

Mohamed Navsa

LRC Oral History Project

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The audio-recording will not be made available under the embargo.

Interview 1 - 4th December 2007

(Brief exchange with George Bizos on Page 29 included in this interview)

Int Thank you very much for taking the time to do this interview, the interview is with Judge Mohamed Navsa. And it's Tuesday the 4th of December. I wonder whether we could start the interview by you talking about your experiences of growing up in South Africa and apartheid and what were some of the formative influences that perhaps may have influenced and led you to the legal profession?

MN Well I was born and grew up in a town called Edenvale, which is very close to Oliver Tambo International airport. At that time it was incredibly underdeveloped. There was a big African township at the foot of Kelvin power station stretching downwards. And my father ran a retail outlet, a shop. I guess that one of my earliest memories... I was talking to my sister the other day...was of big Kwela-Kwelas picking up people on pass offences. That's sort of my first images on how rough and brutal people...policemen were, particularly with women that they'd forced into the back of these police trucks. But on a very personal level I have a spotted ethnic heritage. My paternal grandmother was Malay, my paternal grandfather came from India. And in those days, I think that a lot of people who came from India didn't have official papers and they came, and they worked, and the idea was they'd go back. The ordinary rule was that you took your father's ethnic identification unless your father was white and married a Coloured woman or something like that, then you didn't. We, however, were all registered Cape Malay - the old classification. We were about to be moved under the Group Areas Act from where we were, from where we lived...we lived behind the shop in Edenvale. What then happened was that the closest place we could move to was...would be the closest coloured group area, was Reiger Park, where I presently live. The difficulty of growing up the way we did is that you never quite knew where you fitted in. The Indian community rejected you because you weren't pukkah (**pure breed**). The coloured community didn't accept you because you were a K...an ethnic slur-an equivalent of the K word. So that was difficult. But at the time I was in standard 8 (grade 10) at William Hills, an Indian High School in Benoni. It was the English medium school closest to where I lived. But it was also undergoing a transition because they'd moved all of the Coloured people from Benoni to Boksburg - to Reiger Park. They moved all the Indian people into Benoni. They moved all of the African people out of Reiger Park, so you knew who the enemy was that was displacing you. But when we moved from Edenvale to Reiger Park, a Coloured Group area there were attempts to reclassify my dad. Our ethnic lineage was never a secret. My dad remembers vividly being picked up by the police and interrogated for hours about his ethnicity heritage. During September 1972,

I think, when I was in standard 8, the school principal told me in front of the entire school, one day at assembly, that I did not belong there because I was Coloured. And my dad had to plead and beg for me to finish my standard 8 at William Hills. And there was no other place else where I could complete the academic year. Coronationville High, which was English medium and the next closest school, was full. So I had to go to where my uncle was chairperson of a school governing body, which was Kimberley-more than 400 kilometres away. And that felt like real exile. I was 15-years old and told that I didn't belong in a place. The good thing about Kimberley though, was that the community was too small to have separate schools. So, Indians and Coloureds went to the same school. I attended William Pescod High School, which is where I matriculated in Kimberley. In the meantime, race classification proceedings against us as a family were instituted. My dad had to appear before the race classification board, to resolve the problem -whether we belonged or not. We got racially abusive phone calls at 2, 3 o'clock in the morning. My dad had himself built the house we presently live in. And we were offered a pittance for the house, told to get out, that we didn't belong there. All of those things happened at a crucial adolescent time in my life.

Int Who was this kind of pressure coming from, because it didn't sound like it was coming from the white...?

MN No, it came from people like Jac Rabie, who was at that stage, a member of a right wing Coloured political party within the community. My dad can speak Gujarati. My grandmother was temporarily sent to the village because my grandfather had thoughts of going back. There she learnt the language and could speak it very well when she came back. She nevertheless found it difficult to reintegrate. I went to an Indian Madressa and I wasn't totally accepted there either. All of these things left stark impressions and had a really stark effect. Well, the race classification ended on the basis that we could remain what we were classified as...

Int Cape Malay?

MN As Cape Malay and Coloured. I then had to go to university and in those days again, as you would know, you couldn't go to an 'open' university unless you chose really odd courses that were not offered elsewhere. I had to go to UWC-a 'Coloured' university- in the Western Cape.

Int Was this in the seventies?

MN This was in the seventies, yes. This was a rough time too, sort of post '76. 1976, was when I started my law degree.

Int Why law?

MN Well, because...I guess we had to move because of Group Areas. Because I saw all of this brutality being perpetrated in front of me, particularly in respect of the African population, because we were kicked around as a family, had to move, had to relocate, I felt like an exile. I guess very early on I used to watch Group Areas inspectors come around to the shop and to the house. The race classification era, and that's why law, I guess. Always a sense of how could a system operate like this? How could laws allow people to treat people like this? But I think the experience of being thrown out of the school, weighed heavily, particularly for an adolescent. You didn't quite understand it all. And the weird thing is here within the black community, within the Indian and the Coloured community, there was a sense of rejection. The good thing again about going to Kimberley was well, the community wasn't split. So all the social events you went to, you felt at home, there was no real distinction-no stark schisms between the Coloured and the Indian community or the Malay and Indian community. So that was the first time I was comfortable. Then there was UWC. At the time that I got there, (Allan) Boesak was the chaplain on campus. Then he was very young and bright-eyed. He didn't get his singulars and plurals right- his 'was' and his 'weres' and his 'is' and his 'ares' He was very much a kid from the Boland. It was very comfortable to be amongst like-minded people; notwithstanding that it was a terrible institution at the time. It was very rigid. A number of people who couldn't get jobs elsewhere, particularly White Stellenbosch graduates, got jobs at UWC. They didn't like us. We didn't like them. And the place was designed, as most ethnic universities (Bush colleges) were-not to have too many graduates. English in the Arts faculty and Chemistry in the science faculty were the courses that acted as culling devices. I met some really good people at UWC. Although the institution was terrible and one wanted to get out of there as quickly as one could one also had an interesting time, particularly when Dr van der Ross was in charge. At the time Professor Jakes Gerwel was head of the Department of Afrikaans Nederlands. 1980, was a very formative period because that was my final LLB year. I don't think we went to class for more than six weeks in that year. It was the time of the committee of '81 where tertiary institutions in opposition to Government were represented. I participated in that as part of the ad hoc SRC at UWC. Dr. Van der Ross was about to depart and Jakes (Gerwel) hadn't yet been installed as Rector. It was a time of great turmoil on campus but also a good time in terms of meeting really good people, of the challenges to apartheid, of forming and strengthening ones own political views. In Kimberley too, I boarded with my uncle, who was married to my mother's sister. And he was president of SARU, which was then the only non-racial rugby union. So all of these things really, I think, shaped my world. The year before I graduated (1979), the LRC was being formed. A circular came around at the time that I was convenor of UWC Student Legal Aid. And Professor Van Huysteen, who recently asked me to write a Foreword to his book on The Law of Contract, asked if I wanted to take up an LRC vacation job. You've got this interest in public interest law he said - I had been involved in legal aid for years before then and was convenor during that year - and I said yes and came for the interview. I remember Cecilie Palmer taking me into the interview at Innes chambers...the LRC used to work out of Innes chambers. I must say it was a bit weird because it was an incredibly large and tough panel for an interview for a vacation job. Went for the interview, got the job, and you know, it was much like I'd found work at legal aid clinics, very challenging and satisfying.

Int When you say vac job, was it during the vacation of university or...you'd finished your LLB degree by then?

MN Yes, I would have finished my penultimate year. I had one more year to go so it was the end of '79...

Int And this was Johannesburg.

MN This was Joburg and I was a Joburg boy. The other interesting thing is that when I was running UWC legal aid, Kate O'Regan was running UCT Legal Aid. And there were joint programs. At one stage SASO put pressure on us and the split with the 'White' University had to come. But UWC Legal Aid did a lot of work in the townships. We had a clinic in Hanover Park and we had a clinic in Bellville. I travelled to Paarl on a Thursday night to run a clinic there. So all of that fitted in perfectly with coming to the LRC. I did the vacation job. Pinky Madlala, whom you might have heard a lot about, was a mother figure in a very real way at the Hoek Street law clinic, which is where I was placed for the vacation job. Ramola Naidoo at that stage was the Hoek Street law clinic head. Arthur Chaskalson and the rest of the LRC were at Innes chambers.

Int And Morris (Zimmerman) came later?

MN Morris Zimmerman was there. Morris (Zimmerman) was the really big, big influence in my life. He was like a second dad. When I came back in 1980 I worked directly under his supervision and we sat in this big office at Hoek Street. Morris (Zimmerman) sat in the one corner, and two of us in the other. his voice booming all over the place. Morris (Zimmerman) wasn't, by his own admission, academically strong- he said at UCT you would not find his photo in the academic halls. As you know, he was a Springbok rugby wing, played with Bennie Osler- a Springbok in the old days. But he had a great feel for what was right. The thing about Morris (Zimmerman) is that subtlety was never his strong point. We'd be giving advice and he'd shout out: I've never heard anything quite as stupid as that in my whole life! Patrick Ndou, from Venda, was the other fellow I served with. Patrick (Ndou) used to sit to my right. But Morris (Zimmerman) had the most dramatic impact on one's life. He took on unpopular cases. He took on the community in which he lived. He wrote letters to the newspapers all the time- about injustices he had encountered. I remember the first trial I was ever involved in with Morris (Zimmerman). I remember it as vividly as anything. Later we discovered that the client had lied to us. Morris (Zimmerman) took longer than a year to get over that fact. He was a giant of a man with an incredibly generous spirit. And he was always in the office first thing in the morning, before anybody else. Always the last out. He was always there weekends. When later, I became an advocate it was quite weird getting briefs from Morris (Zimmerman). He wasn't big on detail and technicalities. But he brought heart to a case and you really had to apply the rigour. He really was a big, big influence for very many years, just in the way he dealt with life. Never took himself seriously. And he had cause to do so. I mean, *Sachs v Donges*, which was a very famous case and

Sydney Kentridge's really first very big brief, came from Morris (Zimmerman) as the instructing attorney.

Int What was that called?

MN *Sachs v Donges*. It was a question of whether or not the granting of a passport was a right or a privilege. Sydney (Kentridge) was the only one who had provided an opinion that said it was a right. Apparently they'd shopped around for a number of counsel and opinions. After the vacation job I went back to finish my degree. Finished in '80, came back in '81 as a fellow and was placed at the Hoek Street law clinic. I worked there with Morris (Zimmerman) for a year. It was right next to Park Station, Johannesburg. It was incredibly busy. We'd see probably 50, 60...I don't know what the figures were...people a day, on a sort of conveyor belt system. Pinky (Madlala) would be the paralegal who would see them first and then transfer them through to the three of us. Morris (Zimmerman) would oversee all of the work. Romola (Naidoo) was the head of the clinic but Morris (Zimmerman) gave it balance and gravitas. In the middle of my first year at the LRC, Arthur (Chaskalson) started talking about starting an Advice Centre Program. One of the fellows who served with me was Kate O'Regan's husband, Alec Freund. Sisi Khampepe, who's now a judge in the Johannesburg High Court, was the other. That's my recollection. Patrick Ndou, Sisi Khampepe, and Alec Freund were the three other fellows that year. Arthur (Chaskalson) then suggested to me that if I wanted to come back after doing pupillage at the bar, I could run the LRC's Advice Centre Program. He wanted the groundwork to start early. The idea was a little more sophisticated than the Black Sash advice centres which focused mainly on influx control. The idea was we would transpose what the LRC did to township venues. And you might want to speak to the CEO of the Nelson Mandela Children Fund, Bongki Mkhabela, who is married to Ishmael Mkhabela. During the apartheid years they were Azapo activists and she was a big struggle figure - class of '76. She was a resistance figure in the student movement, was arrested and spent time in prison. At the time that she ran an advice centre in Zola in Soweto she was a banned person, which made her job near impossible. She and her husband couldn't live together. They had to get permission to live together. She was incredibly brave. She ran her advice centre, if I remember correctly, from the Anglican church in Zola, which is one of the most depressed areas in Soweto. So I started going out there to begin with. Frank Chikane ran an advice centre in Kagiso. Mrs. Mogase was the person who would do the work on the ground in Kagiso. We also made contact with people in Daveyton, and later on in Duduza. So I'd started that off and then went off to do pupillage with Denis Kuny in '81. I got admitted in September of '81 as an advocate on the strength of the LLB. I served pupillage with Denis (Kuny) who himself was well known as an anti-apartheid lawyer. He did a lot of good work. He did the Hanschen Koornhof case. He did a whole lot of cases for political activists and for victims of apartheid.

