

**Theo Sefuba      Constitutional Court Oral History Project**

**2<sup>nd</sup> December 2011**

Int      This is an interview with Theo Sefuba, and it's the 2<sup>nd</sup> of December, 2011, Friday. Theo, thank you so much for agreeing to participate in the Constitutional Court Oral History Project.

TS      It's a pleasure.

Int      You currently serve as the Chief Director in the Office of the Chief Justice. That's quite a mouthful (*laughs*). Theo, but I wondered if we could start this interview...if you could talk about where and when you were born, your early memories of growing up in South Africa under apartheid, and what your experiences were and how they may have shaped you?

TS      Well, I was born in a township east of Jo'burg, called Katlehong in 1964. I'm the middle of three kids, my elder brother and my younger sister. We grew up in what you might say in township terms, a middle class family. Because my dad was a personnel officer and my mom was a matron at Natalspruit Hospital. So we were encouraged to go to school, and the value of education. So I started my primary education in Katlehong, at a school called Ntuthuko Primary School. And then moved on to another school called Ukhanyiso combined school. That was up until 1976 when there were the riots. I was affected by that, because we would go out of school and go and march up and down the streets and fight with the riot police, as they were called then. So that kind of shaped out my future, tragically as we put it. From then on I was shipped off by my parents to a place called Herschel in the Eastern Cape. I think the town there is called Sterkspruit. I went to a school called Price Mbethe junior secondary school; that was 1977, to do standard five. I stayed with relatives there for a year. That's where my mom is originally from, and my grandmother on my father's side, they were both from that region. And so we stayed with relatives, me and my other sister. But after a year we moved closer to the schools, there were houses that acted as boarding houses there, where we could sit, because the school was quite a distance away from where we were staying, about fifteen kilometres. So we had to travel ten to fifteen kilometres a day to and from school. So we moved. Me being a township guy, township boy, that was quite a challenge for me. But people who grew up in those rural areas, so they're used to travelling, to walking long distances to town. Of course, the transporting was scarce there. So I moved closer to school, there were boarding houses there, I stayed there. From Price Mbethe Secondary I moved on to Mehlomakulu Senior Secondary School. They were in the same yard. That's where I matriculated. That area actually is a strongly PAC area, it's got a strong Pan Africanist Congress tradition. So you'll find that even within the school milieu, and within the teachers as well, it's always been that. Incidentally that time Herschel fell under what was then called the

Homeland of Transkei, under the then Chief K.D. Matanzima, I think it was. So we started there and then that's when I got politicised with my background in the '76 riots and also with that Pan Africanist tradition that was strong in that Herschel area. And I started to see things, the oppression of apartheid, the effects of that, started registering to my mind. And I told myself that I wanted to be an activist, that you can't just sit and accept the status quo, that we had to fight it. So my political consciousness started there, you know, maturing. I matriculated at Mehlomakulu High School, and then I proceeded to Fort Hare University in the Eastern Cape. That's when then I started joining the student movements. I joined the then AZASO, which was called the Azanian Students Congress, which had aligned to the congress tradition as opposed to the Pan Africanist Congress which that, as I said, I was taught, or learnt in Herschel. But I joined AZASO at Fort Hare and also joined a progressive Christian student body that was called, Young Christian Students, YCS. And I think that's where really in YCS, I was appointed the co-ordinator of the Fort Hare branch of Young Christian Students. That's where I got to learn a lot...access a lot of literature about the struggle, about the history of this country and how to fight it, how to tackle it, from a Christian perspective. And also this side as I say, I was also involved in the activities of AZASO. So I stayed in Fort Hare, I was studying...I had intended to study psychology because my mom had said, she thinks I would make a good psychologist.

Int Why did she say that?

TS Well, I don't know, maybe...she thought I had analytical power, you know, power, I could analyse things. I'm a good listener as well, I'm not much of a talker, so...and she encouraged me to apply for a psychology degree. Incidentally, before I went, going to Fort Hare, because I matriculated in 1982, and then 1983 I applied...well, '82, I applied to be accepted at Wits University to do that psychology degree. I even went for a...they used to call it pre-university courses there. So I used to, I think for a period of a month and a half, in January of that year. So I attended that course until mid Feb, but was not accepted at Wits. With the result that the whole of 1983 I spent at home doing nothing. But with the encouragement of my mom, encouragement from my mom, and my parents in fact, I did some courses through Damelin just to keep busy. And then the next year, '84, I was accepted at Fort Hare University. That's where then, as I say...I had intended to study psychology, I had applied for psychology, but on the queue to the registration I met my future friends who were going to...activist guys, who recruited me into AZASO, they said, no, man, what, psychology, what, let's go for law. We'll be able to fight this oppression through the legal route. So I was persuaded on the queue to the registration, I changed from psychology to law. When I phoned my mom she was a bit disappointed but she accepted it. So I started law, '84/'85. As you know at Fort Hare, then those days, and Fort Hare was in a so-called Ciskei homeland, and there were a lot of requirements that if you are not from Ciskei you need to have a student permit, study permit to come in and study in Ciskei and all those things. So we were fighting all those stuff.

