

Mahomed Navsa Constitutional Court Oral History Project

13th January 2012

(This interview is under partial embargo and certain portions of the transcript were removed as part of the partial embargo at the interviewee's request.)

Int This is an interview with Justice Mahomed Navsa, and it's the 13th of January, 2012. Mahomed, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate it.

MN Happy to do so.

Int I wondered if we could start by talking about early childhood memories. I've had the opportunity to interview you for the Legal Resources Oral History Project, and we took an extensive biography, but for the purposes of this interview if you could talk about how early childhood may have prepared you in some way for life on the Bench?

MN Well, as I explained last time, I grew up in a very small community. At the edge of a massive black township in Edenvale, which is now very developed. Then it was very, very rural. And my very early memories are of people being arrested under pass laws, being physically abused, police vans picking people up and herding them away. And also of the,, socio-economic conditions in which black people lived. And that was right up in your face all the time. My own situation where we lived at the time, was that there was no sewage, no rubbish removal, so everything was pretty rudimentary. I'm of mixed heritage, Indian and Malay, which in itself caused problems. The closest school I could go to that was an English medium school, was an Indian school in Germiston, a place called Dikhatole, which is, as most people who lived there during that time and people who attended school there will tell you, was a township that was pretty low down on the priorities of service delivery – also long drop toilets, sewage running down the streets, one tarred road, I think, in the entire township. But the teachers were wonderful. They were all TED educated, Transvaal Education Department. And it was at a time when teachers were like royalty in black communities. They were the people that everyone looked up to and you addressed everyone as sir and madam. I went there for my primary school education. and then left to go to William Hills which was in Benoni. It was changing at that time from being a former Coloured school to an Indian school, and Indian people were being moved into Benoni, and Coloured people were being moved out of Benoni, into where we live at the moment, which is Reiger Park. So Group Areas loomed pretty large, but there was a further complication. My father was subjected to race classification hearings, and we faced prejudice, both from Indian communities and Coloured communities, about not being one or the other. I have memories of

my father being picked up and interviewed at police stations about his ancestry, whilst the historical records were there for all to see. So those were childhood memories. I had to leave William Hills after standard eight because of the reclassification process and I was told that I was now headed to being finally accepted as being Malay, for purposes of population registration, I didn't belong in an Indian school. And at that time Coronation High, Newclare, and Bosmont high schools didn't have any place. That saw me landing up in Kimberley, where my uncle was on the school board and that was the only place I could find a place. So I went to William Pescod, standard nine and ten. And in many ways it was a blessing in disguise, because although I hated being wrenched from home, the community in Kimberley was too small to have separate schools for Indians and Coloureds and so the division that one was subjected to here, that the National Party government exploited, wasn't there. And so there was a better sense of belonging, in a way, that I hadn't felt before then. And when I completed my schooling at William Pescod, I went to UWC (University of Western Cape), because that was the ethnic university to which I was assigned by legislation. And that too, on one level was a pretty good experience. It was a terrible institution as a place of learning; it was very much a 'bush' college, very much designed to meet National Party objectives, but there were wonderful people there. That's where I first, first ran into Allan when he was chaplain at UWC, and was exposed to tertiary education politics and became involved in it. And was involved for a long time in student politics as well as in the Committee of 81, which everybody knows about in the Western Cape. We had periods of strife almost every year that I was there, and in my final year LLB I don't know that we were in classes for more than six to eight weeks of that year. We were a very small class. I think we were seven or eight LLB students for that year, and about four or five BProc students. But the other good thing about UWC was I got involved in UWC (University of Western Cape) Legal Aid. And it was at a time when I was in charge as convenor of student legal aid, and Kate O'Regan was in charge at UCT (University of Cape Town) Legal Aid that our paths first crossed. And we had joint clinics, which were later to be terminated because of SASO (South African Students Organisation) politics. I refer here to the SASO (South African Students Organisation) NUSAS (National Union of South African Students) conflict. So we had to withdraw from that relationship. But it got me involved in poverty law, in public interest law. And it led to a vacation job at the LRC (Legal Resources Centre), through Professor Louis van Huyssteen, who was my contracts professor, and who a few years ago approached me to write the foreword for his book, which he co-authored on *General Principles of The Law of Contract*, with Gerard Lubbe and others. And I'm very grateful to Louis for that. And that got me a job at the LRC; I remember interviewing for that job and when I got to the Legal Resources Centre I did the vacation job, and that's all I wanted to do with my life. That's the kind of law I wanted to practise. And so I applied for a fellowship after that. Was put in charge of the Advice Centre Programme not long after that. Became a resident advocate at the LRC, and stayed there until '95. When Arthur Chaskalson was national director and later Geoff Budlender. I was the Regional Director (Johannesburg) at the LRC (Legal Resources Centre). And so that's my

professional history. I practised no other law but public interest law from the time that I left university until I was asked to do an acting stint at the Johannesburg High Court at the beginning of '95. And then was appointed in mid-year, permanently. I was there for five years, and then was appointed to the SCA (Supreme Court of Appeal). I've been there for probably about...I'm in my twelfth year at the moment. So I've been a judge for almost seventeen years. And that's it. I also did an acting stint at the Constitutional Court, which is, I guess, is the reason I'm here. I also...I argued a matter here, which was about civil imprisonment for debt. I think it's called *Scholtz v Officer Commanding PE Prison*. And the first attorney to appear before the ConCourt was the attorney for one of the parties, for, I think, the Law Society, when that was argued. And Lex Mpati was my junior. And we argued before this Court. I remember Sydney Kentridge was still on that Court at the time. I did a two term acting stint here. I forget what year now. But I mean one could check that through a judgment that I wrote called *Sidumo (Sidumo and Another v Rustenburg Platinum Mines Ltd and Others)*, which was a labour matter. Very important at the time, perhaps still is because it's still the test that's applied by the CCMA (Council for Conciliation, Mediation and Arbitration). And you'll see from the judgment that it's a very delicately balanced Bench with a slender majority of one, on one issue. On the second issue. On the one issue it was unanimous. And on the second issue I don't quite know, and leave it to legal scholars to determine exactly just what the divergence is. But that was it. So other than that I've kept up my interest in the LRC (Legal Resources Centre), from the time that I graduated I've been involved in a variety of organisations, NGOs (non-government organisations), school boards, soccer coaching, the whole gamut. And so that's my life in a nutshell.

