trial and you had to defend them, would you have adopted the same approach?

It's a very difficult question to answer. Advocates work according to the 'cab-rank' system. You have to take the cases given to you. I was very worried myself in case some right-winger had a mental aberration, and would brief me . . . but I was never faced with that difficulty. So when I was given the Treason Trial, I embraced it with satisfaction.

I didn't lose sight of the actual plight of these people, in fact one of the first things I did in preparation for the trial was make a catalogue of every piece of discriminatory legislation against blacks, coloureds and Indians. And I cross-examined this fellow, Professor Murray, for many days.

[Keith Maisels, Isie's son, interjects: This is one of the most famous pieces of cross-examination . . . it has been used in textbooks and mentioned in a number of books. Professor Murray was a professor of political science at Cape Town University, a very right-leaning sort of person. He was brought forward by the state as an expert witness on communism, and during this cross-examination of Professor Murray, which didn't last very long, he was asked by my father to identify the authors of certain passages from various well-known writers, and he was unable to do so. Out of six passages he got five wrong. The last one he said was definitely a communist tract, was written by himself in a magazine called *Die Huisgenoot*. An article appeared about it in the *Spectator* or *Time* Magazine, called 'The Expert Witness'.]

So you totally destroyed his credibility in court.

Yes. They never referred to him in the judgment. They said what communism was, but they never said a word about his evidence.

And he was trying to correlate the Freedom Charter with communist literature?

Yes. Mandela was a very good witness. For example, he said, 'We're not asking for all the seats. Give us thirty. And in some years' time we'll ask you for some more — sixty.' He was a gradualist. They envisaged not taking over the country. There was a chap called Dr Conco, who said it doesn't matter if it takes years and years. Mandela has been to visit me recently, and has enquired many times about me after I had my accident. He is a marvellous chap. I have the greatest admiration for him. At the time of the Treason Trial he was one of the younger fellows. I established at that time a great rapport with Luthuli and Professor Matthews.

So you're saying that at that time the ANC was a very moderate organisation, and it was the actions of the South African government that radicalised them?

I'm sure. Instead of learning a lesson from the Treason Trial, they passed the laws about detention without trial, and so on. It became worse instead of better. More and more onerous laws.

Some people have compared the laws of apartheid to the laws of Nazi Germany. Piece by piece, there are several laws which are quite similar — the Immorality Act, the Group Areas Act, job reservation. How did you feel as a Jew, and as an advocate, operating within a legal system which had on its statute books laws which must have been to you utterly intolerable. How did you find it possible to function in such a system?

The only weapon we had was to fight by law, and we used every legal stratagem which we were entitled to do. Our fees were minimal. It was accepted principle that anybody who was acting in the Treason Trial had very low fees. Chaps like this marvellous fellow Rex Welsh, Bram Fischer of course, Sydney Kentridge, Chris Plewman. Outstanding fellows. I think it was the strongest defence team that had ever been put up in a South African court. We had to fight them with our legal weapons.

Does it make any sense to you to compare the Nazi system of laws with the apartheid system of laws?

The Holocaust comparison is so odious. I don't think it is correct to say that the treatment of the blacks or Indians or coloureds was the same as the treatment of the Jews in Europe . . . I don't think it was so extreme. You see,

there were a certain amount of liberties that were never lost here.

In these political trials there were often Jews acting for both sides. Percy Yutar comes to mind as prosecutor in the Rivonia Trial. How did it feel to you to be facing Jewish lawyers or advocates on the other side?

I've never had to face Percy Yutar in a political matter. I've had cases against him in ordinary prosecutions, and he has always behaved impeccably. I think he went a little overboard as prosecutor in the Rivonia Trial. Although he maintains that, since they were found guilty of treason, he saved them from the death penalty. That was told to me by a rabbi the other day . . . No, he went overboard in prosecuting these people, no question.

Why do you think he did that?

Because it's a case of *plus royaliste que le roi* — more royalist than the king! He was in love with this dreadful fellow 'leave-me-cold' Kruger [the minister of Justice Jimmy Kruger who said after the murder of Steve Biko, 'It leaves me cold']. He actually made a speech extolling Kruger as the best Justice minister he had ever come across.

Did you ever feel that as a Jew Yutar was breaking some sort of Jewish code of ethics by doing what he did?

I don't think I really thought of that. I know that Sydney Kentridge loathed him. But Sydney felt very strongly about certain matters with which I wasn't concerned.

Contrary to your 'legalistic' approach to fighting apartheid, there were other people who came to the conclusion that since the laws had become basically immoral, the only way to fight it was to go outside the legal system, to adopt armed struggle, as the ANC did. Given your perspective, how do you feel about that?

I can't say I blame them. Having exhausted all legal remedies, I can't say I blame them at all. After Mandela was acquitted in the first trial, they were driven to arms.

But I would not defend Albie Sachs for that reason — he said that he was in favour of detention without trial. Some of these MK people were sentenced without trial in the ANC camps, and there was a commission set up . . . Albie Sachs said that detention without trial is defensible. In fact Joe Slovo said this in parliament some time ago.

Given all that has happened historically, what do you think about our chances now of building a genuinely democratic South Africa, and what do you think about the

layer of leadership that has come to the fore?

I really don't know [the leadership too well]. I met Thabo Mbeki once, but I haven't any real knowledge of any of them apart from Joe Slovo who, incidentally, is appearing quite sensible. Joe is a very clever fellow. I'll tell you a story about him. You know, he passed standard six, and his parents couldn't afford to educate him further. He went to work for a firm called Sive Brothers and Karnovsky, druggists. He organised the first strike they ever had. And he waited for the Russians to join the Allies before he joined the army. There was a system that if a fellow joined the army and didn't write matric, the university allowed them to do an entrance examination to enter university. Joe Slovo had only passed standard six, and he went to see Professor Greig, and told him that he had read a lot during the war and so on, and finally Joe Slovo was allowed in, and he eventually won the Society of Advocates Prize, and I presented it to him. I think Joe is an honest fellow. Essentially an honest chap.