It is, as you know, a strong tradition of struggle, that university. It produced great leaders of our nation and beyond. So that's where my activism really came to the fore and we were involved in organising meetings and all that. And then 1986 we were expelled from Fort Hare. We had gone on a student boycott, because one of our lecturers, the Reverend Stofile...I don't know if you might know him, he later became the Premier of the Eastern Cape, and the Minister in the cabinet, was detained by the Ciskei police. So we decided that we are not going to go classes, or to lectures, until he was released from detention. I think it was around about April of '86. They didn't release him. We were sent home around about June for winter holidays, we came back, July, they had released him, and then we went back to classes. So we had to start writing half-year exams that we were supposed to be written in June. And problems started rising again because some lecturers were not prepared to let their students write those exams that they'd missed in June, and so the whole thing started again. With the result that we were then expelled around about August of '86 from Fort Hare. I then applied again because I think the restrictions at Wits by that time were relaxed than back in 1983 when I applied...I'd initially applied at Wits. So I was accepted at Wits, but they told me that they are not going to recognise the courses that I did, accumulated during my stay at Fort Hare. So I had to start afresh at Wits University. The fortunate part of it was that my mom by that time was employed by Wits University. And so at the time, when you had a parent employed at Wits, there was a seventy percent discount on your tuition fees. So I had no bursary, I had no bursary at Fort Hare, no bursary at Wits. So that was easy, my parents said, it's fine, we're prepared to pay the thirty percent difference out of our own pockets, just that you get to do something. Because some of my friends who were expelled from Fort Hare were spread all over. Some went to the University of Western Cape, some went to the University of Durban Westville. And some of us came to Wits. At the time, as I said, Wits was very expensive. But, ja, okay, we managed for the first year and I found that there was...you had also already the relationship with Wits, because some of my comrades at the Young Christian Students Organisation were at Wits. They had a strong branch there at Wits.

Int And you studied psychology at Wits...?

TS I studied again fresh with my law studies. So I did BA (Law). Majored in law and political studies. So it went very well at Wits. Then I graduated there...well, at the time we were boycotting graduation. I didn't go to graduation. Then when I was going to do LLB, the discount that...what was it called at Wits...was it a discount of the fees? Was hundred percent now. Which meaning that my parents did not have to pay anything. Well, they had to pay for food and lodging, but in terms of tuition, because my mom was still employed there. So I had a hundred percent on tuition fees. That's how I managed to get through by the Wits to study. So I studied for my LLB. Wits also at the time had a strong student activism tradition. There was Black Students' Society, there was...AZASO was by that time changed into SASCO,

South African Student Congress. The YCS had a strong branch, a non-racial branch at Wits, was people from across the colour line. Whereas at Fort Hare, we had just the African people only. So your non-racialism also that was inculcated in the congress tradition. Further it was enhanced at Wits when you saw people from other races, also activists in the struggle. So I studied at Wits and then I completed my degree in '92, and then went to do my articles...I struggled to find articles. Because my interest was really public interest law. I struggled to find articles, until I was employed sometime May of '93 I think, by a one-man practice in downtown Jo'burg. It was called Mike Mokwena Attorneys. So I started working there on a salary of six hundred (rands) a month. But we were expected to wear a suit with jacket and a tie when you went to court. That was a struggle, because you also had to pay transport fees and also feed yourself. But my parents continued to...because I stayed at my parents place. When I was studying at Wits I stayed in the student accommodation. I stayed around here at Hillbrow student accommodation opposite Princess, a hospital. So after six years I went back home to stay with my parents again; I had to readjust to that. But I managed. And after a year with Mike Mogwena Attorneys I moved on to Wits Law Clinic. So they took over my articles there for the second year of articles. And at the time Wits Law Clinic there was...I think, when I joined them our salaries were paid by the Legal Aid Board, because we're assisting really people for free. It was mostly criminal matters, also with Mr Mokwena Attorneys I was doing mostly criminal matters. I had incidentally majored in labour law and that was my interest. I wanted to go into labour law. But as I say, joining a one-man practice there was quite difficult because it was also administration of estates so we were dealing mostly with estates and criminal matters and divorce matters. So when I moved to Wits it continued with criminal matters, divorce matters, but there was also a little bit of public interest in terms of labour issues. We'd go to the industrial court, appear there, to some tribunals, you know. So my interest in labour law again was sparked, and after articles I applied to join in '96 at the Commission for Reconciliation Mediation and Arbitration, CCMA, was being established. And after articles, incidentally, I worked for the Road Accident Fund, as it was called then, as a claims clerk. My aim was really always maybe to be able to go to the route of the Bar, to be an advocate, not to be an attorney as such. But we were persuaded in our final year as LLB students, when we were addressed by Advocate (George) Bizos...he came in to address us, and he said to us...he advised us that if you want to have a fair grasp of the law, firm grasp of the law, you need to...he advised us that you should do articles, then after articles you can then come over to the Bar. It will be easier for you then, you know, to get to the floor. So that's how I came about to do articles and then after that articles, as I said, I wanted to join the Bar, but I then joined the Road Accident Fund as a clerk. I worked there for two months, while the CCMA was being established, I had applied, I had been interviewed, so I was offered then a position as a full-time commissioner at the CCMA, from '96, from its establishment. So I worked there then for the next three years, and I also gained some experience, that's when I had to use my skills or my knowledge of my studies in labour law, you know, to use it practically, to conciliate and mediate disputes, labour disputes, to facilitate the