Int I want to take you a bit back, I'm very curious, if you could talk historically about the impact of the Committee of 81?

MN Ja. It was a committee of all the institutions, educational, secondary and tertiary institutions in the Western Cape. Ebrahim Patel was part of that. And I ...I represented UWC (University of Western Cape) on that. And perhaps a feature of my political life at that stage i was that I was seen as being too much of Mr Nice Guy, too much sort of 'kid next door'. There were some really crazy thoughts thrown around during the Committee of 81, but it was important and it played a major role in the anti-apartheid struggle, I have no doubt. You know, it was 1980, the Western Cape was burning, there was upheaval in all of the educational institutions, and it was a very useful think tank, it was a very useful...also it galvanised public opinion. At that time there were philosophical schisms that the Western Cape would have experienced with the Unity Movement and all the other movements, and the UDF (United Democratic Front), and and Qibla and the PAC (Pan-African Congress), and others . Those divisions were largely put to bed during the activities of the Committee of 81. I remember chairing sessions; I remember participating in sessions that took place at various locations. But I do think it was important, I do think it was very...it was politically significant. And had an impact.

Int I'm also curious, because Kate (O'Regan) also mentioned this, the relationship between UWC (University of Western Cape) and UCT (University of Cape Town), I'm very curious about that and at what point that SASO-NUSAS (South African Students Organisation-National Union of South African Students) conflict happened?

MN Well, Cecil Esau used to be a SASO (South African Students Organisation) member and he was at campus at the time. We had been approached by UCT to run legal aid clinics jointly, and I'm trying to think which the joint clinics were. I think one was Mannenberg. We also ran one in Crossroads. The problem with the one in Crossroads was that it ...it was just crazy volume-wise, because there'd be crowds and crowds of people on a Saturday morning, and there was very little one could do...there was very little redress that one could offer. There were cases quite clearly that one could take but for the vast majority of people we could offer no assistance. And at one stage there was a bit of a difference between me and Kate about whether it served any purpose. But those were sort of operational things that cropped up from time to time. UWC (University of Western Cape) had quite an extensive legal aid outreach program. We used to run a clinic in Paarl. I remember driving to Paarl on a Thursday night to run a clinic there, quite late at night. People would queue to see us. We had a clinic in Bellville, which was quite busy. We had a clinic in Hanover Park, which I used to attend quite regularly. And Hanover Park was sort of iconic in relation to the Western Cape. It was typical of the problems that beset black communities in the Western Cape. Despite differences of how to deal with cases and clinics like Crossroads the partnership with UCT (University of Cape Town) had been a very 'profitable venture' in terms of impact, of getting people aware of asserting their rights, of challenging legally the apartheid government. So, in terms of productivity and impact, it certainly was a worthwhile venture. SASO (South African Students Organisation) started putting pressure on us, accusing us of being liberal lackeys by being in bed with NUSAS (National Union of South African Students) aligned UCT (University of Cape Town). And SASO (South African Student Organisation) itself was under intense pressure at the time. I mean, there were bannings, individuals being persecuted. And I remember just having to face a barrage of criticism all the time. And eventually we couldn't...we had to make a decision. I think our very existence depended on it. I think SASO (South African Students Organisation) would have been able to mobilise enough political muscle to force us out of business as a legal aid organisation altogether. And so it wasn't a very pleasant exchange but I was forced to tell Kate (O'Regan) that it wasn't going to continue happening. And that's how it terminated. So ja, that was the NUSAS SASO conflict...

Int And also, you have had such a long and substantial history at the LRC (Legal Resources Centre), you started quite early on at LRC, and in terms of this test case approach, you were involved in some of the key cases. I wondered whether you could talk about at least one or two of those?

MN Well, I was involved very early on in the *Rikhoto* judgment, but that was as a fellow working for Charles Nupen, along with Nomali Tshabalala, so we spent a lot of time in the Germiston factory where Mr Rikhoto worked looking for records and stuff like that. That was very early on. I was very closely tied to Morris Zimmerman who was my mentor and supervisor for a long time. And he did a lot of consumer cases involving some of the biggest crooks of the time. We were involved in challenges to the emergency regulations. We challenged much later on segregationist policies such as the racial exclusivity of the Springs municipal swimming pool at a time when the National Party was trying to project an image of trying to do away with petty apartheid. We did a number of cases involving police brutality and excesses. I think the thing that I was involved in that probably was the most high profile was the *Goniwe Inquest*, where George Bizos and I represented the families. That was the second inquest that ran forever and a day. It ran for...well, more than a year and a half, I think, or at least close to a year and a half. And we had to travel to Port Elizabeth...Clive Plasket was involved in that, a fellow called Nicolette Moodie, myself and George (Bizos). And other people chipped in as well. But that was probably the most significant case in terms of throwing up for public scrutiny the dirty secrets of the apartheid regime, and having documents disclosed hitherto not seen by the South African public. So for a year and a half it held centre stage in terms of legal happenings and challenges at the time. It was that kind of litigation that made me aware of the corrosive effects of power and the misery that law could cause, or the liberating influence it could have.

Int I'm also curious, when change happened in 1990, had you anticipated this?

MN I don't think any of us thought it would come that quickly. I think we knew the apartheid regime could never last indefinitely. We knew that there were cracks, there had been cracks all along. We knew that the sanctions were biting. There were forces both within and without that were beginning to intensify, and I think even the Nats (National Party Supporters) themselves were beginning to think that they couldn't continue., But I don't think anybody thought it would be quite that dramatic and that quick. So when it happened, I remember being in the LRC (Legal Resources Centre) when (F.W.) De Klerk made the announcement in Parliament and we all crowded around a radio, and you know, Vesta Smith was still there and so was Cecilie (Palmer), and Vesta (Smith) was a veteran of the anti-apartheid struggle, and you could see the shock in her face. So I think we all...none of us had planned for it, you know, there was no sort of devising a strategy, or sitting back and thinking, well, what will we do when it happens? And perhaps that's... ..it is an indictment against us, simply because I don't think we thought...you know, we weren't thinking, everything that happened, happened so quickly, and there were ad hoc committees, and people put together, and constitutional negotiations, and experts brought in.

Int You've been credited for really starting and being the brainchild behind the Access to Justice Project.

MN Our advice centres.

Int Yes... and I wondered whether you could talk a bit about that?

MN Sure. I didn't speak about that. Kate' (O'Regan)'s husband (Alec Freund) and I were fellows together, with Sisi Khampepe. We were all fellows at the LRC (Legal Resources Centre) in the same year.

