

## Introduction of Chief Justice Arthur Chaskalson

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## Introduction of Chief Justice Arthur Chaskalson

CLINTON BAMBERGER\*

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I am honored to introduce Justice Chaskalson. First, I want to introduce his wife, Dr. Lorraine Chaskalson, a teacher and a poet. At the University of Witwatersrand in Johannesburg, Lorraine taught skills to new students to overcome the inadequacies of their education in the apartheid era. In the law faculty, she teaches writing skills to law students. Lorraine has shepherded a husband and two fine sons. Now she enjoys the company of four grandchildren.

As I introduce the first appointee to the Constitutional Court of South Africa, I acknowledge the presence of the most recent appointee to the Court, Justice Bess Nkabinde, who has enriched the intellectual life of the University of Maryland School of Law for several weeks.

I have a dilemma. Justice Arthur Chaskalson is an outstanding advocate and jurist of our time. If I were introducing Arthur to the Bar Council of South Africa or the International Commission of Jurists, I would need to say no more than: “Please welcome Chief Justice Chaskalson.”

Here, some may not know him so well. Rather than recite the galaxy of his achievements, lectures, honors, and awards, I have chosen to tell you four vignettes of Arthur as law student, lawyer, leader of a law firm, and creator of a court—four vignettes that define Arthur as a man of integrity, compassion, wisdom, and justice.

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*The Law Student*

Arthur has lived by what is right and just for all of his life. George Bizos, another fine South African lawyer who has been a close friend of Arthur's since their days at the University of Witwatersrand School of Law, tells this story:

I was under attack as a member of the Student's Representative Council because of my radical views in relation to the treatment of black students . . . . [T]here was a motion of no confidence in me . . . . [O]ne of the first-year law students . . . stood up and just said:

"Mr. Chairman, we all . . . are asking the wrong question. Surely the question is not what the University policy is, what it has been, and what it ought to be. The question is actually a simple one. Let us just ask what is right and what is wrong."

. . . [T]hroughout our friendship this has been the one question that Arthur Chaskalson always asked.<sup>1</sup>

*The Lawyer*

On July 11, 1963, seven leaders of the African National Congress were arrested at Rivonia in South Africa. Months later, they and four others, including Nelson Mandela, were charged with the capital offense of sabotage in a conspiracy against the State. Arthur was about to be engaged for a year in the Rivonia Trial, one of the most important trials in contemporary history.

A South African lawyer, Joel Joffe, assembled a team of advocates for the defense. Joffe enlisted Arthur; I quote from Joffe's book *The State vs. Nelson Mandela*: "Tall, good-looking, articulate, and a fine sportsman . . . . [f]or some time he had felt it his duty as a lawyer to undertake the defence of people who would otherwise have gone undefended . . . ."<sup>2</sup>

I must inject here an explanation of "fine sportsman." Arthur was a soccer star at University, and every Monday morning in chambers

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1. George Bizos, *General Remarks*, in *A DELICATE BALANCE: THE PLACE OF THE JUDICIARY IN A CONSTITUTIONAL DEMOCRACY* 1, 1–2 (Jonathan Klaaren ed., 2006) (delivered during the symposium marking the retirement of Arthur Chaskalson as the Chief Justice of the Republic of South Africa).

2. JOEL JOFFE, *THE STATE VS. NELSON MANDELA: THE TRIAL THAT CHANGED SOUTH AFRICA* 19 (2007). Joffe's book is an inspiring account of the best of lawyer advocacy well worth the reading by law students and lawyers.

his law clerks were challenged to discuss the weekend's cricket scores.

Arthur's "most careful cross examination," Joffe's words, of a key prosecution witness exposed a vital flaw in his identification of one of the accused. That defendant was acquitted, the only one to go free.<sup>3</sup>

When the time came for final argument, Arthur was the first to speak. Joffe reports that: "Suddenly the Court was no longer a forum for third rate amateur theatrics, but became a court of law."<sup>4</sup> The opening paragraphs of Arthur's argument, "[i]n one stroke, [demolished] a substantial part of the State case . . ."<sup>5</sup>

The accused were sentenced to imprisonment for life.<sup>6</sup> The death sentence was not imposed. The result was the most that could be hoped for and a victory for the defendants.

#### *Leader of a Law Firm*

In 1979, in the dark depths of the apartheid years, Arthur joined Felicia Kentridge, an advocate, and Geoff Budlender, an attorney, to establish the Legal Resources Centre, a public interest law firm for the poor in South Africa. This was an act of considerable personal and professional courage. The apartheid government was quick to imprison or assassinate its opponents.

