

Shadrack Nkutha

LRC Oral History Project

6th August 2008

Int This is an interview with Shadrack Nkutha and its Tuesday 6th August (2008). Shadrack, on behalf of SALS Foundation, United States, we really want to thank you for taking the time and participating in the LRC Oral History Project.

SN Thanks. I'm glad to be also part of such a process.

Int I wondered whether we could start this interview by...if you could talk about your early childhood memories, and where you think your sense of social justice and injustice came from, particularly growing up under a situation of apartheid?

SN Yes. I was born in Soweto, 18 January 1967, from a family of...it was a family of five children and parents and grandparents. But my paternal grandparents had a place somewhere in Winterveld in Pretoria. They had a plot there but due to the migrant labour system, the parents were supposed to work here and then we were shipped obviously to stay at Winterveld. And in very early stages of life, I think I was about seven...seven, eight or nine, when the June 16 arose. I was still at lower primary. And as a result of that we were obviously forced to stop schooling and whilst we were still in Winterveld, the homeland system was starting there. And because my paternal grandparents were not Tswanas, Mangope was taking over as the President of Bophuthatswana, and we were supposed...obviously, the non-Tswanas were supposed to be evicted from Bophuthatswana, and that part of Winterveld was also designated to form part of the new Bophuthatswana Bantustan Homeland. Some people stayed but my paternal grandparents decided just to cut their losses and we moved permanently to Soweto, you know. And the parents had to find some place where to stay, and then started living with relatives on the maternal side, until they managed to find a place of their own, ja. So I can simply say that it started around obviously designated areas as part of the Bantustans, and also the migrant labour system and also you have a family but you don't stay together as a family unit. You know, you have absent parents, but for all intents and purposes it's the grandparents who are like parents, and it was a very deprived background I can say, ja. And unfortunately when my grandparents left Bophuthatswana they lost some of the plots.

Int And then...?

SN Ja...but I schooled in Soweto eventually, it was the aftermath of June 16th...what one can say is that not much one can say about the education because soon thereafter, the regime it was quite repressive. It did affect me personally, because one of my elder brothers was detained for about six months, for a related incident that arose in June 16th. He used to be a student at a school called Phefeni Secondary School and he was arrested around 1979, on the basis of what was allegedly said by an informer, and he was held in detention without a trial for quite some time, and at the time, the lawyer who came to his rescue, was someone called Shun Chetty, who was a well known human rights lawyer, but in the middle of the case, Shun Chetty had to flee South Africa, and a lady by the name, called Priscilla Jana took over the case and he was

only acquitted around...it went to the High Court. It used to be called the Johannesburg Supreme Court, he was acquitted around 1980. And the first born in the family, at the time of June 16th he was at the University of Zululand, but because they came from Johannesburg and they were not like Zulus and it was the beginning of these things about people who came from Johannesburg, who were seen as agitators. He also had to drop his studies. So as a result I was the first one in the family to be able to graduate at 'varsity, when I eventually finished high school. Virtually I did my high school...my primary education and secondary education at Soweto. Ja, it's...it was one environment, going to school, everything used to happen there, but around at the time in terms of political activity it was relatively quiet because of the repressive system at the time.

IntShadrack, in terms of wanting to become a lawyer, where do you think you got this impetus from?

SN When I was, I think it was in 1983, when I got arrested for not having a reference book...

Int '83?

SN 1983.

Int So you would have been sixteen?

SN Sixteen, yes. I was somewhere at Kempton Park with some friends. Obviously we were supposed to be at school but we were not at school and we happened to be at Kempton Park, accompanying this particular friend. When the event suddenly stopped and then we were asked about ID's and I was clueless at the time, and also being young. We were arrested and I stayed about two or three days, at a police station in Kempton Park, and then after the three days, was just released to go home and...ja. Without anything having been said, and I would say that experience plus the fact that also, the circumstances under which my paternal grandparents left Winterveld, I felt an aggrieved sense of injustice that had been done, and also the fact that also what happened with my two brothers, the experiences and...I started reading a lot, and you normally read about the papers and then you'll hear about someone called (George) Bizos, (Arthur) Chaskalson, (Sydney) Kentridge, (Issy) Maisels and also when they talked about Mandela and Tambo. It also had to do with the fact that they were also lawyers and to me, it created this impression that lawyers were like legends in their own right, and that law could be used as an instrument of social change. Ja, so that's when I had...I started developing this particular interest.

Int So were you reading when you were in high school or were you at university by the time when you started reading....?

SN Fortunately, my, my father used to encourage us to read quite a lot and he used to buy a good paper, it used to be called Rand Daily Mail. So he used to give it to me just to read, and I would read some of that, and also the books on the African Writers Series, I was still at high school but I got exposed to some of the things, and things like Chinua Achebe, *Things Fall Apart*, you know, all the stuff on the African Writers Series, so in a way my father exposed me to some of the literature that I was reading still at high school. And by, before I completed at high school, COSAS, Congress of South African Students, was, already was starting to ferment then. We also had some people in the neighbourhood who used to have some of the banned literature and then you used to share some of the literature and I remember, there was one guy who used to tell us how to tune in to Radio Freedom.

Int So you listened to OR's (Oliver Tambo's) broadcasts?

SN Yes, yes, and by the time I wrote Matric I did not even write it at Dalo High School where I was a student, it was already the uprising that was starting, because they had already, in the Vaal Triangle, they had already killed the Mayor that led to a case called the Sharpeville Six, and it spread towards Soweto. By 1984, the government then was forced, because we were writing Matric, to group us into one particular school, and then you'll have people guarding you and then you wrote. That was 1984. By 1985 when it was my first year at 'varsity, things just flared up, but by 1984 one could really sense that you were sitting on a powder keg, and it was the young guys who were like quite vocal, ja. So I would say it started at high school and then it spread to 'varsity, because it occurred just before I went to 'varsity.

Int I'm also wondering, Shadrack, when you get to university, which university did you go to?