resolution of disputes between unions and employers and also doing mediation in individual dismissals, misconduct disputes, and also arbitration. Writing awards. It was a challenge then because I think we couldn't meet the expectations, cases were just flooding in, and we were expected to do everything. But we managed, and then my contract...of course at the time we were offered contracts of two year, three years, five years, so mine was a two year contract, it was further extended for another year. But they encouraged us that, you guys, you've trained...we got a lot of training, I must say, at the CCMA, induction courses, they had good training courses there. And then they said, we advise you guys to go out there into the industry, to teach companies, employers and employees about this regime. Because at the time this Labour Relations Act was a new thing that was coming to radically change the whole of our labour situation. So I then applied to join the Office of the Public Protector, so when I left the CCMA, I went to the Office of the Public Protector; that was in '99. Also there it was a fairly new office, they were still establishing it, so I was assigned to do mostly labour matters. Though I was doing also other grievances. We were dealing with grievances from members of the public against government institutions and state institutions, like your Transnet, your SABC, and all those things. But I was assigned mainly with both my labour law experience and background, I was assigned to do mainly labour related grievances. So I worked there, let's say, for I think, for about nine months, and the Public Service Commission was also being transformed. It was a Public Service Commission that had this overarching responsibility for all employees of the public service. So it was being transformed into a different broom from what it used to be. So they had advertised positions there, you know, labour relations specialist. So I applied there and I was accepted, 2000. I then became Chief Director for labour relations. I was also assigned to deal with legal issues, so I was Chief Director...basically I was Chief Director: Labour Relations and Legal Administration. And that was another experience because now I was dealing with labour issues within the public service. You had to go to the Public Service Co-ordinating Bargaining Council to present...for example, when I joined there my staff were busy developing what are called a disciplinary code for the public service. So I had to go with them to the Bargaining Council to promote that code, because they were changing the code from what it was previously. So we promoted it, then we used to go there now and again to convince the parties there that is the way forward, and they later adopted it. Then also appeal procedure, they were changing procedures, initially appeals were handled by the Public Service Commission, but with the new...as I say they were transforming, appeals were then moved to what were called, executive authorities, which in fact are ministers, so the ministers would then be able to handle appeals within their various departments, rather than being directed at the Public Service Commission. So those were the exciting times at the Public Service, you know. I worked there for about four years, and then a position...a vacancy appeared...I think they were going to establish the Office of the Chief Justice. I applied and I was accepted in 2004, to be...my mandate at the time, I was told by Chief Justice (Arthur) Chaskalson, as he then was, that my mandate was to establish the Office of the Chief Justice.

There had never been an Office of the Chief Justice, so I was coming in to establish the Office of the Chief Justice. At the time Chief Justice (Pius) Langa, was the Deputy Chief Justice. During my interviews in fact, Chief Justice(Pius) Langa was there, Chief Justice (Arthur) Chaskalson, and Chief Justice (Sandile) Ngcobo. At the time, Chief Justice (Sandile) Ngcobo was just an ordinary judge of the Constitutional Court, but they sat at the panel. And so I was accepted there as the Head of the Office. I was going to establish the Office of the Chief Justice. So I encountered many problems there, because I had to deal with, you know, officials from the Department of Justice who had a different view of what the Office of the Chief Justice should look like, from what the judges of the Constitutional Court wanted it to be.

Int Can you explain what the differences were, Theo?

TS Ah! Look I think the differences were at the level...because my interactions with them were at a level of just plain officialdom. But the judges were dealing mainly with, I think, the senior officials, like the then Director-General, the Minister, the Deputy Minister, then inaudible. I never used to participate in those discussions.

Int And who were they at the time?

TS I think at the time, the Minister, when I joined, the Minister was I think Minister (Brigitte) Mabandla, who just came in. And the Deputy Minister was Johnny de Lange. And who was the Director-General? I think the Director-General at the time was...Mr (Vusi) Pikoli was...when I joined was...I think he had just left the department. There was an acting...Mr (Menzi) Simelane was about to be appointed, but he was not Director at the time of my appointment. So I was dealing with the Deputy Director-Generals there and the Chief Director, and Mr (Jacob) Skosana, who was mainly my contact at the Department of Justice. There was also confusion about my role, who am I going to report to, and who am I accountable to? Was I accountable to Chief Justice (Arthur) Chaskalson, the Chief Justice then, or to the Director-General at the Department of Justice. I don't think those issues were ever resolved. They continued to frustrate me. But Chief Justice (Arthur) Chaskalson told me that "you are going to be accountable to me. We want to have an independent Office of the Chief Justice, independent from the Department. We want to have our own accounts. Bank accounts, I want you to do that and all that." But when I discussed these things with the officials of the Department of Justice, they had a different view, that in fact, no, you are not a separate entity, you are part of the Department of Justice. Your salary is being paid by the Department of Justice. My salary was being paid them. And you are an employee. But we expect you to be our eyes and ears there at the Office of the Chief Justice. So that I was in a quandary, because my view and I shared with Chief Justice (Arthur) Chaskalson view, that I was going to establish an independent office. But there were discussions...but there were a slew of