Int Alec Freund.

MN Ja, Alec Freund. It was 1981 . And we were all fellows together, and I guess I was just lucky, I worked with Morris Zimmerman, I was lucky in a number of consumer sort of battles that were fought at the time. I was lucky to be involved in a number of cases that were quite effective, and towards the end of that year, Arthur Chaskalson asked if I wouldn't consider coming back to run an advice centre programme. And I'd had some contacts with people who were based in communities and the idea was we would set up something a little more extensive and...not as narrowly focused as say the Black Sash, where we would afford to communities a wider programme of legal challenges than they had hitherto experienced. And so I spoke to people that I knew in the townships, and eventually started setting up contacts. And the money was then forthcoming from German funders. And we started this programme, which was fantastic at the time. We had access to communities and had our finger on the pulse because of that interaction. And Sibongile Mkhabela who was part of the Nelson Mandela Children's Fund, was a former trustee of the LRC (Legal Resources Centre), and was one of the class of '76 activists, with a very proud history of resistance to the apartheid state and persecuted for it, was one of the people we had a relationship with in a part of Soweto called Zola. We travelled to Zola and Phiri in Soweto. We interacted with Frank Chikane who ran an advice centre in Kagiso at least helped us establish one there. We had an advice centre established, or at least we assisted in the establishment of an advice centre in Daveyton. We went even further afield, further east, beyond Brakpan Springs, Duduza. We had a student group that assisted in Duduza. We serviced Diepkloof in Soweto and Reiger Park itself. So eventually we'd established this network of advice centres and then later on branched out to other provinces. And the LRC (Legal Resources Centre) would travel to the Northern Cape as well. It was...although it was a depressing time in terms of the prevailing strictures and repressive measures, it was also a romantic time, I think. And you know, a former activist can be forgiven for almost wanting part of it back, because the lines, the division between black and...well, there was no grey, there was black and white.

There was right and there was wrong. The good guys and the bad guys were easily identified. But there were people who risked life and limb and their jobs and their very existence to fight the apartheid regime, and I think that if you ask people who were active at the time, who were socially aware, who were socially conscious, that's what they miss the most. That sort of connection, instant connection, with something that was noble. And I...you know, there may have been a mishap or two in terms of the administration of anti-apartheid organisations and stuff like that, but by and large they were good people doing things they believed in. And I think that that's what one thinks is probably the greatest thing you miss about the past, that easy identification, almost...it's very difficult to describe, it's almost an emotional connection, an emotional bond, almost something that was instantly established when you interacted with people. Anyway...

Int I'm interested in that. I wondered in post 1990, when change started happening so rapidly, at what point did the LRC (Legal Resources Centre) decide that there was need to have a Constitutional Litigation Unit and how did that come about?

MN Well, what I didn't deal with either was the TRC (Truth and Reconciliation Commission) legislation. When I was still at the LRC (Legal Resources Centre), sort of towards the end of my tenure at the LRC (Legal Resources Centre), Gilbert Marcus had been involved in a sort of preliminary exchange with, I think, Dullah Omar and others about TRC (Truth and Reconciliation Commission) legislation based on experiences elsewhere. And I think a very first tentative model was put together. George (Bizos) and I were then asked to come in, and I remember travelling down to see Dullah (Omar) almost every other weekend with Johnny de Lange. So it was me, and George (Bizos), and Dullah (Omar), and Johnny de Lange, and at that stage Dullah (Omar) was quite concerned that there were sort of saboteurs within his own department. So we met at IDASA's offices, and we started brainstorming how to do this statutorily. . But certainly the model for the legislation is what George (Bizos) and I put together. It was a pretty intensive exercise. And then I left. And I remember when I was about to take up my appointment, before that I remembered we'd missed one thing, one thing technically. And I sat up in bed that morning and I phoned George (Bizos) and I said...George (Bizos) had to go and do the final presentation in Parliament...I said, we missed something...I think it was the mechanism of joining all the sub-committees together in an accountable fashion.

Int I'm curious about the Constitution Litigation Unit, how that came about?

MN Oh, sorry, I missed that. I was, again towards the end of my tenure at the LRC (Legal Resources Centre), I was asked if I would...by then I had been at the LRC (Legal Resources Centre) close to fourteen years, including a stint as a vac student...if I would be interested in becoming part of a Constitutional

Litigation Unit, and it was all new so it had to be set up and we had to put together a library and there'd be funders who'd be willing to do that. And we did, if you look at the early docket cases, I was involved in arguing two docket cases, one in Namibia, in front of Ismail (Mahomed) and Ray Leon, and the former Chief Justice of Zimbabwe, Dumbutshena. And we did one in the Eastern Cape, Lex (Mpati) and ... I did one. Clive (Plasket) instructed me on the other. So those were the beginnings of Constitutional Litigation (Unit) and the setting up of the library. But I left soon after that, and that's when Wim (Tregrove) came in. So Wim (Tregrove) was brought in to be the heavyweight, as I was departing. At was also at the time when the LRC (Legal Resources Centre) was battling to find a new philosophy and moving from being necessarily antagonistic to government to figuring how to deal with this new animal, a democratically elected government. I don't think anybody was thinking during the apartheid years, damn, what will happen prospectively; what will we do prospectively; how will we organise ourselves; what will we do about land questions? I was involved in a case in the Northern Cape that we lost during the apartheid years, the new government ultimately didn't give the people what they thought they would get. The point of that whole thing is that although I think the community and the lawyers held out the hope that there would be a settlement with the government that would be conducive to them retaining their ancestral lands, that didn't materialise. But so the Constitutional Litigation Unit grew...grew out of changed circumstances and had to be...had to figure out where it was going as it went along. There was no blueprint. I Oh, we also did a challenge to...Lex (Mpati) and I did a challenge to a prescription period in Ciskei National Legislation called *Zantsi v Minister of Defence*. And that finally came before the Constitutional Court. We argued before Justices Pickard and Heath, and that (*Zantsi v Council of State, Ciskei and Others*) finally came here. So ja, there was a range of cases...and it's funny, can't recall them all at once, but as you talk they come up. So that was the range of litigation. We did a lot of cases against the Security Forces, for the way they behaved. We did a lot of litigation around township housing. There is a reported judgment called *Toho versus Diepmeadow Town (City) Council* that I argued, dealing with the conversion of rights to township housing...Geoff (Budlender) was the attorney, Geoff (Budlender) and Raymond Tucker were the joint attorneys. It was done in the Jo'burg High Court. I did a case as Arthur's (Chaskalson's) junior in the Cape called *Scholtz versus Cape Divisional Council*. It dealt with township regulations as they impacted on the Coloured community in the Cape A lot of consumer litigation. I think the LRC (Legal Resources Centre) probably still holds pride of place in terms of having done a substantial amount of consumer litigation when it wasn't fashionable to do so. So, ja, that's the background.