There are a number of Jews among the group of people who have come into power positions in the new government, in the upper echelons and in the lower levels as well. How do you account for that and what do you think of their role now and in the future?

Well, of course a lot of them were extreme leftists before — Ben Turok, for example, who was one of the treason trialists . . . I don't think they would change their colour . . . I don't know . . .

What do you think about Ronnie Kasrils?

I don't know him, but I think he's a bloody bastard! He was the chap who sent those people into the Ciskei . . . the Bisho thing . . .

What is your evaluation of South Africa's legal system at present?

We've been through affirmative action with the Nationalist government since 1948. The whites! Disgraceful appointments to the Bench, disgraceful appointments to the Civil Service! Absolutely! The Afrikaners have had affirmative action since 1948. And if the blacks now want affirmative action I can't blame them. It's a very undesirable thing, but I can't blame them.

How do you account for the fact that nevertheless the South African legal system survived relatively intact through the apartheid system?

Well, because some of these Afrikaans affirmative action fellows were

relatively honest. Most of them were essentially honest, even though they might not have been good lawyers or good judges. But some of them were decent fellows.

In general, what were your relationships like with members of the South African government?

The only person I met was Vorster, who I knew at the Bar, and Hilgard Muller, and I met this dreadful Ben Schoeman, and . . . I don't think I met any other cabinet minister. Oh yes, I acted for Pietie du Plessis,[7] and my lips are sealed . . .

Can you say something about the David Pratt case [David Pratt tried to assassinate Verwoerd at the Rand Show and Maisels defended him]?

My memory is that it was a very popular attempted assassination. The members of parliament said that it was Providence that saved him. Then the other lunatic did him in, Tsafendas. Verwoerd was the arch-apostle of apartheid. In general, I'm not in favour of removing statues and things, but I am in favour of removing statues of him. He was poison! You have to read his speeches. Unbelievable! I'll tell you a funny story. The attorney-general was a chap called Rein. I had to see him in connection with this case, because we were trying [a plea of] lunacy first. He said, I'll agree with you, provided you undertake that there will be no talk about Verwoerd being friendly with Pratt's wife. It was nonsense of course, a rumour.

I can also tell you that David Pratt had a nephew accompanying him to the Rand Show, and the nephew wrote a letter home from boarding school to his mother, and he said, on the way to see Uncle David, he met so-and-so and did so-and-so, and then he spent a day with Uncle David, and Uncle David shot Dr Verwoerd, and then he said he was getting on very well with his arithmetic, and so on . . . the great excitement of the day was that Uncle David had had a go at Verwoerd.

Can you also talk a little about the Ahmed Timol case? [Timol was the first political detainee to die in detention — he 'jumped/slipped/was pushed' out of a sixth-storey window of John Vorster Square, police headquarters.] You handled the inquest into the case.

George Bizos (my junior) and myself were very unhappy about the verdict in this case, which stated that he threw himself out of the window. There were several theories. One was that he was beaten up so that he escaped torture by jumping out voluntarily . . . I don't know. We were very unhappy about this

7 Pieter Theunis Christiaan du Plessis was elected MP for Lydenburg in 1970, and became minister of Manpower in 1983.

inquiry — the police were exonerated. There were also other cases which showed police brutality — there was another Indian case . . . I was very much involved in Group Areas matters. I acted for several Indian families. There was a chap called De Vos Hugo, who apparently during the war had a moustache like Hitler and brushed his hair the same way. He was the chairman of the Group Areas Board, and the very first matter he had was in Lydenburg, where the Mia family had a store that they had owned from before the Anglo-Boer War. [In terms of the Group Areas Act they were now being told to move.] So I went to see him. They had allotted a piece of ground for the Indians near a sewerage farm, and it was so bad that De Vos Hugo threw it out. I went to see him, and I said it's possible that Indians might move to other premises if they were very nice.

But then he was interviewed by the newspapers, after he became a judge in Kimberley, and he said that the Indians were going to be moved no matter what, thus pre-judging the matter before the case had been heard in court. So I applied to the court for him to recuse himself. My opponent was Pirow, who was the prosecuting counsel in the Treason Trial. I said to Pirow that I'm going to ask for evidence in this case. Pirow said, 'There won't be any evidence in this case — we're giving in. I'm sure to put that bloody fool in the witness box.'

I got on very well with Pirow. I remember that we started off the Treason Trial by applying for the recusal of a chap called Ludorf, and I addressed Judge Ludorf to request him to recuse himself, and the presiding judge called on Pirow. Pirow said 'I have nothing to say . . .' — which was an absolutely correct attitude. I had also been against him in a few other matters. He didn't work too hard . . .

How do you relate to communism today, now that the USSR has fallen, but given that a lot of the people who brought this country to where we are today were communists?

I am not a communist. I've read a bit of Marx. I had to read it. It couldn't work. All men are not equal. I am not a political scientist, but I think a communist system would be disastrous in this country.

You've had a long and intense relationship with Israel over the years. I see on your wall photographs of you with David Ben-Gurion, for example. What are your feelings about what is happening in Israel today?

I am very pro-Rabin. He is a first-class chap, a straight shooter, a no-nonsense fellow. He is a courageous fellow, to give Gaza and Jericho and eventually most of the West Bank. It's a very difficult question, especially the Golan Heights. I went there a week after the Six Day War. I've seen it. We might well be forced to have a referendum over it.

Over the years the ANC had very close relationships with the PLO, and Mandela is close to Arafat. How do you feel about that?

He had to be loyal to his supporters. Before he went to the USA he stopped in Libya and saw Gaddafi. The Americans tore him to pieces, but he was loyal to his supporters, and Arafat supported him as well. The past Israeli Ambassador, Alon Liel, has done a marvellous job in South Africa [building bridges to the ANC]. There was a bloody fool before him, Dov Ari, who made a speech to the Zionist conference attacking the ANC . . . bloody stupid fellow. I think Mandela will go to Israel, no question about it.

Do you foresee a strengthening of ties between Israel and South Africa?