Bills, there were just a lot of Bills that were being discussed that were going to address the transformation of the judiciary. So there were these regular meetings between the...I think the judges had a committee that will meet regularly with the senior officials there, and the Ministers...the Department of Justice. So that went on until Chief Justice (Arthur) Chaskalson left...retired. And Chief Justice (Pius) Langa came on board. And Deputy Chief Justice (Dikgang) Moseneke deputised for him. So we were introducing...there were lots of programmes that we were introducing. And by the way, I didn't have staff. I didn't have a staff component. I didn't have a secretary. I had to get a secretary from one of the staff here at the Constitutional Court, someone just to assist me. Because there was this dispute about the structure of the Office of the Chief Justice, and Chief Justice (Arthur) Chaskalson at the time had a certain view of the structure, he wanted a certain structure, and he wanted me develop this structure, so I tried to develop some discussions with them. So when we were discussing it with the officials of the Department of Justice, they had different...they have a job, what was called a evaluation committee, if I'm not mistaken, that was supposed to do a work study of any structure that is being developed. So they brought in those people to interview me, and they were going to assist us with the grading of that structure and all those things. And they went back to the Department and they came back with a different structure from what was conceptualise by Chief Justice (Arthur) Chaskalson. And I think then Chief Justice (Arthur) Chaskalson presented it to the judges and they rejected that structure. And at that time Chief Justice (Pius) Langa was coming on board. He also was not happy with that structure. And he said, "no, we must do another structure." So we tried to develop another structure. Now with the people from the justice that were involved in the structure. At the meantime the talks were continuing, you know, about transforming the judiciary; there was a Superior Courts Bill that was of much contention between the judiciary and government. And then it was going to Parliament and it was being taken back for discussion and all those things, and it was also, I think, a JSC Amendment Act, that was also going to address those issues. Because I was responsible at the time for the JSC, also, the Judicial Service Commission. I think you are aware of what it is about?

Int Yes...

TS Yes. So I was also responsible for that.

Int How were you responsible for the JSC (Judicial Service Commission)?

TS I was running it. Not in fact that...it was my responsibility, but when I got on board, it was always someone who was dealing with JSC (Judicial Service Commission) work and what...in fact she was Mrs...her name escapes me now. She was from Bloemfontein, she was a secretary there in Bloemfontein, she was a judge's secretary, but she was assisting Chief Justice (Arthur) Chaskalson with matters pertaining to Judicial Service Commission, so she

was the secretariat of the JSC. But she was also a secretary of a judge in the Superior Court.

Int Was it Green... something?

TS Mrs Greenstein , thank you. Mrs Greenstein was the secretary there. So Mrs Greenstein was then supposed to report...Judge (Arthur) Chaskalson said, she will have to report to me, I must report to Chief Justice (Arthur) Chaskalson. But she had been doing this work before I came on board. So I would attend, for example, meetings of the JSC, sit there with the judges. And then, as I said, Chief Justice (Pius) Langa came on board, the discussions continued. There still was no structure for the Chief Justice. I didn't have anyone to assist me. But I was patient because I was hoping that maybe eventually they will resolve their differences. And then Minister (Brigitte) Mabandla wanted to introduce a programme for the acceleration of women to the judiciary. She was complaining that the number of women judges was really...did not bode well for the country, and she wanted them increased. So she introduced this programme. It was also what we called at the time judicial education. I think it was also a contentious issue about new judges coming in, into the judiciary, who needed to be trained. They wanted an institution that will run training courses for new judges. And so Chief Justice (Pius) Langa spoke to the official at the Department of Justice and then they created a post of a Director legal education in the Office of the Chief Justice. I think that was in 2006, if I'm not mistaken, or 2007. I then had a second person to assist me. She came in as Director of legal education, she then took over the running of the JSC (Judicial Service Commission), and also this programme that Minister (Brigitte) Mabandla had introduced, acceleration of women into the judiciary.

Int And who was this?