Int Was this...?

MN This was pupillage at the Bar.

Int Ok, so it wasn't...

MN I was then allowed to do the last month with Paul Pretorius at the LRC. So I did three months with Denis (Kuny) and a month with Paul (Pretorius). And at that stage the NUSAS boys were all installed here – it was, Geoff Budlender, Charles Nupen, Paul Pretorius and Karel Tip. I was offered the job at the LRC provided that I passed the Bar exam. I did and then came back as green as anything. But to be fair and in retrospect, the only person who really was willing to take the chance of giving me advocate's work (with my Bush College education), was Morris (Zimmerman)- the only person who was willing to take a chance on me and brief me in-house. I got most, if not all, of my work from Morris (Zimmerman). I did my first civil trial in the High Court on brief from him. I did a whole lot of magistrates' court work for him. And at that time the Advice Unit Program was taking off in a big way. People had decided, within the limited space that apartheid allowed you, to challenge laws and their application. They came from everywhere. There was a group of students in Diepkloof called Songqoba Student Group. There was a Catholic church based in Phiri in Soweto. There was a place in Kagiso, in Duduza and in Daveyton. So it started taking off in ways I don't think we quite foresaw. And we'd drive to all these places. Because we did the work so regularly the problems and solutions became familiar. So in a morning session at an advice centre one could see 20-30 people, giving advice off the top of your head. If necessary one would take some of the files that required litigation or further correspondence back to the LRC. We would see people on an ongoing basis. It was great that Arthur (Chaskalson) was there, and some other really brilliant legal minds to assist, particularly with High Court litigation.. And then came the Sullivan years, where people were falling over each other to give money to NGOs; to get brownie points for accreditation back in the States. Also the LRC wasn't quite as confident of long-term funding- there was talk then of streamlining the LRC. You would have heard some of that from Paul (Pretorius)...

Int Do you mean Paul Pretorius? I haven't interviewed him yet.

MN Ok. Paul (Pretorius) left at the time when there was the case in the Western Cape against the Wit doeke. That was a case involving vigilantes fuelled by right wing forces in the Western Cape. Paul (Pretorius) departed. I guess that I was lucky. For once, race was on my side. The LRC needed to have a diverse staff complement. Karel (Tip) left shortly after Paul (Pretoriua) had departed. Charles (Nupen) ran most of the LRC's labour cases, so he stayed. From my vacation job, the fellowship and thereafter I recall the precedent setting cases such as Rikhoto and Komani.

Int So this was '82?

MN Yes. I remember going through work records at Mr (Tom) Rikhoto's place of employment in support of the case. I wasn't involved in Komani but I was involved Rikhoto. Nomali Tshabalala was also involved. She was Charles (Nupen)' fellow at the time. She's an attorney now and has been an acting judge in the Labour Court. I also played a fairly prominent part in the fellowship program. Like most fellows, I came from a Bush College background and understood the chip on one's shoulder and

the problems you come with from that situation. I took a very keen interest in the fellowship program and was allowed to interact intensively with fellows. So Dunstan Mlambo who's now a judge in the SCA was one of my fellows. Urmilla Bhoola, who's with the Resolve group that deals with change management, was one of my fellows. One of the partners at Cheadle, Thompson and Haysom, Shamima Gabie, was assigned to me. Thandi Orleyn when she came in...she's on the Trust and a former CCMA director, worked very closely with me. She later became my instructing attorney in a number of matters. And that was great. In retrospect, perhaps I was incredibly hard on the black fellows. Its because I knew that they'd be judged much more harshly in practice and one tried to instil an extra sense of discipline and rigour so that when scrutiny came they'd be able to stand up to it. That was the early and mid eighties. Lots of interaction with donor organisations: Ford, Carnegie, Rockefeller brothers. Saw a lot of Alice Brown. I participated in fundraising meetings and dinners. I attended meetings here, meetings there, meetings everywhere. I did a USIS trip...I forget the year. Probably '85, '86. At that stage, Jamie Kilbreth was at SALSLEP. I saw him in the USA and enjoyed interacting with him. I was getting into court more often, building up a confidence of sorts, took lots of cases, did a lot of briefs with Arthur (Chaskalson), junior briefs, lots of important cases, *idle and undesirable* was one of them. I did a case with Arthur (Chaskalson) in the Cape High Court concerning the allocation of township housing. The Advice Centre Program kept me busy. We put together an advice centre or paralegal manual, which I was Editor of. It was intended to be a reference manual, which dealt with typical problems and set out the law in relation to typical problems. I'm trying to think of other cases in which I was involved. If you look at the posters alongside the wall, I was involved in a number of the Esser cases, which were consumer protection cases. Zim (Morris Zimmerman)'s big thing was consumer protection, and there was no case too small for him. He was always involved in debates about the LRC's focus on test case litigation against the smaller cases he was intent on taking. Zim (Morris Zimmerman) said you can't abandon people who don't have any other recourse. Then, there were very few people practising consumer law. Then there was the Springs Town Council swimming pool case I was involved in as counsel. This was when petty apartheid was being abolished and white communities were scheming to privatise public facilities to keep them exclusively White. Margot Segal was the instructing attorney in that matter. Arthur (Chaskalson), in the face of a diminishing funding base had started planning to streamline the LRC. Karel Tip had left voluntarily. The idea was that we'd bring in young people for a short stint, and keep institutional memory and knowledge. Young people would come in and energise the place and feed it new ideas. I also was involved in the Externship program, which was the placement of students from American universities who came in quite regularly to work with us. I was involved in the disclosure of prosecution docket cases, which dealt with the Constitutional rights of accused persons to full disclosure by the State. The first was in the ECD with Lex Mpati who is now Deputy-President of the SCA (at the time of the interview- now President of the SCA). The second was in Namibia. This occurred close to the time that I was leaving the LRC. I had really good fortune...and that's why I've always said that I think that I was lucky, instead of being imbued with any special qualities. I had the great privilege of working with special people. I had briefs with Sydney (Kentrige), with Issy Maisels, through Zim (Morris Zimmerman), settling particulars of claim. I had a number of briefs with Arthur (Chaskalson). I did the Goniwe Inquest with George Bizos. It was a really important case and gave the public real insight, for the first time, into how the apartheid security establishment

operated. For 14 months George (Bizos) and I did that. And George (Bizos) was a different kind of Zim (Morris Zimmerman). He was big, florid, dramatic and incredibly generous of spirit. And working with George (Bizos), through Goniwe and other cases, was really special. It was Geoff (Budlender) who I always admired and with whom I still have a very good relationship. But in a way it was different. The NUSAS boys had a sort of network of their own. They had an interaction and a history of their own. I really very much was on the periphery of that, both in terms of my own experience and in addition there was a generational gap. They had years of seniority and they were there before me. They were established lawyers in their own right. And very often I felt on the periphery. And they, of course, had synergies with the Clive Thompsons and Halton Cheadles of the world. And the Edwin Camerons. And so our world was very different. My world was Pinky (Madlala) and Thandi (Orleyn) and all the people who came later. Ellem Francis who now is a judge in the Labour Court was my friend. And we became a group within the LRC, an established group, black lawyers making their way and establishing themselves.

Int Did that create a racial dynamic given that the NUSAS lawyers were predominantly white, of course. I'm wondering what the nature of that relationship was?

MN Yeah, I think that there was. I remember an incident that...and Geoff (Budlender) will remember it as well, where there was a...

Int Geoff Budlender?

MN Yes, Geoff Budlender. I think it was the Elandsrand case where there was a main case and there was an interim interdict that had been obtained. I was asked one day...Paul was away on leave for the day...whether I would be willing to be Arthur (Chaskalson)'s junior, and that was to have the mine manager held in contempt. I said yes and I started going through the papers. Halfway through that day Paul (Pretorius) came in. Nobody announced it to me. He came in, bought a white shirt from the shop downstairs and started robing. Nobody actually told me that Paul (Pretorius) had now been called in and I was being replaced. The black members of staff were quite upset by that. I think tensions were inevitable given the kind of closed societies we all grew up in. I felt, quite startlingly, that the longer I was here the more questions there were about how and where I would fit in. I know there was talk at one stage between the NUSAS boys that perhaps I should head up a sort of educational unit rather than a litigation unit for the LRC. But you know, I think we've hopefully all come through those times, relatively unscathed. I must tell you, I think of Geoff Budlender, for example, as an icon of consistency. I think he's a model of propriety and principle and conscience and consistency. And I regard him as a friend and he is somebody I admire and on whom I tried to model myself as a lawyer. Regrettably, truth be told, public interest law itself is quite competitive. There were very competitive individuals in that circle. And it was a white monopoly for far too many years. Top people in the labour laws sphere, the people who wrote the text books. The people who did all the fancy litigation were White. They were icons in their own communities. That was the way it was in those days.

Int Did you feel that you were given cases that were more run of the mill while the white contingent, whether it was the NUSAS group, or lawyers here, or even fellows for that matter, were given cases that actually led to some precedents, etc?

(This portion of the interview was edited at the behest of the interviewee)

Int What do you attribute that to the sense within the LRC, the fact that there were people who were working for the poor, the marginalised and the disadvantaged, but yet at the same time within the organisation itself there was this racial dynamic going on, probably even a gender parity issue, but um...that there wasn't any kind of real acknowledgment of that or attempts to kind of somehow resolve it?

MN I think we were all prisoners of our own programming and I think also subject to ego and human foibles. It's very difficult to give up monopolies and exclusivities. I think it's just the way it is. I think it's very hard to break those down. I'm afraid that what we are seeing now is the building up of new monopolies and exclusivities. So I think all of those things combined it was...you know, when I look back...let me say this, professionally, the best time I've ever had was at the LRC, and a lot of it was due to the people I worked with, but mostly the communities I interacted with. It was great to be able to go and interact with people who kept you grounded...and not let you get ahead of yourself. And maybe that is the difference. People with a wisdom not borne of books do put things in perspective for you. I've marvelled at the way people deal with incredible adversity, who haven't had any of the privileges that one has had, have not had the kind of exposure to books, the world, travel, and yet they are wiser than one could ever hope to be and they bear that adversity with a dignity that I don't think one could muster. Growing up, I remember we had no sewerage, we had long drop toilets, we had no rubbish disposal, we had to dig holes in the yard, and maybe that's why I have remained living in the township. It's a sense of reality. Much like you can't find any white person who supported apartheid, I think these days, you struggle to find people who acknowledge the poor who are still very, very much with us. I see it every day. I see it as I drive through my township to the post office. I see how the schools are overcrowded more than they used to be. I see the poverty, I see the shacks, I see the deprivation, and my community lives in industrial heartland. To go back to the LRC and the divide, I think there were a whole range of things. We

were all...victims of our own programming but also of human foibles. And the pull of not giving up ones own sort of pre-eminence.

Int As a black lawyer in the LRC, and I want to pursue this because it comes up in other interviews as well...who did you have to turn to...?

MN Well, Zim (Morris Zimmerman). He didn't give you great academic or technical guidance. But he had an unwavering compass for what was right. 99.9% of the time when Zim (Morris Zimmerman) wanted to pursue a case, he'd be right technically. Not because he knew it was right technically, but because he sensed it. He just felt it. The rest of us- we built up a support structure...if you speak to Thandi (Orleyn), Thandi (Orleyn) will tell you that we turned to each other. Pinky (Madlala) was larger than life in very many ways. She was the mother figure, she kept us all together. She was non-confrontational. Any issue that arose I was expected to ride with and go for it. She wouldn't. She would stay very quietly in the background. But she'd gather us all under her wing, very, very protectively. We had lunch together. We'd eat township food, sort of, you know, bread and chips and polony and we'd play table tennis together.