SN I started at a university that was created by the National Party government, it's called Vista University.

Int Right.

SN Vista Universities were obviously to counter the student activism in universities like Fort Hare, Turfloop and the University of Zululand. So they created these varsities to be within the townships themselves, so it was the National Party creation, so it was, they had a satellite campus here in Soweto. So that's where I started. And in fact what was so surprising, the people who were expelled from the institutions like Fort Hare and Turfloop, you'll find them at Vista, and that's why, even in 1985, things flared up also at Vista, and in 1986, they just closed the whole campus down. But by 1986 I was at Wits. I started doing BA, and in doing this BA one got exposed to things like sociology, Karl Marx and Max Weber, all these kind of things, and you read about different societies and I think at the time, one was naïve, to think in terms of rhetoric...but as I was reading all this literature that I found at Wits, and I used...coincidentally I used to spend a lot of time at William Cullen, because they had a whole floor there full of people like Njabulo, Es'kia Mphahlele, you'd get any books that you were looking for. I started reading on that but I thought I was going to

be a clinical psychologist because at the time I was doing Sociology and Applied Psychology. And by sheer chance I just decided to register for a course called Legal Theory and Institutions. It was supposed to be a minor course in terms of my...it was not supposed to be a major subject but just a minor...minor course. But when I...I sat in the class for Legal Theory and Institutions and looking at what I was studying in Psychology and Sociology, everything made sense, you know, so I did that course for a year and then I was doing my second year and then third year, my final year, I also took a course in Roman Law and something called Criminology. It was also a study about what causes crimes in society so it fitted well with Sociology and the Applied Psychology. And one of the things that was featured, always it was a feature, it always had to do with either law or the rules that society establishes for itself in terms of socialisation, social interaction, social intercourse, you know. By the time I...I finished my BA I thought I would still go on and do probably an Honours in Applied Psychology. When the...a colleague that I was doing Psychology with, he also used to be a fellow here, he's now deceased, he was called Tebogo David Motsatsi, he said to me, even if you like Psychology, you know, we were young at that time, I think both of us when we finished our first degrees, he was doing BSc but we were doing projects together in Applied Psychology. He said to me: You know, black people don't go to clinical psychologists. It's either they go to witch doctors or they go to church, so if you think of taking that route, you won't have any clients. It was around 1987, so we saw a notice there saying that if you want to be a lawyer just write an essay of so many words. I can't remember how many words, why you want to be a lawyer, and then you will be accepted into LLB if you write a good essay, and we were just sitting there, we wrote those essays, within a week we got calls that we can come and register for LLB at Wits.

Int Right. So you had done your undergraduate degree also at Wits?

SN Yes.

Int Because you'd moved from Vista.... ?

SN Yes. I did my BA at Wits and then I also did my LLB at Wits and then when I was at Wits, they used to...we were sitting in the LLB class and they used to...some people used to know the other white students, because I came from this particular background but we didn't know so much of the white students. The people that you know as activists, because at the time when I went to Wits, there was something called BSS, Black Students Society. When I first arrived at Wits the President there was a guy called Diego Moseneke, he's the younger brother of Dikgang Moseneke, he was the President. And the black students at the time, the number, it was quite a negligible number. It was quite few students, but you would normally know, even if you haven't spoken to another black student, but you'll know that he's a student here, and also you'll see in the meetings because you used to have BSS, which was also partly called AZASCO, which is now called SASCO. It was like UDF aligned, and then, you had some guys calling themselves Students Action Committee. They were headed by a guy now, he's a famous political commentator called Doctor Xolela Mangcu, so that was aligned to the BC, Steve Biko type, so I was on the BSS. So when I arrived there you had guys like Diego Moseneke, someone called Dali Mpofu,

he's in the news now about the SABC, a guy called Chris Ngcobo and someone called Bheki Mlangeni, but we didn't know the white students but in class people would point at Matthews Chaskalson, that this is the son of...

Int Oh, he was in the same class?

SN Yes, this is the son of (Arthur) Chaskalson and one could not believe that this was the son of...because he was very much revered in the black community, you know, the role that he played in Rivonia. And gradually one would interact with them and we used to have moot courts, and the late Chief Justice Ismail Mohamed, used to come and preside over those moot courts and also, (Arthur) Chaskalson.

Int Arthur?

SN Yes. And one really, you know, this thing that even though one was not sure whether one was going to make it but all of a sudden you became passionate about it, because you see these guys, interact with them, and the way they speak to you, you know, they are quite humble and despite their achievements, but the way they speak to you they'll be like so self-effacing as if they've not done anything, you know. And you then heard about the Legal Resources Centre, the name came up because at that time you also had lots of forced removals.

Int Right.

SN And the reason I knew about forced removals, when I was doing Sociology, we also covered things that were related to land and there was a woman called Professor Bozzoli at Wits and she would cover...

Int Belinda?

SN Belinda Bozzoli, yes. And she would cover that thing extensively and one of my lecturers was someone called Jacqueline Kok, she used to cover this **Inaudible** about violence and I remember in my Applied Psychology I also had someone called Lloyd Vogelmann, he would also speak about institutionalised violence, about torture victims and one of my lecturers was also someone called Chabani Manganyi, also on that particular stuff...

Int Sure.

SN So like everything in a way, you know, it was like this pot with all the stews in...

Int Right. A cauldron...

SN Yes, cauldron, you know. And taking shape with all these kind of different flavours. I would say, ja...

Int Did you get involved, as well at Wits in the Legal Aid Clinic, Practical Legal Studies?

SN I didn't do that at Wits, I only did it when I was at Natal. And the reason I got involved in that in Natal is because in 1990, when we were applying for Articles as, then they used to call them Articled Clerks, now they call them candidate attorneys, you'll find lots of rejection in the white law firms, and at times if they took you as a black applicant, one of the things they wanted some kind of an experience maybe as a vac student, and we didn't have those kind of connections. And then we applied to the Legal Resources Centre, and we got accepted as fellows, and you know, one of the things that I knew about the Legal Resources Centre it's because, when I was doing my second year in LLB, I got a scholarship that was the SALSLEP, through an institution called EOC, Educational Opportunities Council. So I got that and they used to communicate with us quite a lot.