Int I'm also curious, Mahomed, at the time that you were appointed as Acting Judge on the High Court, it was also the time where Geoff Budlender had also been appointed at the Department of Land Affairs, and Arthur (Chaskalson) had been away a lot of the time for the Constitution negotiations process. I'm

curious, did your appointment to the court come as a surprise? What were the circumstances around that?

MN Well, I was...I think the Judge President, Frikkie Eloff, at the Jo'burg High Court had spoken to George (Bizos) about who might be identified to do a stint, an acting stint, because quite clearly there was now going to be a push for transformation. George (Bizos) suggested me, and when he came to me with the idea, I was horrified. I'd had very limited commercial experience and most of that was being on the other side in consumer matters. I knew absolutely nothing of company law or copyright other than having studied the subjects at university. And I was going to go into the busiest commercial court in the country. And I said to George (Bizos), this is nuts. I'm not going to be able to do this.

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But it was...so it certainly came as a surprise, but, and also it didn't quite work out as I envisaged, or George (Bizos). Because I said to George (Bizos), "George, I'm going to have to get up to speed with the commercial stuff". He said, "No, no, no, the Judge President said, look, try to get you used to the Judicial Office by putting you in civil and criminal appeals, you'll be eased into it". And I thought, well, that doesn't sound too bad. In the first week that I was in the court, they'd assigned a very new clerk to me, who brought me I think, twenty court files. And she said, there are two silks waiting, and this one it's a test case on the motor vehicle insurance act, insurance act, which I knew nothing about, never done anything on it. This one is about a passing off. That one is about a copyright infringement. The other one was a big building contract that was just...the file was as thick as anything. And I thought perhaps this is a good time to leave. And I literally sweated through it. I used to stay...I didn't have a law library at home then, so I'd go and use the LRC's (Legal Resources Centre) at night. But eventually stayed at chambers here till about two or three every morning. Drive back home to Reiger Park, and drive back at six or seven in the morning. I was terrified that would disgrace black lawyers. That I would somehow ruin it for others if I fell down on it. So there was this real panic, daily panic. But I was very fortunate. There was a judge called David Melamed, who was a kind, gentle person, who would say to me, you know, if you have a commercial matter you don't quite...you're not quite up to speed with, you can come and talk to me in the mornings. And so for a few weeks, I went and I spoke to David Melamed, who was careful never to give me the answers, but to test whether or not he thought I was going to do

something really foolish. And that worked out. And I think in the five years that I was on the Jo'burg Bench, I was overturned one and a half times, I think. Which isn't too bad for...which is really a busy court, and I wrote tons and tons of judgments. And there were some really interesting judgments. There was the baby swap case, where the babies were swapped at birth. And what to do afterwards and whether to award damages. There was a case on publication of statements about a operative within the South African security regime. Lots and lots of reported judgments that came out of that stint at the Jo'burg High Court. So that's how that came about. And I literally got pushed in at the deep end. The good thing about that was I remember thinking this is insane. Because for about eighteen months that's how I lived. Lived at chambers, went home for a change of clothes and a shower, and then came back. Also I think it was the wrong attitude. I thought it was my duty to prove to every counsel in court, particularly white counsel, that I knew the law on everything. That I knew it before they even sort of ventured to argue it. But it takes time to develop a confidence to say, well, okay, let me breathe a little. I can work this out. Logic and the law should accord, and so would a sense of justice. And ja, so the first eighteen months were frightful, I mean, I just panicked all the time. And remember I was the first person there after Ismail Mohamed, and it wasn't all welcoming. Parts of it were, parts of it were very antagonistic, and very bitter and acrimonious and insulting, and even counsel would tend to barb some of the submissions they made before you. But that was it. And so the good thing about that is, you do go through this baptism of fire, but if you survive it in the Jo'burg High Court, I think you're okay. You will have seen...I mean, I did up so much experience in commercial matters, in such a short time. I'm amazed at how quickly that experience developed and it was almost like a steamroller. Information overload in an incredibly short period of time. So that's how that occurred. And then there was the appointment to the Supreme Court of Appeal, and that in itself was daunting because the Sunday Times had heralded a whole new wave of appointments: Edwin Cameron, myself, Lex, (Mpati), all arriving at the same time. And not all of the establishment was welcoming. And parts of it again were incredibly antagonistic and suspicious. And to win confidence again in a new environment took some time. And to forge a collective cohesive fellowship, collegiality in itself is difficult, you know. But that was what that was all about, so seventeen years on...

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MN You know, I don't think one can quite discern it from the judgments. I don't think it helped that there were these two personalities who had unresolved issues. Certainly as far as one of them was concerned. I also don't think...there was an expectation but within the SCA at some stage, after an exchange with, I think, the leadership of this Court. Rightly or wrongly, that what was ultimately envisaged was a joint Court. And that sort of died and I think it's just too many things that happened in between, too many personalities and difference of perspectives. But I think that there was certainly for a while that idea was fostered and nurtured and then it just sort of disappeared and fell off the table.

Int I'm also curious, when the Court started and then there was this initial appointment of judges, they had the sitting judges that were appointed and then the judges through the JSC (Judicial Service Commission) interviews, did you actually observe this process, were you following the process?

MN Ja, I mean, I watched the interviews... (*huge boom of lightning*)

Int My goodness! Johannesburg has fantastic storms!

MN It does, it does, and it's unsettling particularly for people who aren't used to it. If you're in a car you're completely safe, because it's insulated, because of the rubberised...

Int Thank you. I was asking about Constitutional Court and the appointments, and your observations of the choice of judges that were appointed to the first Bench.

MN There was a selection process, you know, I think all of that was public. There was this question of how best transformation would be served. And I think those choices were then motivated by those kind of considerations.

Int What do you think, Mahomed, about some of the JSC (Judicial Service Commission) interviews? I mean, some of them were very bruising encounters for some people, and for others they weren't that bad.

