

Ellem Francis

## LRC Oral History Project

**Interview 1: 14<sup>th</sup> July 2008**

**Interview 2: 23 July 2008**

### Interview 1

Int This is an interview with Judge Ellem Francis and it's Monday the 14<sup>th</sup> of July (2008). Ellem, thank you very much for agreeing to be part of the LRC Oral History Project. We really appreciate it on behalf of SALS. I wondered whether we could start this interview by asking you about your early childhood memories, what it was like growing up in South Africa under apartheid, what were your specific experiences and where did your sense of social justice and injustice develop?

EF Well, I was born in a town called Standerton, which is in Mpumalanga, it used to be called the old Transvaal. I remember myself, I think, when I was at the age of about four/five years old, when we used to live in an area where Africans lived together with coloured people and Indian people, and I was told that there were some forced removals that had taken place, in 1961/62. We were then moved to a place called... and I'm sorry, you know, for the name, but it's called the 'Coolie Kamp', which is really a derogatory term, you know, used for Indian people. My grandfather was, Indian, he got married to an African woman from my mother's side, I think, her grandmother was Griqua, and she was married to a man, whom I'm told, I think, was half Scottish and half Afrikaner. So because I think, we were of mixed race, we then had to move away from a place called Sakhile and we moved to, like I say, you know, the Coolie Kamp. The conditions there were quite atrocious in the sense that we still had the pit toilet and my paternal grandmother used to run a shebeen, to augment his income. And I still remember I used to be told at an early age, to dig up a hole next to the toilet, especially when his customers had to use the toilet quite often. This was wrong of her to have made me to do this. This was part of growing up. Our school was about 5km from home and we used to walk to school. There were days when it was misty and frosty. It used to be bitterly cold and I had to run to school in short pants. We had to run past white areas, and see little white boys and girls being driven to school by their parents either in cars or in a school bus, you know. And I always wondered why we were treated differently from them. There were times when those young white boys would wait for us at various street corners and all hell would break loose. They would beat us up and we would then just gather together and exact revenge. And that's basically, how we grew up. But I've got very fond memories of the place itself in the sense that we had a some water streams or dams that went past the mountain where we stayed. As youngsters we would build some boats and we would, you know, take the boat to the river and, you know, move downstream. I also, I think, you know, used to work at, from a very early age, because my father was unemployed for a number of years, and my mother used to work at a place called, you know, Toga Linings, and she was employed there as a seamstress. She would also sell, you know, fat cakes to make a living. And I used to work at these people called, I still remember them, they were Wielietjie, you know, Indian people. They used to sell fruit and vegetables and I would work after school and every week I would earn an amount of two rands, you know, per week. But I would get a ration. You know, the

ration comprised of, you know, potatoes, onions, tomatoes, cabbage, and some fruit, and I would take that home, you know, just to help out, you know. What I still also remember of that place is that in Standerton, and like in all black townships, there was a curfew and at nine o'clock a siren would go off...nine o'clock at night...and when the siren goes off all black people, that includes Indians, coloureds and Africans, had to be out of town. And if you were caught in town, you know, you'd either be arrested or taken to the police station, or you'd be given a spot fine. My father used to play, what we called, you know, fafi. I don't know if that's known to you. But it's basically where a Chinaman would come and you would have to choose, you know, some numbers. So maybe, at the time I think it used to be a sixpence, a ticky. And if you caught a number, you know, you'd basically be paid out. It was basically illegal. And I used to, with my sister – her name is Elmar – you know, we'd go to town, because there would be two draws, the one would be at two o'clock, the other one would be at eight o'clock at night, and we would go to the Chinaman's place, wait for the draw, and I think then have to run, you know, back home at about nine o'clock. And obviously if the siren went off we would, you know, just be quite cautious not to be caught out by, you know, the police. Something that I still remember also about the place where I grew up was that I had a late cousin, who's now...he died some years ago...and we once went into town to go to watch a movie, you know, the two o'clock movie. And we walked past a white house and my cousin, you know, then saw some toys outside in the yard. Ronnie took it and he was then seen by the owner of the house. He ran away. I stood because I knew that I was innocent. But he was caught. We were then put into this guy's car and then driven to the police station, and when we got to the police station I said, look, I don't know why I was arrested, you know, because I'd done nothing. And the policeman got a cane and, you know, we got a hiding, and I still protested that I was innocent, and he just said, look, you know, because you were with him, I was basically just, you know, beaten up about that. That always, I think, you know, I really felt quite aggrieved about it, I always remember that incident. We went to the movie house, we couldn't sit properly because we had all these stripes and marks on our buttocks, you know. But couldn't tell our parents about that, you know, because I knew that if I told my mum and my dad they would have taken out a sjambok and we would have been beaten up too. It was just after what my cousin had done. But that has always...it's quite ironic, you know, because I just spoke to a friend of mine yesterday and we were just talking about our early days and I mentioned to him, you know, this incident that it's something that I've always remembered. And that's probably, I think, why I became, you know, later in life, I became a lawyer. And it's probably, I think, why I also focused, you know, in assisting people with claims against the police. So yes, I think it was quite tough, you know, growing up...you know, because for some strange reason, you know, my mum was not my paternal grandfather's favourite, and so we were treated quite badly. I gave the example of me having to clear the pit toilet. We had to cut, you know, the grass, the lawn, and I had to cut the lawn, but we were not allowed to sit on the lawn. At school too, you know, it was a mixed school, you know, it used to be called the Standerton Coloured & Indian School, but we used to be reminded by, you know, the Indian teachers at the school that the school there was not a school for coloured people, it was an Indian school. And it was quite tough. A lot of my, you know, friends and, you know, people that I grew up with, once they'd reached standard five, some of the Indian school teachers would remind them that coloured people are just fit to become, you know, just bricklayers, carpenters, they're not fit to become, you know, anything else in life. So a lot of them, you know, left school. And I remember,

I think, an incident because I went up to...well, I completed my matric, you know, in Standerton, but when I was in standard nine, I was approached by, well...the teacher that I'm talking about is Mr Moola, had approached me and wanted to know from me, you know, what I was going to become. So I said to him, look, I think I'm also going to become a welder. And he wasn't too pleased for that, you know. So I said, look, you know, what do you expect me to become, what do you expect me to say? Because you've drummed it up...you've basically told us that we are just fit to become, you know, bricklayers, boilermakers and stuff. There were also, you know, excellent, you know, good teachers there. My maths teacher, a Mr...there were two of them...the maths teacher was Mr A. Dangor, (he was called Boetie Dangor) who was quite good and I think I learned a lot from him. My Science teacher was a Mr A. Dangor (Anna Dangor) and he was also, you know, quite excellent. So we had, you know, quite good teachers there.

Int What did your teacher Mr Moola say to this when you confronted him?

EF He wasn't too pleased, he knew, I think, what I was, you know...that I was just basically, you know, getting back to him. And strange, I met him in 2007 after my English teacher, Mr. Essack had passed away. So we met at his funeral in Standerton and Mr. Moola was there and all the other learners were there, and we just started talking and I think I mentioned to him that, you know, this is basically I think what he'd said, and he wasn't too happy about that. And a lot of the other, you know, Muslim learners, also said that he was quite a terrible man and that was one of the reasons I think, why they...because he used to give, you know, Geography, and that's the reason why they left, didn't do Geography. In fact, I think, I loved Geography but, I think, I just didn't like Mr. Moola. And I had the option between typing or Geography so I decided to opt for typing. But Mr. Moola wasn't too pleased, so, you know, he tended an apology and I basically, you know, accepted his apology.

Int So he did apologise to you, this last year?

EF Mmm. This is almost after 25/26 years. We also, I think, I had a horrible, you know, principal, a Mr. Maharaj who had a habit, I think, of, you know, just...I come from a very poor family. We were ten at home. Six boys and four girls. The resources, I think, were quite scarce, so I had to walk, like I said earlier, you know, five kilometres, you know, from home to school, and I had to walk back, you know. And I would work in the afternoons. And my shirt...I had a white shirt, you know, because our uniform was white shirt with grey pants and a green blazer. And I would wear my shirt, you know, for two days. And invariably, you know, I had some black marks behind the collar, and he would always, you know...tell me to stand in front and would say to the other learners, look, how dirty is my school shirt, you know. I felt quite bad about it but I just said, look, you know, it's just one of those things. But he had...in fact after I'd completed my matric I had to work for a year, because I'd applied quite late at the University of the Western Cape for admission. I was admitted but didn't find any accommodation. So I sent my brother, you know, with the application form and I'd stated that I wanted to do, you know, BA Law and so Mr. Maharaj, I think, was not too pleased for that. He refused, you know, to complete the form and had said to my brother that he thinks that I should do teaching and I'd sent

the message back that, look, all that he must do is just to complete the form, you know, I've decided that I want to do law. Which is basically, you know, what I did. Sadly, I think, you know, we had to move away from the 'Coolie Kamp', I think in 1971'72, and that was basically...it was in fact, I think, our second, you know, forced removals. We then had to move to a place called Azalea. People, you know, so-called coloured people, were moved from Bethal, Ermelo, and, you know, Leandra, which are basically small towns in Mpumalanga, due to the Group Areas Act. So this Azalea was a newly established, you know, township for so-called coloured people. And Indian people then moved from...were moved to Stanwest, also more or less in the same period. So the Indian people that we lived with in, you know, the so-called Coolie Kamp, they moved to Stanwest and we had to move to Azalea. And Indian people had, you know, shops in town and they then had to move from town to Stanwest. That was, I think, my mom's third removal, because she grew up...people used to call it the old location. They moved from the old location to the new relocation, and she then had to move from the new location to the Coolie Kamp, and then from there, you know, to Azalea. The house, I think, that we moved to, I think, was much more better than...it was a brick...it had, you know, brick foundation, bricks. Because in the previous place, I think, you know, the house was built out of zinc, and, you know, come winter time it was very cold and summer times it was extremely hot. There were some leaks in the house so it was quite bad. So I think the move to Azalea in terms of, you know, just the house was not that bad. And it wasn't that far from each other, it was almost like half a kilo, from my previous space. I still, you know, have fond memories about, you know, the old place, in that I remember thinking of my late grandfather – he passed away, I think, when he was 90 years old. Used to...

Int This was your Indian grandfather?

EF Ya. We would go to, you know, just the mountain, he would take out his guitar and we would sing, you know, he plays guitar, he taught us all these songs like, the Alabama, you know, Jan Pierewiet, and Bobbejaan Klim die Berg, and all those things, you know. We really loved that, and I obviously, you know, think about that, you know. In terms of...I gave you the one example about, you know, the siren that would go off at nine o'clock. We were not allowed to walk...well, we could walk on pavements, but if a white person came in your direction, you had to move away from the pavement to allow him to walk on the pavement. And if that, you know, didn't happen, you would basically get a beating, like nobody's business, you know. My... you know, Standerton, I think, it's got a rich history in that the PAC leader, that's now Smangaliso Sobukwe, I'm told, I think, you know, used to be a teacher in Standerton. And I didn't know that my mom in fact...him and my mom and my uncles...my father, I think, were friends, you know. It only came out much more later, you know, when we were just talking about this, much more later, and I've mentioned Sobukwe's name. That she said that basically he was a teacher there and they spoke quite fondly about it, you know. My maternal mother also once told us that she had, you know, quite a big stand in the old location.

Int This is your mother or grandmother?

EF My mother's mother. And she had once in her house, I think, when Nelson Mandela was on the run, he had spent some time at her place. But that must have been in the late...in the fifties. I think he was on his way to Natal, but had spent some time there. The irony about all of this is that they never spoke to us about politics even though they were quite involved in it. But I guess, I think it was more, you know, to keep us, you know, protected, you know, from this. Because I would sometimes, you know, say to my mom, why would she...sometimes she would call white people, baas, you know. And I would be quite offended about it. She said to me, it's just a way, it was just a survival instinct, you know. She would go to a butchery and she would call the guy who was selling meat, call him, my baas, you know. And he would add...give us some extra meat, and that's basically how she survived, you know. And when she went to vote for the very first time in 1994, you know, she said to me that, look, you know, there are still...there was still, I think, a lot of pressure, you know, on them, but she knew that she could basically call white people baas and missus, but knew that she was going to vote, you know, for the ANC, a new government. So, growing up as a child, I think, I was basically exposed to, you know, racism, you know, within the broader, you know, black communities in terms of being reminded at school that it's not a school for so-called coloured learners. And also, I think, you know, being exposed to, you know, apartheid in the sense that, you know, we couldn't just walk where we wanted to walk. We'd have to go...go into a post office, you basically would have to go, there were these separate queues, you know, one for white people and one for non-white people. It was quite, you know, stark. You'd sometimes just peep and see that in the one queue there was, in fact, no queue at all, you know, because there would just be one white customer in the queue, you know. For non-white people, I think, we would probably be about 30/40. And they would serve us, I think, you know, when they deemed it necessary. You weren't even allowed to go into...some shops would have a white entrance and a non-white entrance and you'd basically not be allowed to go into, you know, the white entrance. Even if you bought things...they would never every give you the change in your hands. They will just, you know, put it onto a table even though, you know, you would hand them maybe a five rand note or a two rand note and they would just put it on the table. But, ya, I think, we survived. Things were quite cheap, the system, I think, you know, was quite brutal. People...it became almost like a sport, you know, for white people, because I remember, I think, an incident, I was probably, I think, nine years old...no, about ten years old, when I was sent to go to town, and as we got to the post office, I think, there used to be a café called, I think, it's the Rex Café. And I still remember, you know, a white man, you know, walking out of the café, took out his firearm and then shot this person to death. And the person, I think, that he killed, I think, was a black guy. And I was scared, you know, I stood in...there were some trees and I watched...I basically saw the man being killed and I was too scared to report this to the police, you know. I also remember one incident, I think, you know, where I was sent to town...well, not to town, to one of the cafés and I was then stopped by a group of, you know, white men, put onto the back of this vehicle and we knew that this guy had a reputation, I think he was one of the most...he was the strongest man in town, he was a bodybuilder, but I knew that I was in trouble, you know, because, I think, as he drove off, I jumped off from the back of the vehicle, I ran into some trees and he...because I knew that he was just going to take me to his farm, because I know that, I think, a lot of youngsters were taken there.