Int Do you remember any of the people you used to communicate with?

SN There was someone called Robyn...

Int Yes, Robyn Sealey...

SN Yes, I remember Robyn (Sealey), because we used to even write letters to each other, and if she was coming to South Africa, she would like indicate, ja. And I know that she used to tell me...I forgot now the name of my real sponsor, you know, because that also made quite a lot of difference because when I went to 'varsity, I didn't have a bursary.

Int Right.

SN When I did my first year at Vista, it was on the basis that I passed the aptitude test well and they gave me a bursary, but for the second year when I changed to Wits, I didn't have a bursary so for that year, I had to pay, my parents had to pay for me, but because I did well at the end of the year, and then suddenly I got an anonymous donor to pay my fees, and then third year I became lucky, I got a bursary for that, but when I was doing LLB, when SALSLEP came in, it was quite a relief because one got...it paid my fees, m tuition fees and also residence, and also you had books and allowance. So it was like mine was just to study.

Int Sure, that's great. So when you came to the LRC, did you come to the Johannesburg office?

SN I came to the Johannesburg office: that was on the second of January 1999.

Int 1991.

SN 1991, yes. I'm sorry, 1991.

Int That's ok. And so you stayed for a year?

SN I stayed for a year, because at the time when I came in it was not yet Articles, it was just fellowship, it was supposed to be for a year. And when I came in, it was five of us: it was me, Tebogo David Motsatsi, Imraan Haffejee, Lisa Bosman and a woman called Molly Malite, I think she left soon thereafter. And we got allocated some kind of principal. The person who was in charge of us was someone called Trevor Bailey, but my first six months I was allocated to Moray Hathorn. And he dealt mostly with cases that related to labour tenancy in the Eastern Transvaal, which is now called Mpumalanga. So I was with him for the six months and my first experience with him, going...I went with him to court, it was Piet Retief, he was going to represent someone called Mavimbela, he was being evicted from the farm by a farmer called Klingenberg. Seemingly the dispute arose over the fact that, even though he was working there, he had a son called Gilbert and there were allegations that Gilbert had fought with someone else, and the farmer also was complaining that Mavimbela now had too many cattles, and they were taking too much of the grazing field. So but he got charged with trespassing, because he was given the notice to vacate, they used to call it **Inaudible** and the whole generation was born there and their beloved ones were buried there, so it was Mavimbela and someone also from Wakkerstroom called Witbooi Kubheka and a number of cases, but on this particular day we were going for Mavimbela's case, I was with Moray Hathorn. When we arrived there, someone then says to him, are you Moray Hathorn, and then he says yes, and then suddenly they give him a summon to sign, that he received...to sign for the...as proof that he has received the summon, and he was being charged for obstructing or defeating the ends of justice. And I asked why. He said no, he was in the...the last time he appeared in the court, he was representing a number of people who had been evicted from the farms but in this particular instance, there was a woman that was found in the household and she was charged as an accused. So on the day of the court when they were supposed to plead, and then there were nine accused in the box, as it was required, but instead of eight men and one woman, there were nine men. Someone had pleaded not guilty. He was the husband of this woman, and she said that, and he said the...the reason he pleaded was they could not charge the wife, because he was the head of the household. When Moray Hathorn found out about that, he brought it to the attention of the prosecutor so on that day they let it slide, but when I came with him that was the time that they charged him with defeating...

Int Charged Moray?

SN Yes, with defeating or obstructing the ends of justice.

Int Gosh.

SN That was in 1991.

Int Quite shocking!

SN Yes, that was my first experience. And you are there, you are very enthusiastic, you want to see your principal in action, all of a sudden now you have to postpone this case because you...you can't...no, no, on that particular day we proceeded, but some of the things that happened there, that I saw, that the prosecutor was white and the magistrate, at some point in time Mavimbela was under cross-examination and this...when we adjourned...we adjourned, one man went to speak to Mavimbela. When we resumed and then this woman brought it to the attention of the magistrate that that man there, and they pointed the guy to stand up, and they ask his name, and they ask what were you saying to Mavimbela? And then he was saying, no, no, one of the things that was posed was that he needed to find an alternative place, he should go to the new areas that they've demarcated for people who are evicted from the farms, they were called self-governing territories, so he said no, he was telling him the fact that even if he goes there, he won't find a space because you have to pay homage to a chief. And then the prosecutor on the spot wanted to charge this man for speaking to the witness who was under cross-examination. This man didn't know anything about the law. You know, that first day being in that court, it just opened my eyes...

Int Sure.

SN ...that really there were so many things that needed to be addressed, not in terms of the fact that only the laws were repressive, but the way the system operated, and when I came here it was supposed to be a public interest law firm, and I was amazed why I was...we were doing criminal cases but it also opened my eyes to the fact that, you know, if one looked at the apartheid system, it was really a system that was based on law, in the sense that, despite the fact that the...the laws were unjust but they were laws and they were enforced, and the reason why it worked as a system is because, whatever the political ideology, but it was cloaked as law. And you either complied or you didn't comply. If you didn't comply, you were going to be prosecuted criminally, so there were criminal sanctions and when I started working with Moray (Hathorn), it made sense now why Legal Resources Centre was representing people in the...in the Eastern Transvaal area. Because we used to go to places like Ermelo, Amsterdam, Driefontein, Lothar **Inaudible**, Wakkerstroom, Shipmore **Inaudible**, you know, it was quite a...a sizable area that we used to cover, because during that first...that first six months I worked at the LRC, I used to also go there with someone called Ilse Wilson, she's a daughter of Bram Fischer, she was working in the Advice Office of the Johannesburg office. Every second month we'll go to the Eastern Transvaal just to conduct clinics for people at Piet Retief, but we'll normally hold some at Amsterdam. There was a man there called **Jota Zwane (Baba)**. People would come to his place with all kinds of legal problems and I also realized the role of lawyers, that at times, you...even though you are not going to make a difference, but the fact that you sat there and listened to someone, it made a difference to them and we'll do the clinic there on that particular day and that night we'll drive through to Driefontein, and we

used to sleep at a house owned by someone called Beauty Mkhize who happened to be the wife of Saul Mkhize, who was shot with the forced removals at Driefontein. And then the next day we'll also hold clinics there and there was a man who used to help us a lot, his name was Yunus Cajee, an Indian man, and he also used to provide food there for also people who'll be there the whole day, and you'll find by the time you arrive, you'll find a queue, people waiting for you there. That really opened my eyes, to some of the things that were happening.