Int I've heard about the playing of table tennis. (laughter)

MN And that is a bonding thing. And when the new young black lawyers came and there was new energy and a new vibe...and I mean, if you speak to Cecilie (Palmer) at all, I think Cecilie (Palmer) should be an indispensable part of this. She typed the first drafts of both constitutions, Namibian and South African. She was Arthur (Chaskalson)'s secretary, she was Geoff (Budlender)'s and she was my secretary and went on to start a Women's Centre. But Cecilie (Palmer) will tell you that in the old days when you walked in, geez! There was an energy that was palpable. We worked till all hours of the morning. When I started we worked...oh the other thing that I should tell you is that Mohammed Dangor who's now our ambassador to Saudi Arabia, was one of my big clients as part of ACTSTOP, which was an anti-group areas evictions group. He brought in hundreds of people to the LRC. At 2, 3 o'clock in the morning when you had to get the papers for interdicts together to prevent people being evicted clients streamed in. I did a lot of pass law/influx control cases. In the early days it was quite traumatic. We were caught between the Black Sash wanting to put up all these technical obstacles in the way of a prosecution and the clients would say, I just want to go home, forget all that stuff, I want to plead guilty. (laughs) So we turned to each other...we turned to each other and we found strength in each other, and...remember I was able to rely on people like Bongi Mkhabela, and people I bonded with, so when I went out to townships I went to see activists. I was very comfortable in all of these townships. I did a lot of work for Moray Hathorn. You might speak to him later. Moray (Hathorn) is so good that Moray (Hathorn) makes (Mahatma) Gandhi look bad. He really is a good guy.

Int I've interviewed him.

MN A very straight down the line, but very intense person...he won't relax, he was sort of like that all the time. And Moray (Hathorn) went to what used to be the Eastern Transvaal, Mpumalanga -our version of the American deep-South. He travelled to Wakkerstroom, Driefontein, a whole lot of those towns, defending people, representing farm labour tenants...I got briefs from him dealing with farm evictions, some in the Pretoria High Court. For the system Moray (Hathorn) became the enemy. And they started coalescing against him. I don't know if he told you about his prosecution on trumped up charges, and George (Bizos) and I were consulted about that. And you know, driving out there with Moray (Hathorn), it's the most beautiful part of the country with all its repression and this really brutal system that Moray (Hathorn) saw firsthand. Moray (Hathorn) was very much part of that new circle of people. He came into the LRC after me. He was very tense, very on edge. I don't know how Moray (Hathorn) survived not having multiple ulcers or a heart-attack. So Moray (Hathorn) came in too and he was part of the new group. And then when I became Director of the Johannesburg LRC...and that too was kind of fortuitous. I mean, what had happened was because of this mass migration of everybody...

Int You mean 1999? ...

MN I forget what year it was.

Int But after transition.

MN No, I became director of the Joburg office of the LRC before transition. Geoff (Budlender) was going to succeed Arthur (Chaskalson). Arthur (Chaskalson) was away for a long time with Delmas, and I can't quite remember, one would have to go and look up the details. Geoff (Budlender) became National Director...and a spot became available. So I came to it quite prematurely and unexpectedly.

Int This was the Johannesburg office?

MN Johannesburg office, yes. That was in the old building-Elizabeth House- in Sauer Street, across the road from the Star newspaper. It was located on the corner of Sauer and Pritchard streets. That was ok because we now had a new staff. The NUSAS boys had gone...Charles (Nupen) had gone off to CCMA and it was time to forge an own identity and it had black leadership for the very first time. And we made a lot of those posters that you see outside.

Int Is this the still the eighties?

MN This was the eighties, yes. This would have been late eighties. And when that happened the dynamic changed quite palpably. I remember black clients when the NUSAS boys were still around, saying, listen don't want you to take this wrong way, but I'd much rather have a white attorney. I mean, I remember that quite vividly. So, yeah...we looked to each other, we found each other and we strengthened ourselves.

But then again, I mean, let me say this up front, that I could never be disloyal to the LRC. There are debts I owe... I mean, there was the BLA when the BLA started... and I don't know if you've heard the names Victor Molewa, Dolly Mokgatle were there at the time. I was asked at one stage if I would come and run the BLA legal education centre. And I said no for a variety of reasons. One is I owed too many debts at the LRC. And I thought what they did was important and they did it with aplomb. I could never have acquired the technical skills elsewhere. So again, looking back and being grateful and feeling fortunate, the time I spent with Arthur (Chaskalson) money couldn't buy...the time that I spent with George (Bizos). But with Geoff (Budlender), Geoff (Budlender)...there's a case called Mahlaela versus de Beer, which is a reported judgement about residents permits, and it's an example of how great Geoff (Budlender) was as an attorney, setting up someone he was going to litigate against. And so his letter writing skills, his sense of strategy, technical correctness was always superb. Labour law I would have learnt from Charles Nupen. So all of that, wherever the difficulties were, the realities and the truth is that I wouldn't have been equipped, assuming I have any technical ability at the moment. I would never have achieved any kind of level of technical expertise except the uncertainties that came with a Bush College background. No-one would have briefed one in meaningful cases. I might have resented the fact that there was a liberal monopoly. So in a very real sense, yeah there were difficult times but they were also the best times. And shortly before Wim Trengove came, you know the directorship rotated in 4 year cycles, and that was initially instituted to accommodate the aspirations of the NUSAS guys in competition with each other and Arthur (Chaskalson) will tell you that quite readily. They were competitive strong individuals who needed outlets for their talents and energy. I was pretty low down in the hierarchy and I was catapulted upwards due to circumstances. Towards the end of my stay at the LRC I was asked to start up the constitutional litigation unit. This was before Wim Trengove came. Shortly thereafter I was asked to take up an acting judicial appointment. So it was a very brief stint...

Int Is this in 1990?

MN Yes, it's the 1990s, just shortly before transition and around transition time. And then I went and...and I think it was time to go. I'd been around for almost fifteen years. My stint as an acting judge started in January 1995 and the understanding was that I would be eased into it. Remember, I'd had no commercial experience, except for the brief time that I was with Denis (Kuny) working on some of his commercial briefs. And it was frightening. They were going to ease me into the WLD, which at that stage certainly was the busiest commercial court in the country. I didn't have a law library at home, as I do now.

Int WLD?

MN It is the Johannesburg High Court. And the very first week Frikkie Eloff, the Judge President sent me a number of cases. I remember Rochelle Freed was my clerk. She was new. I was new. The idea was that I was going to sit with other judges in criminal and civil appeals and be eased into judging. Rochelle (Freed) came in with a stack of files and she said, the Judge President says there's counsel waiting for you in court. This is a case involving millions of Rands. The other is about infringement of

copyright. This is a test case in respect of compulsory vehicle insurance. I started sweating blood and stayed at chambers till 3 or 4 o'clock every morning, Went home, came back at 7 a.m. There's this thing -I don't want to embarrass my kids, I don't want to be the first one who fails. And for the first, maybe 18 months, I got very, very little sleep. I just read...and thankfully there was a sort of Zim (Morris Zimmerman) substitute. David Malamed, a judge in the WLD who said I must come and talk to him if I needed assistance. I used to discuss things with him. And I stayed at the High Court for 5 years. It was a pretty good 5 years and I think I was overturned on appeal only one and a half times in 5 years and I really did a lot of work. I worked with a whole lot of new people there. I got lots and lots of work and then went to the SCA but...

Int SCA is...?

MN It is the Supreme Court of Appeal. That's where I am at the moment. I spent six months in the first half of this year as an acting justice in the Constitutional Court. During my tenure as a judge I kept my links with the LRC. I became a Trustee soon after I left the LRC. I stayed on vicariously.

Int So you've been a Trustee since '95? '96?

MN I forget now. There would have been a two year interim period...a year or two, I'm not quite sure. And I remained as Trustee from that time onwards. And there was a time when we were struggling to keep things together and the Executive of the Trust, which I'm on, had to assist the new Director, and I was very intimately involved in that.

Int What period was that?

MN Sort of around Bongani Majola's time. When he took over, I think and shortly after he left. It was around that time.

Int So you're looking at the 1990s?

MN Mmm. Yes. I kept doing developmental work. I was involved with a developmental trust in the local community dealing with pre-schools, cognitive development and other community related issues. I was involved in inner-city housing for a while, a year. I was involved in soccer coaching for very many years - I haven't for about three or four years now. All of that stuff, I find meaningful. I am now thinking less in grand terms about how best to affect the world. I try to affect the world in humbler yet tangible ways. Less ambitiously, less grand...so that's about it I think.

Int Well...I want you to come back a little bit to your LRC experience and looking at...I'm just wondering you've given me a sense of a run down in terms of your

trajectory. I'm curious as to...during your time as Director of the Johannesburg office, what were the crucial issues that you had to deal with in a leadership position?

MN Legal?

Int Both legal as well as administrative and organisational issues. Looking at the cusp of transition, going into transition.

MN For legally and technical challenges, as you would have known, the space was very limited. So one needed to be extra creative to try and find space. The LRC had a test case focus. Remember, the Advice Centre Program gave you a very different focus. It gave you a body of cases from which you could siphon off impact litigation. But generally, if I saw 30 people in the morning at an advice centre, and I sometimes saw three or four advice centres in a day, a lot of it would be workmen's compensation claims, which might or might not require a High Court review application, but basically very often a letter or two would resolve matters, or a phone call to an official. Lots of unfair labour practice cases. Lots of unemployment insurance cases and township residence permit issues. That is what we saw. So maintaining this delicate balance between the volume which threatened to overwhelm on the one hand, which Zim (Morris Zimmerman) always sort of protested should be maintained, and the drive on the other hand to do the impact litigation. Now, the impact litigation was important for the sake of changing society. But it was also important from the point of view of continued funding because that's what donors wanted to see, they wanted to see you making a difference. Certainly when I took over the Johannesburg office after the NUSAS heavies had moved on, I can't tell you about the anxiety because you had to keep up the standards and I was succeeding Geoff (Budlender), who had a reputation for excellence. But that continued. I mean, we pushed people to achieve. And you know, I think the trade off...and this is being self-critical now... often I was a steam roller and probably often insensitive to other people's insecurities. But from my perspective rightly or wrongly, probably very often wrongly, I tended to pull and push people along. I have that kind of personality. I recognise that in myself. I ran the Legal Aid Board during its really troublesome phase...when I took over as Chairperson, it had a debt of half a billion. When I left it had a positive cash balance of about four hundred million. But I recognise that as part of my make-up and to get there, you push people, often beyond their own capacities and very often you generate an antagonism as you go along. So I understood that about myself. If you interview former fellows that tell you that about me, that I was perhaps too much of a slave driver and perhaps a lot of that stemmed from my own insecurities and my own sense of being held up to scrutiny. I was intent on being better, because I knew I was going to be judged. It's like being in a 5 star restaurant and not knowing which fork to use. Because that's the kind of scrutiny one is subjected to. So yeah, I understood that and maintaining friendships and keeping the office cohesive and moving it forward was the challenge. The black/white divide was always an issue, always a challenge. Having a meaningful voice in the organisation and striving to make that voice heard was always an issue. And again I think people will tell you that, you hear that consistently if people are up-front, they will tell you that consistently. By the same token they'll also tell you that their best years were at the LRC, their best training years were at the LRC. So there was always that kind of sense that almost schizoid

thing of, geez, I'm angry but I know I can't do it without these guys. So there was that. The other thing was when you knew what was legally feasible and what wasn't. And the dynamic between doing what was politically more appropriate and providing a legal avenue that might not suit people politically and then being caught in that tug of war. What I found incredibly difficult and hopefully, 'touch wood', did manage, was maintaining an ethical and moral standard in the battle against apartheid. When one is fighting such a monstrous system...there is a temptation to bend the rules to get people out of the grips of the system. And you can see some of the public debates at the moment, which just leave me with a deep sense of irony of how little we've learnt from our past. How, if you sacrifice principle you give away so much and you don't quite realise the colossal effect it has on the very fabric of society and on the rule of law. You can do it in your head, sort of justify it. And it's never justifiable. So I think that those are the sort of issues that we had to deal with.

Int I want to go back a little bit, during the 1980s you were really involved quite early on from the Rikhotso case for example. I'm wondering what you think are the reasons for, if parliament was supreme, the LRC had some significant legal victories against apartheid legislation, what do you think were the reasons for legislation not being appealed or repealed by parliament under apartheid?