Int What were they taken there for?

EF They would be sodomised.

Int Really! And this is a white farmer?

EF It's a white guy, ya. So...ya...I...so, you know, my mom would sometimes, you know, complain, you know, they would complain about cheap labour. They would basically, you know, work their backsides off and just, you know, still get, you know, a small salary, you know. But those are my recollections of my early childhood in Standerton. I think it really prepared me...it prepared me, I think, for the future. I basically, you know, grew up, you know, a tough way. I would...had to fend, you know, not just for myself, but for my family too, at an early age. Made to work quite hard. Competed, you know, at school, didn't have a lot of, you know...well, didn't have money basically at school. But then, I only realised when I was in standard, I think, eight, how competitive, I think, some of my, you know, learners were. You know, because they would always ask me, you know, like Ellem, you know, what did you get, you know, for maths, and what did you get for Science, you know. And it's only then that I realised that there was this massive competition, and it's only then that I started competing. Because I was probably fortunate in the sense that I was one of the top four, you know, learners in my class.

Int And it was a mixed race school?

EF It was, ya. I remember, I think, when I was in matric, a friend of mine, you know, came to me and said, look, aren't you going to apply to study further? So I said, no, I've never really thought about it, you know. So I said, but why should I apply and study further? So he said to me, look, but you've been doing quite well, you know, you can apply to one of the universities. And he said to me, he doesn't believe that I shouldn't get admitted, you know. But that was already, you know, quite...that was around about September of that year. I applied, you know, got admitted but didn't find any accommodation at the hostel but decided just, you know, to work for that year. And then, which I did basically. And I decided, you know, just to do BA Law. In fact I was...we didn't really have a guidance, you know, teacher, who could tell us, look, this is best, I think, the options, you know, open to you. Because when...initially when I applied I think I applied to do BA Social Work. I wanted to become a social worker. Because I already saw, I think, you know...I knew where I came from. I saw the hardship. I saw, I think, that there were no real professionals, I think, who could really help people. So I thought that maybe if I became a social worker I might be able to assist people out there. But I gave you the one example about...you know, just being beaten up by the police and knowing that I was innocent, you know. And that always, you know, it troubled me, you know. Maybe what I should have done was to have reported this policeman to a lawyer. But I couldn't, you know, because I think at that point in time, I think, there were just white lawyers. But it always, you know, troubled me. Also, I think, I remember one incident, I think, when...my mother was...she was basically, you know, assaulted by my aunt's son. So...I think this must have been when I was about six years old...

Int And you were living with your paternal grandmother?

EF Ya. And she...my mother carried my sister on her back and we then ran to the police station and when we got to the police station, you know, my aunt was there. My mother wanted to open an assault case and they basically refused to take that, you know. And that also, I think, you know, just...it's something that just always troubled me. So eventually, I think, when I decided to...I then decided that, look, let me just try law and see what I can do, you know, about all the injustices I...you know, that I obviously suffered as a child. In fact, I was always outspoken. I remember, you know, when I was in my matric class, there used to be, you know, the matric farewell parties, and my father had prepared himself, you know, you go to the matric party. My mom too. And I didn't tell them. And they went and I remained at home. And when they got at home...well, they arrived at school, people were enquiring about me, I wasn't there. And they obviously came back very disappointed that I didn't go. So they asked, you know, why didn't I go? So I said, no, I just needed to make a...to me I think it was more in protest, you know. It was more to say to Mr Moola and like-minded teachers that I wasn't going to allow them the opportunity, you know, to say look, you know, we've now produced a matriculant from the school. More, I think, you know, a form of protest from my side, you know. So, the ball took place on the Saturday, went to school on the Monday and was asked, you know, where I'd been. So I said, look, you know, I didn't go because you guys didn't believe that some of our coloured learners would be able to reach...or make it to matric. I...thinking about it, you know, I felt that I basically denied my mum and my dad, you know, the opportunity to have seen me, you know, at the matric ball. But I'd explained that to them, I'd told them, I think, you know...what, you know, the real reasons were. There was also, I think...before I start talking about my stay at...going to the Western Cape. I basically grew up in the Dutch Reformed Church. They call it the NG Kerk. And, I...all Dutch Reformed Churches in South Africa had white priests. And I only understood later, I think, why they had white priests. So, we're busy now building this church, and that time I think I was in standard nine. Building, you know, this white church, and one day, you know, the priest came and had brought us some sandwiches. And he then took out two mugs and gave us tea in a mug. And he himself then used a, you know, a cup. And I just said, look, I'm not going to drink it but I didn't, you know, show the priest that I was not going to drink it. I went outside and I threw it outside and said, look, you know, I don't understand why he is a priest, you know, why there should be this discrimination, you know, coming from his side. But I remember once when, not him, but another white priest had spoken...well, he was preaching in church, and he spoke about that...where white men came to South Africa, and black people...and made the country what it is. And this again was...I think this was 1976. And the black man should never think that he would take back the country, you know, from the white people. And I stood up and I said to him in Afrikaans. I said, Pastor...or Pastor, you are now talking politics, you are basically defiling the pulpit. You're not supposed to be doing this. You're supposed to be preaching the word of God. And I walked out. Of course, I think, my mom wasn't too pleased about that. But I never set foot again in a Dutch Reformed Church. Only after about 7/8...you know, after about 4/5 years, when I went to the Western Cape, and when I'd listened, you know, to somebody called Dr (Allan) Boesak, and he basically brought a different gospel to what I was taught as a child. I then completed my

schooling in 1977. I managed to get a matric exemption. And I probably, I think, made history in Standerton in the sense that I was the first so-called coloured learner who had completed his matric...not completed, I think that there were one or two before me, but I was the first one, I think, who had, you know, passed matric with an exemption. I worked, you know, for a year in Johannesburg.

Int What did you do?

EF I became a cardex clerk. I don't know if...do you know that is? I worked for a place called the Pontings Mailing Order in Bramley in nineteen...let me see, in 1978. The firm, you know, used to sell clothes, so they would advertise the clothes in catalogues distributed countrywide, and people would then just complete the odd forms, we would get it...so the person, I think, who was dealing with the order forms was called the cardex clerk. He would basically have to look at how the order, you know, catalogues, the goods and mail it. I then worked there, you know, for a year. But I also, I think, met a person who...just forgotten his name...who was, you know, highly intelligent and we then started talking about, you know, politics. I knew that the system was unjust. I knew that, you know, I think, that there was a lot of suffering that was taking place. I've mentioned to you that my parents never spoke to us about politics, you know. But then I started talking to this guy and he gave me some material...

Int Was he a shop steward or...?

EF No, no, no, he was also, I think...he'd just completed, I think, his matric, and he also worked there as a cardex clerk, you know. And he...I think, he came from the old northern province, which is now called Limpopo. But the sense, I think, that I got was that he was well-informed, he gave me some literature. I'd known about, you know, (Nelson) Mandela, just in discussions, I think, at home, but not really told, I think, you know, what he really stood for, you know, and that he was at that point in time on Robben Island. So, you know, this guy gave me some material. And I was quite pleased about it, you know. I then decided to do...enrol for a BA Law degree. I went to University of the Western Cape. Lucky in the sense that I managed to complete my BA LLB within five years. It is a 6 year law degree. But because I did some of my law subjects in my BA my 4<sup>th</sup> and 5<sup>th</sup> year was just combined into one and I was able to complete that in five years time. Campus I think, you know...

Int This was Western Cape?

EF Western Cape. I don't have...well, I had an option, I could either apply to Wits, but I knew that we had to get special permission, you know, from the then Minister of Education. Get special permits, you know. But decided not to go there. I decided rather, you know, just to go to UWC. I don't think it was a wrong move, because I was then exposed to, you know...students coming from all over the country, you know. Some came from Namibia. And that's really, I think, you know, where I received, I think, my political training from. Except for completing my law degree, I met different people. It also happened, I think, in 1983 when I completed my law



degree, it was just, you know, the...it was when the UDF was formed. You know, we were marshals, we went through to, I think, it's Mitchell's Plain, at the hall where (Allan) Boesak spoke. But it was really I think, you know, I've got very fond memories about UWC. We used to go out into the communities, we used to play... this...Ravensmead and basically did some community work. There used to be different pamphlets that we distributed. I was fortunate in the sense that Trevor Manuel, you know, came to Bush...we called UWC, Bush, you know...came to speak there several times. Cheryl Carolus used to be a learner, a student, at UWC.

Int Was she there at the same time as you?

EF I think she was a year or two ahead of me. But I remember, I think, you know, we had a lot of demonstrations on campus. Police would come there. But she was one of the student leaders. Trevor (Manuel) wasn't a student at UWC, but at that point in time, I think, he was involved in the union movement but he came there quite often. I think, what's his name...Ebrahim Patel, who's now part of Nedlac...I think, he's secretary general of one of the unions...was also I think, a student leader. Especially in 1983 when we had that...we had a huge, huge boycott of classes that went on for about, I think, 4/5 months, you know. So I've met, you know, quite prominent leaders at UWC. I remember, I think...I think it must have been in 1979 or 1980 when there was a Free Mandela campaign, there used to be a newspaper called...not the City Press, I think it's the forerunner of the City Press...but they published some petitions and I still remember going to one...I got hold of these petitions, went around to campus getting people to sign. Quite remarkable how some of the politically active students reacted to it, you know. The others who were not really politically involved, you know, would sign that...the others said, no, no, no, they don't want to sign this because they're quite scared that the state might get information and then might visit them later.

Int So this was the politically active or inactive ones?

EF The active ones. One name that comes to mind is Ignatius Jacobs. I was a few years ahead of him but he's now, you know, a prominent ANC member. He's involved... he's MEC for transport. But he was just...he just had basically refused to sign that. It's just ironical that he's now...he's one of the top gurus in the ANC. I had some run-ins with some of the lecturers. One that comes to mind is the Dean of the Law Faculty, I think, a Professor Visagie. If you recall, I think, there was also the Tricameral Parliament...

Int '83.

EF '83. And there were a lot of campaigns against that. In fact it's even before 1983, if you recall, I think, there used to be the old coloureds representative council. The CRC. And I think there also used to be a house for Indian people. But the CRC had its chambers not far from Bush, or from Western Cape. And in 1983, you know, (Professor)Visagie...there were talks about the law faculty being moved to the CRC buildings. And that year too, I think, 1983, we had the record number of law

students...no, LLB final year students. It used to be two or three but that year we were ten. And so (Professor) Visagie came to us and asked us, you know, what our views were about moving to the CRC building, and I took a stand and said, no, we can't, you know, it's...well, I forgot that UWC was an apartheid institution, but I said, look, you know, the CRC was an apartheid institution and we could not be seen, you know, to move there. And there's also a colleague of mine, Ferial Allie I've forgotten the surname now...and the two of us took a stand and said, no, we're not going to move there. We then wrote Mercantile Law 3, and in September when we got our marks, this Professor Visagie handed out the marks, and I remember him going to this guy, who's also a judge now, Steven Majiedt, I think he'd scored about 76 percent in Mercantile Law 3. And he said to him, look, you know, Steven (Majiedt), you know, you've got great potential to become an excellent advocate. Diane Terblanche, I think, had scored 71. Also said, no, she's got the potential to become a great academic. When he came to me, I think, I got 53 percent.. He said to me, look, you know, I've got my priorities wrong. I must decide if I want to become a politician or an attorney. Once I've decided that, I think, you know, I will then be able to make it, you know, as if I want to become a good attorney, I must just forget about politics. So I stood up, I said, look, aagh well, you know, this is basically what happens to puppets, you know. If you're a puppet you basically score 76. And if you're committed to the cause you score 53 percent.. He wasn't too impressed with that. But luckily for me my DP, my year marks, I think, were quite good. And myself and Ferial (Allie) then decided... took a stance not to go to the...that year, I think, they had a farewell function, you know, for the LLB students, because I think we had...there were ten of us, it was history. And we decided not to go. And I think Steven Majiedt had felt quite bad about what I'd said, and I'm told that he gave a speech about, you know, people should not be victimised for believing in whatever they believe in. And I'm told that (Professor) Visagie was...you know, felt quite bad about that. And at the time...

Int That's quite amazing actually. Because he could have taken it the other way.

EF Ya. He could have, ya. And even Ross who was the Rector and said he hopes that his children, who've decided not to attend the function, will not be victimised. And when I...we used to buy the Rapport, you know, I think, the marks will be published in the Rapport. And when November came I was very...I wasn't too sure if I'd...if I was going to pass. But luckily for me my year marks were quite high and I managed, you know, to pass and get my LLB. Mahomed Navsa came and...he was a student leader in the 1980 boycotts. And I think, I'm speaking under correction, but I think he completed his LLB in 1980. But he came back in 1983 after he'd joined the Legal Resources Centre, and then spoke about the Legal Resources Centre and mentioned what work they were doing. Because I was so undecided, you know, I knew that I was going to get my law degree, but I knew that I wanted to become...I knew that I wanted to become a lawyer, you know, to assist people, but at that point in time I didn't know that...what I basically, I think, what I wanted to become, I think, is called a human rights lawyer. And when Mahomed Navsa came and spoke I just knew that this is basically what I think I wanted to become. I took down the details of the Legal Resources Centre, applied, and I was then invited for an interview in December of ... no, December of 1983. I was interviewed and I was then offered a job as a fellow. So I started my fellowship...

Int This was at the Johannesburg office?

EF Johannesburg office, ya. I started my fellowship in 1984. And at that time...I don't know if you went to the old building in Elizabeth House, 18 Pritchard Street. The office was there and they had a law clinic at...the Hoek Street Law Clinic. So I spent my first, you know, six months at the Hoek Street Law Clinic. And I had a wonderful, wonderful attorney working there. It was the late Morris Zimmerman. And my first meeting with him was at...he had this loud voice, you know, almost like talking to me, I felt quite scared. But Pinky Madlala was also there, she was the administrator, and, I think...I think, with me and Pinky (Madlala) I think it was almost like love at first sight. Not in that sense, you know, she took me on as a...