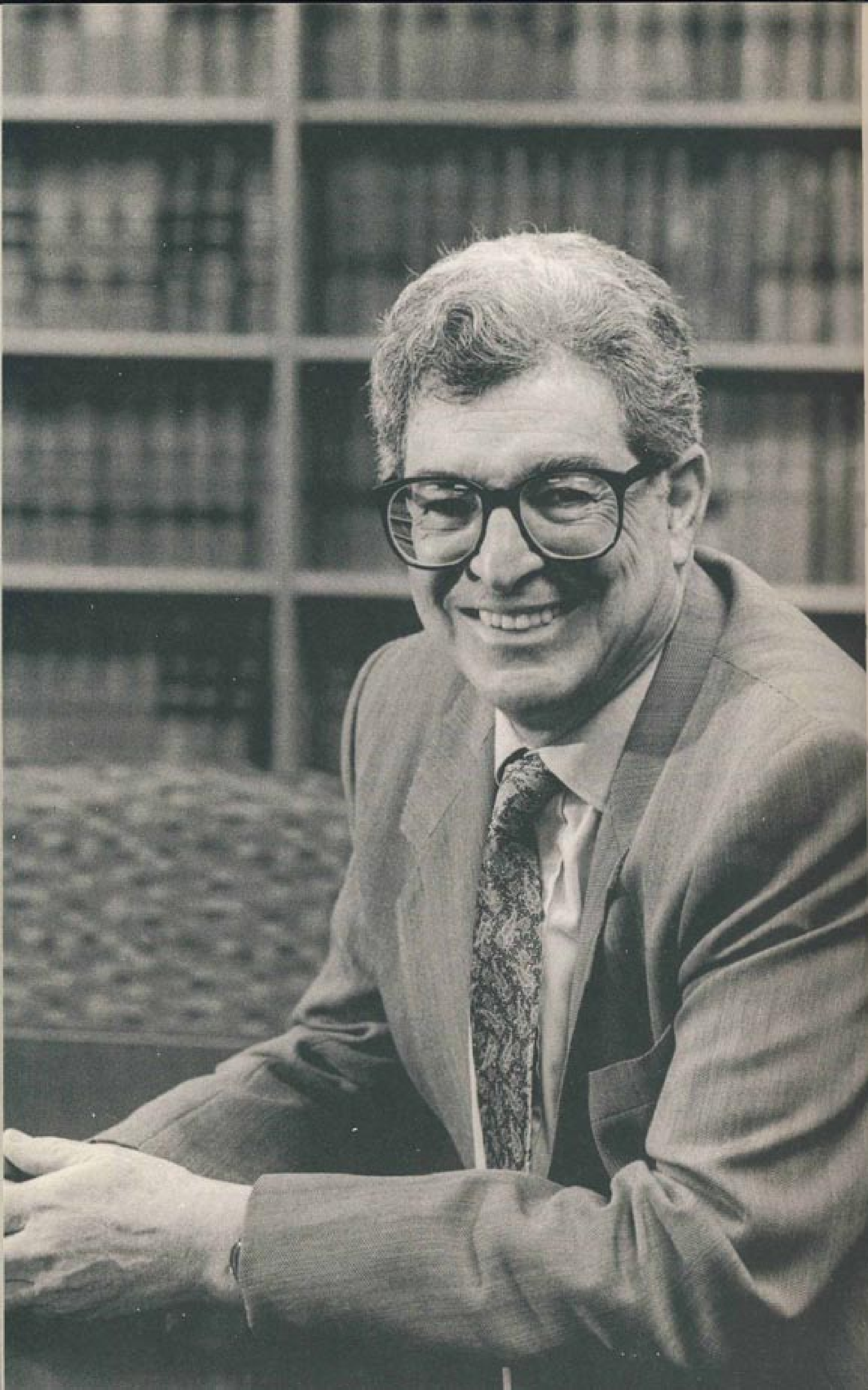
I think it would be in the interests of both Israel and South Africa. De Klerk is, of course, very pro-Israel.

What do you think of De Klerk?

He is a wonderful fellow, because he knew the consequences, and he had the courage to take . . . the second step. The first step, of course, was taken by the *groot krokodil*. De Klerk is a courageous man . . . and I think he has lost the Afrikaners.

How do you account for Mandela and the others coming out of Robben Island without any apparent trace of bitterness?

Well, it's a marvellous trait. You know that Mandela invited some of his warders to his inauguration. He told me a story — he said that they were treated very badly at first. He was put into solitary confinement on several occasions, because he was the acknowledged leader. And he said that one of the warders one day, giving them orders, said 'Gentlemen . . .' He said there was a change of atmosphere — they were treated as human beings . . .



ARTHUR CHASKALSON

'. . . it is very important for people to claim and assert
their dignity, and I believe that when people resist oppression,
through the law or outside of the law, they are claiming
their dignity. For me, siding with people who wanted
to resist oppression was very meaningful.'

Arthur Chaskalson, born in 1931 in Johannesburg, has had a long career as a Human Rights lawyer. He graduated from the University of the Witwatersrand, was admitted to the Johannesburg Bar in 1956, and took silk in 1971. He was on the legal team which defended Nelson Mandela in the Rivonia Trial in 1963, and he defended many other prominent opponents of apartheid. In 1978 he founded the Legal Resources Centre, which played a key role in challenging apartheid laws. He has held many prominent legal positions and has received numerous awards, including: Human Rights Award for 1990 of the Foundation for Freedom and Human Rights, Berne, Switzerland; Commissioner of the International Commission of Jurists in 1995; Vice-Chairman of the International Legal Aid Division of the International Bar Association from 1983-93. He was also made an honorary member of the Bar Association of New York, becoming the second South African to receive the honour (the first was Jan Smuts in 1930). But despite being recognised internationally, Chaskalson was never given a judicial appointment by the Nationalist government, which did not want judges who would call attention to the discriminatory statutes they were expected to administer.