MN Well I think that there are several reasons. One is that there were liberal White judges who were receptive to human rights cases. One always looked to see who your bench was. There were gaps in the law and there was some space within which to manoeuvre. The government had always prided itself on the independence of its judiciary and bragged about it. It could hardly be seen not to accept judicial pronouncements. It often was torn between wanting to bring down a really heavy hammer and accepting results in certain cases. I wonder if there isn't something more subtle, I wonder if sometimes they didn't feel that what they couldn't be seen to be doing the courts would. Results in cases in fact would sometimes alleviate some of the political pressure that was building up. Anybody with half a brain must have known, that the system couldn't be maintained with that kind of consistent pressure. So I think all of those things kind of came together. There were times when we didn't quite see how all the consequences of a case would play out. There were times when a test case in itself did not achieve an instant result. Geoff (Budlender) wrote an article entitled *Between the Tyre and Tube*- about enforcing the Komani result. The State continued being obstructive and we had to go back to court repeatedly to enforce that judgment. And we reckoned, well, you've got to do that, if it means bringing ten thousand individual cases to ensure that the principle is maintained you've got to do that. Geoff (Budlender) wrote what turned out to be a prophetic paper, and it has found an echo in some Constitutional Court judgements. It was about when government becomes a breaker of laws it ceases to maintain a moral right to exist and to be obeyed. And that's as true today, as it was then. These things came out of our own experiences. Sometimes something that looked quite insignificant at the time assumed a dynamic of its own and gathered momentum. Then there were unexpected results. There is a case about petty apartheid called *Waks*, a judgment of the Judge President of the TPD, Frikkie Eloff. One could never have predicted the result in that case, namely, that the reintroduction of petty apartheid measures was unlawful. You know, I don't think there is an overall answer. I think it depends on what the forces were at the particular time and how they impacted. But what the LRC did in many

cases contributed to the pressure that ultimately saw the demise of apartheid. I think this is true.

Int So during the 1980s in states of emergencies, repressive legislation, what do you think actually prevented the LRC from being under such close scrutiny and not being closed, banned, etc.?

MN Well you'd get the standard answer, you'd get it from Arthur (Chaskalson) if you asked him, is the stature of people on the Board of Trustees. Justice Johann (Kriegler) Kriegler was on the trust, so was Justice Andrew Wilson. Arthur (Chaskalson) was a respected figure, even in circles politically opposed to him. Prominent people such as, Charl Cilliers served on the Trust. It really was a Trust of heavies. I know that (Johann) Kriegler would tell you that he was brought under direct pressure by the then Minister of Justice, Kobie Coetzee ..I think it was Coetzee...Kruger or Coetzee, I forget, probably, Coetzee. And typically, Johann (Kriegler) said I was thinking of resigning anyway but now that you've threatened me I'm going to stay. So I think that helped. But also Arthur (Chaskalson) very skilfully, and because he was who he was, managed to get establishment approvals. We were established with the approval of the Bar and the Law Society and the clinic was able to run. And I wonder again in a sort of ironic way whether that didn't suit the government. They could at least monitor and see what you were doing. And one of our trust meetings was tapped by the security forces at a venue in the Magaliesburg.

Int So you know, during the eighties certainly the kinds of cases that were being taken were very closely aligned with ANC interests as such, so when you come to 1990 onwards, there is this sense that now with an ANC government that's going to be installed in '94, you're going to have to take cases against government. Did that represent a challenge at all within the LRC?

MN There's a paper that Sydney Kentridge presented at one of the Bram Fischer lectures which you should get a copy of, in which he attempts to look into the future. And he says, well, it would be great if there was no need for an LRC with a new government but as experience all over the world has shown, it's not the way the world works. Power is power. Wherever it resides there will always be excesses, and there will always be people to fight those excesses. It's very difficult wearing a judicial mantle, but I certainly do think that as a nation, let me put it that way, as a nation we're failing our poor. I think that if you look at what the poor don't have access to...I went to a public hospital two weeks ago with a domestic, I was appalled at the conditions in this hospital. There were always going to be difficulties for the LRC. It had lost a lot of its top brass. It lost people who'd had an institutional history and knowledge. It lost a lot of its technocrats. It lost a lot of very good lawyers. To rebuild was difficult. To rebuild in a climate in which funding was beginning to take a downward turn was even more difficult. We were no longer the international flavour of the year. It was difficult to find appropriate people to chase funds and to find good lawyers. That was another challenge - to harness fewer resources in a much more conducive climate. It proved more difficult. We were now competing with the private sector. The best brains were going off to make money. The best socialists of our time became the best capitalists of our time, overnight. It became an era of opportunism. The development

drive-to develop the best black skills for the benefit of the country was not going as planned. You still have angry black voices feeling marginalised. Where are the best commercial legal skills in the country still located? That we took our focus off what we should be doing, developing our country for the benefit of everyone (what we focused on when times were bad), and lost that focus simply because it's now open season for personal advancement is hugely disappointing. Now the focus is on the 'me' ethic! These are the challenges that face lawyers who focus on development. To hold the country to the values set out in our Constitution and not be seen as the enemy is the new challenge. I don't think we've succeeded in opening up a new meaningful dialogue. It really is about opening up a meaningful dialogue with government about what we see at firsthand. We have the benefit of an extensive and historical reach into communities. We know what their concerns are, how they're struggling to get access to education or health services or social services. We are now in the process of refocusing and rebuilding and realigning and hopefully becoming leaner and meaner. We need to find means of more aggressively achieving what we think is in the best interests of the constituencies we serve, and doing it in a way that is smart, effective, moral and Constitutional. These are the challenges.

Int I'm wondering, one of the issues that comes up and it's piggybacking on what you've just said, is the issue that...it seems to be said that it's very difficult to attract and retain very good high quality lawyers, and not just lawyers but also black lawyers in the post apartheid era. Is this true?

MN Mmm, black judges, black professionals in general. Finding black skills that make a meaningful contribution to change is difficult- absolutely true. If you're a black kid, a bright black kid out of law school, the world is your oyster. You could see the problem manifesting when we've tried to attract people as Trustees or as CEOs. For a bright black kid the world is your oyster. Why would you come to the LRC unless you had a sense of calling? That's the other thing that has changed. Certainly all of us who worked at the LRC in the old days, whatever our differences were, whatever antagonisms there might have been, we all knew one thing, philosophically we were in the same boat. The good guys were easier to identify as were the bad guys. There was a deep sense of commitment, of social commitment, of commitment to social justice. I'm not so sure that that ethos continues. And I'm not just talking about the LRC. I'm talking about it across the board. Are you in government because you want to make a difference? Or are you in government because it's a job? Are you in government because it's a stepping stone to a big corporate job 5 years from now? I think all those pulls are real. All the pulls are quite aggressively in the opposite direction.

Int The one thing that comes up often is the issue that – certainly in America it comes up – is the idea that, you know, the LRC seems to have relied a lot on external funding and now that South Africa is no longer the darling of the funding world, it seems that there hasn't been much of an effort perhaps to attract internal funding, whether it's from the legal fraternity or the corporate world within South Africa. What are your thoughts about that?

MN Well, I don't think we've tapped into the BEE market as...

Int Black empowerment?

MN Yes - as we should have. And given that the BEE is in itself tapping into new opportunities it should not forsake a social justice focus. It should be moral and maintain principle. I've often spoken publicly about BEE insofar as it affects the legal profession. I warned against cosmetic changes in the demographic make-up of firms - to maintain a market or grow a market, or gain legitimacy or political favour or merely to get your name onto a shingle. Do you do the real and meaningful work? So I think the BEE market has to be tapped and I think we're beginning to do that now. What corporate South Africa finds sexy, is not necessarily what we do. I think we've got to be more persuasive. I don't think we've tapped into areas such as individuals who might be willing to give quite generously. But it is a tough competitive funding market. Furthermore, as an organisation we have to find ways of becoming a slicker machine. There were times in the past we thought we might be a bit bloated. We've dropped a lot of excess weight. I'm not sure that I'm too optimistic about a greater deal of our funding being able to come from internal sources. I think we certainly can jack it up by 20/30/40 percent but I don't know that we'll get to levels where it can fully support us. I don't know that we've tapped into establishment money as well as we should have either. We were talking the other day about the Attorneys Fund, whether we shouldn't be entitled to some funding from that source, given the millions that they're sitting on at the moment. Development money now goes through a State development agency, and perhaps we should be entitled to a share of that. But again, which government in the world is going to give money so it can be litigated against. It might take greater persuasion to gain a slice of that money. In any event, I don't see why one should be seen as being antagonistic towards government.

Int Would that not create a real conflict of interest if you took state funding?

MN It might. As it does when you take corporate funding.

Int Yes, fair enough. The other thing that seems to come up a lot, especially from lawyers who've been involved here and now have left, is the idea that it's not clear what the LRC's focus is anymore. Where under apartheid it was quite clear, and now in order to refer someone it's problematic. Do you have a sense that that's the case?

MN I...you know, I've always been a sort of...I've never been a great enthusiastic supporter of workshops where you try to work out mission statements and we've done a number of those over the years. Morris (Zimmerman) said to me repeatedly that you're here to serve the poor, the vulnerable and the marginalised that's it. I think the LRC is beginning to be more focussed than it's been in a long time. And you know, I think you've got to take into account that it's had a struggle with meagre resources, and it has struggled to recruit and develop personnel. That has been difficult. The other problem is what we spoke about earlier. The LRC has to start not just recruiting the best legal minds at law school, but to recruit people who genuinely want to do this work, who feel it is a calling rather than just another job. Saying that one is working for the poor does appear patronising and condescending. One should not see it like

that. It should really be about understanding that...we're an undivided country. Our wellness as a nation depends on each of us doing our bit. None of us is doing the other a favour. We're not doing charity work. There is no optimum synergy between philosophy and technical proficiency. That is what we're struggling with.

Int What do you think are the concerns, projected concerns for the future for the LRC?

MN I think not being co-opted...

Int By the government?

MN Well, by the holders of influence and power in any society. The LRC should maintain a very purposeful focus. A lot depends on what your idea is of what law should be and whose interests it should serve and reflect. The LRC should guard against doing business as usual or it will retrogress. In the old days the issues we dealt with made the newspapers. It was important from a funding point of view. But it was more important because the issues we were dealing with were issues of the day and made people sit up and take notice. We were making a marked difference and we were doing it emphatically. I am a little concerned that we're not quite making that emphatic a statement at the moment. Cases like Richtersveld make that statement. But I'd like to see us affecting the national fibre, for the better, much more visibly, much more repeatedly. And I'm not talking about issues that impact on government. We should be taking on labour cases of significance. The great polluters of the world should feel our influence. It is presently a sexy issue, which does affect the lives of the poor, in the most incredible fashion. Where are the big toxic waste sites? Where do the effects of pollution go? The poor are almost always affected. They live in the most environmentally unfriendly places. Now, that's where we should be seen, that's where it should be happening. But you need the drive to do that, you need the philosophical zeal to do that.

Int I've asked you a range of questions. I'm wondering whether there's anything that you'd like to add to the Oral History that I've neglected to ask?

MN I don't know...I mean...there's lots of stuff...there's tons of incidents that one has to synthesise...I'm not quite sure that one always understands quite how they all flow together. Working for the LRC enabled me to travel and see parts of the world I wouldn't otherwise have been able to. I travelled to see donors, to attend seminars and conferences. There was a time when it was popular to do a masters degree at an American university. There were other programs at Ivy League universities. I must say looking back that I am uncertain about the value of that in relation to South Africa's needs at the time.

Int You mean the LRC ones?

MN Well, the LRC participated. Some graduates who came through the LRC did those degrees. I'm not so sure with hindsight, and maybe the problem is that it is just hindsight, of the value of those degrees to the country. How many of the people who did those degrees ploughed back? What was the true intellectual value of what they got there? Were all of those programs of high quality? Were they designed for overseas students? I wonder how much of that time and effort could have been better employed in building up locally, a cadre of people with really good technical skills, which could have contributed to the breaking down of exclusivities. Who are the big intellectual property lawyers? Who are the big commercial lawyers? Why aren't black lawyers getting their fair share of briefs? Well, you've got to be technically proficient to do that. You've got to gain the experience to do that. How do you do it when you're on the periphery? I don't think we're paying enough attention to the development of black lawyers. A lot of what is being done is posturing and cosmetic. Without the relevant experience going onto the bench and becoming a judge can be nightmarish. Particularly, if all you know about most issues is what you read in a text book but have never actually seen in operation.