MN Well, haven't they become much more public and much more dramatic with the passage of time? I'm not so sure that they were all like that at the beginning. I think everybody was trying to find a way and there was an easing into institutions and processes. So, I'm not sure that my recollection of the initial thing...I think that there were questions about whether or not academics should be appointed, younger people should be appointed, those against transformation criteria, about ensuring that old mind sets were retained. So I think those were the considerations.

Int And what about from your perspective, what was your understanding of choosing an apartheid era judges, who may have been deemed progressive...?

MN Well, you know, there's that old age-old argument that featured in law general articles about whether or not you could change the system from within. Whether or not it was moral to sit as an apartheid judge.

Int Yes...

MN Ja. You know all of that. If you'd asked me at the time...and I mean, we used to in the apartheid years, watch to see which judges we got, to see if we stood a chance in any of the cases we were arguing. So that was the benefit. I grew up during the SACOS (South African Congress of Students) era. That was the politics I was...and maybe a lot of it dictated my views at the time. you know, no normal sport in an abnormal society. And I guess if you'd asked me at the time, not as a lawyer trying to find a judge who might be conducive to a result in your case, I don't know that I would have agreed with the view that you could serve within...I mean, you know, there are gradations: do you serve as a homeland leader; do you serve on a town council because you could ease the burden; do you give legitimacy to the state? Certainly within black circles it wasn't an issue, nor...certainly black counsel weren't expected to take state work. You would be vilified if you became a prosecutor, you'd be vilified if you

became a magistrate. So if you asked me at the time that's what my politics would have been dictated on.

Int I'm also curious, at what stage...was it when you were appointed Acting Judge just for a year?

MN No, I think I was appointed in January, so I'd served probably two terms.

Int Six months?

MN Broken a bit by an absence here, a week there, to do other stuff.

Int So it was six months?

MN It was six months more or less.

Int And was it during the time of Arthur (Chaskalson's) time as Chief Justice?

MN Ja.

Int And I'm curious, coming from the SCA (Supreme Court of Appeal), where there's recognised formality and hierarchy, coming to a Court that was very different, what's your experiences were?

MN I think I found the processes very different. With us, there's a greater volume, at the SCA (Supreme Court of Appeal). There's a need to get things out within a particular time frame. There is a process in place to ensure that that occurs. And so, it's almost an external discipline that has to be brought into line with an internal discipline. I found that the processes there weren't the processes here. And I found that quite disconcerting.

Int In what way?

MN In the sense that judgments lingered.

Int Here?

MN Ja. I remembered going away and being sent a judgment that I'd dealt with months and months and months and months before. And because of your on-going work to try to get back to it, becomes much more difficult. There were

no pre-hearing conferences here, there was the judges sign, puts out a note. There there's a pre hearing...post hearing conference...sorry I'm talking about post hearing conference. Immediately after a hearing everybody is expected to say what they think. There people would go off and write, and generally there would be agreement on what the result is and the measurement to get there. Here, that took much more time. And so I found that, and because it is the final Court, maybe one can understand that they needed more time, though the had fewer cases. But I think that if you spoke to judges who've acted here from the SCA (Supreme Court of Appeal), they would tell you that that is a major mindset shift, and quite disconcerting.

Int I'm also curious about things like the conferencing that they held to discuss it and also being with ten other...?

MN Well, I think that's the other thing. We sit...our panels are five. We sit in panels of five or three. Getting consensus amongst five is difficult enough. And that's after a post hearing discussion, that's after a judgment is circulated quite quickly after that. That's after a post judgment conference, and an exchange of ideas and *inaudible*. Dealing with ten others is much more diff...I think if you spoke to Pius (Langa)...I remember when I was acting here, Pius (Langa) said, if he comes back in another life, he certainly didn't want to be (*laughs*) with so many other judges. And I think that that's quite difficult.

Int How did you get appointed...what was the story behind that?

MN Where here?

Int Yes.

MN Well, Zak (Yacoob) went on leave.

Int Right. And how did you get appointed?

MN I got a phone call from Pius (Langa).

Int From Pius Langa.

MN Ja.

Int And who do you think recommended you?

MN I have no idea.

Int Could it have been Arthur (Chaskalson)?

MN No, Arthur (Chaskalson) had left.

Int Arthur (Chaskalson) had left, okay.

MN Arthur (Chaskalson) had left, and I don't think it would have been...no, I don't think it was Arthur (Chaskalson).

Int So Arthur (Chaskalson) wasn't the Chief Justice at the time you were appointed?

MN No, no.

Int That's what I was trying to figure out.

MN No, no, Pius (Langa) was. I came here when Pius was Chief Justice.

Int Right. And how did you find Pius (Langa) as Chief Justice?

MN Pius (Langa), I think, was less visibly energised than Sandile (Ngcobo). I think he also had problems relating to the health of a family member... problems that made it difficult. He was not confrontational. I find him to be quite gentle. Gentle, but when he had a view he would assert it then stick to it. I don't know that I can say any more than that.

Int Sure. And in terms of the Bench that you worked with, I wondered what your experience was working with colleagues; had you known some of them before?

MN Well, I knew Kate O'Regan before.

Int Johann Kriegler? He was gone by then.

MN Johann Kriegler had gone by then. (Johann) Van der Westhuizen was here. Dikgang Moseneke I knew from way back, way, way back. When I was at the LRC (Legal Resources Centre), his firm in Pretoria used to be our correspondent attorneys. So that relationship goes back, and the BLA (Black

Lawyers Association) I did advocacy training work for the BLA (Black Lawyers Association) And I'd met Dikgang (Moseneke) and had interacted with him on a number of occasions over the years. So I knew Dikgang (Moseneke) and I still know him quite well, and respect him as a lawyer and as a colleague, and as a person. So I knew him. Bess Nkabinde I knew from SCA (Supreme Court of Appeal), and she's warm, and welcoming and I had a good relationship with her at the SCA (Supreme Court of Appeal). I had a good relationship with her here. Kate (O'Regan) I knew from before.

Int Albie (Sachs)?

MN Albie (Sachs), had come to the LRC (visited)) before his appointment here. Albie (Sachs) and I weren't close socially and we didn't know each other personally and we didn't socialise. (Thembile) Skweyiya, ja, I would have known from practice with fleeting exchanges. Pius (Langa), I would have known from NADEL (National Association of Democratic Lawyers) days and we went on overseas conferences together and stuff like that, and so I would have known him from there. Who else was here?