He helped write the constitution of Namibia from 1989-90 when that country attained its independence from South Africa. As a consultant to the ANC from 1990-94, he helped draft the interim constitution which facilitated South Africa's transition to democracy. In June 1994 he was appointed by President Nelson Mandela to be the first President of South Africa's new Constitutional Court. This court is the highest court in the land for all matters concerned with the interpretation and application of the 1993 Constitution, and the Bill of Rights contained therein.

Left:
Arthur Chaskalson (Photograph: Gisèle Wulfsohn)

Interviewed by Geoff Sifrin
10 August 1995
Johannesburg

Can you tell me something about your parents and your family?

My parents came from an Eastern European background, although they both essentially grew up here. My mother was born here, my father was born in Memel in Lithuania, and came here when he was very young. I wouldn't say that our house was in any way Eastern European. I grew up a stage removed from that. My father died when I was five years old. They didn't speak Yiddish at home, certainly not to the children, but my mother would speak Yiddish to her parents. We learned a bit, because when they wanted to say something they didn't want the children to understand they would speak Yiddish. We grew up in Johannesburg. Our family was reasonably well-off. My father had been a fairly successful businessman, and when he died he left sufficient money for us to live well, but we certainly weren't a wealthy family.

There was a sense of our Jewishness in our house, because my grandfather had been one of the founders of the Besmedresh Hagadol shul in Doornfontein. He was a very religious man. My mother's father had also come from a long line of rabbis . . . so in our roots there was a lot of religion. But this was not really followed through in our house. My mother kept kosher, but largely to have a house to which people who kept kosher could come. Out of the house, she was willing to eat any food other than pork. We used to go to shul twice a year on the High Holy Days, and when I was younger I used to go occasionally with my grandparents to the Yeoville shul. My grandparents were regular shul-goers, and if I ever stayed over with them, I would be taken to shul.

I didn't experience my bar mitzvah as a particularly meaningful event. But my mother was very active in Jewish cultural affairs. She was at one stage the President of the Women's Zionist League and she was also very active in the Union of Jewish Women. She remarried when my father died. She was born Mary Oshry, and several years after my father died she married again, to Joe Adler.

Did you lose anyone in the Holocaust? Was this a factor in your life?

We didn't lose anyone to whom I or my family was close. But of course you couldn't grow up in those years without being aware of it.

What do you feel about your own ethnic Jewishness?

Well, I have always had the sense that I am Jewish. I have never had any

doubts about that being a factor in my own life and upbringing. I don't, however, regard it as an important factor. I regard it more just as a fact. I have never been religious, and have never taken part in Jewish communal affairs.

I just don't have that sense of commitment to religion which would make it a genuine experience. It would be artificial for me to go through the forms of religion. I just don't feel it.

Are you an atheist?

I am not an atheist, in the sense that an atheist is somebody who positively believes that there is no God. I just am not involved in any form of religion. It does not move me. I appreciate that it is very important to some people, and provides them with a tremendous strength. I don't have that.

Nelson Mandela says in his book, 'I have found Jews to be more broad-minded than most whites on issues of race and politics, perhaps because they themselves have historically been victims of prejudice.' Does your experience concur with this?

I don't really know how to answer that question. I certainly think Jews ought to be more broad-minded because of their history. It is part of their history to have experienced persecution, so they should understand the persecution of others. I haven't always seen that expressed in the Jewish community in South Africa. But I do think that, on the other hand, a disproportionately high number of people from the Jewish community may have been involved in activities to identify themselves as finding apartheid evil.

I think it would be understandable that if you have been conscious of having been victims, that you should identify more readily . . . But it has not always happened. I have always been surprised at how people in the Jewish community could not identify totally with what was happening to people of colour in this country. For example, the Jewish Board of Deputies — I always thought that they should have done more than they did do. But of course there is a problem with that sort of organisation, in that it tends to want to embrace the entire community, and therefore it doesn't want to do anything that will offend any member of the community. So, over time, it tends to become a pretty toothless body in all things other than Jewish affairs. And that is what it deliberately chose to do. I am not saying it was wrong, but I certainly disagree with it.

The justification often given for that silence is the fear that Jews had of provoking anti-Semitism. How do you relate to that?

I think that if you are not prepared to be active to protect the rights of others, then you have got no right to expect anybody to protect your rights.

So you would have wanted the Board to have spoken out against apartheid, and to have taken the risk of anti-Semitism?

Yes, certainly! Without any shadow of a doubt! You know, if they had done that, I might well have become involved in Jewish affairs. The fact that they didn't do that was possibly quite a strong reason for my not becoming involved. You know, one doesn't always think consciously of what one is doing . . . and it is very difficult to think back over a long distance of time and say that I made a conscious decision to do this or not to do that. I was always aware of the fact that the organised Jewish community was silent about apartheid, and by and large that the religious leaders were silent, which I thought was even worse. I thought that the religious leaders had a duty to speak out.

Do you think that there is a place for politics in the shul?

Well, it depends on what you mean by politics. There is obviously not a place for party politics. But I think there are certain things which transcend party politics. You can't say, 'I'm not going to speak out about the Nazis because it is a political issue, and therefore I can't condemn Nazism because I will be involved in politics.' There are certain actions in which religious leaders, if they are true to their beliefs, should point to their congregations and say, 'This is evil.' And I felt that, although there were occasional, muted comments from one or two people, on the whole the religious leaders did nothing. And if you compare the Jewish religious leaders to other groups, I think they come out rather badly.

How do you explain the fact that the rabbis didn't speak out?

Small groups very often are afraid to speak out. You might look at other small communities, not necessarily religious, but national communities . . . for example, you probably wouldn't have found the Greek community, or Italian community, or the French community, speaking out either. Small groups tend to focus on their own concerns, and to pursue narrow, parochial interests, rather than broad community interests.

Some Jews actually supported the National Party, financially and in other ways.

I think you will probably find that up until the worst times of apartheid, say the eighties, Jewish support for the National Party was very small. There may have been businessmen who gave money, but they may have given money to everyone. Businesses often do that, just to play both sides.

What about in the legal field where there were often Jews on both sides of political

trials, for example, Percy Yutar as prosecutor in the Rivonia Trial?