Int She mentored you?

EF Ya, and I was almost like her younger brother, you know, and she was like my older sister. And we also had a lady called Faith Maqubela (Madiwana). She also, you know, took me under her wing. We had Morris Zimmerman...there used to be another attorney, a woman attorney, I've forgotten her name...

Int Debbie Dison?

EF Not Debbie (Dison). I've forgotten her name. but I worked with her for the first six months. But Zim also I think...we called the late Morris Zimmerman, you know, Mr. Zim...he also, I think, you know, he was very fond of me, I was very fond of him. And I remember he would come to my office and say, Ellem let's go to Fraser Furniture, because he would...either would have written a letter to the furniture shop about unlawful repossessions and there would be no response, so he would just, you know, put on his jacket...I remember him wearing also running shoes, I found it quite odd that Mr. Zim would basically wear a suit and in those running shoes, you know. And I would just follow him down Jeppe Street, come to Frasier Furniture shop and he would say, look, you know, I'm Mr so and so, I'm demanding to see the manager. He would then confront the manager and say, look, you know, I've written to you several letters, you know, why is there no response? And basically demand that there should be response. And I think in most cases you'd find that they would settle the matters. He did also, I think, a lot of...so the late (Morris) Zimmerman, I think, focused more on consumer protection. He was just an expert on it, you know. But he also had a thriving business...you know, practice, dealing with claims against the police, you know. He did a lot of matters also involving dog bite cases, where domestic workers would be bitten by their master's dogs. So he focused more on consumer protection, claims against the police, and dog bite cases. So I spent my first six months there under his wing together with the attorney whose name I've just forgotten now. And after six months, there was a rotation system, I then moved to Elizabeth House in 18 Pritchard Street where I worked in the advice centre program, you know, under Mahomed Navsa. I think, Mahomed (Navsa) was heading the advice centre program and he had...Thandi Orleyn had just joined. She must have joined the LRC either in '84 or '83, but I met her there. And so the three of us, I think, you know...well, no, no, I'm speaking under correction. Thandi (Orleyn) only joined the

LRC, I think, in 1986/87. She wasn't there. It was, Mahomed Navsa headed the advice centre program, Thandi (Orleyn) only came later. Because I was there as a fellow, but I worked under Mahomed Navsa. And we would go on Tuesdays and Thursdays, you know, we would go to advice centres. There were advice centres in Soweto and advice centres in the East Rand. Mahomed (Navsa) would basically be responsible for those, you know, in Soweto, and we'd go to advice centres in Diepkloof. There used to be an advice centre in, I think, Pierie, and one in Zola. The one in Zola, I think, was headed by a lady called...she's now heading a...she's part of the Mandela Foundation...

Int Bongile Sibongile Mkhabela?

EF Sibongile Mkhabela. I think at that time her maiden surname was Mthembu. But I've met her and she was a very, very warm person. I was quite, you know, impressed with her commitment to helping the poor...the poorest of the poor. So, the person, I think...I'm very fond of Mahomed (Navsa), so I think I learned a lot from him. Mahomed (Navsa) had a foul temper and he would tell you where to get off, you know. At times he would use 'f' and 'b's and the late Morris Zimmerman would come to my rescue and say to Mahomed (Navsa), look, you were just like Ellem when you started here you know. Allow him to make mistakes. But he was very, very protective towards me. But I saw Mahomed (Navsa) more as an elder brother to me. Basically taken me under his wing. He was a very staunch, and is still a staunch Moslem. I believe, I think, that I'm a staunch Christian. But we just got along very well. He respected my religion and I respected his. We would talk freely about things, you know. He told me that, that time, I think, his children were at Catholic school, and I'd asked him if he didn't have any problems with having his children at Catholic school so he said to me, no, he had no problems with that. And I think he said to me that he allowed his children also to attend mass, you know. And I was quite taken with that, you know. But we had a...ya, I think we had a very special bond. So, the type of cases that I was involved in was labour, consumer protection, claims against the police, we had some housing disputes, and we also did some of the old section 10 -1(d) cases...

Int The Rikhoto case had been done by that time, and the Komani?

EF I think it was just about to be done or it was just done. Because I remember we would take statements, you know, from clients who'd worked for companies for more than ten years. Basically they had a policy that African males had to keep on going back to...because they would come from the homelands and would have to renew their contracts on a yearly basis, you know. There were people, I think, who were born in the townships who would then qualify for tenancy rights but there were also those who got arrested on a regular basis. So I remember going with Mahomed (Navsa) once to the old Commissioners' offices, and where people would be charged with not carrying their passbooks. And I think at that point in time, a lot of attorneys, you know, just got together and had decided, you know, just to represent all pass law offenders. And that really clogged, I think, the system and it really gave rise to a collapse in it, you know. Because you'd find that the Commissioner or the prosecutor, you know, had about 12 cases, that he's got to run throughout the day, so if somebody stands up and says, look he's legally represented by an attorney, he won't be able to

complete his roll. And once that basically happens he would just withdraw charges. But that gave rise to the collapse in that. But I think the Rikhotso (*Rikhotso*) case, I think that must have happened either in '84 or after '84...I think it must have been either '84, you know, somewhere there. I then had to leave, because a fellowship served more as a bridging gap between, you know, law students and practice, you know. And I think, I learned a lot, you know, in that year. I didn't ask the LRC to assist me in getting articles because I know that some of the fellows who spent, the same time with me, got Arthur (Chaskalson) to speak to the big firms, and I just said, no, I want to apply on my own. And I remember just walking up and down, eventually got articles from a small firm, from attorney Enver Tayob, also in the centre of Jo'burg. I spent two years there. I don't regret it one bit that I did my articles there because, I think, there were just two attorneys. But the exposure that I got was quite great, you know. I started off...when I started off at the LRC as a fellow I think I was earning six hundred rands a month. I then had to do articles and my principal started me off with four hundred rands a month. But after completing my two years, I then got in touch with Mahomed (Navsa) or I think Mahomed (Navsa) either got in touch with me, and he told me that there was a vacancy for an attorney at the LRC. And I told him that I was interested, so I went for an interview and I was interviewed by Geoff Budlender and then, you know, got the job. At that point in time, I think, I was earning about a thousand rands at my principal's firm, and he offered...when I told him that I'd found work at the LRC, he offered to pay me three thousand rands, but I turned it down. And the LRC, I think I started off with one thousand five hundred rands a month. I turned it down because my principal, I think...I wasn't quite happy with what he was doing. You know, we get a lot of third party claims and before, when matters got settled, he would take the file away from me and would then liaise with clients directly. And I discovered later, I think, that he was cheating quite a few of his clients. He'd tell them that the fund had paid out, say for example, maybe twenty thousand, when in fact I think they'd paid out a hundred thousand. So I said to myself, I don't want to soil my name with him. When I got the opportunity to leave, I left. And then I started at the Legal Resources Centre as an attorney on the first of March 1987. I worked in the advice centre program with Mahomed Navsa. The Hoek Street Law Clinic had closed in the meantime end of 1983. And Pinky (Madlala), late Morris Zimmerman, Thandi Orleyn, had already been employed. There's another attorney...I've forgotten her name, a woman, from Germiston, who was also working there. But, ya, I think, working at the LRC was an eye opener. We had formed...I don't think Mahomed (Navsa) has mentioned this, but we basically formed a black caucus within the LRC. Mahomed (Navsa) was in the forefront of the black caucus. It was myself, Mahomed (Navsa) and Thandi Orleyn. And we used to consult Pinky Madlala on a regular basis. So when this other attorney, whose name I've just forgotten now...I think she was employed on a fixed contract, you know, just on a one year basis. We had issues, you know, black and white issues at the Legal Resources Centre, and she would not side with the black people.

Int And she was a black attorney?

EF She was a black attorney. I've just forgotten her name. But eventually, I think, when her term...when she was given notice that she's got to leave, you know, she expected us to support her. And we decided not to do that. And she then complained bitterly to other people about us and we said, look, when we really needed her to advance the

cause of black people at the LRC, she wasn't there. She then left. But the black caucus, I think...we had to have one because we had to deal with issues around affirmative action, we had to transform the LRC, even though I think it is...some people say it's a liberal institution. It probably is. Do you think it is?

Int Liberal in a pejorative sense or liberal...in a progressive sense? Because it's used differently in South Africa...

EF In a progressive sense. Look, we got a lot of flak, because I think, at the time, I think, when I started as an attorney at the Legal Resources Centre, you know, the Black Lawyers Association was formed. It was headed by Gumbi Mojanku, who's Thabo Mbeki's legal advisor. Faith Maqubela, I think, who I mentioned to you earlier...I think she either got retrenched when the Hoek Street Clinic had closed down, but she was now working for the BLA, and she had tried, you know, to get us to come and work at the BLA. Mahomed (Navsa) was approached, Thandi (Orleyn) was approached, I was also approached. And I was very tempted, you know, to do that. But I wasn't...I think...there was just something, I don't know why I turned them down. I probably turned them down because I liked, I think, what the Legal Resources Centre was doing. And I saw them more at the time, I think, as a competitor to the LRC. But the LRC, I think, had no issues around funding. I've mentioned to you earlier that I basically come from a poor family. I didn't want to still work at an organisation when I'm not so sure that I would be getting my salary at the time. So there were those pressures on us, you know, that you guys are working for a liberal institution, why don't you guys work for a genuine black organisation, that basically might have the same ideals. But I decided against working there. So we dealt with affirmative action issues. We had to look at the black/white ratio. We had to get more black people employed at the Legal Resources Centre. And those were, I think, at times...those were difficult days. So we would basically caucus together and then deal with issues. I remember at one stage there was an issue, I think, around a racial issue, and we invited all to a meeting in the boardroom...

Int This was still in the 1980s.

EF 1980s, ya. And I went to the boardroom and all the white attorneys and black attorneys...well, very few black attorneys, there were just three of us. And Arthur (Chaskalson) had asked us to speak about the black/white issues. And all the people around the table said, no, no, there were no such issues. And I felt...I didn't know what to do. Eventually I think I said, look, you know, I'm quite disappointed with my colleagues who have decided not to raise these issues, but I really believe there are some racial issues at the organisation, and I gave...

Int What was the position of the black caucus at that meeting?

EF I'm just...I'm just...I'm not so sure, I think, if the black caucus had already been formed or if it was just formed after that meeting. But I think the complaints came more from...I think the junior members of staff. And I don't recall what Thandi's

(Orleyn) ...no, what I do recall, I don't know if the black caucus had already been formed. But what I do recall, I think, is that nobody had the guts to say anything.

Int But you did?

EF I did, and I said, these are the issues, you know, as I see them. And they tried to justify it by saying, look, you know, maybe it's not really a racial issue. It's maybe a cultural issue. You know, you find that some of the white attorneys are very busy, you know, and they may walk down the passage and not see a black colleague, you know, and might not greet us. I said, look, well, you know, I think some of us are also extremely busy, we've got big cases too, but when we see somebody walking down the passage we acknowledge your existence and we just greet you, and then maybe just walk past. But ya...that was the explanation given for it. But there was an undertaking given that they would deal with those issues. I remember, I think, just before...I will come back just now to the type of work that I did at the LRC...but I remember I said I'd started there in '87, 1 April 1987, and I left the organisation on the 31<sup>st</sup> of October 2001 after I got appointed to the Labour Court.

Int So you were appointed as a judge to the Labour Court in 2001?

EF Ya. 2001. But just shortly in, I think, 1993, I think when there were talks that Arthur (Chaskalson) might become the Chief Justice. I think he then had to leave the LRC. But he once...he'd spoken to Mahomed (Navsa) that he wanted to meet me, because I think at that point in time, I think, we occupied the third and fourth floor, national office was on the eighth floor. So I'd refused to go to Arthur (Chaskalson) and Mahomed (Navsa\_ kept on coming back to me and saying, look, you know, just go and meet this man, just go and talk to Arthur (Chaskalson), you know. And I said, no, I blatantly refused.

Int Why was that?

EF And then I said to Mahomed (Navsa), but why me? Why does he want to talk just to me about this whole issue? But eventually I decided to go. And Arthur (Chaskalson) then called me into his office, closed the door, told me to sit down and I sat down, and he looked at me and said, look, you know, Ellem, do you think I am a racist? God, I looked at Arthur (Chaskalson) (laughs). Is this part of the history?

Int Yes, of course, absolutely.

EF And I didn't know what to say to Arthur (Chaskalson), I said, look, you know...I thought to myself, should I be brutally honest, should I be frank? Um...has Arthur (Chaskalson) called me to his office because he believes that I'm quite honest, I think he will get it from...I will tell him, I think, what I think he is? Because he said to me, look, you know, he gets on quite well with members of the ANC, he gets along quite well with black organisations, but he doesn't know, what the issue at the Legal

Resources Centre is? And I could sense that I think he was quite sincere about the question. And I said to him, look Arthur (Chaskalson), I don't believe that you are a racist. And after I'd said that, I think...because I looked at his facial expression and what I observed, I think, was that the blood started flowing in his cheeks and everything, his complexion basically changed, but I said to him, look, Arthur (Chaskalson), what I thought...even though I don't believe that he's racist, I thought that he was a weak leader. I said to him that I really believe that he is a weak leader and that is I think a difficulty with a lot of white people. If I am messing up as a black person, I expect you as my leader to say, Ellem, look, you know, you are messing up. Not to try and justify why I'm messing up or try and be too scared that if you confront me about my mess I will hide around the fact that I'm black and maybe try to see that in terms of black and white issues. I said to him, look, if I really mess up, just tell me that look, you've messed up. And I would basically accept that as the gospel truth, you know. And then I gave an example, I said, look you know, there used to be an office...LRC used to have branch offices. The national office was in Jo'burg, we had a branch in Johannesburg, we had an office in Pretoria, one in Durban, one in Grahamstown, one in Cape Town. And there used to be one in Port Elizabeth. The one in Port Elizabeth was headed by Fikile Bam, who's now the Judge President of the Land Claims Court. But there were issues there, and instead of dealing with those issues, and because, I think, you know, it involved primarily Fikile Bam, they were too...the leaders of the LRC were too scared to confront Fikile Bam, because I think he spent ten years on Robben Island. And didn't really have the guts to deal with that. And what then happened was that they allowed those problems just to fester and eventually, you know, after Fikile Bam had left, the office was closed.