TS She was Mrs Vuyelwa Masangwana. She came in then as Director of legal education and all that. We struggled, as I say, we continued to work. She also had to get someone temporarily to assist her as a secretary. So now we are constantly working on this structure now, because now there was this now position that was just created out of nowhere, Director, so we had to try and infuse it into this draft that we were working on. Now Mr (Menzi) Simelane had joined the justice as Director-General. And he's a hands-on person, he wants to know what's happening. So he would phone me and request meetings with me just to know what's happening with the transformation of the judiciary and the Office of the Chief Justice. So I'd explain to him that there were two structures...there's a structure that was developed in conjunction with your officials in the Department, but which the judges had rejected because it doesn't reflect what the judges wanted. Because the judges wanted a completely independent structure. Because that structure had me on the top but I had to refer to the board, the DDG, the Deputy Director-General of the Department of Justice, who then reported to the Director-General. Whereas



the judges wanted an accounting officer for the judiciary. I was supposed to be accounting officer, the head of the Office of the Chief Justice. That's what they wanted me to be. But the Department had a different view altogether. So those were the tensions there. But as I say, we were still constantly working on this structure...on this structure as well Mr (Menzi) Simelane came on board and he said, "okay, look, give me the structure that was developed by the Department", and I gave it to him, and I gave him the second structure that was being...that was work in progress. Then he said to me, "look Theo, I think you should go ahead with the first structure, I'll approve it as Director-General, go ahead and appoint people there". Because I was really complaining, I didn't have staff. I had to run around all over the place. He said, "no, just address your problems, there's your structure there, I approve of it, you can start advertising posts". Because we needed messengers, we needed drivers, we needed secretaries, we needed people to run the Rules Board, because the Rules Board was going to be fully under the Office of the Chief Justice. I discussed that with the Chief Justice (Pius) Langa. Chief Justice (Pius) Langa still rejected it. This is not the structure that we want. They must enter into meaningful discussions with us so that we can have an independent structure. That went on until Chief Justice (Pius) Langa retired. And now Chief Justice (Sandile) Ngcobo came on board, that was in 2009. Well, when he came on board, I went to see Chief Justice (Sandile) Ngcobo and explained the history of the Office of the Chief Justice, and also informed him about these structures that had been developed and that were rejected by the judges. Well his response to me first was that "I'm going to deploy you away from the Office of the Chief Justice". I was shocked but I accepted, okay, I'll accept it. He later called me into a meeting and informed me that, "look, Theo", he's got a different idea, he's got some ideas about what kind of a structure that the Office of the Chief Justice...what kind of shape the Office of the Chief Justice should take and he thinks that will involve extensive research, comparing jurisdictions all over the world. And he will need people to come in and do that research and all that. And then he brought in then people from Department of Justice and Constitutional Development, there was Mr Jiyane was a Deputy Director...at the time he was, and still is in fact, the Deputy Director-General for Court Services for the Department of Justice, to head that interim structure that was going to look at all those things. I was told to move away from...my office was here next to the library in the Constitutional Court...I was told to move away from my office and go to...the Judicial Education programme was now going to establish what was called an Institute for Judicial Training, and they had acquired offices at Edura House in downtown Jo'burg. And I think they had appointed Judge...you know the judge who had presided over the Selebi case ...his name just escapes me...(refers here to Judge Meyer Joffe).

Int It will come back...

TS Ja. He was then appointed to run that Institute. So he was going to be based at those offices. So we were then asked to move from my offices here to Edura House. I'm still there now at Edura House.

Int Really?

TS I'm still based there. My Jiyane then, you know, incorporated me into his interim team, and also said, I've got the institutional memory so that he might need. So the team regularly met with the Chief Justice (Sandile) Ngcobo to update him on their work. There were HR experts from the Department of Justice, also consultants would come in now and again to assist with the process. Now that was in 2010. Now end of 2010, Mr Jiyane came to tell me that, now his mandate as the head of the interim team has ended so he's going back to the Department of Justice. Because I think he was juggling his position as DDG for Court Services there, and also as he was called, Acting Secretary-General in the Office of the Chief Justice. So his mandate, he told me, it ended and that new people will be coming on board. So they brought in new people, consultants, to come in and run that interim structure. They never invited me to any of their meetings, you know, unlike, as I say, under Mr Jiyane's interim committee. So I don't know what happened. I don't know the nitty-gritty's of their discussions because I was never part of their discussions. But they told me...I met with the Acting Secretary-General then, called Mr Richard Sizani, he was called...he came to me and I explained my situation to him and he said, no, okay, look, we are also establishing the Institute for Judicial Training there, also in addition to the Office of the Chief Justice. We'll see where you and your staff will fit. Because by that time I had also a researcher, Mr (Xolisani) Holland I don't know whether you've spoken to him? Xolisani Holland?

Int Next week.