Int I'm wondering, Mohamed, what are the stories left to be told?

MN I think the human stuff...you know. The best things are the people. I remember seeing Pinky Madlala on her deathbed and we just talked about the really good times we shared as friends, as colleagues, eating each other's lunch, sharing a meal and being together. I think those are the stories that need to be told for the human face of the LRC, behind the internationally recognised and successful public interest law firm that everybody saw. The story of how Morris Zimmerman, who was not the most technically proficient lawyer, represented the heart and soul of the Hoek Street law clinic. About how Pinky Madlala ...when she saw hundreds of people in the week, presented a soft face, a face of comfort and metaphorically, a bosom to which people could turn for comfort. Where people would otherwise be dealt with by a bureaucrat or a detached professional, here at the LRC there was softness. Formalities were broken down. What the Advice Centres did in enabling people to look to themselves. It gave communities self-reliance and pride. You could go to the local Catholic Church to see a lawyer in dignified surroundings. Very often people with legal problems just want you to listen to their stories. They just want to tell you what it is that's freaked them out. So for me, if you're asking me what I thought was most important, I'd say that was it. That, for me, was the real importance of the LRC. The people you met, the bonds you forged, the world view that was forged for you by the interaction with brave and good people and its impact on their lives. Those stories don't get told because people focus on the obvious rather than on what really made the place valuable. Again, I think about the best times I had, is coming in to work at the LRC. I wanted to come to work in the morning. You dealt with the harshest problems, you saw the most brutal part of the system, but I wanted to come to work. I wanted to see my colleagues and I wanted to be with them, I wanted to go out to see a community.

Int Ok, thank you very much Mohamed for your time.

Interview 2: 4th August 2008

Int This is an interview with Mohamed Navsa. On behalf of SALS foundation we'd really like to thank you for taking the time yet again to participate in the LRC Oral History Project. Your interview the last time was really wonderful and I just thought it would be very useful for us to actually cover some of the ground in depth. I wonder whether we could start at the point at which you started at the LRC and I think you were really involved in the Rikhoto case and I wondered whether we could start with that.

MN Well, perhaps we should start with my being a vac student in '79. When I arrived the LRC was in the process of starting up, and Geoff (Budlender), Charles (Nupen), Cecilie (Palmer), Felicia Kentridge and Ma Vesta (Smith) were all here at the time. I came back as a fellow the year thereafter, at the beginning of 1981. And like all other fellows, doing general work in the office, and in a sense...I suppose I built up a reputation quite by mistake and probably undeservedly. (laughs) Morris Zimmerman was my immediate supervisor, my mentor at Hoek Street, and he did a lot of consumer protection cases. And Zim (Morris Zimmerman) was the primary influence in my legal life, not academically but in terms of a sense of ethics and he showed me how to be a lawyer and how to be sensitive to the needs of people who are less fortunate. There was a particular furniture company, which had unlawfully repossessed, upon default of payment, the furniture of scores of our clients. I'd written letters of demand. After several letters I was called up with, I think another fellow, to come and see the CFO at head office. We went out there and I was told to submit a list of the clients who had complained about unlawful repossessions. I got paid on the turn. And the money just kept coming upon demand. But here's the catch. He wasn't paying because of my skills or powers of persuasion. They were fiddling the books and therefore couldn't afford a full investigation, or exposure, which could occur if matters went to trial. So my clients were being paid but it was unrelated to my skills. I understood Zim (Morris Zimmerman)'s passion and he was a real example. He was in his seventies when I started at the LRC. And he was always first in the office, always the last person to leave. He was there first on a Saturday morning. Look at some of the LRC's banner headlines. I was involved with him in the Esser case. We were asked to act as a resource for other attorneys at the LRC. Charles Nupen was working on Rikhoto at the time and I remember together with Nomali Tshabalala we went out to where (Tom) Rikhoto worked in Germiston to look through all their files and records. We needed to show that he had worked there continuously for ten years. And it was interesting and instructive to watch Charles Nupen work. He had a very different temperament to (Morris) Zimmerman, a very different approach as well.

Int In what way?

MN Charlie (Nupen) was high energy, he was the labour expert. He tended to be much more focused than Zim (Morris Zimmerman) in terms of the work he took and what he did. He was less patient, although he was always available. Geoff (Budlender) was more of a loner, Geoff (Budlender) tended to be a little distant. I think it's just his personality. He works that way. So that was a different experience. We were looking at the documents and the affidavits and Arthur (Chaskalson) was leading the team and I was very, very junior within that team. I was assisting to gather information,

interviewing people and stuff like that. But again, if you look at the cases, I need to go out into the passageway if you don't mind, to look at the banner headlines. One of the cases involves Esser, who was a motor car dealer. Zim (Morris Zimmerman) took that on. It was part of his consumer protection practice. Our clients often used their meagre life savings towards purchasing a motor car that turned out to be a dud. Zim (Morris Zimmerman) used to put together cases against unscrupulous motor car dealers. The extraordinary thing about Zim (Morris Zimmerman) is he used to walk with two very experienced lawyers around Zoo Lake and he would get free advice for all of his clients. In fact once he got the late Issy Maisels QC to sign a set of particulars of claim in the magistrates' court. (Issy) Maisels was one of the foremost silks of his time. He used to walk in the mornings with and Judge David Melamed, who strangely enough, when I came to the bench, was one of the first people who acted as my mentor there, so there's another connection.

Int David Melamed.

MN David Melamed. So that was a strange connection. Zim (Morris Zimmerman), as I told you, was the instructing attorney in *Sachs v Donges* which is a very famous case. And Zim (Morris Zimmerman) also used to tap people at the Bar to do things for LRC clients. I'd often go and pick up an opinion that he'd managed to wheedle out of somebody. And that was interesting. So from Zim (Morris Zimmerman) I got all of my early kind of exposure to the law and a passion and a commitment for the kind of law we were involved in, and a 'never turn anyone away' policy, which was quite difficult. The difficulty was also that Zim (Morris Zimmerman) was not great on detail and on the technicalities of pleadings. He admitted this. The important thing is that he gave me some of my first court cases. He was one of the few people who trusted me enough to give me that kind of exposure. I did a case for him...I forget what the name is, but it was a person whose arm got shot off by the SADF. And that was my first high court trial brief, which Zim (Morris Zimmerman) gave me, and we won. And Arthur (Chaskalson) came in during the conduct of the trial to look at some of the problems we got into, because of Zim (Morris Zimmerman)'s lack of attention to detail, and helped fix things. That's an early memory. Later I became Director of the Advice Centre Program. Zim (Morris Zimmerman) had instilled in me what was required for that kind of work. It was also quite tricky to balance because I was an advocate and I went out to all these advice centres. As an advocate you need to act on instructions. I would see scores of people with run of the mill problems relating to social welfare benefits and a mixed bag of other cases. In cases that warranted it we would launch high court applications. There were times when I would sometimes see in excess of 50 people in doing my rounds at advice centres. Cases that required further attention were brought back to the LRC. I travelled a lot. Frank Chikane was involved in the Kagiso advice office. George du Plessis a former UDF vice-president was involved in the Reiger Park advice office. We'd travel to Duduza. That is where a mob in the full glare of publicity set someone alight. If memory serves me correctly Archbishop (Desmond) Tutu either tried to prevent it or said how truly saddened he was that it had occurred. Bongsi Mkhabela, who is now CEO of the Nelson Mandela Children's fund and one of our trustees, was banned at the time. She ran the Zola advice office. An advice centre was also located at the Roman Catholic Church in Phiri. Another case that I was involved in is reflected on one of the posters in the LRC corridor, the Springs Town Council swimming pool case. It related to the use of

swimming pools in a formerly exclusively White Group Area. As things were beginning to change, new means were found to continue to exclude people on the basis of race. That was a high court application in which George Bizos led me. I did a case with Arthur (Chaskalson) in the Cape High Court relating to housing and particularly about women being left destitute after their husbands died, and the allocation at whim or arbitrarily and capriciously to someone else. It was called *Scholtz v Cape Divisional Council*. It is a reported judgement. I did a labour case in the High court, called *Elandsrand*. With Arthur (Chaskalson) I did a case relating to the rights of servants in a block of flats in Hillbrow to have persons visit and stay with them in their apartments. I did a case with George (Bizos), a high court case, relating to the administration of a therapeutic drug by a public authority for HIV affected people. I did a lot of court work defending mostly youths who were charged with public violence or some other offence related to the resistance to apartheid. I did a number of criminal cases where people who had been improperly treated by their employers were charged with theft or some other offence to justify the ill-treatment. I did a lot of group areas cases. I used to act for ACTSTOP, an activist group bent on fighting and thwarting the Group Areas Act. Often we could be seen in the Joburg High Court, sometimes at midnight, and very often on Friday nights to try to prevent Group Areas evictions. We also dealt with the dreaded Urban Areas Act and the related regulations. Issues such as whether or not black people were lawfully within prescribed areas. I did a lot of work for the Black Sash in the pass courts in the first three or four years of working at the LRC. At times it was almost unbearable. One often got caught between the Black Sash ladies who wanted to prove a point to see if they could make the system stall and choke and your clients who just wanted to pay an admission of guilt fine and wanted to get out of there. On occasion legal representation led to people getting stiffer penalties.. Then there was the Goniwe inquest which took us 14 months I think, in the completion.

Int And that was mid eighties?

MN That was maybe late eighties, early nineties. We flew down to Port Elizabeth every Sunday, staying there for the week and then flying back up on a Friday evening. Clive Plasket was the instructing attorney. There was also an articled clerk assigned to us. And lots of LRC resources went towards it. It was a fascinating case. It was the first time that the South African public was given insight into the inner workings of the state security apparatus (Holomisa had also made some documents available). The public saw for the first time how meetings of the state security council were conducted, how it infiltrated almost every aspect of everyday life. How many officials in small and big towns were used by the state in subverting the rule of law and in fact oppressing people, sometimes without realising it. So it was a fascinating exercise. Neville Zietsman was the Judge President, and he conducted the inquest.

Int Could you talk more broadly about the parameters of the case and how that came about?

MN Well, there'd been a prior inquest, that had been inconclusive, and this was the reopening of it. We were approached by the families of the deceased to assist.

Int So you worked with George (Bizos) on that?

MN I worked with George (Bizos), yes. I was George (Bizos)'s junior. I sometimes did some of the cross-examination of witnesses. It was an incredible case. At one stage it set the police against the military. One was trying to shift blame to the other, and really in retrospect if you think about it, it's almost ludicrous. It was about the meaning of a telex that had been sent by the military, containing the following words in relation to Goniwe: (translated from the Afrikaans) 'to be permanently removed from society' - '*Permanent van die samelewing verwyder word*'. A large part of the inquest was taken up with the determination of the meaning of those words. There was evidence led and arguments about how about permanent could mean temporary. There was testimony involving Afrikaans dictionaries stretching back to Dutch dictionaries. I think the most incredible thing about the case is even though we understood that the tentacles of the state security system were powerful and pervasive, we did not know or realise just how far it reached until the documentation became available which highlighted the involvement of cabinet ministers and of state officials. Of...how a particular languages...was developed to assuage the psyche-referred to as strategic communication- like the sort of language employed by the CIA. There was a strategic communications department which manufactured words that perpetrators of misdeeds could use. Euphemisms were employed. It really was incredible. Representing the families at the inquest was a mammoth, mammoth task. I think it was much more than just the 14 months. There was the preparation before the actual inquest. There was the winding down of it subsequently. A lot of the inquest featured in the TRC hearings which George (Bizos) was then subsequently involved in. It was incredibly draining, and it took its toll on us. We were exposed to horrors and the inquest was almost all consuming. It's bad enough to have an obsessive compulsive nature and then to find oneself in a situation where that just gets heightened. Can I just look at the banners in the hallway again...(*recording switched off*)

Continuation of Recording

MN I did a lot of those on brief...

Int Farm labour cases.