Int So did you give that as an example?

EF I gave that as an example. I said to him, you know, I think, I would have expected you guys as leaders to have dealt with the issue. Have said, look, you know, these are the issues in PE (Port Elizabeth) and deal with it, you know. But because I think it involved Fikile Bam, you guys were too scared to deal with it, and basically allowed an office to close down of because of the personalities there. I then gave him other examples. So I said, look, I don't believe that you are racist. I believe that you are not a strong leader, you should really have dealt with these issues and forget, I think, the repercussions that it might have. As long as your conscience is quite clear, as long as you've dealt with it, that would have been fine. And look, he accepted, I think, that they should have dealt with the PE office then differently. But also I said to him, I accept it that we're living in a political era where you have to be quite cautious about how you dealt with black/white issues, but as a leader, I think, I would have felt that you should have dealt with that differently. Perhaps...look, he admitted that he should have dealt with that differently. When I went for my interview at the JSC, Arthur (Chaskalson) was then the Chief Justice, you know, and I was a bit scared because I didn't know what to expect, you know. And I'm quite being honest because I felt that my discussion with Arthur (Chaskalson) would have come up. But then I said, I don't think it would...he would raise that because we had really dealt with issues that needed to be dealt with: affirmative action, black/white issues. But, you know, Arthur (Chaskalson) was a gentleman. He'd mentioned that he'd worked with me. My interview went quite well. I've always thought about whether or not my answer that I gave to Arthur (Chaskalson) was correct, you know.



Int In terms of whether he was a racist?

EF Ya. Um...but I don't know what the answer is (laughs). Off the record I could probably tell you what I think the answer is, but...look, Arthur (Chaskalson) I think, was a very caring person. He was very sincere. I think he really cared, I think, you know, for poor people. I think the organisation that he started is a great one. And obviously, I think, we all have got our own mistakes. I think if I was asked the same question by another person, whether or not I believed that he or she was racist, I probably I think, would have said yes, there and then. Depending on who the person was, you know...was or was not.

Int Well, why do you think in the case of Arthur (Chaskalson) you...you didn't?

EF Look, it's because I think, after he'd asked me the question I paused for a while, and...I don't know why I paused for a while, you know. Do you get my drift? No, I paused...I thought more I think...I felt good that Arthur (Chaskalson) had asked me the question. It was almost like he knew that I basically, you know, called a spade a spade. And I think he knew that he would get an honest answer from me. I was in somewhat of a dilemma. In the sense that sometimes I think you talk to people, you want an acknowledgment from people, from certain people. I think it's probably...I feel a bit awkward talking about this...ya...but...I think Arthur (Chaskalson) was just a...he was a genuine person. I think he had his weaknesses, I told him what his weaknesses were. But I think he had a caring spirit, you know. Because I remember once confronting my colleagues at the LRC, that was after the black caucus, I think, was established. I would believe that I am a hard worker. I had set certain standards for myself and for my clerks. I believe, I think, that...because Mahomed (Navsa) used to say to me, look, you know, I think the problem, I think, with a black person at the time in South Africa was that you basically have got to work twice as hard as a white person to receive that recognition. And would say to him, look, you know, but I don't need...why do I need white people's recognition? Why do I need to be recognised by white people? He said that's unfortunately how the world is. And I remember, I think, at one stage, it was probably just more exhaustion on my side, I was involved in a matter where I was representing, I think there were 23 policemen, black policemen, also in the...this was in the late eighties who had broken ranks with the police and they were then disciplined, you know. And I had to appear at those internal inquiries. None of my colleagues at the LRC wanted to help out. And I just felt that I just had enough. And I then said that I don't believe I think, that the LRC is a wonderful place to work at, because people don't really care about the attorneys. You know, you ask for help, nobody gives you the help. I said, look, you know, I'm sick and tired of working there. And Mahomed (Navsa) was taken aback because he felt hurt about what I'd said. And he reminded me that when I'd started off as an attorney he once came to court and watched me in action and all those. But it wasn't really directed towards him, I think it was directed more towards the institution as such. Arthur (Chaskalson) then came to me and said to me that he doesn't believe that I should leave the organisation. They will deal with those type of issues. And I think I did, you know. But yes, on...I don't...I think I'm quite fond of Arthur (Chaskalson) and that's

why I don't know if...that's why I think I felt that I had to reassure him, you know. He appeared to be quite concerned about that, you know. But ya...

Int I think that's a very important story that you've given because in some way it speaks to the tensions within the LRC because when you joined the LRC, both as a fellow and then later as a full attorney, the NUSAS, 'the white boys', as they were called, were very much there, and I'm wondering whether the black caucus grew out of a need to have a ...a different type of representation?

EF Ya...look, what I didn't mention...well, I've hardly even started talking about my work. The directorship...there used to be a rotation, after every four years there would be a rotation of directors. When I joined the LRC, I think, Geoff (Budlender) was the director, and I think his term was coming to an end, I think in 1988 or '89, and the next person in line was Charles Nupen. You know Charles Nupen, he's a labour lawyer. Have you met him? And I don't think Arthur (Chaskalson) and national office really wanted Charles Nupen to succeed Geoff (Budlender) as the director. I don't think this...did Charles (Nupen) speak to you about...?

Int I can't quite remember, it was last year when I interviewed him.

EF And I think that must have been one of the reasons why Charles (Nupen) left, you know. Because at that time Charles Nupen was there, Geoff Budlender, Paul Pretorius, Karel Tip. And I think they all left, I think, 1989? No, no, I think '85/'86. When I got back to the LRC in '87, Charles (Nupen) was still there. I think Charles (Nupen) left the next year. So when Charles (Nupen) left, the next person in line was obviously Mahomed (Navsa), you know. And they came up with all sorts of reasons and excuses as to why Mahomed (Navsa) shouldn't become the Jo'burg director. And I think that's when I think the black caucus started. But this already, I think, was in '87/'88. And we were interviewed, we were asked by Arthur (Chaskalson) about what we thought should...the position I think should be. And we were quite firm, I think, we made it quite clear, there's always been this rotation, we don't see why Mahomed Navsa...who I think had joined the LRC...because Mahomed (Navsa) used to be...I think he used to be a vac student at LRC, but I think he joined the LRC in '81, if I'm not mistaken. And we said, we don't believe...we don't know why Mahomed (Navsa) shouldn't become the next regional director, you know. And eventually I think he became and I think Geoff (Budlender) moved to national office, I think. They'd found him a position, I think he'd started working from long, from national office. The Jo'burg office I think was obviously treated quite badly by the rest of the LRC. There used to be, I think, a lot of tensions up to the time, I think, when I left the LRC...

Int In 2001?

EF 2001. There used to be those tensions. It was almost a question, I think, of us and them.

Int This was with the National office?

EF National office and, I think, also with the Regional offices. Especially with the Cape Town office. Because I think the Cape Town office, when I left, I think, was still lily white, save for Chantal Fortuin and Vincent Saldanha. The rest I think were just white. They had put in systems in place, you know, to...to obstruct, you know, the work that we were doing. We had...when Mahomed (Navsa) became the regional director, Thandi Orleyn then became the head of the advice centre program. She left and I then headed the advice centre program. We had at that time, I think, established links with advice centres, we used to give training for advice centre paralegals, so there were offices in Johannesburg, Germiston, especially the Gauteng area. We formed advice centres in Mpumalanga. I used to go up to Louis Trichardt. Go up to Vryburg, we'd formed advice centres there too. So, you know, it was basically the advice centre program in itself, I think it did quite well. So there was...I think there were moves at foot to try and...you know, to put some obstacles on that type of work. We had a thriving damages practice against the police, did a lot of matters involving the police, you know, police brutality. Our one matter that was given a lot of publicity...you've probably heard about Dr. Gluckman, he used to be a pathologist. I think he was a pathologist also when Steve Biko died, I think. I did a matter in Vryburg, it's in the Northern Cape, involving a ten year old boy who had gone to... with a friend of his who was 11 years old, they went to a factory in Vryburg, and where they were catching some doves, policemen came, saw the lights being switched on and off, took out his firearm, youngsters ran down, saw the policemen, went back into the cloakroom. One of them managed to get through the window, the other, I think, hid. The youngster peeped through the window, and at that point in time, you know, he was just shot in the head and he died. No, no, no, I'm confusing that with another case. But eventually he died and I acted for the family, there was an inquest, the court had found that the killing was justifiable. We then took it to the High Court in Kimberley. The Minister of Justice and Law and Order had given undertakings that this section...it's called section 49(2) of the Criminal Procedure Act...was going to be amended. It was amended but it wasn't promulgated. But it took some years before it eventually was. But the section I think was then amended and struck down. But coming back to Dr. Gluckman, the matter, I think, that I was just confusing him with, involved a...it was also, I think, early 1990s, just before 1994. These youngsters were arrested by the police on the grounds that they had suspected them of having burnt down some policemen's houses in Sebokeng. But the police wanted them to implicate a local ANC leader. And they basically refused. Taken to the Sebokeng police station where they were assaulted and the one, I think, Simon Mtimkulu, was asthmatic, he was told to do some exercise in the toilet, which he did, and I think he then had a fit, and one of the policemen took a rock that they were using as a doorstop, and I think knocked him several times on his chest. He died and they went to go and dump his body not far from one of the hostels. The family then came to me...well, they found him, I think, one or two days afterwards. The family then came to me because they wanted to conduct their own autopsy. I then got in touch with Dr. Gluckman. Dr Gluckman did a second autopsy and that prompted him, you know, to invite the press and had said that he was sick and tired of the police who were killing, not just political people, but just ordinary people, you know, on a regular basis. He was...at that time, I think, the Minister of Safety was Adriaan Vlok, who had threatened to charge Dr Gluckman, and then said, no, but you know, Dr Gluckman is an old person, you know, he won't be in charge. And ya...so that gave a lot of publicity.

- Int Was this the same case that went before the TRC hearings, or is that different?
- EF No, no, no, this is a different one. I think the one that went to the TRC was...
- Int Was it the poisoning...?
- EF ...was Simpiwe Mtinkulu. The person who disappeared?
- Int Yes, about the poisoning...
- EF Ya. So there were these tensions between National office and also, I think, Regional offices. And at some stage Shehnaz Meer became...I think, after Geoff (Budlender), she became the...I think she became the National Director. I'm not so sure if she was acting, but...
- Int She was acting.
- EF She was acting. But she was, I think, was quite...I believe she was being used by the groupings within the LRC, to close down some of the work that we were doing. If I remember, I think, I was interviewed by her, talking, discussing the work that we were doing. And I said to her that, the sense that I had, I think, was that I was being squeezed out of the organisation. I said, look, we had a thriving labour law practice, which was closed down. We had a thriving damages claim, which was basically closed down. We had a thriving advice centre program which was really access to justice, which was also...they were trying to close it down. Consumer protection. We did a lot of workmen's compensation claims, unemployment insurance benefits, you know. And she...well, she reassured me that we had to be strategic, it had nothing to do with the professional jealousies, I think, that might have existed, you know. I once did a matter, you know, involving Eugene de Kock. You've probably heard about him.
- Int Yes.
- EF He was the commander of, I think, the Vlakplaas unit. Um...the strange thing is that he started singing like a canary, I think he gave some information to George Bizos in one of the inquests...one of the TRC matters that George (Bizos) appeared in. And I was then told...I was approached by my client, her name is Sandra Mama. Her husband, I think, had disappeared, and later, I think, you know, she was told that he'd been killed by the police. They'd gone to Nelspruit to rob a Coin Security and they were stopped. They apparently fired at the police, and the police retaliated and he basically died. But later, I think, de Kock was then charged with all sorts of crimes, you know, murder, fraud and everything, and he was found guilty, and I think given two life imprisonment sentences. I think, 200 years. But then she came to us and wanted to sue the police for wrongful...for causing his death, the husband's death,

you know. We sued the Minister of Safety and Security as the first defendant, and de Kock was cited as the second defendant. We got judgement...well, the matter was then set down for hearing before the High Court, and the Minister of Safety and Security came back to us and made my client an offer, I think, of about four hundred thousand, which she basically accepted. And she then got notice that de Kock had applied for amnesty for the killings. It's called the Nelspruit Four killings. And she instructed me to oppose his application for amnesty. George (Bizos), I think, at the time...you know, George (Bizos) at the time would go to Greece, would probably spend...I don't think his mother is still alive, but would spend some time with his mom...but he was there. And there's a white lady who's an attorney, I've forgotten her name, but she was heading the Constitutional Litigation Unit, and when she discovered that I was going to oppose de Kock's amnesty application, came to me and said, no, but I can't do this. So I said, look, you know, why can't I do it?

Int This was at the LRC?

EF At the LRC, ya. Said, no, please tell me why? No, no, because they'd made a deal with de Kock that they won't oppose his application for amnesty. So I said, well, look, you know, I don't know anything about this deal. I've got instructions, you know, from my client to oppose his application for amnesty. Unless you can show me a document in writing, I'm going to proceed, you know. At that time, I think the person who was heading the Jo'burg office was Moray Hathorn. Have you spoken to him?

Int Yes.

EF And he supported me, he said, look, you know, you just go ahead, because I think she'd put some pressure on national office, tried to intervene, I was called by Odette Geldenhuys. So I said to Odette (Geldenhuys)...I think, Odette (Geldenhuys) was...

Int Deputy Director?

EF Ya, Deputy National Director.

Int And Bongani (Majola) was Director?