TS He used to be one of the judge's clerks here. So Chief Justice (Pius) Langa asked him to come and assist in his office. So he stayed, he was on an annual contract, so his contract kept on being renewed annually. He's a senior researcher in the Office of the Chief Justice. And I also had someone...by that time now the director for legal education, Ms Masangwana had left. She left, I think, in January of 2010, to join the Department of Treasury. She had left and there was someone assisting her with her work; she also was left behind. I had the added responsibility...when Chief Justice Langa left, he asked me to see if I cannot find space for his PA, Ms Hlubi Mzaidume, she's on our side there...because apparently Chief Justice Ngcobo wanted his own PA. So she was left floating all over the place. So those were the people that were my responsibility at the time, so I had to look after them as well. But I didn't know what to say to them because, as I say, I didn't know what the structure was going to be like. I still don't know actually. I'm sitting here now and I don't know. I know they are consult...actually they've just appointed another Secretary-General to succeed Mr Sizani, it's Dr Khotso De Wee; he's the Chief Operating Officer at the Department of Justice. He just came on board now, I think last month, as Acting Secretary-General in the Office of the Chief

Justice. I've been trying to meet with the new Chief Justice, Chief Justice Mogoeng, because I know him from my days at the heads of courts...you know, when I was head of the Office of the Chief Justice, we had these regular meetings where the heads of courts from different divisions. He was head of court for the North West division. So I know him from those days. I then obtained his email address and I spoke to him through email, and he said I should arrange a meeting with him through his Chief of Staff. I've been arranging those meetings but at the time it was an Acting Chief of Staff, I understand now he's no longer...there's a new Chief of Staff. So I'm still in the process of trying to meet with the Chief Justice Mogoeng. I haven't been successful in meeting with him, just to discuss and see where I'm standing, what my position would be, how my situation is going to be resolved.

Int I'm very curious, Theo, this is quite an interesting story you've told me...

TS That's why I thought I don't know whether to say it on record, I don't know...

Int Well, you know, the oral history is really yours to tell. I'm very curious, as someone who's had quite a lot of experience, you've been in a senior position, why you've stuck out the uncertainty as such?

TS Well, because nobody has told me...well, I'm trying to get...I'm trying to go out and do my...to go and work somewhere else. But sometimes, you know, you see to your responsibilities, your wife, kids, the house, you have a bond, those people need...they're used to this secure kind of life, and suddenly you decide to leave and go you don't know where, and the lifestyle they're used to now just kind of suffers. So those are the concerns that I have. I've been discussing with my wife, and I've been saying also that I think I should leave and go to the Bar and practise law there...and friends, and the friends say...I have friends there in the Bar, no, don't come here, we're struggling. You'll struggle to find your feet, it will take you about five years to find your feet. So those are the issues that you constantly grapple with. But I told them, let me stick it out there, my wife says, no, stick it out and see where it goes. It's going to be resolved one way or the other.

Int I'm also wondering, your experience of working with the different judges, I realise that you're in a very difficult position because you were being torn between the Department of Justice and the judges, and the Chief Justice in particular. But I'm just wondering if you could talk about your experience working with Arthur Chaskalson and then Pius Langa, and then Sandile (Ngcobo), in 2009...just your experience of working with each of them?

TS Now that was...that experience you can never...it was awesome. Especially with Chief Justice (Arthur) Chaskalson and Chief Justice (Pius) Langa. Well, the person I worked most with was Chief Justice (Pius) Langa, because Chief

Justice (Arthur) Chaskalson he retired, I think, in 2005, so I had worked with him for a few months. But he really...I get a lot of...because he guided me, because at the time, as I say, I was new, we were going to establish a new office, so I had regular meetings with him, he will tell me his ideas for the Office of the Chief Justice, what he wants it to be like, what he wants it to look like, what he wants it to do. And he gave me a lot of...I had to go through those Bills that were...they introduce in Parliament, just to get a feel of what the issues are. I had to do a lot of reading. He introduced me to the JSC (Judicial Service Commission), in Cape Town. But he then handed over the reins to Chief Justice (Pius) Langa, so Chief Justice (Pius) Langa then was new and I was fairly new in the office as well, I was there but a few months, and we struggled together to navigate the waters. I interacted at a high level with heads of courts, as I say, I sat in their meetings when the heads of courts met. The Chief Justice was the chairman of the heads of courts meetings. They will meet amongst themselves to discuss issues relating to the judiciary, so you had to maintain a high level of integrity there because those discussions were confidential. I didn't have to go out and discuss it with some other people who were not in the judiciary. They will meet with the Minister of Justice regularly. I had to sit in those meetings and record...I was recording, as I say, I had no staff. So I had to take the minutes. They also had committees, for example, there was a committee responsible for judicial education, it was chaired by the Chief Justice and the Deputy Chief Justice was the chair. But the Chief Justice gave...delegated, I think, his powers to the Deputy Chief Justice. So he was basically running judicial education. And they inaudible Judicial Institute. So I also sat on those committees, also took notes as well as a recording secretary. So it was high-level interaction, and it's a learning experience. And that's why you never stop to learn. You learn new things every day. And you grow through those interactions. Ja, that was quite an awesome experience. But as I say, when Chief Justice (Sandile) Ngcobo came on board there, I think I only attended...because he came on board around about October, September/October 2009, and we'd already arranged a meeting. Because the JSC (Judicial Service Commission) usually meets twice a year in April and in October. And then we'll have our heads of courts meeting just before the JSC (Judicial Service Commission). JSC (Judicial Service Commission) starts on Monday and we will have heads of courts meeting on Saturday. They will meet for example on Saturday afternoon with representatives from the magistrates, for they had also these interactions with the lower judiciary, the lower court judiciary. And also meet with the associations of magistrates. And then on the Sunday morning they will meet amongst themselves, the heads of courts, and in the afternoon they will meet with the Minister of Justice. And then on Monday JSC will start. So when Chief Justice Ngcobo came on board, we'd already arranged those meetings, so we went...that meeting was my last meeting at the heads of courts or at the JSC. So I went to that meeting. I think, as I say, he had different ideas about what shaped the Office should take. He brought along...at the time Mr (Xolisani) Holland had joined me so I had given him the responsibility of recording the meetings...the minutes of the meetings. And Chief Justice (Sandile) Ngcobo also brought along his researcher, so he was also taking minutes this side