Int It's interesting, that you're talking about all this, Shadrack, you have an amazing memory because when I interviewed Moray twice and Moray speaks about Yunus Cajee and also Beauty Mkhize and Mr Zwane...

SN Yes. I stayed with them and some things they stay in your life, you know. I remember a woman...I don't know whether he spoke about a woman called Phumwayo, Mrs. Phumwayo, the woman who had her cattle be impounded under, I think one of the laws, it was an...an invalid ordinance and they impounded her cattle by a farmer. And then we had to apply to the High Court, only to find that she didn't have anything to eat for quite some time, only to find that after some...the intervention of someone called Paul Kennedy that Moray Hathorn used to brief, that those regulations under that ordinance were declared invalid, and that Ms Phumwayo managed to get her cattle back. And there was one instance where a member of COSAS in Driefontein was killed by a chief. The chief was supposed to have belonged to IFP, and the cause of death it was that he drowned from his own vomit because he was drunk. And you also had those cases there in the Eastern Transvaal of people being beaten up by farmers and dying, or if they were not sending their children, they have to vacate, but you also have the black guys who used to be called bus boys, those would be the guys...the guys who would be telling the farmer who's not working, whatever, if they've got any other problems. You had that kind of problems but that really touched me. It's like yesterday, what I remember about those things, ja. But you know I can go on and on *ad nauseum* about that first six months, you know, working with Moray (Hathorn). It was...it's one of those things like you never forget, once in a lifetime experience, and it also does leave you scarred emotionally.

Int Really? In what way?

SN Because you see the poverty of people and the plight and at times you can't do anything, you know. You...for now, you can resist eviction, but eventually they are going to be evicted. And if they go to the townships, these people have been on the farm, they don't have skills, what are they going to do?

Int Sure.

SN And they are clients, and you need to have that professional detachment but you always think about those people, and they'll thank you for just listening.

Int It's interesting, because you said to me that the law could be used as an instrument of change, but during apartheid, under parliament, well, parliament was supreme and it could overturn legal victories. But for some reason, the victories that were garnered by the LRC quite early on, for example the Rikhoto case, the Komani case, those weren't overturned. What do you think was the reason for that?

SN Yes, Rikhoto is the one that deals with the Pass system?

Int Yes, Section 10.

SN Section 10. You know, if I think about the Rikhoto one, I think, because of the influx it was, what is happening in South Africa with people from Zimbabwe coming over, I think it was like trying to stop a flood gate, you know. It was this tide that was coming in, and I think the way the case was also argued, and if one read, or read that judgement by Goldstone, I didn't see any other way that the government could have been able to enforce the influx control system after the Rikhoto thing. Also in the light of the fact that if one looked at Johannesburg, all of us were migrants, or the black, the black populace in Johannesburg, they...we are really migrants and in that instance, you know, I think LRC made a lot of difference, because what you are saying, I'm also thinking in terms of Soweto. They had something called the Black Local Authorities, whether you owned a house, you're at the mercy of a councillor or whatever.

Int Sure.

SN And they also did manage to...even though they didn't want to grant ownership to the people there, but LRC was able to push that they should recognize the 99...99 year leasehold, that in a way virtually meant that people owned those houses, and even when it came to the rates and the levies, I remember one case that I got involved with Arthur Chaskalson as a fellow, it was called Sihume vs. Atteridgeville Town Council where...

Int Atteridgeville?

SN Atteridgeville Town Council, where they tried to use the Black Local Authorities Act to retrospectively create a levy that they were supposed to pay, in the black communities, and you know, to look at the fact that that case was argued just on the basis of whether the 'or' in the whole section, whether it was disjunctive or conjunctive. To me it just showed the brains that the Legal Resources Centre had and as a result of that, you know, because of the retrospective application, it was declared invalid.

Int Sure.

SN And I think at that time even the National Party government was tired of the LRC, in terms of the victories. One of the things I studied here at the Legal Resources Centre: when they did their cases they used to...they would get an ideal applicant and they will gather the...they will build their case factually in terms of getting suitable clients or even a class of clients...

Int So a test case?

SN Yes, a test case. They used to do that. I remember also when I came here, they were doing that one: Radman vs. Simthwane, the one on legal representation.

Int Could you talk a bit about that?