EF Bongani (Majola) was, ya. I basically put my foot down and said, look, I've got instructions, unless you put it to me in writing that I can't do it, I'm going to do it, you know. The upshot is that, you know, we did the case, we ran for about...I had Kameshni Pillay, who used to be an attorney, but she was basically my junior in that matter. We ran for about 14 days. We had to argue the issue of amnesty of...the same day when we finished. And it took the TRC about two and a half years, you know, to give judgement on it. Happily de Kock didn't get amnesty because that was one of the key applications, you know. I think, had he been given amnesty there, he basically would have walked, you know.

Int What do you think was going on, because it's within an organisation, but very different...people with very different values or sense of what's going on? What was going on then?

EF I don't know. Maybe you should ask them, you know. I couldn't understand why this was happening. You see, after...George (Bizos) and...have you met, what's his name, Steve Kahanovitz, from Cape Town? His brother, Colin Kahanovitz and George (Bizos), I think, did one big TRC matter. I don't recall who it was. And...after...

Int I wonder whether it was the Biko family?

EF No, no, not the Biko, I think Mahomed (Navsa) was involved in the Biko family inquest. There was another one. But then the TRC refused to grant that amnesty. And we got a lot of letters on the Internet, emails, just saying how wonderfully well Steve Kahanovitz, Colin (Kahanovitz) and George (Bizos) did. So we go this decision in the de Kock matter. And there were no congratulatory notes coming from no-one. I then...I think, Steve(n) (Kahanovitz) had sent me...there was a mail, I think, that he'd sent me...oh no, no, it was also about...I think there was a matter where the LRC became an amicus curiae in one matter in the CSC. Either the Grootboom case or the Mahomed judgement. I remember, I think, with Ismail Mahomed...I remember, I think, there was a guy who got deported without the country seeking any reassurances from the States that he won't be subjected to their penalty.

Int The Pakistani individual?

EF Pakistani, ya. I then wrote...I sent an email and I said, look, you know, I just find it quite strange that myself and Kameshni had worked on this de Kock matter, took us like 14/15 days without any assistance from no-one, and no mention made about this. I thought that it was one of the...it was quite an important matter and it should have been given a lot of publicity, you know. Nothing has happened. Only publicity that we got was in the papers, the press, you know. I said, look, I'm not really surprised, you know, it's just a trend that is existing in the LRC, where in matters, I think, where black people are involved, you know, we don't get any...there's no recognition for that. And then I got love letters, Bongani Majola responded by saying that we did well, he was busy with something else, he was going to mention this whole thing. And Steve (Kahanovitz) gave some explanation that, no, no, he'd called Kameshni (Pillay), but Kameshni (Pillay) wasn't available or something along those lines, and he called me several times and left messages but I didn't bother to go back to him about that, you know. So ya, I think, there were those type of things. But I really believe the Jo'burg office...I don't have proof, you know, but I think we were targeted. We were given difficult times at an Exco. Our work was put under the...they basically examined all the work that we did, you know. When we would request maybe certain things, you won't get it, you know. I also, you know, became the regional director, I had to defend my office at the Exco meetings. Kameshni (Pillay) at some stage, I think, was involved in a matter, which involved the Battered Women

Syndrome. Because, I think, she was of the view that some of the judges, I think, didn't take that into account when imposing sentences, you know, where women would kill their husbands. Would not consider, I think, that some women, I think, would have been subjected to abuse over a long period of time. We wanted to take the matter to the Supreme Court of Appeal and we basically received total resistance, you know, for such matters.

Int From the LRC national office?

EF From the LRC. National office, including, you know, the different regions. But that matter was then taken, or a similar case was then taken by the Women's Centre in Cape Town, and they managed to get a lot of funding for that. So...the Jo'burg office, I think, was just treated quite badly.

Int I'm wondering, Ellem, if we could stop at this point, simply because...I have lots of questions to ask you and it's been a wonderful interview. You've made my job very easy by pre-empting everything that I wanted to ask you. I'd like to actually stop at this point and take up... when you have more time...

EF Ok.

**(End of Interview 1)**

**Interview 2: 23<sup>rd</sup> July 2008**

Int This is the second interview with Judge Ellem Francis. Ellem, thank you so much for agreeing to again give your time to the LRC Oral History Project.

EF Can I bill you? (laughter).

Int So it's Wednesday the 23<sup>rd</sup> of July (2008). Ellem, I wondered whether we could start by talking about... you'd worked with people such as Arthur (Chaskalson), and I wondered whether there are other people...Mahomed Navsa, etc, where you developed close good working relationships in terms of cases, etc?

EF I remember, I think, in 1984, when I did my fellowship, I was working with...Karel Tip, and Karel Tip was a junior to Arthur (Chaskalson), and they were both involved in a housing dispute, and I was invited to attend a meeting. At that point in time, I think, I wasn't aware that it was a pre-trial, a conference. But then Karel (Tip) told me that it was a pre-trial conference and I had to read up quickly about what happens at such conferences. But it was my first time seeing Arthur (Chaskalson) in action, and he was in control of the proceedings. I don't recall the exact details but it was more just to narrow down the issues, to reach an agreement on, you know, common cause facts, facts and dispute. And if I recall correctly, I think that the matter thereafter didn't proceed to court, it was settled after the pre trial meeting. I also had occasion to work with Arthur (Chaskalson) because Arthur (Chaskalson) was always available, you know, if you needed to sound him off on issues he was more than willing to assist you. And he had this remarkable memory. You would tell him what the issue was and he would go with you to the library and just go to a...and pull out a law report and turn to the page concerned and the answer will be in the said law report. What struck me also, I think, for Arthur (Chaskalson) is that you couldn't mess him around, he was quite thorough. When you needed to speak to him, you needed to know exactly it was that you wanted to talk to him about, especially when it came to legal issues. But he was always more than willing to assist whenever I approached him. I once, you know, felt quite embarrassed when we were discussing matters and a colleague of mine, Mahendra Chetty, who used to be in the Jo'burg office, I think we were discussing labour matters and he said to Arthur (Chaskalson) that he had now become a master in applying for condonation. And I remember Arthur (Chaskalson)'s expression. He didn't say much, you know, but it's almost like saying to Mahendra that, you know, but you don't have to reach a point where you have to apply for condonation. You've got to comply with the rules of the labour court or the rules of the Industrial Court, to make sure that the matters were referred either to those institutions in timeously. But it's just the expression that said it all. So yes, I think Arthur (Chaskalson) was open, he was helpful. But I think, somebody who I really found, and that I was really fond of, was the late Morris Zimmerman.

Int Mr Zim.



EF I think I've mentioned earlier that I met him in 1984. He took me under his wing. And then we started working together when I got appointed on the 1<sup>st</sup> of March 1987 at the Legal Resources Centre in Pritchard Street. Mr Zim, you know, formed part of the advice centre program and worked, if I'm not mistaken, I think he worked up to 1990, when I think he suffered from a stroke and then died. The great thing about him was that if he really, you know, liked you and if he saw that you were quite keen to learn, he would really teach you a lot of things. We once did a matter together and I think it's a matter of Edgar Roy Phyllis against Stannic. It basically involved Edgar Phyllis was our client, he'd bought a vehicle from a dealer, I've forgotten the dealer's name, but it got financed through Stannic. And after, I think, a month or so, he discovered that the chassis number, or the engine number that was reflected on the papers were not the same as that that was on the vehicle. You know, they then got in touch with Stannic, who basically reached an agreement with Stannic that they were going to refund him the purchase price that he'd paid. Stannic then reneged and I then got Mr. Zim involved in it. He also made a few phone calls to Stannic. The upshot is that we eventually went to court and Mr. Zim was then called as a first witness and I testified thereafter. We lost the case and we asked Geoff Budlender...Geoff Budlender was the attorney of record because I was the witness and Mr Zim was also a witness, but we'd asked Geoff (Budlender) to take the matter on appeal. But the matter eventually didn't go on appeal because it eventually got settled in the parties. Mr Zim had a...some people say that he had a temper, I disagree. He just had a loud voice. And when he would speak to people they would really shiver. But then I then discovered that behind his loud voice was a caring and sincere human being. And I was really fond of him. I went to the Philippines, I think, in September of 1988. There's an organisation that operates more or less like the Legal Resources Centre. It's called FLAG. FLAG stands for the Free Legal Action Group. I was invited, you know, to attend and only discovered later that my sponsor there was the late Morris Zimmerman. Because I flew from South Africa to, I think, Hong Kong. I think I made a stopover in Bangkok, but then flew up to Hong Kong. And I met Morris Zimmerman and his wife; her name is Pam Zimmerman, I think. And from there we flew together to the Philippines. Mr Zim, you know, spent a week in the Philippines. I spent about a month or so in the Philippines. I was quite grateful that Mr Zim was my sponsor and I think it meant a lot to me that he probably, I think, had recognised that I had certain abilities and decided, you know, to expose me to the outside world. I was of course, you know, I think, quite sad when he had passed on. You know, from time to time I think I believe, I think, that he was probably one of the greatest lawyers that worked at the Legal Resources Centre. And in recognition of him, I think, the LRC started the Morris Zimmerman scholarship, and we would interview candidates for the position. I'm speaking under correction but I think the first scholar there was Happy Masondo, and there were other candidates, you know, who got appointed or who received the Morris Zimmerman scholarship. I don't know if it's still in existence but I hope that he's...because I think it will be a sad day if it is no longer in existence. Because I think in that way one would be able to keep the spirit of Mr. Zim alive. I've also, I think, mentioned to you that I'd worked with Mahomed Navsa. He was and is like a friend, like an elder brother to me. He really exposed me to public interest law. I'd also mentioned earlier that he came to the University of Western Cape in '93 and he spoke about public interest law, and that's I think where...and I knew that that's the type of work that I wanted to do and the type of organisation that I wanted to work for. Mahomed (Navsa) also, I think, had a temper. He could shout. He used the word 'f' and 'b' quite freely. He...obviously, I think, you know, could swear like a sailor.

But again I think he was, and is still, a wonderful person. I think he's...except for Mr Zim, I think he in fact taught me a lot of things that I know. He took me under his wing. Some people say that he was a difficult person to work with. Yes, I think he was, I still believe, I think, that he is a slave driver, but I think he meant well. We communicated from time to time. He's moved now to the Supreme Court of Appeal. And when he went to act at the Constitutional Court, he gave a very important judgement in the Siduma matter that really deal with the...

Int The Zuma matter?

EF The Siduma matter. It basically had to do with dismissals and the issue was whether or not a commissioner could interfere with a sanction, you know, imposed by the employer. The Supreme Court of Appeal had said that you had to give due deference to the employer when it came to the issue of sanction, but we believe that the Supreme Court of Appeal was wrong. And the CC then, you know, stated that the commissioner's award must be reasonable. But Mahomed (Navsa) I think had written the main judgment in it. And I remember, I think, after he'd given the judgement, he called me, because he knows I'm working at the Labour Court and we'd had a discussion about the matter, and he wanted to know what my views were on the matter. And I told him that I think it was a correct judgement. The cases...I remember a case that I once did with Mahomed Navsa, it involved 11 accused persons who were charged with public violence. This must have been 1990. The people came from a community called Ennerdale. At that point in time, I think, I was living in that community and I was well known in the community as a human rights lawyer. And there were...you know, people were complaining about high rates and taxes. The water and lights accounts were quite high. Out of their anger and frustrations, you know, they burnt down one community hall. And I still remember being called by a Dr. Fick who was also involved in the Ennerdale community. He called me, it was there...but I'd gone to work. And he told me that I was needed in the community because of the guys that had just burned down the hall. I drove down, when I got to the place, there was nothing that I could really do, things were quite chaotic. But I then urged the guys just to leave what they were doing and they did so. A few days thereafter police came around and they started picking up people, they disappeared. We managed to trace them at a police station, which is not far from Ennerdale. I remember the one person had just been...we were looking high and low for him and when we eventually found him, he basically collapsed and said, he'd basically been tortured by the police. We confronted the police and they denied that. the upshot of that is that 11 of them were charged with public violence. I took the defence of five, Mahomed (Navsa) took the defence of the other five. And we had an attorney called, I think, it was Margo Seegal who also used to work at the Legal Resources Centre. She's English speaking, and the client's Afrikaans speaking, and we decided just to let her defend one of the accused. It was quite funny in a sense that we had to write down, you know, the questions for her in Afrikaans and getting an English speaking person to ask an Afrikaans speaking person questions in Afrikaans was just a bit comical. It was a difficult matter but we eventually, you know, got all 11 of them acquitted and Mahomed (Navsa) thereafter came to me and said that he was quite impressed with my level of cross examination. Because we'd managed to destroy the main witness. I think there's a lot of things that I could probably say about Mahomed (Navsa) but I think I've probably said enough. It must be quite clear that we had come

a long way, we'd struggled together. I think he was my mentor, a friend, an older brother, even though we're both...I'm Christian, he's Muslim, we had a very special, you know, relationship. The other person that I worked with was Moray Hathorn. He was a true gentleman. I've mentioned earlier that we had the black caucus and from time to time, I think, you know, Moray (Hathorn) would...Moray (Hathorn) used to side with us on many issues. And I probably should have included Moray (Hathorn) as the fourth member of this caucus, you know. Because he sometimes used to get flak from his white colleagues about siding with us, you know. But Moray (Hathorn) was just a special type of person. I think that Moray (Hathorn) was treated a bit badly by the Legal Resources Centre. I think after Mahomed (Navsa) I think, Thandi (Orleyn) became the Regional Director.

Int This was what period, Ellem?