I don't think they were different to other people. Whoever took the government's side in court proceedings was not necessarily identifying himself or herself with their case. One of the rules of the legal profession, if you are at the Bar, is that if you are available you should accept the brief. If somebody who disapproved of what the government was then doing was offered a brief and accepted it, it may well be that he accepted because he felt an ethical duty to do so. So I don't think you can simply say that because some people represented the government in a particular case that they were 'siding' with the government.

Most of the political trials that you were involved in were a matter of defending people whose politics you basically agreed with. What would have happened if you had been given the task of defending a bunch of right-wingers who had, for example, planted a bomb somewhere?

Well, let's go back . . . I don't think you are right to say that I defended only people whose politics I identified with. I defended people from various political parties – the ANC, the PAC, the Liberal Party, and the SACP. I certainly would have shared their belief that apartheid was evil, and I would have identified with the goal of a democratic state to replace apartheid, and to get rid of what I thought was an evil government. Certainly I always felt that. But I myself was never active in the party-political sense, and so I think your question assumes too much. The main reason I got involved in political trials was to identify myself with the victims of the political process. I wanted to be on their side and not on the other side.

Now, as to what would have happened if I had been asked to defend a group of right-wingers, I really don't know. I can't tell you, because I was never asked. I represented right-wing political figures in civil cases on occasion. As to criminal cases, if I was asked to defend them, it might have depended on the nature of the case. It may also have depended upon the stage of my career. I think as I grew older in the profession, I became more willing to break the ethical rule of accepting any brief I was offered. I may not have done it when I was younger, but as I grew older, I think I would have said, 'No, you can't force me to identify myself with an ideology which I disapprove of.' But that would have depended on the case itself.

You have to distinguish between being asked to prosecute somebody who has been charged with resistance to the state, and being asked to defend some of the terrible legislation of the apartheid government. I would see it in one way if I was asked to defend somebody who had been charged with unlawful action as a member of a right-wing group. If they said 'I did it', my advice to them would be that they must plead guilty and explain why they did it. If they said they didn't do it, I don't know that it would be any different to

defending someone who was charged with murder and said 'I didn't do it'. Because you must then assume the person to be innocent, if that is what the person says, and you must defend them.

But, on the other hand, if it was a piece of legislation which I thought was iniquitous and I was being asked to defend it, I wouldn't use my skills to do that. For example, if the government had asked me to justify holding people in solitary confinement as a matter of law, I would have said, 'No, I am not prepared to use my skills for that purpose. You can find somebody else to do it, and if you can find nobody, so much the better — it would tell you what the position is.'

Assertions have been made by various people, including Archbishop Tutu and Nelson Mandela, that for South African blacks, apartheid was the equivalent of the Nazi Holocaust. How do you feel about that comparison?

I disagree with the comparison, but I think there are similarities, and one has got to understand what those similarities are. The fundamental difference is that the Holocaust consisted of deliberate murder, with the intention of eliminating the entire community — people were put into death camps and killed. I think that that is different to apartheid...

Is the difference simply a matter of degree, or of quality?

I find it very hard to answer that one. You see, if you look at the Nuremberg Laws, and at the techniques that the Nazis used initially to marginalise Jewish communities, they were very similar to the techniques used by the Nationalists. The whole thing was there! Secondly, there was the element of racial superiority and racial inferiority. That's there too. Thirdly, the difference arises that under the Nazis there was the deliberate attempt to kill all Jews in Europe. Under apartheid, the intention was to marginalise and disempower, and it led to an enormous number of deaths — if you think of infant mortality and matters like that — but this happened as a by-product, not as a direct intention.

How did you, as someone immersed in the legal profession, and with the values that you hold, continue to operate within a system which had laws like that on its statute books? There were others who said that since the system of laws itself had become immoral, the only thing to do was to go illegal.

First of all, I understand completely those who said that the laws were so lacking in moral content that the only solution to the predicament in which they found themselves was to break the law. President Mandela's decision is a prime example of this. I understand completely why that was done. Simply put, I think that their decision was correct.

Correct for them personally, or actually the 'correct decision'?

I think it was the 'correct decision'. I just did not follow that route. Perhaps it was cowardice — I don't know. Perhaps it was a judgement on my part. But with these things, looking back, very often you're not sure why you do or do not do certain things. I may simply have felt that what they were doing at that time was engaging in a hopeless struggle. I may have been wrong about that.

There were some legal people who said that they stayed within the system to try and use every inch of the law itself to squeeze out of the system some semblance of justice.

Well, I am sure that there were people who did that... But I don't know... you know, not everybody is a freedom fighter. Some people take up arms, others don't. You find different ways of identifying yourself with a cause. One thing I never had any doubt about was my attitude to apartheid. I always regarded it as evil, and something that should be eliminated, destroyed, and I always made clear what my attitude was.

I tried wherever I could to give support to people who were fighting against apartheid. Certainly in my professional career I did that. I think, in fact, that I possibly achieved more against apartheid in my professional career than I could have done in any other field. Whether I consciously settled down and said, 'Should I do this or should I do that?' I don't know. For me to say that the reason that I didn't join a resistance movement was that I thought I could do more this way would be a bit of a rationalisation.

How would you compare the response of some Jews to the Holocaust — not buying German goods, not visiting Germany, etc — and the response of black South Africans to apartheid? It seems quite remarkable the extent to which black South Africans are able to forgive.

I think you have to look at what is happening in South Africa now in the light of the fact that there has been a negotiated settlement. When you enter into negotiation, part of that negotiation involves coming to terms with your opponent. Also, one is concerned here with people living together in one country. When you look at what happened with the Holocaust, the Jews outside of Germany who didn't have to come to terms and live with the Germans in Germany may have had a very different attitude compared to the German Jews who went back and lived in Germany. Obviously, those who went back and lived there could only do that by coming to terms with the past.

However, I think there is a great generosity amongst the South African black

community.