and Mr (Xolisani) Holland taking minutes this side. So after that then, as I say, my interactions with the heads of courts and the judiciary cease. Ja, that's when it stopped. So I have not much relationship to say about Chief Justice (Sandile) Ngcobo. I can only talk about Chief Justices (Arthur) Chaskalson and (Pius) Langa.

Int Sure, that's fine. I'm also wondering how you felt about your redeployment, because it did mean having to leave the Constitutional Court as your base because this is where your office was.

TS It did affect me but I thought we roll with the punches. That's it. Those are the challenges of life sometimes. You must respect if your new head has got different ideas about how the Office should look like and I thought we must respect his wishes.

Int Theo, what are your concerns for both your position and the Constitutional Court then based on your experience?

TS I don't think I'd like to comment on those...I can comment on my position, that you know, I think...I don't know, let's say, until such time that I hear from the principals, as to my position here, as to whether I'm still needed or not. Because, you know, as I said, there was Chief Justice (Sandile) Ngcobo didn't stay for long, I think he was here for two years and this process was unfolding. So while I was waiting, for example, as I say, I was part of that interim team led by Mr Jiyane, so I would understand what the issues are, because we were researching different structures and coming up with gradings for the positions and everything. Because I think he had wanted what is called a Secretariat to be pegged at a level of a Director-General. That is Chief Justice (Sandile) Ngcobo. So whereas I'm at a level of a Chief Director, so he wanted the head of the Office to be quite a bit at a higher position. So at the time then 2010, as it was unfolding, as I say, I was part of this interim team, I was busy also with assisting and doing all those things, until, I say, Mr Jiyane left and then the consultant guys came in, and they had different ideas I think, they didn't want to involve me in their deliberations. That was now in 2011. So this was quite a hard year. But then when Justice (Mogeng) Mogoeng came on board I thought probably I'll be able to just see where this one thing is going. Because I don't think the structures therefore has been established yet, but I think it has been approved, I think it was gazetted, and it was a proclamation, I think, by the President approving the establishment of such a structure. I think they're in the process of populating it. But I'm not sure how far they are because they don't share the information with me, the consultants. Because when I go to this one, then they say, no, I think you must speak to an official at the Department of Justice about your position. When I go there they say, no, but these guys must handle your situation. So I'm not sure at the moment, it's still quite hazy. I'm hoping as the

process unfolds then my situation will be clear whether I'm retained or I'm cast aside, or I leave.

Int I also wondered, Theo, in terms of the real issue in terms of setting up a structure it sounded like that there was concern that the Office of the Chief Justice should really be independent?

TS Ja.

Int And has that concern been driven right through in your time?

TS Yes. That has always been the bone of contention in fact, and during my stay here. And I'll have clashes with some official at the Department of Justice and people say to me, but where is your allegiance, are you with the judiciary or are you with the department? So that was really...in fact, it even took me about two years to sign a performance agreement in this office, because...and with my days at the Public Service Commission I know because we were driving this issue of every senior manager must have a performance contract that speaks to his duties. That contract should also be a basis for awarding people bonuses...to or not to award bonuses, you use that contract. That for me was an important...it still is an important document. But when I came here I drafted my performance contract based on what Chief Justice (Arthur) Chaskalson was telling me my work should be. During the course of Chief Justice (Arthur) Chaskalson's time, as I say, it was a few months, probably nine or ten months when I was there, I was still struggling to get direction as to who was going to sign my contract, my performance contract. But I had gotten ideas from him of what to include in the contract. But I couldn't enter into a contract with the Chief Justice because it's not an office here. Because if there was a dispute I couldn't take the Chief Justice to court and all that. It had to be someone...unless of course it was an independent body. So eventually after two years, I think after pressure from the HR department to their senior officials, I entered into a performance agreement with the Director-General of Court Services the Department of Justice. I was not reporting to him, I was reporting to the Chief Justice. So that was...you know, those are the problems, those were the contradictions in the system. But at the time I understood that was a new thing, obviously when something's new there's going to be hitches, glitches there and there, and you go along and sort them out. So it has been my view all along that eventually these things will be resolved and the structure will come up in one form or another. It still is my view that eventually probably have a structure that will satisfy the judiciary. So that was what was driving me all along. And especially, as I said, when Chief Justice (Arthur) Chaskalson left, and Chief Justice (Pius) Langa came on board, that was the issue that seized us almost every day: how to make this structure independent, what kind of shape is...and as I said there was still a lot of opposition from the department at that time. But incidentally when Chief Justice (Sandile) Ngcobo came on board, and the last meeting I attended of