SN Yes, it had to do with legal representation, that a majority, because of also the...some of the laws that also involved apartheid, as I say, like if one was to enforce the Group Areas Act, like it's also related to if one looks at the Rikhoto thing, if you look at stuff like those, it was like a...a social mechanism or a legal mechanism obviously to enforce apartheid, to say that you could live in different areas, but because of the criminal sanction, it became a crime, trespassing, it became a crime, squatting became a crime, and most of these people would appear in the magistrate court. And some of these magistrate courts, because they did not have enough magistrates, they will use to have people who were like administrators. I remember even when I was arrested for the reference book in 1983, one of the things that happened, you'll be appear...it looked like a shed and then it will be the first ten people are going to stand there, and then you are going to be fined thirty days or thirty rand. The next group they say: Go home. It was so arbitrary, because I don't think they had enough manpower to deal with that, but if you look at the number of people who appeared in the magistrate courts, most of them were black, and they were not represented, and they wouldn't get assistance from the magistrates, and the fact that they were not legally represented, it did not matter, and as a result you had many people who were not supposed to be in jail, either awaiting trial or serving sentences that were not supposed to do that. And they had a...a legal aid system whereby they had a means test, you were supposed to earn something like one thousand five hundred, and if you had that then you don't qualify, and most people didn't use that because they were not even aware of that system. And when the first case started, it started with a case in Durban called Khanyile that was a judgement by Deed Court, when he referred to the American cases: Gideon vs. Wainwright and whatever, to say that, really in order to hold someone, he's got a right to legal representation in order to say that the trial was fair, or he's been here because the fact that you are saying that the magistrate can assist him, it does...it's neither here nor there, and the fact that you also have Legal Aid, the Legal Aid guys, which is still happening, coincidentally, today...

Int Right.

SN ...that they will normally make the guys plead guilty and go to jail. But looking at those cases, the way the LRC did their case, because they had a case coming from the

Eastern Cape, Qaso and Mntwana, they had a director there by the name of Pickering, he's now a judge.

Int Judge Jeremy Pickering?

SN Yes, in the Eastern Cape.

Int Grahamstown...

SN Yes, they had all those cases, some of them from Durban, from the Durban office, and when they mixed them, it was like a promotion of access to justice, because you were also saying that if this accused was to have a trial but undefended, it should be an informed waiver, that he's got a right to legal representation, even if he can't afford it, it should be done at the expense of the State.

Int Right.

SN And I think as a result of that case, even though the A.D. decision went the other way, to say that procedural...they reduced it to a narrow point to say that when they speak about the right to a fair trial, they spoke about procedural fairness, not about provision of legal representation, but there was a telling part there, by the then Chief Justice (Michael) Corbett to say that obviously even though the money is a scarce resource and whatever, but ideally, this is what should happen. And I think when they introduced the public defender system; in a way it was a vindication of the view that was held by Arthur Chaskalson then, on the submissions that were made in those particular cases, to say that the **judicial case** system whereby you are going to hire private lawyers, it costs more but if you've got salaried lawyers working on this particular...it becomes more efficient and you can service more people, you know. Obviously that was the ideal and I think that was achieved in a way because we've got...you had those pilot studies of the public defender system, but how they are all over, and you are able now, and most of the people that you find working in there are the black graduates who don't have Articles, and they are able to do their Articles in those centres, they call them Justice Centres, I think, ja.

Int When you were doing your Articles, you were very fortunate because Arthur (Chaskalson) was still there, so was George (Bizos), so was Geoff Budlender...

SN George (Bizos) was a consultant, (Geoff) Budlender was here, and also Mahomed Navsa, also Moray Hathorn, there was Trevor Bailey, there was also Mahendra Chetty and Morris Zimmerman...

Int Right.

SN Ja, and also there was Ellem Francis, yes.

Int Right, ok. So you had a very, very strong group of people...

SN Yes. Margo Segal, because in the Advice Centre they used to deal with the people who used to...when these people moved to these areas which were regarded as white areas, when they invaded the flats, I remember when I went to the Advice Centre, at time we were supposed to go home, it's about five to four in the afternoon, we were supposed to go home, and then suddenly we've got three hundred people coming in saying they've been evicted, and you now have to make...to draft affidavits for an urgent application. It was also quite an exposure when there was Margo Segal, she used to do, in 1991, they evicted people at Carletonville for not paying rent.

Int Right.

SN Khutsong, it's not only now that you are having some...it's in the limelight about this thing, they also were trying to evict people for not paying rent, and in that instance, also LRC made a sterling effort and I also remember people were also staying at a hostel in Dobsonville called Siphilwe Hostel, LRC also played a role. Reiger Park, LRC played a role. So you had different people here, but they did different things, for example, Mahendra Chetty used to do labour matters. I remember one of the first matters I did with him, it was a pilot, a white guy who was HIV positive, and SAA wanted to fire him because he tested HIV positive...it was before it was fashionable, that was in 1991. And I remember Mahendra Chetty taking that case and he worked in collaboration with Edwin Cameron, and they won that case. Then we didn't have the CCMA; we used to have something called the Industrial Court...

Int IMSSA?

SN No, IMSSA was for arbitration that was run by (Charles) Nupen but they hold an Industrial Court that used to sit in Pretoria.

Int Ok...

SN Ja. You also had the first case that...before you even had legislation about discriminating on the basis of pregnancy, it was done by Mahendra (Chetty). A white woman who was fired by the employer who was also employing her mother, for being pregnant, it was done at this office. You had a mixture, and then you also had Pinky Madlala, she was involved in the Advice Office, but she would also there and there rope in when she was dealing with Workmen's Compensation, Unemployment Insurance. So ja, I would say that even though I was not in a law firm, by the time I left here, I really felt that I really wanted to be an advocate, because I used to see the way that these guys were using the same laws, obviously to give these people some relief. Because occasionally they would also take criminal cases, and turn the result. I remember one of the cases I dealt with, with Mahomed Navsa, it was called Mokgalaga, it was a gardener who had beaten up a...supposedly beaten up a white woman, and he was sentenced to about three years direct imprisonment, and the LRC

took the case and that man was about fifty years old, he had a previous conviction, I think it was for culpable homicide, that was over ten years, but the way LRC argued the case, it...it just created the impression that even the magistrate cannot just summarily convict people without giving them a fair trial. When I did the case in Kroonstad with Ellem Francis, whereby someone who used to work in the Advice Centre, because LRC used to also service what they called Advice Centres, we used to go to Parys, Kroonstad and Bloemfontein, when I was in the Advice Centre. This man...someone bought something in a shop and she went to the shop...she wanted to...she didn't like it...she had a choice of five days to bring it in and when she went there, she was told that no, she could not get something...she could not get her money back. But under the Credit Agreement Act, you are entitled to do that. She went to the Advice Centre, and this man from the Advice Centre accompanied her. He was called...the name was Jake, I forgot the surname. He went there with this woman and the...the lady, the white lady who was working there, she said something and suddenly the white man who started beating this man up, and the policeman he was locked up and then also charged with assault. And we went to court with Imraan Haffejee and Ellem Francis and we defended the man. He got acquitted and I think sued the police and the store for quite a sizable amount, but I left before the case could be settled. But, you know, you ask me these things, it's...at times, as you ask me, you know, one thinks about those cases and one at times is not articulate enough, you know, just to weave this thread but...