EF This must have been...this would have been...19...I think, Mahomed (Navsa) became regional director up to 1994, if I'm not mistaken. Probably 1994, or '93, you know. Because in 1993, from '94 I think Mahomed (Navsa) headed the...I think him and Chris Nicholson headed the Constitutional Litigation Unit of the LRC. So I think Mahomed's (Navsa) term would have come to an end in 1992, beginning of 1993. And Thandi (Orleyn) then became the regional director in 1993/1994. But she didn't serve, you know, for a long period because I think she was then appointed as director of IMSSA (*Independent Mediation Service of South Africa*). So, I think I've mentioned earlier too that we had the four, I think, a four year rotation of the regional directors. So, I've been at the Legal Resources Centre for longer than Moray (Hathorn), probably two or three years longer. So in terms of the LRC, I think, in policy, I was basically next in line. Moray (Hathorn) had spoken to me...because Moray (Hathorn) came up from Webber Wentzel, which is...and at the time too was quite a prestigious law firm. I think his late father wasn't too pleased that he'd left Webber Wentzel and he'd become...came into...basically become a public interest lawyer. And when the issue of who was to become, you know, the regional director came up, I think Moray (Hathorn) came and spoke to me and had mentioned to me that he had, you know...that his father was never ever happy that he became...that he'd come to the LRC. And I could sense that Moray (Hathorn) wanted to be appointed as the Regional Director and that this would have meant a lot for him. He would then have been able to go back to his father and say, look, you know, I've now become a Regional Director. But I think the difficulty now was that I was supposed to be a candidate, and Diane Terblanche would also have been in line. But I think, I'd also been there much more longer than Diane (Terblanche) at the Legal Resources Centre. So I decided after my discussion with Moray (Hathorn), I decided not to stand for the position of Regional Director. And I think the difficulty then is that Diane (Terblanche) also made herself available, you know, for the position. The office, you know, voted and I think the majority had supported, you know, Moray (Hathorn)'s appointment as Regional Director. This I think didn't...the National Office, I think, wasn't too pleased with Moray (Hathorn) becoming the Regional Director.

Int Why was that?

EF I think they were saying that he wasn't quite decisive about issues. I think he would not be able to take decisions that needed to be taken. And I remember some people came around, I was interviewed, I was asked, I think, what my views were, and I told them that I really think that Moray (Hathorn) (Hathorn) should...Moray deserves to become the regional director. But I didn't tell them about my discussions...my private discussions that I'd had with Moray (Hathorn) about, you know, what pressures I think he was under. And we then went to the AGM, because every year there's an AGM. And we'd all thought that National Office was going to confirm that Moray (Hathorn) was appointed as the Regional Director. And what they basically did was that they appointed him as an Acting Regional Director for a period of one year, and I think Moray (Hathorn) was quite devastated. But, you know, he got the support from his office. And I think after a year he was then confirmed as the Regional Director.

Int Who was the National Director at the point?

EF I'm speaking under correction but I think it must have been...it could have been Geoff (Budlender). This was also just before Geoff (Budlender) went to Land Affairs. I think it must have been Geoff (Budlender). I don't know if Arthur (Chaskalson) was still there...but, ya, the upshot was that Moray (Hathorn) wasn't appointed as the...he was just made Acting Regional Director for a year, and then got appointed thereafter for four years. And that's simply why I say that I don't think Moray (Hathorn) was treated fairly by the LRC. There was no reason why Moray (Hathorn) just couldn't be made the Regional Director after the position had become available.

Int Did you want to be Regional Director at any point?

EF Uh...no. because I saw that more as...I saw myself more as a lawyer. I was driven to act for my clients. I knew that becoming a Regional Director would involve a lot of, you know, office work. It would mean me having to go to Exco every quarter. It would mean me having to compile reports, you know, for the office, having to discipline people. And I saw myself more as a lawyer wanting to represent my clients to the best of my ability. So I think when Moray (Hathorn) had mentioned this to me, I'd decided, you know, that I won't stand in his way, I'll just allow him to apply and to be appointed. After Moray (Hathorn) served his four-year stint the position became vacant then and I was approached by Achmed Mayet and some of the attorneys at the Jo'burg office who said that I should make myself available to become the Regional Director. I wasn't keen. I had said to...I made it quite clear that I wasn't keen. And in 19...I think I celebrated my 40<sup>th</sup> birthday on the 1<sup>st</sup> of March 1999, and Achmed (Mayet) and Catrin (Verloren van Themaat) came to my birthday celebrations, and Achmed spoke and, you know, he put some pressure onto me saying, look, you know, he thinks that I should avail myself. I reluctantly decided to make myself available but the office had taken a secret vote and on that day, I think, I was...I'd gone to Kroonstadt and Achmed (Mayet) then called me and said, no, I think it was 21 for me and I think there were two abstentions. The National Director at that point in time I think wasn't too pleased.

Int Who was that at the time?

EF It was Bongani Majola. He wasn't too pleased. He believed that nobody should have...there shouldn't have been a vote and that he should rather have canvassed, you know, the staff individually to get their views. I'd said to him that I wasn't, you know...the office had decided to vote and that I was also dead against...well, in fact, I think, I was dead against the idea that they should have been voting. Because also I think what came out was that people wanted us to canvas, they wanted us to address the staff and tell them, you know, make certain promises. And I was totally against that. I'd said to them I don't believe that it was a practice at the LRC where the candidates had to canvas and make speeches, and you know, almost like politicians, to say what a wonderful leader you're going to be. But the upshot is that the office view prevailed. I agreed to that. And I was then recommended by the office. Bongani (Majola) then came to speak to me. At that point in time, I think, my relationship wasn't quite...with Bongani (Majola) was quite a strained one. We had, I think, some major fallouts. I had told Bongani (Majola) that...I'd told Bongani (Majola) about the black caucus that existed within the LRC. I'd told him that we should revive this if we wanted to achieve certain things. He'd agreed with me in principle to do so, but later didn't do that. I know there was an incident I think, where I'd refused to go to one of the AGMs, because I was of the view that decisions are taken by the Cape Town office and we just go around there to rubber stamp it, and that I was not going to go. Bongani (Majola) told me that it might be construed as misconduct on my part, I might be disciplined and I'd reminded him that, I think, there was an incidence where Geoff Budlender didn't go to the AGM. I think he had some reasons. And some people, I think, from Pretoria also didn't go. And none of them were disciplined, you know. And my view basically was that it wasn't compulsory, it was up to the individual. What then happened basically was that I don't think I went, but a rule was then passed that for professional staff members and core support staff members it became...it was supposed to be...it would be compulsory. Bongani (Majola) then wanted to know from me what my views were about certain issues, so I told him what my views were. I'd also told him that I believe that I was a human rights lawyer, that my first responsibility was towards my clients, if I didn't like certain things I would not keep quiet, I would speak my mind, I would tell people, you know, how I felt about certain things. And I'd said to him that, look, if I believed that he was acting...that he was wrong, in the wrong, I think I would do that, you know. I remember I think, just a few days before, you know, with Christmas, Bongani (Majola) had come down to my office and had said that he wanted us to speak about certain things. About my relationship with him. We had a long discussion. I told him that I didn't like the way he was treating staff members, that we were not university students, we were professionals, and that we had to deal with issues, you know, in a professional manner. And we parted on the basis that, you know, we would have smoothed our relationship. I was, I think in nineteen...no, was it now, in 2004? No, no, no...not 2004. I know that I was invited to Palestine. It was the year...I think it must have been 1998...that's when the Israelis were celebrating 50 years of independence, and the Palestinians were celebrating 50 years of human rights abuses. Bongani (Majola) was invited to attend, but I think he couldn't make it, and he'd asked me to make myself available, and I went. It was quite an experience, when we got to Israel I was stopped, you know, at the airport, stood there for about two hours, asked the same old questions about, you know, who I was, what I wanted in Israel, where I was going to, why I was going to Jerusalem, asked why Bongani (Majola) couldn't go. They basically would ask me the same old question several times.

Eventually I think I was allowed in. I came back, I gave report on this. And then I think I had another fallout with Bongani (Majola). I was supposed to have gone to a trip to London, and I was going to talk about the new type of work that the LRC was involved in. Everything was arranged and as a result of this fallout, Bongani (Majola) had decided to ask Mandla Mkatshwa, who was, I think, a junior attorney, I think he probably just had about one or two years of experience at the LRC, and he had to speak about some of the work...the cases that I was involved in. So I think my relationship with Bongani (Majola) was strained. I got appointed to act in the WLD, the High Court, the Witwatersrand High Court. I think in nineteen...it was in 2001. It would have been from August to September. But before that I acted several times in the Labour Court, and it then became quite clear that there was a possibility that I might be appointed to the Labour Court. Bongani (Majola) had spoken to me about us having to appoint a Regional Director and I basically agreed with him, I said, look, it was quite disruptive to be away from your office for about 2 months at a time. But during that period, Achmed Mayet was...acted. But Durkje Gilfillan was then appointed as an attorney. She came from Land Affairs, and Bongani (Majola) then came to me and wanted to know from me who I felt should be the next regional director. And I'd said to him that I believe Achmed Mayet should be appointed as the next regional director. He had been with the LRC, I think, since 1993. Durkje Gilfillan had only started with the LRC, I think, in 2000. Bongani (Majola) then tried to persuade me by saying, look, the time has perhaps come for us to appoint a woman as the Regional Director because there'd never been a woman as the regional director. So I reminded him that Thandi Orleyn was a woman and she'd basically been appointed, you know. And it was quite clear that I think he'd made up his mind that it should be Durkje Gilfillan, and I'd made up my mind that it should basically be Achmed Mayet because, I think, he was next in line. He was the most senior attorney. What then happened was that Bongani (Majola) then spoke to people privately and the Monday when I went off to the High Court, as I was just about to go out of the 4<sup>th</sup> floor, I see Bongani (Majola) coming, but he then went to the 5<sup>th</sup> floor. And I basically just found that to be quite odd. But he waited until I'd basically left and then went to the office meeting and had made an announcement that he'd spoken to all the attorneys and support staff within the Jo'burg office, and that the majority had felt that Durkje Gilfillan should be appointed. Which was contrary to what I was told, because I think that...I was told that the majority wanted Achmed Mayet to be appointed. I then got to know of this and the one day I came in and I sent Bongani (Majola) an email stating that I don't believe what he'd said to...what he'd announced was correct. And that I think the way that he had spoken to people...obviously, look, if you come to a cleaner as the National Director and say, look, you know, don't you think that we should appoint so and so as the Director? The chances that you'll disagree with the national director, I think, are quite...in my view and there's no real possibility that a cleaner will basically disagree with the National Director. I wrote to him, I said to him, look, this is basically what I was told. The figures that you gave to the meeting, I think, was incorrect. I believe that the majority wanted, you know, Achmed (Mayet) to be appointed. And all hell broke loose. I was threatened with all sorts of disciplinary action, I was told that...I was asked to withdraw the, you know, what I'd said. And I made it quite clear that I was prepared to...I wasn't prepared to withdraw that and I was going to...if he wanted to take action against me they were free to do so. What then happened was that a committee was established, made up of Geoff Budlender, Charles Pillai and Mahendra Chetty, about how they had to deal with me. I was invited to Exco, and so I said, no, I'm not going to Exco. I'm an acting

judge in the High Court I don't have time to go to Exco. And so they decided to wait until my acting stint was finished. I still refused. Decisions, I think, were taken at Exco, but I just said, look, I'm not going to appear at Exco, because they wanted to know from me who my sources were. And of course I couldn't tell them who it was, because I knew they were going to victimise. So I then went for my interviews at the JSC in October 2001. I only got one...well, I got two messages of support, one was from Johan Roos, he used to be an advocate, I think, a senior advocate in Grahamstown...and the one was from an attorney, William Kerfoot, in Cape Town. He basically wished me all the luck. I then, I think, a day or so before that, I think, I got an email from Bongani (Majola), basically wished me all the luck. Went, I got appointed, and then I decided that I just needed to get out of the LRC. I think I was suffering at that point in time from...I think, it's post traumatic stress. I just needed to be out. I think, if I wasn't appointed, I think I would still have left. I think I would have looked for some other work. It was just, you know, waking up in the morning, knowing that you've got to come to work, was quite traumatic. Knowing that you had to fight about a lot of things, just basically got to me. But yes, I think I was happy that I got appointed onto the Bench. But I think I was sad that I left the LRC because I really believed...I really...I liked, you know, the work that it was doing. It was...it was no longer an enjoyable to be. Because I think, of all the teething problems I think, that I had at the LRC. I know that when I was told that you were going to interview me, I eventually said to...in fact, I think, I first got a letter just confirming that there was going to be this interview. I ignored that. I then got a call, I think, from...not colleague, but I think one of the receptionists, somebody just called me and wanted to know if Judge (Ellem) Francis was here...I said, no, not Judge (Ellem) Francis...I answered the phone, I said he isn't here. Left a message then that I should call the person concerned. Said I would do that, you know. Then, Cecile (Palmer) then called me. I basically felt sore in a sense that, aagh you know, there's been some other functions and I was never really invited to attend those functions, so I thought, you know, why should I even avail myself for this interview? But...Cecilie (Palmer) I think...I've worked with Cecilie (Palmer) too, and I'd worked with her and I think we had a wonderful relationship, and she was able to persuade me, to say, look, this is basically just oral history, I think sometimes these things needs to be told. And I decided, you know, just to avail myself...make myself available.

Int Well, thank you (laughs). In terms of...at some point you mentioned the word 'post traumatic', and I'm wondering why you feel that, you working at the LRC, left you feeling like you had post traumatic stress?