the heads of courts, and there was a new Minister at the time, there was a new Deputy Minister. And it was Minister (Jeff) Radebe, and Deputy Minister André Nel. So that meeting when Minister (Jeff) Radebe said to the judges, you judges you want to run your affairs, I'll give it to you. So that was in a way, as we must say, a dramatic change from what it used to be under the previous regime. Because now we had the new Minister who was saying, I'll give you whatever you want. You want to run your affairs, I'll support you. That was a wind of change. I thought it's now the opportunity...so I think when Chief Justice (Sandile) Ngcobo came on board there was support, I would say, from the department and the Minister, mainly from the Minister for the judges to run their own affairs. Whereas the previous Ministry, I think there was just some tensions between the previous judges and the...I sensed that, that there was a reluctance to let go of the judiciary. That's my view. They probably wanted still some control or measure of control over the members of the judiciary. So I think when, as I say, when Mr (Jeff) Radebe came on board and he said, judges run your own affairs, that's when I think it was probably easier for Chief Justice (Sandile) Ngcobo then to implement his ideas about what kind of shape or structure, that he wants the judiciary to undertake. I haven't been able to speak to Chief Justice (Mogeng) Mogoeng, I'm sure it appears that he's continuing with the legacy of Chief Justice (Sandile) Ngcobo, because I see the consultants there who used to run that office under Chief Justice (Sandile) Ngcobo are still there, they are based there at E dura House with me.

Int I also wondered, Theo, when you applied to the Constitutional Court, what had your hopes been for your job in terms of being able to work at this court as a lawyer?

TS For me that was a milestone. By the way when I was at the Public Service Commission, I was at level Chief Director. So same like level as this, so it was what you might call a cross transfer. It was not like as if it was a promotion. But when I saw the advert, you know, with your strong activist background, I thought, the wishes that...I mean, things that you'd been struggling for at 'varsity, you know, your life, and this court is taking shape, and this Constitutional Court, you know, our Constitution says it is the apex, it's a constitutional democracy. And being a trained lawyer, you find yourself in there, it's a learning experience for you, it's something that I think you cannot learn anywhere else. So for me it was just like that, and I think I probably might have impressed them also during the interview, when I said...when they asked me, why do you want to leave your job at the Public Service Commission, an exciting job and come here and do just a cross transfer which is not a promotion? And I said, Judge, I think this is a...when I saw the advert that they needed someone to establish an Office of the Chief Justice, that the intention was the judiciary should be independent as our Constitution says. So I thought there's something that probably I could contribute to as well, you know. And I felt that I was contributing actually under Chief Justice (Arthur) Chaskalson and Chief Justice (Pius) Langa, that with those discussions I'll be

patient, this thing will take shape and I'll be part of it in one way or the other. Maybe not as head of the Office but as part of the court somewhere. But it still continue, as I say, that Office has not been fully established yet. We're hoping that probably it will be established during the reign of Chief Justice (Mogoeng) Mogoeng. But those, as I say, those are the exciting...that's what excited me the most, you know. You are going to work with Chief Justice (Arthur) Chaskalson, a giant in our legal field, in our struggle as well. Then there was Chief Justice (Pius) Langa, also one of the luminaries of our struggle in law. There was the then Deputy Chief Justice (Dikgang) Moseneke, one of the greatest people also in our legal field and in our struggle. So you are going to be milling with those people, you know. Learning from them, from their experiences, getting, deriving some lessons there. So that's what excited me. In fact, when I was based in the Constitutional Court, that's what, you know, you interact, you meet with the judges in the corridors, go for a chat, you know. Those were the exciting things for me, and I got to meet with the heads of courts, as I say, the Judge Presidents from the various divisions here, and to interact with them. Just learn from them and just know from their great minds, just tap into their great minds sometimes. So that's what really excited me.

Int Theo, I was wondering whether there's anything I've neglected to ask you that you'd actually like to add to this oral history interview?

TS Not really, not really. Because when I was told I was...I didn't know what...I got a letter from Chief Justice (Arthur) Chaskalson to come, inviting me for this interview, and I said, there's no way I'm going to not to come when I'm invited by Chief Justice...I hold him in high regard. I can't, you know, say I'm not coming to the interview. So I'll come and hear what they're going to say, so I didn't come here prepared.

Int That's okay.

TS Maybe if you could have given me some brief background. Well, the letter from Chief Justice (Arthur) Chaskalson did give a brief background, what is expected of, you know...but I thought, he contacted me personally with a letter and said inviting me for this interview, I must come. I would have been glad if I'd been interviewed as the head of the Office, you know, it would have been a different thing, I think I would have been able share more light. I can only speak about, as I say, 2009, about this Office.

Int That's right. Theo, thank you so much for sharing your experiences and for being so candid, and I really hope that things resolve themselves soon for you.

TS We hope so too. Thank you. Thank you for the opportunity.



Int Thank you.

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