I think there is a great generosity. I think leadership is very important. We were extraordinarily fortunate in this country that the leadership of the ANC contained the people that it did. I think too, if you look back, the ANC always actively campaigned on the basis of a non-racial country. And those whites who joined the ANC and fought with it reaffirmed that belief. I think the white community in South Africa owes a great deal to those whites who did join the ANC and fought with it.

You have been involved in the legal world in many different countries, but never in Israel. Is there any particular reason for this?

No, just the way things have turned out.

What sort of feeling does Israel provoke in you?

I have been very distressed at the way events have developed over the last ten, twenty years. First of all, I felt Israel's identification with the apartheid government in South Africa was absolutely wrong. I understand realpolitik, but I think there are limits to what one should do. I think it was simple expediency. At the time, Israel was deeply isolated, and South Africa was isolated, they needed support from each other in certain fields, and they got into bed together because there was nobody else to get into bed with. That upset me.

But what has also troubled me greatly is what has happened in Israel. I suppose the inevitable result of the occupation was repression. It had to happen. It is impossible to be an occupying power, in which you are ruling people without consent, and expect events to develop differently to the way they have. You simply have to start resorting to more and more extreme measures to retain your position. And watching it, you can see that what has happened, inevitably had to happen. And it has been very distressing to me.

What would you have wanted to see Israel do in the circumstances?

I realise the difficulty of what I am saying, but I don't think there should have been settlements on the West Bank, and I think every effort should have been made to negotiate a peace, long before things got to where they are now.

How do you relate to the rise of significant racism towards Arabs among certain groups of Israelis?

It doesn't surprise me, because it is a consequence — if you are in a situation where you are repressing people, inevitably it happens.

The South African liberation movements have for many years been close to the PLO, and have regarded Israel in a hostile light. Did this create any problems for you in your dealings with people in the liberation movements, as a Jew with a brother living in Israel, with links to the country, even though those links were problematic?

It wasn't an issue for me. I never had to confront it.

How do you relate to the Arab world's hostility towards Israel, Arab terrorism against Israelis, and other events which have contributed towards shaping Israeli attitudes?

There are several things mixed together in your question. When you are talking about blowing up buses, planting bombs, killing people, certainly that upsets me profoundly. But if you talk about young Palestinians marching and throwing stones at Israeli soldiers, I can understand them. It is naive to think that demonstrations like that will not be made against an occupying power.

One could say that that was a consequence of the occupation. But even before the occupation Israel was under constant attack . . . before the Six Day War.

That is the whole profound difficulty — that there is action and reaction, which leads to a cycle, and pushes everybody into a situation which it is difficult to blame anybody for. But I still feel that, somehow or other, Israel ought not to have allowed itself to drift into the situation which it did.

When you were younger, did you ever join Habonim, the Zionist youth movement, or have any feelings about wanting to live in Israel or help build it?

No. Never. That is just the way I grew up. I never went to Habonim. The schools I went to had a very small Jewish component. I went to a private school called Pridwin in northern Johannesburg, and then I went to Hilton College in Natal. Both of them were very 'Anglicised' schools. As I told you, my father died when I was very young. And my mother always said to me that he wanted me to have the best education possible, because he had had to leave school at a very young age. So that was why I was sent to those schools. Of course, there is also a value judgement there as to what is a good education, with which I do not necessarily agree. I did not send my children there. Our children actually went to King David. They wanted to go there. We live in Atholl, and they went to Fairways Primary School, which had a very big Jewish contingent — about 80 per cent of the school was Jewish at the time. And their close friends were going to King David, and our oldest son wanted to go there too to be with his friends, although we had suggested to him that he should go to Woodmead.

Given what you have said above, were you not concerned about them mixing only with Jews, and possibly imbibing a 'Jewish chauvinism' if they went to King David?

Not really, because they were already twelve or thirteen when they went, and it was a good school, the teaching was good. And that is where they wanted to go — it seemed like a reasonable request. Children are better off where they are happy. But as I said, it wasn't our first choice of school for them.

As President of the Constitutional Court, you are involved with upholding a secular constitution, created by people and subject to amendment by people. Now, for many centuries, Orthodox Jews have claimed that they have their own constitution in the Torah, that it is divinely given and therefore not subject to amendment by Man. Also, a secular constitution defines rights, but does not explicitly order your moral behaviour, whereas the Torah contains many moral imperatives, for example, 'Honour your father and your mother . . . ' Could you comment? How do you relate to this?

I think there is a big difference. The one determines a religious and moral framework, while the other determines a state polity. I do believe that there are certain values underlying our current South African constitution, and those values may have counterparts in Judaism and other religions. But there is a great difference between a document which is intended to govern the way a state functions, the political order within that state and the way its members shall relate to and deal with each other, and a religion which prescribes a moral framework for life. I don't think they are the same. They are very different things.

Yet the Jews, using the Torah as their constitution, have had their own rabbinical courts which have handed down legal decisions, and the Talmud could be compared to a body of legal argument, case studies, precedents, discussion, etc. There are many strong parallels, at least in a structural sense, to the secular legal system.

The truth is, I have never really thought of this comparison. Your raising it with me is the first time that I have even given consideration to it. Perhaps I may be too ignorant on Judaism to comment.

It was thirty-one years ago that you defended Nelson Mandela in the Rivonia Trial, when he was sentenced to life imprisonment. This year Mandela, as President of South Africa, appointed you President of the Constitutional Court of South Africa. When you look at this remarkable turn of history, the circle closing like that, how do you feel?

Well, it is absolutely incredible. You know, right up until the day . . . I didn't really believe events would unfold the way they did. I looked at some speeches

I made in Europe in the late eighties, and I said then that inevitably apartheid would collapse, and that I thought it was likely to happen sooner rather than later because of the contradictions in the society and so on, but I didn't think in 1990 that it was then going to happen. But events since then have unfolded at such an unbelievably rapid pace — I mean, it is just a year since President Mandela took office, but it feels like very much more . . .

After the Rivonia Trial in 1963 you were involved with commercial work more than political work . . . then you re-entered the political world with the Nusas trial in 1976 . . .