Int Yvonne (Mokgoro)?

MN Yvonne (Mokgoro), I find very warm and welcoming. I hadn't know Yvonne (Mokgoro) before but we have a sort of UWC (University of Western Cape) connection. Tholie Madala, I got to meet here. I find him to be a gentleman and a very gentle person. I liked him and I liked interacting with him. Who else...I'm trying to think of who was on the Court at the time...Sandile (Ngcobo) was here. I'd known him from the LRC (Legal Resources Centre) because we had worked at the LRC (Legal Resources Centre) before that. So there was Sandile (Ngcobo). I think that's it. Johann van der Westhuizen I didn't know from before that.

Int I'm curious, much has been made about the collegiality of the Court, and I wondered whether you experienced that or whether you experienced something different?

MN It's a big Court. I think it's inevitable in a big Court that people aren't quite as close as they might be if there was...well, it's not big in terms of size, but in terms of having to make decisions collectively, it's big that way. And I think that in itself, people are people, different people have different personalities. I think inevitably some people get closer to some than they do with others. But certainly in terms of discussions around the table, I think it's inclusive, I think it's extensive. I sometimes used to think it's too extensive. You know, the judgments are much longer than most courts write. And I think there was a recent trend that I think should perhaps be avoided, which is too many judgments and you can't quite...you might not have a majority of ratio, which

in itself is difficult. There might be a difficulty discerning a ratio across a number of judgments. But other than that I don't know that I can say much more.

Int I'm also curious about the cases that came before you while you were here, and I wondered whether you could talk about those cases?

MN Well, *Sidumo* ((*Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*) was the one, which was the labour matter. And what approach one should have towards an employer's decision to terminate. That overturned an SCA (Supreme Court of Appeals) decision about what the test was, and also what the test should be prospectively for CCMA (Council of Conciliation, Mediation and Arbitration) commissioners. That was fairly important. I wrote another judgment, which was not of any particular significance

Int That's fine. I wonder what you think, having been at the Constitutional Court, about some of the difficulties and challenges of adjudicating cases?

MN Where, here? I think you have a big enough Court to be able to muscle or to put together enough intellectual muscle to decide matters. I'm not sure that I...sometimes there are difficult choices to make and sometimes there are difficult balancing acts. But the Constitution is fairly clear, I think, about fundamental rights, and so, ja, I think it has its challenges as a final Court. I think there are the challenges of being consistent, maintaining a consistent jurisprudence. I think the challenges of trying to ensure that there's a clear right here to a decision. But that's about it.

Int I also wondered, if you could talk about some of the approaches to judgments that the Constitutional Court has taken over the first fifteen years of its existence.

MN Well, I mean, certainly the jurisprudence has been hailed internationally. It's been...I mean, I think that they've been cited in other jurisdictions. I think it's followed some of the best jurisprudence elsewhere and then it's forged its own. So, you know, I think it's invidious for a court below this one, I mean, to pronounce about the direction it's taken or expect of some of the issues that we've decided differently or that it's decided differently.

Int Okay. In terms of the emphasis on socio-economic rights, I'm wondering, there's been some sense that those haven't been satisfied; I'm wondering from your perspective whether you think the Constitutional Court, its approach to socio-economic rights, whether enough has been done?

MN Well, it depends on, I think, your view about the role of courts, in a democracy such as ours. What it is a court can achieve. And quite clearly, you know, I am firmly of the view that constitutionalism should be advanced. That rights should be protected...asserted and protected and should be pronounced upon. But I do think that when you're dealing with things like housing, and when you're dealing with things like education and health, that ultimately a well-intentioned government, with the forces at its command...and I'm talking about the other arms of government, can achieve much more than one can in a preventative, distributive, or any other manner. And I know when you say that to some judges, they kind of balk, because I think they'd like to think that they're a little more important than they are. And of course they maintain and perform an incredibly important function. But I do think that those issues, if they're going to be dealt with comprehensively, *Grootboom* ((*Government of the Republic of South Africa and Others v Grootboom and Others*) for example, people would cite as, well, Mrs Grootboom still doesn't have a house. Or whether you'd look at *Soobramoney* (*Soobramoney v Minister of Health (Kwa-Zulu-Natal)*), by dialysis machines and choices that are made by courts of final instance, I still think if you step back soberly and you said to yourself, well, how best would these issues be dealt with? It's like AIDS litigation. It may drive government into a particular position, from an activist point of view, but in the end, the success or failure of a health programme or a housing programme, or an educational programme, must depend upon the drive and the resources put at the disposal of that drive by the other arms of government. I do sometimes think that sometimes we allocate to ourselves too great an influence. And, yes, we're an indispensable part of a constitutional democracy. Anybody who carps about us being a brake on the other arms of government or gets agitated by it and thinks that, that should be done away with, I think misunderstands the fundamentals of a functioning democracy. But on the other hand, I do think that sometimes too much importance is given to the effect we have, irrespective...

Int You mean judges?

MN Ja, as judges. On the really, really major issues that plague society.

Int I'm curious though, Mahomed, how you think given that judges do have power, how you and other judges grapple with the issue of power in relation to state power?

MN Well, I think for me it's simple. The principle of legality and the rule of law is what drives you. If there are constitutional prescripts that are not followed by the other arms of government, well, it seems to me that it's not a difficult question. They should be followed. Where there are choices to be made, that are purely policy choices, well, then government should be free to do...to make those choices. And that ultimately that is where, you know, the argument about judges not being elected, and therefore, you know, sort of

being...considering themselves above the electorate and therefore subverting the true choice of the people by way of the actual elected representatives. I just think that that's short-sighted; I think it's a misunderstanding. And perhaps that's what should be cleared. I don't for one believe that there shouldn't be a tension between arms of government. I think it's inevitable that there should be a tension, but it should be a manageable tension, and it should be a tension within which...within prescribed...within which there are clearly understood parameters. And one arm will carp about the other arm, and so it should be. And one arm might be frustrated at what it thinks is being done by the other arm, to thwart it. But in the end, I do think that if you have people who understand the fundamentals of democracy, and also understand...and particularly in comparable jurisdictions where you understand that political power may change, and therefore you've got to keep the super structure in place because if you upset it so that it leads to a lack of democratic accountability, and a particular slant or bias, tomorrow you may be at the receiving end. And I think we're still too much in the infancy of political battles and changes for that to have become so ingrained in one's democratic DNA.