Int No, absolutely. You've got a fantastic memory. Shadrack, what made you... you said that, you know, you wanted to go on to become an advocate?

SN Yes.

Int What was really the reason...you've mentioned it but I'm trying to understand why...

SN What made me to...?

Int To move on from the LRC, after you left, you went to Natal?

SN Yes. When I was here, during the...during the course of my fellowship here, Mahomed Navsa was the in-house counsel here, and I used to see, like he would normally be at the library, or chatting in Cecilie Palmer's office, or just checking on us and he had this system: every Monday we were supposed to have seminars. He would say to us, you are supposed to prepare this, you are supposed to prepare on prescription, and tell me about prescription next week Monday, so at three you would drop everything and you have to attend these seminars. And he was good at tongue-lashing, Mahomed Navsa, and I think he was quite feared by the staff. So...but every Monday morning we used to have a professional staff meeting, it used to be fellows and the candidates, so every lawyer was supposed to account what he had done throughout the week, and the fellows, if you have anything to say, but he used, these attorneys used to get a dressing down from him, he would tell them that...what are you doing here, are you pen-pushers or what, you know? Or what you are writing, what you are doing there it's a lot of nonsense, you know, you need to jack up your

socks. And when he spoke, he was so passionate about law, even though he used to use clichés and catchphrases but he was so passionate about laws, and said that you need to make a choice, either that you apply yourself or not. He said, as an advocate, you've got a lot of time obviously to research the law, to litigate and not to do administrative work but just to be good at what you are doing, and to be, what is the word that he was...yes, you have to be incisive and clinical in how you deal with issues. That is your job as an advocate. To me that appealed and I subsequently went to the AD with Arthur (Chaskalson), that was in September and there was a woman who came in at that time, she was a...she was a...a lecturer at **Inaudible**, Pam Andrews, and then an external student, I forget her name, from the States. We went to the AD and then...

Int AD...?

SN Appellate Division. It's now called the Supreme Court of Appeal. And whilst we were there, one...that evening, Arthur Chaskalson took us to dinner and he started talking about law and the fact that even when he goes to court, he prepares a lot but he still gets anxious and he always anticipates what the other side is going to argue, but for that, in order for you to be okay, you always need to prepare. So I thought, you know, administratively, I'm not good, so I thought well; I just...I wanted to be a clinician. You know, I just wanted...I'm interested in the forensic application of the law.

Int Sure.

SN Not the administrative part. So they offered me Articles for 1992 but because I didn't have Latin I decided to go back to 'varsity and do Latin, but in doing Latin I also registered for a Masters doing Trial Advocacy, just to learn advocacy skills.

Int Sure, sure. So you went to University of Natal?

SN I went to university and at 'varsity, I was fortunate to get a former Director of the Legal Resources Centre, to teach me Trial Advocacy: Chris Nicholson.

Int Chris Nicholson, right.

SN And I also used to go to the office at...in Durban there was a guy called Nzo Mdladhla...

Int And Richard Lyster.

SN Richard Lyster. They had Howard Varney and then they had a woman called Asha (Moodley), an Indian woman. Those are some of the few names that I remember...

Int So you kept your contact with the Legal Resources Centre?

SN Yes, I've kept my contact with the Legal Resources Centre. But when I went to 'varsity, already I was...I just told myself that I'm going to do this **Inaudible** and then Trial Advocacy, and whilst there at 'varsity, because I used to work at LRC, **Inaudible** recommended that I should go and work at the Law Clinic, help at the Law Clinic at University of Natal.

Int Right.

SN When I went there I worked with someone called Robin Palmer, he's now the Professor there, so for me, like you know...

Int You got a good...

SN Yes that my only option was to go to the Bar, ja.

Int Right.

SN And when I was here, they used to send us to deliver counsel briefs and at times we had the luck of talking to the advocates and one of the advocates was always advising me what to do...on what I wanted to...was also Paul Kennedy, he was also quite influential and some of the briefs that were prepared by the late Morris Zimmerman, he used to do cases that dealt with a security company called Khulani. It was notorious for beating up people. It's like the Red Ants; I don't know whether you've heard of the Red Ants? These are the security guards they use when they evict people from these buildings.

Int Oh really? Gosh.

SN Yes, they call them the Red Ants. So at the time these guys Khulani Security, they used to beat up people, before then they were called Patrol, Springbok Patrols. They used to injure people and they were a law unto themselves. And Morris Zimmerman used to take them on and he used to brief someone called Robert Nugent, who was still a junior counsel. He's now the judge of the SCA. And when you met those guys and they do the matters from the LRC, I saw the importance of advocacy. And at the time when I went to the Bar, there were not that many black advocates. The only person who had come here as a fellow and went to be an advocate, was someone called Rusty Mogagabe. He's now a senior counsel.

Int Right. So you were at University of Natal for how long?

SN I was there for two years, because I was doing a Masters in Trial Advocacy.