There certainly wasn't a conscious withdrawal on my part from political cases. I never turned down any political cases which I was asked to do. Actually, I don't think that there was a lot going on during the years 1970–76 of the type of work that I would have been good at — such as law points, management of complex facts, preparing cases to get home a particular message, as opposed to cases around straight facts, such as whether somebody did this or did not. In my whole career I have never defended anyone on an issue of public violence — I have never been asked to. I don't think my skills lie in that, they lie more in the field of legal theory, and large cases where the facts are very complex. I am good with documents. There just weren't many big trials during that interim period . . . In '63 there was Rivonia; then I did the ARM [African Resistance Movement] trial; in '65 I was in Bram Fischer's trial; I was in the *Rand Daily Mail*'s prisons cases, and that went on for a very long time; I was in Winnie Mandela's case in '69, when she was accused of trying to revive the ANC.

Through all the years in the Legal Resources Centre, when you never really knew how the whole thing would end, how did you manage to carry on? Some people felt that essentially all you were able to do then was to apply band-aids to a bad situation . . .

I really didn't regard it as band-aid. In retrospect I think a great deal was achieved through the Legal Resources Centre. First of all, I regard those fifteen years in the LRC as the best years of my professional life. It was using my skills to do something I really wanted to do. Which meant to deal with the situation in the country on the side of the victims of the oppression in the country. I found the people I worked with had similar ideals and values. They were very creative and talented, fighting people, most of them younger than me. It was a very rewarding experience to have had that opportunity. I think that we achieved a lot, in the sense that the cases we handled were meaningful cases which affected the lives of millions of people.

Also, I think it is very important for people to claim and assert their dignity, and I believe that when people resist oppression, through the law or outside of

the law, they are claiming their dignity. And for me, siding with people who wanted to resist oppression was very meaningful.

During the negotiations which led to the transition to a democratic system in South Africa, you were legal adviser to the ANC, and had a major role in drawing up the interim constitution, which will eventually lead to the final constitution. Some people interpreted your actions as publicly identifying yourself with the ANC, thus calling into question your 'impartiality' as a judge. Has this caused any problems for you in your subsequent legal roles?

I was never actually a member of the ANC or any other political party. But look, all over the world people go on to the Bench as judges after a very active political career, much more active in party politics than I ever was. The President of the Conseil Constitutionnel in France was Badinter, who was the minister of Justice; the great Chief Justice of the United States, Earl Warren, was the Republican Governor of California and ran for Vice-President; the head of the Judiciary in England sits in the Cabinet — the Lord Chancellor; if you look at any Constitutional Court or indeed, any ordinary court anywhere in the world, Australia, New Zealand, all those places, you will find people who have had active political careers. The point is that judges who are appointed to the Bench disavow all past political affiliations, but they don't disavow their own ideas, thoughts, beliefs and attitudes. They commit themselves to acting with integrity, and the only question is whether they carry out that commitment or not. It is a myth to say that anywhere in the world judges can go on to the Bench without any attitudes to society. Indeed, if they have no attitudes they are not fit and proper people to be judges, because then they will be so removed from what goes on in the world. It is a total myth . . .

The term* ubuntu, *which can be loosely translated as 'African humanism', has been incorporated into the wording of the interim constitution, and in their arguments for the abolition of the death penalty, two of the judges on the Constitutional Court actually used the concept as a basis to justify their approach. How do you view* ubuntu, *and its role in the Constitution?

I think it is really an attitude to life — how people should relate to each other. It is a specifically African concept of communality, of healing, of bringing people in rather than excluding them. One sees it expressed in many different forms in ordinary day-to-day life — the extended families, the acceptance of strangers. There are many features of this 'coming together', of mutual support and mutual respect. I don't think it is an exclusively African concept, although it obviously expresses itself in a particular form in Africa. You see similar philosophical attitudes expressed in other parts of the world. It is a term consistent with the Bill of Rights, and gives substance to the Bill of Rights.

Is there a precedent in the constitutions of other countries for incorporating such a concept into the wording?

If you look at the German constitution, for example, it may not use a phrase like *ubuntu*, but it begins by stating that the highest value is the dignity of man. Much is built around that, and a lot of the jurisprudence is developed through putting dignity at the top of the scale. Of course, that is partly because of the particular history of the country — the German constitution was established after the collapse of Nazism. In the case of South Africa, everything that is in the constitution is affected by its past — both the structures that have been brought into existence to accommodate the past, and the values which you find in the constitution.

Were there any mentors who were very influential in your life?

There were two very important figures. One was Isie Maisels. He was a very powerful influence in showing what a lawyer should do in these sort of situations. I admired him and watched what he did.

The other important figure at the Bar was Bram Fischer, who I also admired and watched. I was obviously very distressed at what happened to him — I took part in his defence when he was tried, and I represented him when the Johannesburg Bar applied to strike him off. He was a very great man, one of the most extraordinary people I have ever had the good fortune to meet.

I began at the Johannesburg Bar in 1956, and shortly before that, in about 1955, there was an African man named Duma Nokwe, who held a post on the national executive of the ANC, and who was the first black man to be admitted to practise law in Johannesburg. He wanted to practise at the Johannesburg Bar. Those were the days of 'high apartheid' and the Group Areas Act. There were objections from some members of the Johannesburg Bar to his occupying Chambers, based on his colour. Isie Maisels, who was really a very great man, one of the leaders of the Jewish community and of the legal profession, made it perfectly clear that Nokwe would be allowed to come to the Bar, and that if certain members couldn't accept being in a building in which a black person had an office and had to leave, then so be it! Maisels was one of the prime figures in ensuring that Nokwe was admitted to the Bar. He also ensured that Nokwe would have Chambers — he arranged with George Bizos that Nokwe would share with him. Nokwe then practised for some years, but almost immediately after starting to practise he was put on trial in the Treason Trial, and thus became a client of Isie Maisels, who defended the treason trialists. He was on trial for about three years, and had very little time to develop his practice. Shortly afterwards he went into exile, and while in exile he became secretary-general of the ANC, and he died in exile.

We have lived through times in South Africa when people feared that something would happen to them if they were politically involved . . . did you ever worry about the safety of your family?