Int In terms of the issue of pragmatism and principle, how do you think judges grapple with these issues of respected adjudication of cases?

MN I wrote a judgment a short while ago that was, I think, confirmed in an appeal called *Blue Moonlight City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another*. And it was about housing. And I remember talking to Indian judges when they were here at UWC (University of Western Cape), Chief Justice, and a whole range of judges on the Supreme Court. They were talking about socio-economic issues and socio-economic adjudication. In India it's been quite sort of extensive. And there have been accusations too of an overly sort of energised judicial activism. And I thought that, if there's an obligation it must be enforced, but how far you make a government enforce it...and I call it the art of the possible...much like politics is the art of the possible. I think it is the art of the possible. And it's the art of how far that tension, that calibrated balance can be obtained. And of course if judges stray into territory that is beyond them, that calibration will be upset. On the other hand, if government is free to do as it pleases, without any constraints, equally, the calibration will be upset. So I think it's about getting the calibration right. And pragmatism...you know, I've always thought, and it's something that I don't know that we've given enough attention to as a country...I thought if you were to talk to a reasonably informed student of the rule of law, he or she would say, well what does it mean in effect? Everybody should be treated equally. The law should be predictable. There shouldn't be unpredictability of result relative to facts. The law should be written simply so that it's easily understood. It should be pronounced upon simply so that it's easily grasped. And I'm not so sure that the judiciary has played its part in respect of that. I think we get caught up in the interest of perhaps a section of the profession that wants to make this so much more deep, so much more complex, than it is. We have to avoid being

like high priests who have to make the right incantations and diffuse the right amount of incense to be able to discern what the law is. Rules have grown up over centuries, we've understood them as collective judiciaries and societies over the world. We have discerned why certain rules have evolved and why they exist. And I think we sometimes are too convoluted in our pronouncements. I think statutes sometimes suffer from that same ailment. So, I think it may be another thing that the judiciary should strive towards...simpler judgments, more clearly understood by litigants, more simply stated, you know. We've done away with Latin, but I think the aura of the magical incantation hasn't gone. Simply because I think we ourselves sometimes like to feel that, you know, maybe we are special. Maybe there are these really wonderfully convoluted rules that only we understand.

Int I'm also wondering, to what extent do you think some of the Constitutional Court judgments have maybe transgressed that line between the executive and the judiciary, if at all?

MN Well, you know, you're asking somebody who thinks that the rule of law is what should drive everybody in this country. Again I think it's invidious to ask a court lower down what they think about a Court higher up. The system is what the system is...

Int Let me put it to you rather this way. There's been some sense by other judges in other courts, that some of the judgments may have transgressed that fine line between the executive and the judiciary.

MN Well, you know, I don't want to...I can't respond to it generally. But I'd like to see a specific case....

Int Okay. The lights just went out. They're back. We have a generator thankfully.

MN I'd like to see the specific case and I'd like to see the specific complaint and the specific passage and the specific pronouncement of a part of the law that says that line has been transgressed. But you know, I mean, sometimes I think judges should develop...sometimes I think there should be a thick skin. But sometimes I think...and I don't know that we've done enough about this...I think we need sometimes, as a judiciary, either from the Office of the Chief Justice or somebody to say, well hang on, this is going too far. I can't think of a more accountable profession than that of the judiciary. You have to write what you think, you have to reason a result. The result is then open to scrutiny by higher courts and/or academics and/or the world at large. And so you don't get away with things unscathed within this profession. And so...so there you go. I really think that there is sometimes, by critics of the judiciary, a lack of appreciation of that particular tumult, because it is tumultuous. I think about sitting in say, twenty cases a term, maybe more in our court. Having to go

through all of that. If you're a presider, you hold overall responsibility and if somebody else is writing, you just make sure they get it right. People are fallible. You can't always get it right. And ja, sometimes we err. And I don't think...I think you might even find admissions from people in this Court, that just because you're the final Court doesn't mean you're right. Doesn't necessarily mean you're right.

Int I'm wondering, in terms of the non-legal considerations and how much they come into play in decision making. Societal concerns, how much they come into play in decision making...?

MN You mean, whether you're influenced by what's being said or done outside of the courtroom?

Int Sure, and what's happening within society. Social concerns as well.

MN Well, you know, and again it depends if you read t read the realist school of thought, they say judges are not immune from their own programming the situation, they come from the spat they had with the spouse the morning, their mood, the breakfast they had, all of it goes into the pot. Again I think one is human and one is subject to human fallibilities. I like to think, and perhaps it's romantic, perhaps it's just removed from reality, that the very idea of moving away from mob justice, is to move away from what is the emotion of the day, and to say, well, hang on...what I am concerned about is knock-on effects, and I think all judges should be concerned about that. I try not to adjudicate beyond the instant case. I find it difficult enough to bring enough wisdom to bear, to solve a particularly complex case. It's impossible to provide answers for ever and a day. And I think sometimes we might be guilty of that. And sometimes I think we might be guilty of not thinking of knock-on effects. So you're pronouncing something today and you might even think it might be applauded, which is the consideration outside the Court, and society might welcome this. I think one needs to be a little cautious about that. I think one needs to be concerned about what this may mean in other areas of the law, whether the statement is too broad, whether the pronouncement of the law does have the potential to be abused in cases unrelated to this one. Or whether it might be taking it too far, in that it might lead to a lack of practical application in the future. So the pragmatism you talk about might come into play. Ja...but again, you know, I think we're human, we're subject to human foibles.

Int I'm also interested in judicial transformation being more than just demographics. I wondered what your understanding is of judicial transformation in this country?

MN For me, it's a mindset change. It's a change about understanding what this Court has pronounced upon, on understanding the kind of society we had, understanding the kind of society we aspired to. Understand that we're not there, and that between here and there is a long journey. Understanding that there are aspects of society that we don't quite understand that may be different from our own experiences that may be something we can't quite appreciate. It's a mindset change, it's a change about understanding. Having a deeper philosophical understanding of the power of law and the abuse that law can lead to. I mean, you know, there's the rule by law and the rule of law, and the rule by law is what one saw in Nazi Germany. And understanding that distinction and understanding what accountability means. And I think what South African society...and I'm talking about judicial, executive, all sorts of power, all over the place...I am very conscious of the fact and when I lose sight of it I try to remind myself of it, I think more public office bearers should have a sense that they hold...they owe a duty to that office. It's not as if it gives you a right to puff your chest out. I think it ought to be about understanding it's almost a solemn duty, to carry out that function to the benefit of society at large. And that in effect you serve rather than you have the right to be served. But again, I mean, I think we all kind of want to be almost instinctively heroic and being the person who commands societal attention. I think it's just part of the human condition. So I think that we haven't yet learnt that completely as a society, of how much we...the Constitution has been structured to try to ensure that people who are in power should exercise that power within the constraints placed upon it by the Constitution. And I think we've got to come to terms with that. And when we do, perhaps we'll be a better society altogether.