EF You know...I don't know if it's probably just, you know, fate...but my whole life has been a struggle. You know, struggle at school, I struggled with my church, I struggled at varsity, I struggled at Legal Resources Centre. I was also appointed, you know, to the Estate Agency Affairs Board. It was the first board after 1994. You know, we struggled to make the board more representative. I got appointed to the Gauteng Consumer Affairs Cohort, that was a struggle. Starting at the LRC...you know, we knew that we had to get...we had to start...get the LRC to have an affirmative action policy, there wasn't one in place. I've mentioned to you the professional rivalries and...don't think I have a difficulty with that, but the jealousies that existed. We had to, you know, the work that we were doing, that we really excelled in, was just stopped. We had to try...we always had to try and justify why our work was still

important. I'll give you an example: the ICJ, the International Commission of Jurists, I think, was a major funder of the LRC. And Bongani (Majola) had made a representation...or had made a submission to the ICJ, and he spoke about everything and also then dealt with access to justice. At that time, I think, I was heading the advice centre program. It used to be called the advice centre program. There was then a name change, it became Access to Justice Project...Program. And he wrote just, I think, 4 or 5 lines about the Access to Justice Program. And it was only after...I think one of the funders there was a person by the name of Thor...I think it's T.h.o.r...I don't know his full name. He then enquired about the Access to Justice Project, because he came and told us that. He said, look, you see this proposal...there was just 4 or 5 lines about the Access to Justice Project, he made enquiries about it, and discovered that it was basically the hub of the Jo'burg office, because I think we had about 40 plus advice centres there. Most of the work...because whenever we used to report to Exco, the Jo'burg office would have its report and the Access to Justice...the advice centre program will have a separate report, you know. And had discovered that it was quite a...not just a tiny project, it was something big, you know. When the money was asked about, I think, he gave some explanation. But they, I think, they then gave a lot of money for the advice centre program. But it was those, you know, battles about, you know, why we had to...having to justify our work. There were the issues around racism working at the LRC. You know, the continuous...I think I mentioned to you earlier about what had happened when Mahomed (Navsa) was supposed to become the regional director. I think at some stage, I think, Mahomed (Navsa) also wanted to resign. But I was seen to be, I think, on the side of Mahomed (Navsa). We were, I think, the ones who were complaining about a lot of things, you know. We had regarded the LRC as part of our home, you know. We wanted the LRC to have certain policies in place, you know. It probably, I think, would have been different, you know, had we been incompetent, you know. But, you know, we felt that we were competent, we felt that we were able to assist our clients. There was, you know, the jealousies that I mentioned. And having to go to the LRC where you'd basically be confronted about various things just, you know, frankly, just made me sick. I don't know, you know, some people talk about that if you sometimes work in a bad building you suffer from this bad building syndrome, you know. I don't think it was that, you know, it was just...I mean, when I'd wake up, I'd say, aagh, you know, I'm going back to the LRC, I'd really wonder what it's going to be, you know. It was so bad in a sense that, you know...you know, we were used to, when I first was director and when I think, Geoff (Budlender) was the Director...I'm not talking about national director now...we used to have robust debates. We could debate these things, you know. But what happened after that is that we would discuss matters, say maybe at the Monday morning meeting, you'd find Bongani (Majola) would then call you, say at about half past ten, and say look you know, this is basically what was discussed at the meeting, you know, and would want you to defend yourself or explain that, you know. So we then knew that we had spies within the LRC. I was tasked with investigating racism within the Durban office, because I think there was a lot of infighting that had taken place there.

Int Between whom?

EF It was said to be an African - Indian dispute. I think the person...the Director at that point in time was Nzo Mdladhla, I think, who then later got boarded off for medical



reasons. So, there...I think the view basically was that the African staff there were treated quite badly by their Indian counterparts. So I had to conduct the investigation. I think what came out from my investigation was that, I think, Bongani (Majola) had played a part in what had happened there. he wasn't giving Nzo (Mdladhla) the necessary support. I think he was...he was basically interfering too much in the running of the regions. I then made a report and Bongani (Majola) didn't accept the report and he was fuming about the report, and I think he said that I should have allowed him an opportunity to respond. The irony, I think, is that...remember I said to you that Bongani (Majola), before...on the Monday when I went to the High Court, I'd seen him. He always went to speak to my support staff and to the attorneys, and had said that I was...well, this is now just based on what I was told, that I was racist, that I didn't support Nzo (Mdladhla), and I couldn't understand that, you know, because he'd asked me to investigate that. I had said...and I think part of Nzo (Mdladhla)'s complaint was that he wasn't getting the necessary support, you know, from Bongani (Majola), and that Bongani (Majola) basically was really undermining him. So there was also the issues that...you know, the issue of race. Also, you know, I really believed that candidate attorneys had to be trained, you know, because I was asked to come up with a training program for candidate attorneys, you know. I spent a lot of time in coming up with such a program. It was accepted but I always felt that some of the offices were just in lip service to such training. You know, there were people who did some acting stints in the High Courts, they were then taking unpaid leave. I think when it happened to me I also took unpaid leave but they introduced a new rule that I had to pay in my medical aid contributions and my provident fund contributions. And, I had no difficulty with that but I couldn't understand why there were special rules...whenever it involved me they had to make special rules. You know, people were talking about nepotism within the LRC. I'd once questioned why Steve Kahanovitz was basically using...he was the Regional Director at that point in time, was briefing his own brother in matters. I felt that you can't even do that. You can't brief your brother and allow your brother still then to charge the organisation. So...I know that when I left the LRC...

Int This was in 2001?

EF 2001. I just had that sense of...it was almost like a load off my shoulders. I'd...you know just going to work, just really made me...the place just made me sick, you know. I would think that I'm a hard worker. I just didn't just loaf when I was at the LRC. I basically would work...spend a lot of time there. But just that...I just felt that...I just needed to be out there, you know. Because a week won't go by when there won't be an issue, you know, between us or the national office. There was an incident, I think, where, I think Moray (Hathorn) had appointed an office administrator. I think her name was Sophie. She was interviewed by Bongani (Majola) and Moray (Hathorn) too. When Moray's term...I had all those questions about, look, Moray, how on earth can you appoint Sophie as the administrator? And he'd said to me, no, no, she's got good admin skills and bookkeeping skills. I said to Moray (Hathorn) that, look, I won't be surprised if Sophie didn't complete standard six. And he said, no, he'd basically seen her CV. When I got appointed I asked all my support staff to let me have copies of their qualifications, their certificates. And I then got Sophie's one. I could just see that it's not a genuine matric certificate. I wrote to the Gauteng Education Department, and I was told that the number is invalid. I got

her CV, she had said that she'd completed her matric in 1977 at Moletsane High in Soweto. I managed to get hold of the principal and he said to me, no, 1977 there was no matric class. It only went up to standard 8. I then confronted her around these things. And said to her that she's got a right to representation, she's got a right not to respond...because as I worked with her as a Regional director, it was quite apparent to me that, you know, she wasn't qualified for this job. We would go through the books of accounts and she would make silly mistakes. Her spelling was quite putrid. She would have to sometimes write three or four cheques, you know...the same cheque three or four times because she would just spell...it would just be a mess. I then decided to charge her with...I don't remember what the exact charge is but it's basically misconduct in that she had lied about her qualifications. A day after she was charged, I suspended her. A day after she got...no, a day before she got...no, let me see now...I wrote to her and said to her, look, these are the charges I'm investigating against you, please let me have a response. She then wrote me a letter saying, look, you know, I am harassing her, she has told me that she's a married woman and she can't have an affair with me.

Int Gosh!

EF I responded. I said, look, this is obviously just...it's a lot of hogwash, but please tell me, you know, these are the issues that you're faced with, please let me have a response. I then got another letter. This time it was well drafted, you know, you could probably see that somebody must have assisted her in drafting the letter...you know, where she raised the issue about sexual harassment and victimisation. I responded and I said to her, look, this is basically...I reject that with the contempt that it deserves. And I know that you are having an affair with somebody who is quite influential within the Legal Resources Centre, and I will divulge that information at an appropriate time.

Int You said that?

EF Ya. Guess what? I gave her the letter, I think, like...no, she'd left, because she was on suspension, and I had the letter hand delivered. And then I got a call and the person said to me that he thinks that I should delete the one paragraph where I am saying that I know that she is having an affair with somebody in the organisation, and he thought that that's not appropriate to put that. So I said to him, look that's really my trump card.

Int This was someone within the organisation who called?

EF Ya, somebody...I'd rather not...I'd prefer not to mention names.

Int Sure, sure.

EF The upshot of I think, is that she then resigned, and we...I got Topsy McKenzie, appointed her. Again I think it was a real struggle because I was told that Topsy (McKenzie) does not have the necessary skills. So I said, look, but she can grow in the job, you know. At least she's probably twenty times better than Sophie. So that's...ya...

Int So you came to the Labour Court directly?

EF Ya.

Int And you've been here since?

EF I've been here since the 1<sup>st</sup> of November 2001. I left the LRC on the 31<sup>st</sup> of October 2001. I probably should have taken some time off. But we were short staffed here and I just needed to be away from the organisation.

Int What has been yours experiences of the Labour Court?

EF In what way (laughs)?

Int In terms of being a judge and in terms of enjoying your job, has it been a different experience for you and a better experience for you than the Legal Resources Centre?

EF Look, you obviously can't compare. You can't compare the two. The one is an NGO and the Labour Court is a...well, it's almost like a government institution. So the type of work, I think, is different.

Int Sure. But in terms of the working environment?

EF The Labour Court...I've spoken to people about the other courts, the other High Courts, because we've got the same status as the High Court. The atmosphere here I think is much more relaxed. It's, you know, you can talk about things. I think the leader of the organisation, that's Judge President Ray Zondo, I think is a remarkable leader. I...look, the challenges here are somewhat different, you know, in that you still deal with angry, white people, who still believe that the judiciary belongs just to them. It's just the domain of white people. You...so it's basically those type of challenges. But I can't say that I've had any incident where people were really questioning or undermining your authority. I think, once they've dealt with you, I think once they know that you're quite thorough, you know what you're talking about, they treat you with the necessary respect. Because you see sometimes can get a reputation that with some judges you can mess them around, others you can't. So it's been...I've enjoyed, I think, my stay on the Bench. I think deep down I still regard myself as an activist. I still regard myself as...you know, that, I should still be doing more for the poorest of the poor. And I think, I sometimes...I don't miss the LRC, I

miss the people that I worked with. I miss the work that we were doing. So there are times when I just think back about the work that I did there. You know the wonderful people that I've met, that I've worked with over the years. There are some challenges, I think, you know, on the Bench. It's quite sad, I think, that there are these controversies that now exist, you know. It doesn't look good for the public out there. But I guess, you know, that we're dealing with human beings and, you know, we all are not perfect. I think we will, you know, make mistakes as our democracy becomes much more mature.

Int Speaking of which...I've come into the country this time and there have been lots of attacks on the Constitutional Court, and there seems to be crises in the Bar, etc. And I was wondering what your sense is of how, in terms of respect for the rule of law, and respect and independence of the judiciary, whether that's a cause for concern?

EF Look...as long as you're dealing with human beings who might have their own agendas, I think, when it doesn't suit them, I think they would want to blame the judiciary for all the ills of this world. But you really need a strong judiciary. You need also, I think, strong leadership within the judiciary. And I think as judges you've got to keep reminding yourself that, you know, you've taken an oath, you've got to try and steer away from political issues. And I think once you start making political utterances I think you've got to then expect that politicians will respond in the same manner. I know that, you know, this scrap between the CC and the High Court, especially the Cape High Court is not good, you know. And I just hope that the leaders of the profession, or the leaders of the judiciary, I think, you know, will basically have the wisdom of Solomon to deal with these issues. Because...once you open yourself up for such critique, how do you then start justifying yourself, your existence, you know. And I expect it too that people will now say that, look, you know, because this has now happened, will Jacob Zuma have a fair trial. And I think that's probably only part of the dilemma that the CC is now faced with, you know, that no matter how they rule in the pre-matters, they're going to be criticised. But probably I think we'll just have to bite the bullet and just deal with the issues. I know that some utterances or something have been made by various people from time to time about certain judgments, and I would expect that you if those things happen that the judiciary, I think, should basically be firm on those issues, you know. Because I think it really...because if they don't do that, I think, you know, people are then seen to have a licence just to willy-nilly attack the judiciary. I would have thought that some people have made certain utterances which might really be in contempt of court, you know. I remember when the Schabir Shaik matter had come up, you know, Judge (Hilary) Squires was attacked in public. He was called all sorts of names. I think the people who criticised him had opened themselves, they should really have been prosecuted, you know. And I think once you start compromising all these things, we never know what might happen in say, five years time, six years time, if the politicians doesn't take the institution quite seriously, what about their followers?

Int Exactly...

EF So I think it is a bit worrisome and I just hope that common sense will prevail. But if there's respect now between Judge (John) Hlophe and Judge Pius Langa, who

represent...the Chief Justice who represent the CC, I don't know, you know...how do you deal with this? It's...well, we're probably not unique, you know. It's probably... it shouldn't be happening but...I don't know. It's frustrating.

Int I'm just wondering, during the 1980s when you were being involved with the LRC, there was this sort of sense of having a clear enemy, and in the post apartheid context the LRC to its credit has taken some cases against an ANC government. Do you think it's done enough? Do you think more could be done? Do you think the government could be challenged more effectively, or do you think that the LRC has done well in this regard?

EF It's not so much, I think, a question of challenging the government. Because I think the LRC shouldn't be seen as just an anti-government institution. But should really be driven by their clients, and it's really issues around poverty, that's really issues around social welfare.

Int But have cases in that regard been taken up do you think, in terms of socio-economic rights, in terms of land redistribution, etc.?

EF Look, I think...you know, some cases that comes up would basically be like the Grootboom matter. I think Alexcor was another one. I'm just having somewhat of a difficulty with the way you've cast the question.

Int Just as an outside observer, as someone who looks at cases and thinks of the LRC or a public interest law organisation should be really taking this up, do you get a sense more generally that in terms of public interest law issues and cases, the LRC has been at the forefront of it or have you not heard much?

EF Look, I think they...well, I think they have been...well, look the difficulty I think is that except for the LRC, which other organisations are there? You get Lawyers for Human Rights but their mainly focus is I think, on, you know, assisting illegal immigrants. So the LRC really...I can't think of any other organisation, it's really just basically the leading public interest law firm. And I think what I said to you, that I've got some difficulty, I think, with the way I think you'd formulated the question, was I didn't want the impression to given like that it's the LRC against the government, you know. But I think it's really a question I think of...ya, I think it's really a question I think of the LRC acting in the best interests of the poorest of the poor, of the oppressed.