- Int Right.
- SN So...
- Int So '92, '93?
- SN Yes, because I also had to do part of the research, and part of the research was on the right to legal representation. It was before the new interim Constitution came into effect, so I was researching on that aspect, on how it was going to be applied in the light of the interim Constitution, which had a justiciable Bill of Rights, you know. So...ja.
- Int And then, Shadrack, what happened after you finished your Masters?
- SN When I finished with my Masters I came back to Johannesburg, with a view to do a pupillage.
- Int Right.
- SN And when I came back to Johannesburg, I was doing my pupillage...within the first week I was doing my pupillage, Imraan Haffejee from, who used to be...
- Int A fellow...
- SN ...a fellow, I think then **Inaudible** before he was an attorney. He called me to say that he's working at a particular department in...it was the IEC. I forgot now the department that he was working in. now it was the Monitoring Department, he was working with Peter Harris, he used to be a lawyer at Cheadle and Haysom.
- Int He was also an LRC person.
- SN Oh? I was not aware, because the person that I'm aware of, was...there was a guy called Bheki Mlangeni, who was belong with the...he was one of the guys who also assisted me in the formative years when I was doing LLB, because he used to give me his books, I still have some of the books that I was given by Bheki Mlangeni.
- Int Gosh. His death must have come as quite a shock.
- SN Yes, because in December, he died in February, December I was at his wedding, and I knew his wife and the son, the three-year-old son, so it was quite a shock, you know.
- Int And he died in January...?

SN Is it not February?

Int February? Oh right, ok.

SN Yes, yes. So...but Imraan (Haffejee) invited me to join him at the IEC, so I then had to break the news to Paul that I needed money to obviously repay some of my student loan, when I went to do the Masters. SALSLEP was no longer sponsoring me because I was...I had already finished my degree so for the first six months I worked at the IEC, and then after that I went and did my pupillage at the Johannesburg Bar and then I completed at the end of that, and then I started at the Johannesburg Bar on the 5th of December 1994, and then whilst there, and then I got recruited to come and teach at my old *alma mater*, that was Vista University then, to teach Law. So within like, three months, they took me on permanent basis then I had to change my membership from being a full member of the Bar and then I became an associate member of the Johannesburg Bar. And I started lecturing, that was 1995. 1996 I got a call, Mahomed Navsa was now a judge, he wanted an assessor in criminal matters. I didn't know anything about criminal matters, I went and sat with him, and he took me through the stages. By the time he was done with me, like, I was now...my services in criminal matters and as an assessor, were in demand. As they say that the LRC always looks out for its own. (Laughter.)

Int I can clearly see that, Shadrack.

SN Yes.

Int You've been very fortunate.

SN Yes. And all the judges that I know, it was because of (Mahomed) Navsa when he invited me. And I did so well, you know, and lectured...at some point in time, in 1999, I was even asked if I was not interested to be an acting judge in criminal matters and I said, no, thanks. But the LRC has been good to me.

Int Why did you turn down being a judge?

SN 1999, I...I think it's something that I learned here, that it's not about the position but it's about whether you are able to do your utmost best if you are going to do that job, and I thought I was...I was of the right colour, but I thought the job of being a judge, then I was not ready and...in terms of judgement.

Int That's interesting, because, people I interviewed say that in the post-apartheid transition, too many people have gotten into positions of power, especially as judges, who are not ready for that position.

SN I hold that view, because I heard you speaking about the rule of law, because one of the things that I see as the biggest threat in this country, what they did when they said that they were transforming the Bench, they just put in a lot of black faces, and some of them are not even supposed to be there, and in the process, the...the thinking seems to be if it's a black face, therefore it means we are transforming the Bench, but what has happened is that it has affected the black counsel, the black advocates and the black lawyers, and the black clients are worse off. Why? Because some of these black judges, some of them have never practised in the High Court, most of them they've done the Road Accident Fund, they've done criminal matters, and they've operated as one man firms, and they have ascended to the Bench because of probably their connections to the Black Lawyers Association, or through NADEL. They were like activists, but not in the sense that now they are portraying today. And when they get there, one of the problems it's...at times you are saying that if you affirm someone who's got potential, but they...they don't improve themselves just to learn on the job, and write reportable judgements, it'...if one looks at the Law Reports, very few black judges have got reported judgements, but what is worse is that they're afraid of the black...the white advocates and the white lawyers. When you go to the Motion Court, if it's a black judge, the white advocates and the white lawyers who appear there, they'll always get their orders without any hassles, but if it's a black advocate, or a black attorney, you'll be grilled even if it's a...there's a draft order or there's a settlement agreement, it's like as if they are looking for a mistake, it's as if you are not capable of doing the right thing, and they forget that...and they will normally...you are supposed to show respect to the Bench, but they are always quick to show judicial displeasure if it's a black person. At times they don't give you a hearing thinking that it's about you, but it's not about you, it's about...it's about the client that you are representing, and most of the clients that come to us will be the clients that don't have money, who can't come to the LRC, because the LRC is taking public interest cases and they can't do individual cases.

Int Sure.

SN So he has to go and negotiate with the law and he gets that black lawyer and that black advocate who is willing to take the brief on that, but in court he does not get a hearing.

Int Sure.

SN That is the biggest problem. And the second biggest problem that I see...currently we've got socio-economic problems in South Africa, and that's why you need places like the Legal Resources Centre for socio-economic problems. I think it's a disgrace that you have a case of that woman who died the previous day, called Grootboom, the one about the rights...

Int Oh, she's passed away...

SN Yes, she passed...

Int Two days ago?

SN Yes. And you've got someone who deals with housing, who's in the government, belonging to the ruling party, to say that no, no, this time she won't get her house, she's going to look at the others getting their own houses, we are proud of her but she's not getting a house. And I thought, what that man was saying, that for her having the temerity to take the government to court, obviously they were going to sideline her, but the biggest problem it's if you've got weak judges, who think that their ascendancy in terms of seniority, of getting positions in the Bench, it's...if they show allegiance to the political party, then we've got serious problems, because what is the judgement there? When is a judge fair? When can you say that this particular black person, he's a judge, but he's got a sense of judgement? Where do...when do you say that this person is impartial, he's fearless, and I think with the things that are happening around the country, you see the problem that people are...like the judges are saying that, well I'm going to be the Chief Justice because I've aligned myself to this faction, or you won't be the Chief Justice...and I think that is a disgrace. Because now it means also judges are no longer impartial, they are no longer neutral.