No, it was not a major issue for us. My family was always completely supportive of my role in political cases.

If you look back at the decades of activity in the struggle against apartheid, what do you remember as the high points and low points for you?

The very worst time was the period 1963-70, when it looked as if there was going to be no hope. There were all the Rivonia arrests, the breaking of the ANC and the PAC, and the complete annihilation of what seemed to be any meaningful opposition.

This was coupled with an acceptance within the white community of what was being done. Those were terrible years. It was hard personally, emotionally, to live through that.

The high point was obviously the period from 1990, when the process of change really began to move.

Personally, the event that stands out in my memory was the independence celebration in Namibia, which I went to. I was a member of the committee which advised the Constitutional Assembly on the drafting of the constitution. It was a very emotional moment when I stood there and saw the old South African flag coming down and the Namibian flag going up. I felt deeply moved, and thought that one day it would happen in South Africa too.

Also, the day of the release of the Rivonia trialists was very moving. When Sisulu and the others came out first, and later Mandela. Then there was the day Mandela was here at the FNB stadium and made his speech after he was released in Cape Town and came straight up to Johannesburg. He invited George Bizos and myself to join him on the stage. That was a really extraordinary day and atmosphere. Then, I remember being in parliament when the constitution was passed . . . and being at the inauguration of President Mandela . . . there are lots of important moments . . .

Mandela is certainly one of the great men of the century. How do you explain his stature?

People are who they are, and we are very lucky that he is who he is . . . He is an absolutely extraordinary man. He has got tremendous authority, he simply carries authority. He is a very considerate and thoughtful person. He relates to people, speaks to people, is interested in people, and he somehow has a facility for doing the right thing. And he is a very brave man. An exceptionally unusual person, and we are very fortunate that he is the President of our country, and that he was here at this time . . .

When you look at this new South Africa, do you feel that this is the sort of country for which you fought over the years? Are you optimistic about the future?

Yes, I am optimistic. I think we have achieved so much in this country that we should be able to overcome the difficulties which lie ahead. The great issues facing the country now are whether the government is able to meet the basic needs of the people, whether it can address the basic issues of homelessness, education, etc, and show sufficient progress to keep ahead of the expectations of people who have been deprived for so long. In a sense the real problems now are economic and developmental, and if we can solve them then the country has got an enormous future. I think they are going to be difficult to solve, but they will be solved.

What is often heard when people talk about Africa is that it is characterised by corruption, dictatorship and ethnic conflict. Do you think we stand in danger of falling into that?

Well, I think all countries do. If you look at Europe you can see that happening at the moment in parts of Europe, and you can see it in Asia, and in South America. No, I think it is all tied up with shortage of resources, competition for resources, matters like that. I think that here in South Africa we have an opportunity to succeed. We are comparatively small, but a large enough population — forty million people — to promote development. A medium-sized country.

The great problem is really the legacy of apartheid — the legacy of under-development and disempowerment which has got to be addressed. And it can't be done in a moment. It is going to take time to do it. And the difficulty is going to be to manage the country during that time, say the next five to ten years.

Do you have any thoughts about the role of the Jewish community in the new South Africa? The social historian Luli Callinacos writes: 'At last multiculturalism is free from the stigma of apartheid, where people were forced to be pigeon-holed into ethnic groups. People can now freely choose to claim their identity and their culture.' How do you see that issue playing itself out in relation to the Jewish community?

I have not really thought about it.

The very positive political role that Orthodox Chief Rabbi Harris has played here in the last few years . . .

I think he has done very well.

Is that the sort of role you would like to see rabbis play in the future?

I wouldn't say I would like to see the rabbis do anything in particular. It is not something that I think about. I don't think that way. But I am pleased at his involvement in broader community issues.

Yet you did say previously that you were disappointed that during the years of apartheid they did not speak out . . .

Yes. I felt a sense of shame at some stage that not enough was being said or done.

Let's look at it from a slightly different angle. Many Jews are leaving the country now. Almost every family has got children in Canada, Australia, etc. Do you feel that by leaving they are being disloyal, unpatriotic to the country that gave them so much privilege and opportunity?

No, I don't think so. I think that people must make those sorts of decisions for themselves. I don't think it is a 'wrong' decision . . . You know, patriotism is a very dangerous concept. Either you have a commitment to a country or you don't. If you want to make your life in a country, then you are committed to it. If you feel that you don't want to be in that country, I don't think there is anything morally or ethically which requires you to stay.

The thought expressed in relation to this is that for some people, as long as apartheid was in place and they could live off the cream of the land, they were willing to stay, but now that things are tougher and they have to compete on an equal basis with the whole population, they are leaving in droves . . .

Well, I still think that that might be a reflection on the people themselves. The question is, why are they going? One has got to understand the reason. If they are going because they are afraid of the future . . . people make choices in life as to what risks they take, where they go, etc. I can't think of a reason why people would leave now other than out of a sense of fear. Either a fear of crime, or just the fear of not having confidence in the future of the country — that there may be ethnic or other conflict. I am not saying it is legitimate, but I know that people make those decisions . . . I don't hold the view that you are obliged, as an individual, to do things you don't want to do because it is the 'right' thing to do. I certainly don't want to leave the country, and fortunately at the moment our children don't want to leave. So we are lucky — we have got our family here with us. But if they said they wanted to live somewhere else, I would accept it. I don't think I would even try to persuade them otherwise. I think that people have got to make those sorts of decisions themselves.

THE REAL HEROES

The real hero of the Isaac story was the ram,
who didn't know about the conspiracy between
the others.
As if he had volunteered to die instead of Isaac.
I want to sing a song in his memory —
about his curly wool and his human eyes,
about the horns that were so silent on his living
head,
and how they made those horns into shofars after
he was slaughtered . . .

The angel went home
Isaac went home
Abraham and God had gone long before

But the real hero of the Isaac story
was the ram

Yehuda Amichai, extract from his poem 'The Real Hero'

Motho ke Motho ka Batho Babang
(A person is a person because of other people)

Sesotho proverb