The Centre began by affiliating with law school clinics at four sites in Johannesburg. Arthur became the National Director. The next year, the Centre had three advocates, including Felicia and Arthur, and three attorneys, including Geoff. In the fourth year, the Centre opened an office in Durban, the professional staff grew to thirteen, and the Centre won a very important case for the oppressed black South Africans, the *Rikhoto* judgment.<sup>7</sup>

Under apartheid, black families were assigned to live in rural areas remote from decent employment. Black men who found employment in urban centers had to leave their wives behind. If a man was employed continuously for ten years at the same location, he could

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3. *Id.* at 78, 244.

4. *Id.* at 237.

5. *Id.*

6. *See id.* at 254.

7. *Oos-Randse Administrasieraad en 'n Ander v Rikhoto* 1983 (3) SA 595 (A) (S. Afr.).

claim that place as his permanent residence, and his wife could join him. However, employers gave workers successive annual contracts of employment. The government ruled that ten successive annual contracts at the same location was not continuous employment for ten years and did not entitle the worker's family to join him.

The judgment in *Rikhoto* reversed the government's rule and held that ten annual contracts *were* ten years of continuous employment.<sup>8</sup> Tens of thousands of workers' families were allowed to join the workers. The result was a significant defeat for the government's scheme of racial segregation.

In 1993, Arthur stepped down as National Director of the Legal Resources Centre. In the fifteen years under Arthur's leadership, the Centre had become an excellent law firm for the poor and persecuted in South Africa. It was one of the best public interest law firms in the world. There were sixty-three advocates and attorneys, nineteen candidate attorneys, twelve paralegals, and forty-nine support staff in six offices throughout South Africa. Five of the eleven Justices first appointed to the Constitutional Court were lawyers or trustees of the Legal Resources Centre.<sup>9</sup>

Three other Legal Resources Centre people are with us at this symposium: Professors Penelope Andrews and John Dugard, and Attorney Steve Kahanovitz.

### *Creation of a Court*

In 1994, Arthur was appointed the first President of South Africa's new Constitutional Court. In 2001, he became Chief Justice of South Africa as well. When he retired from the Court in 2005, Arthur reflected that on his first days in office the Constitutional Court had "no judges, no jurisprudence, no building, and no traditions."<sup>10</sup> The Court now has learned judges, a wise jurisprudence, and a striking symbolic building.

The Justices and the judgments of the Court give life and meaning to the Constitution of South Africa. From the beginning, the Court

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8. *Id.*

9. LEGAL RES. TRUST, LEGAL RES. CTR., REPORT FOR THE YEAR ENDED 31 MARCH 1994—SOUTH AFRICA, 5–6 (1994), available at [http://www.lrc.org.za/Docs/Annual\\_Reports/1994\\_AR.pdf](http://www.lrc.org.za/Docs/Annual_Reports/1994_AR.pdf).

10. A DELICATE BALANCE: THE PLACE OF THE JUDICIARY IN A CONSTITUTIONAL DEMOCRACY, *supra* note 1, at v.

has included black and white men and women representing the rich diversity and intellectual strength of South Africa. The Court is among the most respected courts in the world. Its judgments are lauded by scholars and judges in every common law jurisdiction.

When Arthur retired from the Court, Margaret Marshall, the Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, a most respected court, praised Arthur's tenure as Judge President in these words:

“The *function* of the judge,” wrote Professor Owen Fiss, is “to give a proper meaning to our public values.” Since 1994, Chief Justice Arthur Chaskalson has given voice to the public values of the new South Africa embodied in your Constitution. And what a voice his has been: precise, learned, thoughtful, compassionate and highly persuasive.<sup>11</sup>

Oliver Wendell Holmes, Jr., also a Justice of the Massachusetts Court, and later of the United States Supreme Court, wrote: “I think that as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived.”<sup>12</sup>

Arthur Chaskalson has shared and shaped the action and passion of his time. He has lived as well as any man could live. We are all in his debt.

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11. Margaret H. Marshall, *The Separation of Powers—A Comparative View*, in *A DELICATE BALANCE: THE PLACE OF THE JUDICIARY IN A CONSTITUTIONAL DEMOCRACY*, *supra* note 1, at 16, 16.

12. Oliver Wendell Holmes, Jr., Address at the John Sedgwick Post No. 4, Grand Army of the Republic (May 30, 1884), in *THE ESSENTIAL HOLMES: SELECTIONS FROM THE LETTERS, SPEECHES, JUDICIAL OPINIONS, AND OTHER WRITINGS OF OLIVER WENDELL HOLMES, JR.* 80, 82 (Richard A. Posner ed., 1992).