Int That's a very important point because I was wondering, in terms of the Grootboom case as well, the LRC...when Arthur (Chaskalson) left, he said that the LRC's role as a public interest law organisation is to take on government when necessary, even if it is an ANC government, and to be fair to the LRC, it has done so, in terms of the TAC case and also the Grootboom. But the problem is, after you win a case, the implementation.

SN Yes. I saw in parliament the Director General there was saying that they've got about three hundred and something orders that they've not complied...

Int Contempt orders?

SN Yes. And some of them even date back to 2003. And I also heard that other Eastern Cape...on the social welfare, where people didn't get their social grants, and that is the problem. That also, if you also have judges who are also fearless, no, no, who are fearful, who are not fearless, then how do you take the matter further? But I'm glad that...in a way that has been taken a step further, because the Constitutional Court said that now you can even attach the government property...

Int Right.

SN They've got the right...

Int Oh, so they have said so.

SN Ja, they have said so, that this thing that the government is exempt, it infringes the equality clause, so I think that is, in a way, it's a good thing, but the issue then becomes, if you've got a majority of these black judges, what happens if you've got a judge, even though the case favours, this one has made a case for this relief, but he's fearful because it's against government policy...that's where I see the threat, and that's where I...when I see the erosion of the rule of law, you know. That it's about socio-economic rights, you need a strong Bench, and I don't believe that a strong Bench it's the one that constitutes of the majority of people who are black, but I think a strong Bench would be people who speak through their judgements, who are not politicians masquerading as judges. I think at the moment we've got a lot of people who are claiming to be judges but in a way, they are just dressed up as judges but they are really politicians, you know.

Int Shadrack, this brings me to a very important question. In that context, where there's a lot of political machinations that are going on in the judiciary, I'm wondering how a public interest law organisation like the LRC can function effectively, in that context?

SN Obviously, one of the problems it's funding, obviously.

Int Sure.

SN One of the things that has happened when the new government came into power, is that they've managed, in terms of funding, even including the NGOs, they almost control everything, even the funding and even if you say things that they don't like, you know, you get shut down, so I would think if you have people like the Legal Resources Centre, obviously properly funded, I think they'll be able to take the fight to the government to its logical conclusion, but as you say, that LRC for it...I don't think, in terms of the judges or judicial officer, it's nothing new because even when they operated under apartheid, they would present cases under...before very hostile magistrate and judges, I know some of the things that George Bizos has been subjected to, Arthur Chaskalson, (Mahomed) Navsas, you know, the lawyers in this office being ridiculed, you know, by magistrate or judges because they come from the LRC or...and...or they are the human rights lawyers, so in that respect, the question that I think it's whether is LRC, organisations like LRC still attracting the calibre of people that are going to keep LRC going? You know, who see the role of LRC as an instrument of social change, to fight for the underdogs, because I've always thought of LRC as about restoration of the dignity of the poorest of the poor, it's about the basic humaneness, you know, to live with dignity, you know, and equality before the law. I think LRC it's all about that, but I think for LRC to keep on doing the work that it does, obviously it needs to still breed the kind of lawyers who believe in the ideals of the LRC.

Int The other thing I wanted to ask you, is that in the post-apartheid era, the LRC, besides funding, it's also unable to attract, it's linked to funding, unable to attract very good quality black, young black lawyers, because they are so much in demand in the corporate law firms. What's your sense of that?

SN Yes, that's true. But it's...that's human nature. It's like a child who grew up being deprived, all of a sudden when there's plenty, obviously you will always want to...to amass whatever you can do, and lining your pocket. You say that I've done my part, therefore some others they need to take up the baton and carry on. For that one, I...I don't have an answer, but I know that LRC still offers...

Int Candidate attorneys?

SN Candidate attorneys and...how long they stay...but I would always say that if, in terms of quality, I know that there are so many people who are always willing to...to be consultants for the LRC and to do cases for LRC so I think, if you can't attract the suitable guys then I think you just need to approach them on a *pro amico* basis or this thing about pro bono because I know also, people like Wim Trengove, he used to work here, do some kind of work, and Gilbert Marcus...so I would say probably use them as consultants then, if you can't do that, and I also know that you do have some black guys who also do some work here, like there's a guy called Garth...

Int Okay...

SN Ja...but it's...it's...the question that you are asking, it's one of the questions that I always ask myself and I don't have an answer for that, I don't have an answer for that.

Int Shadrack, I've asked you a range of questions. I'm wondering whether there's something I've neglected to ask you, which you feel ought to be part of your LRC oral history interview?

SN Not really. (Laughs.)

Int Right. Well, you've pre-empted a lot of my questions anyway...which is nice. But I wondered whether we could end the interview, if you could share a memory, whether it's working with Mahomed Navsa, whether it's working with Moray Hathorn...of your time with someone from the LRC, or even a client, something that you treasure.

SN Hmm...I would say it's when I was working with Moray Hathorn in the Eastern Transvaal or Mpumalanga, the Mavimbela matter, representing that family up to taking the matter to the High Court, and even though when we went to the High Court, to...to the Supreme Court in Pretoria, when Mahomed Navsa was...he did the case and they said that they must be evicted, and I think one of the judges in that matter, I'm not saying it's because he was a farmer, he rejected the application not to be removed, even though Mr Mavimbela lost the case, afterwards coming to the office and thanking us for putting up a valiant fight.

Int That's wonderful.

SN Yes, I think for me it's still...I understand now that Mr Mavimbela died, but it's one of those memories that I treasure LRC for, you know, to expose you to that side, to show that it's an organisation but it was compassionate and caring, but it's an organisation, it's supposed to be an entity, but it does have a human face, and it also does evoke human emotions, you know, it's not professionally detached, ja.

Int Shadrack, it's been a pleasure meeting you, and I really enjoyed talking to you.

SN Yes, same here.

Int Thank you very much.

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