MN Farm labour and related cases. Very often people would get charged criminally with trespass and other offences. I did some of that for Moray Hathorn. So if you speak to Moray (Hathorn) about it you'll get a cross reference. I did some high court applications for Moray (Hathorn) relating to farm labour tenancies. There was one infamous case at the LRC that Moray (Hathorn) did where a black farmer had been living as a labour tenant on a white-owned farm.

Int In Piet Retief.

MN Yes... and had become quite successful and had built up a homestead and had become prosperous, and this had led to tensions between him and the farmer. I think they came in with bulldozers and knocked everything down. And I argued the application

to have ...everything rebuilt. I think Dirk Marais was the judge. We got a very good hearing. The difficulty in the Pretoria High Court was that many of the judges were farmers, and a lot of these cases had to be brought in Pretoria. Moray (Hathorn) himself, you will have heard from him, faced prosecution as retribution for assisting farm labour tenants in small towns. I was involved with George (Bizos) representing Moray attempting to get the charges dropped. I did a couple of criminal matters relating to farm labour tenancies on brief from Moray (Hathorn). During the state of emergency, I did a number of applications to get people released. I...did one for Bongki Mkhabela's's husband with Lewis Goldblatt SC as my leader. I did one case where I thought we had a winner. It concerned a woman who worked at the Post Office as a tea-lady who I think was a detained at a funeral that she attended. It was common cause that she arrived at the work after the main black workforce went out into the field and she left before they came back. She was detained on the basis that she was a political agitator. The matter was heard by Judge McCreath. We lost. I remember the SABC racist remark case, I remember some involvement in it, and I can't precisely tell you whether I did a first draft that later was settled by somebody else, or whether I signed the particulars of claim. Farm labour cases were particularly harsh. The environment was hostile. I remember going to one of the small rural towns on brief for Moray (Hathorn) with Kuni Detera who was Moray (Hathorn)'s black CA or fellow at that stage. There was such hostility towards us just being there. There was an easing of petty apartheid and they had opened up places like Wimpy restaurants but the townsfolk did not welcome us. There were always racial tensions in those towns because attitudes had hardened. Black people were constantly being forced off the land they'd lived on for generations, on which their ancestral graves were. White people saw their continued presence as a threat to their propriety rights. It was ...a particularly harsh environment to work in. Post '94 I was at the LRC for approximately one more year. I did a docket disclosure application in the high court in the Eastern Cape, which was heard by 3 judges. Lex Mpati was my junior, and we won that. We also did a case together, Lex (Mpati) and I, in Namibia, which also related to docket disclosure where Ismail Mahomed was on the bench and the former chief justice of Zimbabwe, (Enoch) Dumbutshena. And we won that. I did another case with Lex (Mpati) in the Eastern Cape called Zwane that ultimately landed up in the Constitutional Court. It dealt with the constitutionality of provisions of an Act that limited the time within which an action could be brought against the military in the Ciskei. And that was before judges Heath and Pickard. I was involved in setting set up the LRC's first constitutional litigation unit, just before Wim Trengove came. I can't remember the details of what subsequently became of the Advice Centre Program – Pinky (Madlala) and Ellem Francis were involved in the day to day work and I used to do the litigation for them. Ellem (Francis) did a lot of magistrates' court work, which I helped him with and very often did a lot of appearances in public violence cases where kids were in danger of...harsh sentences, which were being doled out. Convicted persons could have sentences upwards of five years' imprisonment imposed on them. It was harrowing. Many of our clients were involved in protest action which was then frowned upon...well frowned upon is a euphemism, an understatement...by the state. The consequence was that a number of public violence cases came our way. Very often you'd get people off because of an inability to identify our clients as the perpetrators. I remember a particular case in which Ellem (Francis) and I appeared relating to children involved in protest action in Ennerdale. That is where Ellem (Francis) used to live. And in one protest action, the civic centre was burnt down to the ground. These kids were then charged with arson and a number

of related offences. We represented them. And often in these public violence cases there'd be three or four advocates or attorneys lined up to get several cracks at cross examination of state witnesses. I was fortunate in that a number cases in which I was involved became reported cases. At that stage I would probably have done up comparatively, more high court and impact litigation experience than most of my black counterparts had done elsewhere. And that was just pure luck, it was pure good fortune that I was at the LRC. I was fortunate to work with Sydney Kentridge QC, We needed a silk in a case in which a number of our clients had been beaten up by 'kitskonstabels', in Kathlehong, if I remember correctly, Katlehong. A number of our clients had been detained by kitskonstables, taken to a disused power station and severely beaten. We also obtained interdicts against kangaroo courts in the townships, flowing from advice centre work. Rough justice was meted out to women and men. This occurred when the community or somebody would report conduct considered reprehensible and then people were either flogged or threatened with a flogging in public. I did a lot of urban areas, residential regulations cases. There is a reported case called *Toho v Diepmeadow Town Council*, where Geoff (Budlender) and Raymond Tucker were my instructing attorneys. It involved the Conversion of Rights into Leasehold Act which was a very badly drafted piece of legislation. We won, and it really...it had a benefit beyond our clients. Geoff (Budlender), particularly, knew more about land and legislation relating to land than most people. It was a privilege working with him. I spent days with him educating me about the history of land legislation. I'd worked with Geoff (Budlender) as an attorney a couple of times. I always thought that Geoff (Budlender) was one of the best attorneys at setting up the apartheid government for a fall. He entrapped them by...engaging them in correspondence, which was designed to elicit a particular response or to get things on record. There was a case in Brits, which he might have told you about, which is also a reported judgement- *Mahlaela v De Beer*. Stafford was the judge and you will see from that the correspondence that the required response was elicited. The township manager told Geoff (Budlender) what he could do with his letter of demand.

Int That's actually quite good. (laughs)

MN But I have a list of cases, which sets out the reported cases that I was involved in.

Int Thanks for that Mohamed, you know, apart from Goniwe, what other cases did you work with George (Bizos) with...

MN I worked with George (Bizos) on one or two of the Eugene Terreblanche cases.

Int Was this post '94?

MN This was...I forget .There was one on brief from Kate Owen. George (Bizos) could tell you about them. One cases involved Terreblanche's treatment of people on or near his farm in Ventersdorp. Then there was the HIV case I spoke about earlier, which is also reported. You will see that it is one of the earliest reported cases on Aids related treatment by provincial hospitals. It was before Judge Myburgh. George (Bizos) was always helpful, particularly in Group Areas cases if you needed him. I worked a lot

with Ron Selwyn SC in Group Areas cases. Often one would need a silk to persuade a judge on a Friday night to reinstate people who had been evicted or to prevent an eviction. We would phone people like Ron Selwyn who'd do it willingly. I once worked with Jack Unterhalter SC, with Issy Maisels QC and with Sydney (Kentrige) Kentridge. I consider myself incredibly privileged, and it was just pure good luck, pure good fortune.

Int So you were involved with George (Bizos) in drawing up the amnesty legislations...

MN The TRC legislation, yeah.

Int If you could talk about that.

MN Yeah, it was very strange at a JSC interview when I was being interviewed for a position on the Africa Court I literally froze when somebody said to me, how could you have written this? So I said, I beg your pardon. I thought for a second that I'd been hallucinating. And they said, well, Parliament wrote it. The way it worked was that Dullah Omar, the then Minister of Justice and Johnny De Lange were our clients...there was a time when Dullah (Omar) feared that he was being, being...sabotaged from within the department, and we used to fly down a number of weekends to Cape Town to see them at the IDASA offices.

Int When you say within you mean...?

MN I mean from within the department of Justice. And George (Bizos) and I used to fly down on many weekends to take instructions about how the legislation should be written and what it was to cater for. Initially there was a very rough sort of working papers by Gilbert Marcus, I think, and then George (Bizos) and I started putting together the framework. George (Bizos) will tell you that we looked at best practice throughout the world and we tried to put together draft legislation that would be from constitutional attack. We had to work out the mechanics of the various structures of the commission and its separate bodies and how it would fit into the whole...and George (Bizos) will tell you just how much craftsmanship that took and the detail of it. I remember going away to act on the bench and remembering that I think you had to appear...

(Interruption- rather serendipitously, George Bizos enters) ...and you (Mohamed Navsa is referring to George Bizos) were due to go to the portfolio committee, and we had drafted the legislation over many months and you were due to go before the portfolio committee. You weren't there at my last JSC interview and when they asked me how we could have written the legislation...I really thought I'd hallucinated whether I'd indeed written with you or...because only parliament wrote legislation.

GB There were many drafts. ???

- MN Well we wrote all of those structures. I mean, I remember coming back while I was the acting... to say to you, I'd forgotten something, about how the structures would tie in with separate committees.
- GB Yes. But also there were completely outrageous...
- MN Yeah, suggestions.
- GB ...suggestions. You know, you could enter any premises any time of the day and night and search and remove without...there were...
- MN We put the superstructure in place and we put the separate structures in place. We did International Best Practice. We looked at Chile, we looked at everything. We went and told them why they couldn't do certain things. Then Dullah (Omar) put us on a road show, remember. We had to go around and sell the draft to NGOs and then we got all of the flak for the stuff we'd advised against that government had insisted go in, and that was a sort of weird...
- GB You weren't at the important meeting in Cape Town with...what was his name? Vice chairman?
- Int Alex Boraine.
- MN We used to fly down weekends and because Dullah (Omar) feared subversion within the department we used to meet at (Alex) Boraine's Institute and we used to go down...Johnny (de Lange) was our client, and I remember the very many sort of things where we started with, where Johnny used to make speeches, you know.
- Int This was Johnny...?
- MN Johnny de Lange.
- GB Johnny de Lange. But, you know what Johnny said, at the same platform...I'm sorry about (referring to interrupting the interviewer)
- Int No, that is quite alright; this is a great interview by the way, it's being recorded
- GB At the University of Cape Town on the same platform as me, and I raised the question that was raised by Ismail Mohammed, that there are certain things that you can't change in the constitution. You can't say there'll be no future elections. It won't be an amendment but a tearing up of the constitution. And I said, there is a debate as to whether the 34 principles are in cold storage or you know, and or will come and he said...you know what he said? He said, these principles, he says, they have no hold on

it whatsoever! They were for the interim constitution, they've got nothing to do with the final constitution! And I said, you know, I'm sorry Johnny (de Lange), I think am I dreaming or something?

MN Yeah, well I was just telling Roxsana, we did one of the earliest HIV cases, the case about Gancyclovir case. You and me. Mahendra (Chetty) was our instructing attorney...

GB It supported...an applicant versus the...yes, well this is right.

MN That was very early, that was right at the beginning. (Johnny) Myburgh was our judge.

GB Yes. And he gave a strong judgement.

MN And counsel on the other side cheesed him off big time, remember? I can't remember who it was now...

GB I remember. He said, you are steamrolling this. And he got angry. (laughs) He says, well you know, he's entitled to file a further affidavit in lieu of this. He said, it's ten o'clock, quarter past 11 he better have his affidavit here or come here and explain (laughs). It was a very important case actually.

MN It was about the Gancyclovir and it was long before the TAC.

GB You know what happened, the maker of this...I'm sorry...

MN It was for the eyes, it was an eye medication.

GB A man...knew that he was going to die within 2 or 3 months. He was given a specialised experimental medication and they had actually opened up his throat...

MN It was a tracheotomy, I think...

GB Yes, it was a tracheotomy and his complaint was that one of the things that he really enjoyed was his eyesight which was going to disappear unless he was taking this. They were giving it to him for 6 months and then the supplier said, we've been giving you this for an experimental time and you're not paying, we now will not give it to you because you have to pay for it. And we went to court. And they said you know that...and I said it was a matter of policy, I said. You can't have policy about individuals.