Int I'm also wondering whether you have any fears and concerns of the independence of the judiciary?

MN I think that there will always be noises about the judiciary intruding. I am concerned that it's become more plentiful, the criticisms of the judiciary. not drawing the line. You can't respond to every criticism. You'll go crazy, you'll go...you don't want to be accused of being paranoid, but there are times when a public collective response is required, and I think we should, as a collective judiciary, determine when that is to be and who should speak for the judiciary when that occurs. So ja, I mean, I think societies in transition always have those concerns. About where it's going, will we maintain it, will we, having won what we have at a tremendous price, whether we will regress? I think it's natural to have those concerns.

Int Do you have any fears and concerns for the future of the Constitutional Court and the Constitution?

MN You know, I think, that again in terms of what I think is ideal in a society that's matured in democratic observance and practice, and I don't know that we are,

I think that the kinds of concerns we're talking now should play itself out in the public voice, in that the public should be concerned that when their court is unjustly attacked, they will say to their elected representatives, this is not on. When they're concerned about a judiciary encroaching upon the territory of the other arms of government, there would be a band of intellectuals, of lawyers, of groups of lawyers, who say, hang on, this is too far, who will tell you why it's too far. But I think you need a level of continued practice and observance of democratic principles to reach that stage.

Int In terms of the transition to democracy and the role of the Constitutional Court, what did you think were the challenges then, and what are the challenges that remain now?

MN Well, the challenges when things started was to map out a jurisprudence, to set out a framework within which decisions could be made. A template, as it were, for the exercise of power and the assertion of rights. And that's an on-going process. But I think that, you know, we've at least got a skeletal framework within which to work by the Constitutional Court's jurisprudence, certainly in its first decade of existence, as having been set. In the next decade, you know, I think it's for history to decide when at the end of the day, there have been judges who have been...who have dispensed justice, who have exercised their functions without fear, favour or prejudice. Who have acted within the limits of their own power, and have ensured that other institutions of state and individuals have acted within the limits of their rights and powers. I think those are the challenges. And that can only be determined by history finally at the end of another period.

Int You've recently given a very strongly worded *Simelane (Democratic Alliance v President of South Africa and Others)* judgment, and that's played itself out in the media, and you've invoked the Constitution and you also mentioned Ismail Mahomed, and I wonder what the reasoning was behind this very strongly worded judgment?

MN I thought that was very restrained (*laughs*), I mean, it's on appeal at the moment. I wondered because, I must say, when I read the newspaper headlines, I thought, did I write that. Not the words that were quoted but the sort of, you know, criticisms of the way government was taken to task. I thought, you know...and it's on appeal right now, so I say this only in respect of my approach to it...I thought the thing to do is to reason out why I thought it was...the decision was integral to the rule of law. And I thought, well, examine the legislation, and examine the Constitution and see what it requires. And you get to the end of that and you say, well, that's what's required, I don't think that it was met, and that's the conclusion. Now, you know, judges speak through their judgments and they speak no more, and I firmly believe that. So if you're asking me, I certainly think press media sensationalism played a part

in the way it played itself out, but the judgment is there for all to read. If I'm wrong, I'm wrong. I mean, I...

Int I'm wondering, what do you think of Ziyad Motala's statement that it's 'politics masquerading as law'?

MN Well, I thought I was following the law. Clearly Mr Motala thinks otherwise. Well, you know, first of all I'm not sure that that's...that's within acceptable bounds. But I've written what I've written, he's written what he's written. This Court will decide ultimately who's right or who's wrong (*Democratic Alliance v President of South Africa and Others*). There's no more to be said, I think.

Int Sure. In terms of some of the failings of the Court and its greatest achievements, the Constitutional Court, what's your observations thus far?

MN Well, it's easy to speak of its achievements, I think. Certainly if you measure things in decades, the first decade has been a phenomenal success in terms of it having established a presidential system, having established an international reputation, and having been a place where litigants could come to look to assert fundamental rights. You know...again, I don't know that it's up to me to pronounce on its failings. I sit in a court below it, I think we do the best we can and hopefully they do the best they can.

Int I've asked you a range of questions, you've been so generous in your responses, I wondered whether there was something I've neglected to ask you, which you think you'd like included in your oral history?

MN Not that I can think of.

Int The one thing I'd like to ask you perhaps is, you came as an acting judge and Arthur was not here as a leader, but having known Arthur (Chaskalson) for such a long time, I wondered whether you could talk a bit about his management of the Constitutional Court and setting it up, what your observations have been?

MN Well, you know, I mean, Arthur (Chaskalson), and I spoke about the difference between Arthur (Chaskalson) and... I think Arthur (Chaskalson) is much more difficult to get to know on a human level, on an interactive level. And I owe Arthur (Chaskalson) more than I can articulate. Certainly if I have any drafting skills at all, he played a great role in that. If I have any judicial reputation at all, I think a great deal...I have a great deal to thank him for. I think Arthur (Chaskalson) is essentially a non-conflictual person. I think his management style is to try to reason things out. I don't think you'll get histrionics or a show

of temper, or anything dramatic. It's not within Arthur's (Chaskalson) style. I still have visions of Arthur (Chaskalson) standing behind me when I write things, saying in the softest tones, you know, perhaps you should try harder, perhaps it needs a little more work, perhaps it could be better. And there were times when I would really wish that Arthur (Chaskalson) would shout, rather than be logical and measured and careful. But I think that's who Arthur (Chaskalson) was and I think that careful, meticulous, studious, ultra-logical drive is what Arthur (Chaskalson) is, and I think that's how he managed the Court. I can't imagine him managing anything else other than with that style. So, ja...I think that shows in that first decade of jurisprudence. I think you can see a hand at the tiller, and it's a very recognisable hand.

Int Thank you so much Mahomed.

MN Okay, not a problem.

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