Int The LRC doesn't seem to be against government, I suppose what I'm also trying to ask really is that the issues that concern the public in terms of civil rights and human rights, those are often cases, if you look at for example, social welfare, it wouldn't necessarily have to be against government, most cases. So in that sense I'm wondering whether the LRC has been at the forefront, or in your estimation perhaps not done more?

EF Look, it has...let me tell you what my one difficulty is, I think, the last time I saw the LRC's name in the press I think was when it was the issue around the...I think people who were arrested at one of the Methodist Church, I think the LRC then acted for...I think the Church after the people were arrested and evicted, and I think the LRC then was able to get an interdict. Except for that I think there isn't much publicity about the work of the LRC. And I've not been getting say a lot of reports coming from the LRC. So, I can't really then, you know, my difficulty is that say for what I read, you know, not having access to reports from the LRC, I can't really give you an honest answer. But again too, I think...that I think is my difficulty so I can't say to you, yes, or no, they're not. But I still believe that they've got an important role to play. And I think...and obviously, look, the comrades who are now in Parliament and in government, you know, would now think that they are immune from certain court action. And I think the LRC, they must be a strong public interest law firm that will still keep the government on its toes. That will still ensure that the rights that are contained in the Constitution becomes a reality. And you need a very strong NGO. I once spoke...I was once invited, I think, before I came to the Bench. There was some conference held about, I think it was section 9 institutions, like the Human Rights Commission, the Gender Commission. And I'd said that those bodies are really toothless bodies. They don't really have any powers of enforcement. And all the monies that were being spent on it should really have been given to the NGO sector. Where you know for a fact that they are independent, you know. They don't owe any allegiance to the state. And that's really, I think, what you need, you know. Yes, I think there is still a future, a role, for the LRC to be played. Yes, I think I've had my run-ins with the LRC, but I still believe that it's a wonderful institution to have. I think it has produced a number of good candidates out there. It is still very relevant. And I think...I just worry that, you know, there shouldn't be the private agendas, like it's like us and them. It should really be...we should really be looking at the Constitution, looking at our clients base and then take it from there. But I just...if there are some hidden agendas, that in itself, I think, might be an issue.

Int You mean on the part of LRC being against government or...?

EF No, no, I'm just talking about...when taking up matters, I think...it shouldn't be a question, I think, of, we're taking this matter up because we want to teach somebody in the government a lesson. We should really be saying, we're taking this matter up, you know, because these are the issues that are involved. These are the perpetrators of this and then just take it up. Because I sometimes get the impression that there are a lot of, you know, angry people out there, that might then want to use, say maybe, an organisation like the LRC, to get even with people. And I think as long as the LRC is not used for people's ulterior motives, I think it still has a great and wonderful future.

Int You mentioned the word training, and you used it in the context that you feel the LRC really ought to be about training. And so it's now been said...given the issues with funding, that the LRC doesn't train enough or doesn't have the manpower, the capacity to train in terms of having a coterie of...good quality senior lawyers. So that's one problem. The other problem that seems to be a concern is that the LRC is unable to attract good quality lawyers, especially young black lawyers, because

they're being snapped up by the corporate firms. Do you think that's a fair estimation?

EF Look, as far as timing is concerned, I think it needs a commitment on the part of the lawyers who are there. I know that one of the complaints that we had against Geoff (Budlender) was that he didn't take on candidate attorneys. And I think his example of...the excuse that he gave was that he's not a good trainer. The current attorneys there, most of them have got more than...I'm not so sure how many years of experience...there's probably some who might even have twenty years at the LRC. So I don't...training basically would be where they would take on the candidate attorneys and train them, you know, let them become involved in their practices. Because we used to have...we would have mock trials when I was still at the LRC, you know. We would basically give them a problem, you know, ask them to draft a summonses, a plea and affidavits. You then arrange for a date, you know. You either would get, say maybe George Bizos to be, say, the magistrate, you know. And that...get clients. Have a mock trial. And after that you basically would tell them...critique them. Look at where they did well, where they didn't do well. And just...and then deal with it. That can be done. But I think it needs really just a commitment on the part of the organisation. And I don't think that's really...it should be too much of...quite expensive. Because I think, you don't pay...candidate attorneys don't earn a lot, you know. So if there is a commitment on the part of the practitioners at the LRC they should be able to do that, you know. The second question...what was it again?

Int It's often been said that the LRC is unable to attract young black lawyers in particular...

EF Look, it's been a struggle. I think, it's basically been a struggle say maybe from day one. And I think the practice...well, my experience at the time was that you'd be able to attract some good lawyers, black lawyers, even women lawyers, but we'd only be able to have them there say maybe for a two year period. You know, some saw the LRC as a stepping stone to a lot of things, you know. The challenge at that time, I think, was also, I think...well, that time it was...some people said, no, it was fashionable. I know that Wim Trengove once made...I think he coined a phrase that 'do the sexy work of the organisation', you know. I don't think really call that sexy work, it was more just...it was basically, you know, just bread and butter issues. But ya...I think for some people it used to be quite fashionable to have worked at the LRC. I don't know, you know...if...say maybe becoming a human rights lawyer if it's really a calling. Some people say that, you know, it might be a calling to become say maybe a teacher. It might be a calling to become a nurse, or maybe, you know, a doctor. So...it's basically been an ongoing problem, you know. But I think if they were to approach, say maybe universities and tell them about the LRC, tell them about the wonderful work that they are doing, I bet you that in every class, you know, you might find say maybe just three, four, five, who still have got the ideal, you know, to go out there and basically just to help the poorest of the poor. About two weeks ago I was listening to 702, where, I think, (Prim) Reddy is the presenter. She had interviewed two law students, I think they'd won a prize and she had spoken highly about them. And one of them said that...she described the type of work that she wanted to do, which was more like public interest law. So you'd find that the majority

might still want to just become lawyers and just become commercial lawyers, but you will still get a tiny bit that still want to do this type of work. So it's then a question of marketing themselves and just going to the different universities and telling them about this type of work, you know. It's almost like, you know, if the...look, most universities will have a...would have got some dealings say maybe with the Legal Aid Board, with the justice centres. So they might still be able, you know, to attract, I think, good candidates. But it's going to be quite tough, you know. Because I think we see it also on the Bench, that a lot of capable advocates don't want to come to the Bench, because we say that the salary that we're getting paid is peanuts, you know. But I think I decided to come...well, one of the reasons I decided to come to the Bench was that it was also a question of transforming the Bench, you know. One couldn't just sit or stand on the sidelines and criticise the judiciary or criticise the government and say, look, you know, the Bench is not being transformed. But people who can really contribute in having the Bench transformed don't make themselves available, you know. So it's been...ya, I think it is a difficulty.

Int Ellem, I've asked you a range of questions, both the last time and this time, I'm wondering whether I have neglected to ask you something which you think ought to be included as part of your LRC Oral History interview?

EF I've spoken about my cases...I think I've just mentioned...I've made some notes here...no I think I've spoken...

Int Yes, you did...

EF No, I think...no, I think you've asked...

Int We've covered it (laughs). I'm wondering whether...given your long standing association with the LRC, having worked there and also in some ways keeping in touch with certain people as well that you've work closely with such as Mahomed (Navsa), I wonder whether there was a particular memory...because you've used the word home in relation to the LRC...is there a particular memory of a person or a client or just generally of the LRC that you actually treasure?

EF Um...there are probably, I think, three.

Int Ok, (laughs) tell me.

EF The first one, I think, he's...ok, he's now late, that's the late Morris Zimmerman. I think I've already spoken fondly about him. The second, I think, is Mahomed Navsa. The third person was the late Mrs Pinky Madlala. And I think, she...Pinky (Madlala) used to say to me that...she made sure that I got married. She used to remind me that, you know...because she went with...she attended my wedding in Mafeking in 1990 and she's always reminded me about that. I think she regarded me also as a younger brother. And we had a wonderful, wonderful relationship. I could speak to her about



my personal problems, she would also come to me for advice. She together with Mahomed (Navsa)...well, I think towards the end, I think, she would basically, you know, when I felt down and out, I would go to her and she would basically just, you know, encourage me. And she always used to say that she was also just there at the LRC just to make sure that she works until she gets her pension. She was also very frustrated about a lot, about the direction that the LRC had taken, you know. But she was like my support, she was almost like a beacon to me. Almost like my light, you know, in my darkness. Arthur (Chaskalson), I think I'm probably grateful that he'd started the organisation. I think he had no reason to have started the organisation. And I think...he...I think, but for him, I don't think I would have worked with, you know, in such an organisation or do public interest law. As I said previously, that's really what I wanted to do. I knew that I wanted to do certain type of work. I didn't know that it was called public interest law or human rights work, but I think...ya...I think...him too...and I sometimes wonder because I don't...I wonder if...has he ever been honoured by the LRC? Except maybe...there's probably been some dinners and...I would have thought that maybe what they should consider doing, I think, you know, whilst he's still with us, you know, either to name something after him. I know that the Jo'burg library was called the Bram Fischer Library, because obviously Bram Fischer had donated, or Ilse Wilson had donated some of Bram Fischer's books. But I think it would probably be good if the LRC could, you know, think about something. So I guess, I think, ya, it's probably four persons, but I think if I put it into a pecking order, it would probably be Mahomed Navsa on top, then Pinky (Madlala), then Morris Zimmerman, the late Zim, then Arthur (Chaskalson), ya.

- Int Ok. Ellem, thank you very much again for a very thought provoking interview and moreover for the generosity of your time.
- EF I think, thanks for having spent these about four hours with me (laughter). But I also enjoyed it, you know.

**Ellem Francis–Name Index**

Allie, Ferial, 10  
 Bam, Fikile, 16  
 Biko, Steve Bantu, 19  
 Bizos, George, 20, 21, 22, 39  
 Boesak, Allan, 7, 9  
 Budlender, Geoff, 13, 18, 20, 25, 28, 29, 30, 32, 39  
 Carolus, Cheryl, 9  
 Chaskalson, Arthur, 13, 14, 15, 16, 17, 18, 24, 28, 41  
 Chetty, Mahendra, 24, 30  
 Dangor, A.(Boetie), 3  
 Dangor, Anna, 3  
 De Kock, Eugene, 20, 21, 22  
 Dison, Debbie, 11  
 Essack, Mr., 3  
 Fick, Dr., 26  
 Fischer, Bram, 41  
 Fortuin, Chantel, 19  
 Francis, Elmar, 2  
 Geldenhuys, Odette, 21  
 Gilfillan, Durkje, 30  
 Gluckman, Dr., 19  
 Hathorn, Moray, 21, 27, 28, 33  
 Hlophe, John (Judge President of Cape High Court), 36  
 Jacobs, Ignatius, 9  
 Kahanovitz, Colin, 22  
 Kahanovitz, Steve, 22, 33  
 Kerfoot, William, 31  
 Langa, Pius, (Chief Justice of Constitutional Court), 36  
 Madlala, Pinky, 11, 13, 40, 41  
 Maharaj, Mr., 3  
 Majiedt, Steven, 10  
 Majola, Bongani, 21, 22, 28, 29, 30, 31, 32, 33  
 Mandela, Nelson, 5, 8  
 Manuel, Trevor, 9  
 Mama, Sandra, 20  
 Maqubela-Mandiwana, Faith, 11, 14  
 Masondo, Happy, 25  
 Mayet, Achmed, 28, 30  
 Mbeki, Thabo, 14  
 Mdladhla, Nzo, 32, 33  
 Meer, Shehnaz, 20  
 Mkatshwa, Mandla, 30  
 Mkenzie, Topsy, 34  
 Mkhabela Sibongile (Bongi Mthembu), 12  
 Mohamed, Ismail, 22  
 Mojanku, Gumbi, 14  
 Moola, Mr., 3, 7  
 Mtimkulu, Simon, 19

Mtimkulu, Simpiwe, 20  
 Navsa, Mahomed, 10, 11, 12, 13, 14, 15, 17, 18, 19, 22, 24, 25, 26, 27, 32, 40, 41  
 Nicholson, Chris, 27  
 Nupen, Charles, 18  
 Orleyn, Thandi, 11, 12, 13, 14, 14-15, 19, 27, 30  
 Palmer, Cecilie, 31  
 Patel, Ebrahim, 9  
 Phyllis, Edgar, 25  
 Pillai, Charles, 30  
 Pillay, Kameshni, 21, 22  
 Pretorius, Paul, 17  
 Reddy, Prim, 39  
 Roos, Johan, 31  
 Ross, (Rector at University of Western Cape), 10  
 Saldanha, Vincent, 19  
 Seegal, Margo, 26  
 Shaik, Schabir, 36  
 Sobukwe, Smangaliso, 4  
 Squires, Hilary, 36  
 Tayob, Enver, 13  
 Terblanche, Diane, 10, 27  
 Tip, Karel, 17, 24  
 Trengove, Wim, 39  
 Verloren van Themaat, Catrin, 28  
 Visagie, Professor, 9, 10  
 Vlok, Adrian, 19  
 Wilson, Ilse, 41  
 Zimmerman, Pam, 25  
 Zimmerman, Morris, 11, 12, 13, 24, 25, 40, 41  
 Zondo, Ray (Judge President of Labour Court), 35  
 Zuma, Jacob, 36  
**Ronnie**, 2  
**Sophie**, 33, 34, 35  
**Thor**, 32

**Cases:**

Alexcor, 37  
 Battered Women Syndrome case, 23  
 Biko family Inquest, 22  
 Consumer protection, 11  
 Deportation, Pakistani extradition, 22  
 Ennerdale public violence case, 26  
 Grootboom, 22, 37  
 Housing dispute, 24  
 Komani, 12  
 Mahomed judgement, 22  
 Methodist Church case, 37-38  
 Nelspruit Four killings, 20-21  
 Edgar Roy Phyllis against Stannic, 25  
 Police damages cases, 19

Police disciplinary case; internal inquiries, 17  
Rikhoto, 12, 13  
Siduma matter, 26 (employment dismissals)  
Simon Mtimkulu police killing, 19  
Wrongful death, 20-21

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