- MN But also, we did the Springs swimming pool case together, you know who our opponent was? George (Bizos) and I did Springs together, do you know who our opponent was? Do you remember? Jonathan Heher.
- GB Oh, yes.
- MN And the judge was Maynard was it...it was?
- GB There's a big poster outside (refers to the hallway at the LRC Johannesburg office) of Springs. They would rather close...
- MN They used a mechanism of membership that they...they privatised it, and we said the privatisation was unlawful...we won but we ought not to have won because it was on paper- motion proceedings and there were disputes of fact. And...who was it? It wasn't Maynard was it? It was Hekkies Daniels. Hekkies (Daniels) gave us the judgement and then it got settled thankfully after that, so we won but...
- GB But you know what...the Separate Amenities Act allowed segregation. This was a white woman, mother of 3 boys, living directly opposite the swimming pool, and they decided, for economic reasons they say, to fill the swimming pools with sand...
- MN No, no, no, they privatised it. They privatised it George (Bizos), that's what happened. We argued that the privatisation was a schlenter.
- GB The way I remember it is that we said, whatever it is, that it was a schlenter, (laughter) whether they were going to fill it with sand or whether they privatised. And you had a white woman saying this is an amenity for my children over the road from me, and I don't want you to do this...
- MN It should be open to the public, yeah.
- GB It should be open to the public. And...it was interesting. But you know how the case came to us? She was supported by a magistrate. And also we got special funding from Kellogg's...
- MN To cover the costs. The magistrate was a bit of a maverick. He was...he gave the department uphill and he supported the kids, that's how it came about, he supported the kids. But he was a real maverick and I think still is to this day...
- GB He's the one that made the application that they were not...the magistrates were not independently...didn't have sufficient independence. But anyway...and Kellogg actually footed the bill. Because...

MN They had to cover...we had to get protection because she was a person of means and if she lost she would have had to pay the costs. We had to find indemnity for her.

GB Anyway don't let me...

Int Thank you George (Bizos).

GB No, no, no, sorry that I interrupted you.

Int No, it was good for you to be part of the interview.

(And just as magically as he appeared, George Bizos departs and the interview with Mohamed Navsa resumes)

MN I did a publications control case with Ismail Mahomed in the SCA which is also a reported case. I also did a criminal appeal in the SCA for Mahendra (Chetty) relating to a gardener who in a fit of rage, after an argument with his employer, had choked her, but had not seriously injured her. He got an outrageous sentence, and we went to the SCA and got that reduced. So I did that. But that's the sort of stuff I recall off the top of my head.

Int I'm also keen to understand, before the interview started you mentioned about George (Bizos)'s generosity and it seems to me that you've been extremely lucky because you've had...you've worked closely with Morris Zimmerman and you got a very good sense...ethical sense of right and wrong, but he also wasn't very detailed oriented, and then you worked with George (Bizos) and George (Bizos) isn't very detailed oriented and has an acute sense of right and wrong, and I wonder whether you could talk a bit about that as well?

MN You could see in the exchange now about the details. His generosity is both material and of spirit. I mean, the treason trialists will tell you how George (Bizos) bought lunch for them almost every other day and certainly made them a salad every day from his garden. You know, George (Bizos) is a very, very giving person. The sort of thing that stands out for me is recently when the Terrorism Act now was sought to be amended, George (Bizos) was one of the lone voices, I mean, speaking about the treachery of it. He spoke against a party with which his affections clearly lie. So...and he spoke in defence of Justice (Johann) Kriegler when he was attacked as Head of the IEC. To him, it was a matter of principle. That's how one remembers George (Bizos). I was Denis Kuny's pupil...you did an interview with Denis?

Int Yes.

MN And the good thing is, that during my pupillage I worked with George (Bizos) for the first time. It was on the Aggett inquest. Neil Aggett had been detained by the security

forces, and we had to come up with an argument about how the conditions of his detention induced suicide. And Piet Schabort was our opponent. I remember that quite vividly. So that's where it started, I was Denis' (Kuny) pupil. And that was my first involvement with George (Bizos). I try to have lunch with him a couple of times a year and talk to him and see him. I speak to him on the phone occasionally. When you walk down the street everybody recognises and knows George (Bizos). He is incredibly generous and he trusted me and relied on me. There is nothing that shores up your confidence, as much as George (Bizos) saying this is a good piece of work or giving you acknowledgment, which I've received in the books he's written. So for me that was incredibly important and it was a boost. And unlike Arthur (Chaskalson) who's quite reserved and George (Bizos) is gregarious, he's a florid character, I mean, he runs trials like that. (laughs). I was fortunate being exposed to that contrast. I was Arthur (Chaskalson)'s junior on numerous occasions...oh, the other important thing that I forgot was one of the first cases I was involved in with Arthur (Chaskalson). It concerned dehumanising legislation. During the height of Apartheid black persons who were unemployed were in danger of being declared idle and undesirable and liable to be shipped off to particular destinations. And I think we appeared before Van Dijkhorst Horst and won in our challenge to the regulations. The same Van Dijkhorst Horst who presided at the Delmas treason trial. It's incredible how these things pop into your head just when it appears that you have forgotten them. Arthur (Chaskalson) presented me with my advocate's bag. Arthur (Chaskalson) the supreme technician, the guy who dots all the I's and crosses all the T's and who, like Sydney (Kentrige) is given to the understatement. And George (Bizos), this florid person, who imposes himself by sheer force of personality, takes over a conference, takes over a trial. And that was the contrast. I think of George (Bizos) as having the temperament and genius of West Indian batsmen, the calypso temperament. When I pore over a legal problem, I find myself going through the Arthur (Chaskalson) steps, trying to apply the discipline and the rigour. There is a tendency to rely on one's experience and the strength of your personality and try to get through the stuff. When I draft a judgement I have this vision of Arthur (Chaskalson) standing looking over my shoulder and sort of nodding in disapproval that it's not rigorous enough. It was scary working with him. The other case in which I was Arthur (Chaskalson)'s junior and that I forgot...in terms of reported judgements, is *S v Rudman* – the right to legal representation. This was an important case in the pre-constitutional era. It was frightening working with Arthur (Chaskalson). He worked harder than everybody else. If he set you a task, you couldn't complain even if it was Herculean. You did it. And again, you know, for me, it was a confluence of good luck. I was able to balance the methods of a number of my mentors. As I said, even today, when I write something I have this terrified look on my face and then I look around to see Arthur (Chaskalson) standing there metaphorically looking over my shoulder urging discipline and application. If you did something George (Bizos) disapproved of, or didn't do something, you didn't produce something of the standard that he expected, his response would be dramatic. He would tell you. Arthur (Chaskalson) was much worse because he'd say so little. His disapproval was understated and more devastating. Sometimes I would think, please just shout or say something. And Zim (Morris Zimmerman)...you know, Zim (Morris Zimmerman) always used to laugh about how, if you went to UCT, you'd see his name in the sporting gallery and not in the academic halls. I certainly think my life would have been very different if Zim (Morris Zimmerman) had not been in my life. He was as a major influence. He had a human touch. He shouted a lot during my first year as a fellow. They were reprimands with lots of love. Zim (Morris Zimmerman)

was very funny and I adored him. Zim (Morris Zimmerman) did everything he could to make my career successful. So yeah, great memories, I remember him very, very often.

Int You know, an organisation always has interesting relationships and one of them is people always say that somehow you were Arthur (Chaskalson)'s protégée, would you agree with that?

MN Well, you know, I was involved in the first cases in the Constitutional Court in which an attorney appeared. It concerned civil imprisonment for debt. And people who were in court said they could see the interplay with Arthur (Chaskalson) looking at me almost apprehensively, but also affectionately. And yeah, I think that Arthur (Chaskalson)...I think you could hardly work in the LRC during the time that Arthur (Chaskalson) was there and not be influenced by him. At a time when there were competitive and able people in the form of the NUSAS old boys, at the LRC, they would be competitive amongst themselves but never with Arthur (Chaskalson). His word was final. He was the resident genius and set the ethical, the intellectual, moral and academic tone. And no one quibbled with him. So yeah, I think he took a lot of people under his wing. I worked as his junior fairly often and I benefited enormously. The Tollgate case as well. It was the case that we didn't win. Arthur (Chaskalson) played a huge part in my career. I always got the sense that even perfection was not good enough for Arthur (Chaskalson). So I'm always kind of apprehensive about what he really thinks and about how he really measures one. My career would, I think, have been very different if it hadn't been for him, Zim (Morris Zimmerman) and Denis (Kuny). And even the people who I mentored: Ellem (Francis) and Thandi (Orleyn) and a range of fellows after that. I'd like to think that one of the bigger contributions I've made, if I made a contribution at all, would have been in respect of the fellows, generations of black fellows for whom I took responsibility. I was harsh on a lot of them. I always worked on the basis that you were going to be scrutinised ten times more critically than your white counterparts and therefore you had to be ten times better prepared. I hope that I had some sort of positive influence of the generations of LRC fellows who made their way in the world.

Int Well I think you certainly did, given that I'm interviewing lots and lots of fellows. They always say how harsh you were with them but the remarkable and also probably the most striking thing in their narratives is the fact that they all come back to thank you in the interviews, because I think the idea is that...well, certainly the perception is that...if it had not been for you and giving them the basic skills that a lot of them didn't even have, you know, the drafting skills, that they wouldn't have been able to take it on and take that into their future careers. So, you know, just as a feedback.

MN Some of them were remarkably gifted and I think very few of them realised the extent of their gifts. You know, I can think of 5 or 6 people who, given the disadvantages they faced demonstrated remarkable strengths. And that was always pleasing, I mean, it was always pleasing to know that there was someone here who if given half a chance would be an incredible lawyer or just a good...a person who would be a major resource for any community.

Int What strikes me particularly is that given that I'm doing the interviews now, it seems that when people talk about the Johannesburg office, it's really the 1980s as a time of incredible rigour and activity, even the clients queuing up etc. since the Hoek Street clinic had closed down. My sense now is that things have changed and I wonder whether you could talk about that in your role as a Trustee, because it seems to me there's Arthur (Chaskalson) and George (Bizos) but they're not here all the time, certainly Arthur (Chaskalson) isn't, and there's Achmad (Mayet) etc, but there isn't a very strong coterie of senior, middle, and so the junior attorneys in terms of training, I'm wondering what your sense is of what's going on?

MN You know, I used to have quite close ties with the Joburg office and used to walk in here a couple of times a year after I had departed the LRC. And I think so did Ellem (Francis) and Thandi (Orleyn). I've lost a bit of touch but my sense of it is that the energy at the front desk is not what is used to be. It was almost was like a spur, you know. You came in, and there were just desperate people in droves and some of them you couldn't help and that was frustrating and desperate. But some of them you could and it created a buzz, it created...people fed in. The library, I think, is much quieter now than it used to be. Catrin (Verloren van Themaat) will tell you that. The library was overworked when we were around, and people worked as teams, even the competitive people. I worked in a very different environment. We had our own sort of little world in which we featured. It was the advice centre world with all of its attachments. It was our little world and we wanted to make it work. We were a family within that world myself, Thandi (Orleyn), Ellem (Francis), Pinky (Madlala). Pinky (Madlala) was the central part of it all. And we were connected to communities. I mean, we could find a case at the drop of a hat. We could phone people and ask that they seek out a case. The LRC struggled post '94, in that, the greater part of its think tank had moved on, right at the outset of our democracy. So geez, you had this big turnover of staff. I still think that they do incredibly good work that is really impressive. On the other hand, I think they do suffer from lopsidedness. Cape Town, for example, is just too heavy with experienced people. Other offices don't have a proper balance. I also think that we're not recruiting the brightest young things in sufficient numbers. And it may be that we're not offering good enough salaries or incentives, or we're not selling ourselves properly. So we're losing out to other institutions and the private sector, particularly. I think it's much better to invest in bright young people with energy and a vision and a commitment to an ideal. You know, in the old days we used to think, maybe we kidded ourselves- but I still think that it is true that we were all philosophically aligned. Now I'm not sure that everybody who takes a job here necessarily has that philosophical alignment. For some, it may be just another job. It's also gone through hard times in terms of the funding tailing off and therefore faces the added pressures of keeping the boat afloat. So it's been hit by that, as well. I think we should and could do better at the lower end, getting young people in to energise the place. We should not necessarily recruit people for life. Get people in, let them enthuse the place, new energy and creativity arise, and then get them to tie in with people like Arthur (Chaskalson) and George (Bizos) and the other senior people. I think that will work. We have now gone through a restructuring exercise, which, hopefully, will get us into a situation where we can get that synergy right. I haven't said anything about the Legal Aid Board so perhaps I should get that out of the way. I got involved in the Legal Aid Board quite

accidentally. Dullah Omar was Minister. I knew Dullah (Omar) from the old days and Dullah (Omar) had been at the LRC. And Dullah (Omar) saw me at some state function or the other. He said, listen I've got to talk to you about the Legal Aid Board, and I said, ok. He said, I'd like you to be the new Chairperson, and you can have leeway and vote with the other members of the board to aid transformation. At that stage Legal Aid Board was in serious trouble but no-one knew just how badly in trouble it was. I mean it really was. Conservative estimates at that stage said it was a half a *billion* rand in the red. This was in the late nineties- '96, '97, maybe '98. And Dullah (Omar) got himself into a prickly situation. He had, in the interim, constituted an unofficial shadow board, which involved Cheryl Loots and Shadrack Gutto, and other people who were well intentioned. The problem that arose is that there now was a new Board intent on transforming the manner in which the State provided legal aid that couldn't be shadowed by another unofficial board. At that stage State funding had levelled at a hundred and some odd million rand. There was a great level of corruption within the organisation. Money was flowing out the door and records went missing. Seven out of 10 files were missing. The computer programmes and data, such as they were, were corrupted and inadequate. Arthur (Chaskalson), who had been on the old Board stayed on because Justice Plewman, who had been the Chairperson before me had left. Arthur (Chaskalson) felt a moral responsibility to see the Board out of the situation it found itself in. And the new Board was a cause of optimism. People like Geoff (Budlender) and Eb Moola came in. I can't tell you how it aged me. There were threats to ones life and all sorts of shenanigans. People trying to set you up and prevent you from discovering the truth.

Int Was this from within the organisation?

MN Yes! It was from within and without. The people on the outside had been working with the people on the inside to line their pockets. People were making millions and millions of Rands from moneys destined for the poor. And remember at the same time there was the (Allan) Boesak saga where (Allan) Boesak was getting open ended funding from the Board that was running into millions and I had to stop that. And that led to (Allan) Boesak making all sorts of statements about the manner in which we operated in relation to him and how we had funded others without limits and were now prejudiced against him. They had hired a senior counsel who flew down on an ongoing basis to the trial venue and they had a team of forensic auditors. Millions were flowing into one case. And then there were also the heist cases which drained the Board's coffers. Some practitioners were holding the LAB to ransom. A number of cases ran almost endlessly. The good news is that when I left they were back in the black and now had a very healthy surplus. All of the old debt and had been wiped out and an accord had been reached on a new fee structure. The Justice Centre program aimed at replacing the judicare system had been put in place. But the personal price was incredibly high. The time that I'd spent on rehabilitating the organisation, you know...Dullah (Omar) gave me some time off the bench. Still, I had to move back and forth. Came back to the bench and then again took time off the bench, trying to get things going. Each time something rocked the Board I was pulled back in. I went on Haj in 2000, thinking the Board was on its way to recovery. Before I came back we were kind of...humming along towards normality. When I came back there was another big scandal and I had to try to resolve that. Again, I was incredibly fortunate. There was a collection of really good and talented people on the Board and staff who

were incredibly committed. I was the agent for them to coalesce, but on a personal level it took its toll. I can't tell you how...you know, I always thought of myself as a strong person, and at the end of that I don't think I ever felt more vulnerable. And as you know, when my term was up, I said to Minister (Penuell) Maduna, who subsequent to Dullah (Omar) was very helpful, as was finance Minister Trevor Manuel that I did not want to renew it. The Minister had been incredibly good to us. So in a sense I was a catalyst. I was the right person at the right time to help the forces coalesce to achieve the result. Yeah, so you know, I think that in terms of a national impact it was something that I feel good about, but I can't help feeling that I lost something of myself in that whole saga. It really tore at my insides in ways I'm not sure that I can work out. I remember, you know, when Legal Aid Board statistics were being disclosed and the criminal justice system was under threat of failing, advocates and attorneys would see me and I'd get phone calls threatening me. There were outrageous things said. A few black practitioners saying to me, well, the past Board let white practitioners exploit the place so why don't you allow us to do it now! Almost in those terms: to rip the place off. As crass as that! The personal attacks, attempts at sabotage and the attempts to set me up, and the things that I was exposed to was just...I just...you know, you kind of felt like you needed a shower and you...you'd never be able to get rid of the sleaze. So yeah, I mean, I can look back on it with a degree of satisfaction, and again I say this to you in all sincerity, I think it's due to the efforts of a great number of people working as a collective.

Int When I interviewed Denis (Kuny), I mean, he really credits you with turning the Legal Aid Board around, but I'm also wondering...

MN Oh yes, he was on the Board as well.

Int Yes, exactly, and you know he said that you were also a judge at the same time, so that must have been incredibly difficult.

MN Yeah, sure, in and out, in and out, sometimes judge, sometimes administrator. And yeah, you know...I had sort of personal adversities to deal with at the time as well. It was just...I mean, I...yeah...

Int It's interesting because I'm wondering whether that then leads to some kind of disillusionment with the new dispensation, and in terms of rule of law and concerns for that?

MN Well, that's a very different view, I mean, it is disillusionment with parts of the human race in general and the way people behave and the greed, and you can imagine that all the Legal Aid Board does is deal in money, so the scope for corruption and greed and the fertile ground for all of that. Um...rule of law, I have very grave concerns at the moment. I think it's...I think the judiciary lacks a profile, its own profile. I think it needs leadership, a collective leadership that's much more emphatic and I can understand why that hasn't happened up until now.

Int Why?

MN I think because everyone wanted to give a new system a chance to grow and develop and establish. And people wanted to do things consensually rather than antagonistically. I think that the judiciary has not yet become a cohesive force. I mean, recent events will have shown you that there are differences of views about the role of a judge and about what can be dealt with publicly and what can't be dealt with publicly. I think philosophically you know, judges should never be a sort of monolithic force or a homogenous force but there should at least be a commonality of view about the value of the institution. I don't think the public is educated enough about the importance of the Institution. I don't think the judiciary does enough to educate the public, in layperson's language, not in legalese, of the importance of an independent judiciary and what it in fact means. I don't think the judiciary has been strong enough in dealing with criticisms that clearly border, not just on contempt but go beyond contempt. It is now subjected to ridicule and is belittled, very consciously, in some quarters. So that worries me. I am also concerned that when appointments are made that care should be taken to appoint people with a sense of democratic values, with a deep sense of commitment to a judicial institution, and to an unshakeable independence. It worries me. I don't think we engage enough with the public at large. I don't think we engage enough with what the curriculum at schools and at tertiary institutions says about the judiciary. I don't think we arrange enough school trips for people to see what Courts are like and why they are important. I don't think we've looked at the curriculum and what it says about the judiciary and considered whether it could be written better. I don't think we engage enough with the profession to have them be partners in the institution that keeps them afloat and ensures their clients' rights. And I think because of the era of opportunism in the country, there isn't enough of a sense within the business world at large of why in the long term it's important to have those checks and balances. Also, I don't believe that there shouldn't be any tension between the arms of government. I think for a healthy democracy there should be a manageable tension. I am concerned about how race divisions are beginning to surface within the profession. And if it's surfacing in the profession, the judiciary won't be immune from it. And one should resist that. I mean, you know, what should be avoided is talk of 'our people' in furtherance of a clique. Soon one will not be able to tell the difference between the good and bad guys. And for me, that's difficult.

Int There's also some sense from some quarters that perhaps it was too much too soon that young black lawyers, who were probably good, got positions as judges too soon. Would you agree with that assessment?

MN Well, I mean, if I agreed with it, I shouldn't be on the bench.

Int No, you've served a long time at the Legal Resources Centre, I don't think you're in that same category.

MN This portion of the interview was edited out at the behest of the interviewee.

Int Then piggybacking on that, what do you see as the role of the LRC for the future in terms of public interest law issues? Key ones?

MN I think the LRC is going to find itself in situations in which there is going to be a great deal of confrontation with institutions and the powers that be than has been the case in the recent past. I think its way forward must be the way that led the past. You keep doing things with integrity and you keep doing things philosophically purely, and you keep true to constitutional principles. As far as the bench itself is concerned it's almost its legitimacy that is at stake. You know, Ismail Mahomed has written tons of papers and several addresses about where the legitimacy and the strength of the judiciary lay. Not in armies, but in the psyche of the people. And it can only do that if it truly does serve the people. And there I think that the judiciary must take responsibility for ensuring that it is the independent arbiter that a populous can look to with confidence. So in a sense I think it's the same for the LRC: how it's finally seen and what its role is when history is written. It will be judged must be the way it conducted itself. It must do so in as friendly a manner as it can. But it should be true to itself. It's the same for the LRC.

Int There's some rumblings that perhaps the LRC doesn't take on as many cases against government as it ought to. Do you get a sense of that?

MN I can't tell you that I get the sense that it is done consciously. I don't think I get that sense, but then again I'm not in the offices. I don't know what the filtering process is, I don't know how the decisions are made other than the reports that we get. I would

like to think not. But I think part of it is...it's not just related to cases against government, it's related to cases in litigation in general, and I think that the litigation ratio has got to be upped. I don't think we litigate enough on issues of principle.

Int There's also the sense that, you know, drawing on Morris Zimmerman and also George (Bizos), there's been this tension that, you know, there's a need for a public interest law organisation to see people off the street because their concerns are really important. But given the nature of funding and the need for specialisation, currently the LRC seems to be faced with a situation where it does have to refer a lot of people away.

MN I don't have a problem with the referral system if it's effective. I'm probably somewhere between Zim (Morris Zimmerman)'s extreme stand and Arthur (Chaskalson)'s stand. I don't think one can get a true sense of where the pulse without seeing more people than not. Patterns only emerge later. And if you're referring away all the time, the patterns won't necessarily emerge or be detected. So my sense of it is, you've got to keep some kind of involvement, whether you do it through advice centres where you might send somebody through and cases can then be filtered. One could do it through a front desk of an office that allows a mishmash of cases that helps you keep your hand in without overwhelming you. One needs a system or an office that can be a sounding board. And you know, that's what I would go for. I think that will bring an energy in itself and people will see you being involved, in not just the grand cases that will make you famous. Well, that's the other thing that besets this society: personal agendas that detract from institutional agendas. Judges who write judgements to get famous are a danger as are lawyers who take cases for themselves. And you go back to what we talked about earlier are turf battles within the NGO world. They're still there and they're not common just to this country. I reckon you do the good stuff, you do it for the right reasons and fame will come as a bonus. You don't have to go looking for it. I guess my religious bent tells me that it's all just nonsense anyway. That in the end, what are you going to get judged on? The core of what you do has to be morally right. The rest is just so transient; all of this is so transient. So that's where I'm at.

Int I was wondering in terms of the...I am aware that you have to go soon but I'm wondering in terms of the constitutional litigation unit, you headed it up and set it up in a very crucial time, not only in the country's history but also in the history of the LRC, because Arthur (Chaskalson) was on his way out...

MN Well, it was very fledgling when I left. But...

Int But you got offered the bench, and it must have been a dilemma for you.

MN Well, yes and no. I mean, in a very real sense, I'm not so sure that I'd make the same decisions again. I now have a sense that perhaps...truth to ones life should lie in doing things less ambitiously. You know, when you're younger you imagine doing things on a grand scale...maybe this is just me facing a mid-life crisis, but it seems to me that I've always wondered about the worth of what we do as I look at organisations

going about their business. I continue living in the township and for me it's the small but important things that don't get done. You know, there used to be a society for the care of the aged, there used to be a variety of pre-school organisations and cancer organisations. People used to run self-help gardens and much of that is gone. I have a greater sense that those things aren't being looked after as was the case in the past, the things that matter in the lives of real people. And they're not to be addressed in terms of a grand scheme. It is about just dealing with the problems that beset...our community at any moment in time. School drop-out rates continue, teenage pregnancies continue, drug abuse continues and escalates. The schools get more and more overcrowded and have fewer resources. NGOs have all disappeared. And for me that's where one should make this crucial difference. And if you're asking me how I'd like to live the latter part of my life, I guess that's what I'd like to do. I would like to effect change in the lives of a few people. I have some skills that can be used. I can knock on bureaucratic doors harder and push harder, and not to do grand things. That is what I'd like to do. That's genuinely what I'd like to do. I would like to do things that satisfy my soul rather than just meet my material needs.

Int Well, thank you very much for a very reflective and thoughtful interview.

MN Thank you very much. Thank you, this was great.

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