

**Trevor Bailey**

**LRC Oral History Project**

**Interview 1: 1st August 2008**

**Interview 2: 6<sup>th</sup> August 2008**

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Int This is an interview with Trevor Bailey and its Friday the 1st of August (2008). Trevor on behalf of the SALS Foundation in Washington DC, we really want to thank you for taking the time to participate in the LRC Oral History interview. I wondered whether we could start this interview, if you could talk about your early childhood memories growing up in South Africa and what your experiences were and where your sense of social justice and injustice developed?

TB I grew up in Durban in a liberal household and my parents were certainly very politically aware, they'd lived out of the country for a number of years. And through my parents having since lived on a sugar estate in Tanzania for five years and they met people from outside of South Africa and from Europe and other parts of Africa, and this certainly gave them a sense that the political dispensation in South Africa at the time was not a just one. And my father always said to me that he grew up in a family where there was a great deal of prejudice, in a sense, there was a dislike of Catholics in particular, and this is in a sense what got his sense of justice going, so to speak. And initially he was involved in white opposition parties to apartheid; and my father came very close to getting banned at one point because he was in a meeting one night where...and he managed to sneak out via the back door of the garage down in Durban, and those people who didn't, in a sense, manage to escape, all subsequently, they were rounded up and they were banned. And so, I had a...I grew up in a very warm family and I had a very, very happy childhood. And, but, certainly there was always this sense that...whenever there was a sense of loneliness, so for example I would be perhaps the only person amongst perhaps one of...and maybe one or two others, from time to time, who would come from a family that would not have supported apartheid.

Int You mean in school?

TB Yes. At school. And even, you know, I remember one occasion one of the masters actually was very, very aggressive towards me and my brothers, and my folks always put that down to the fact that, you know, my parents were known to be people who did in fact not support the apartheid system. And ya, so there was always a sense of that one was living in a society that wasn't right. And so in a sense that...and I guess flowing out of that, together with my just...I guess only manipulation, was towards the law, and I then, as I went through, you know, through high school – in fact in my matric year was 1976, which of course as we all know was the year of the Soweto uprisings – and then there was the real issue of: do you go to the army, do you not go to the army? Do you go and support this system? And if you went you went reluctantly. If you didn't go it was either jail or you left. Or you'd go into university.

And I remember having a discussion with my father and his attitude was: well, of course we don't support these guys but his advice was to go, to just get it out of the way, although one didn't support it, and...certainly I wouldn't have been mature enough anyway at that point and I think strong enough to become a conscientious objector at that age.

Int The End Conscription Campaign hadn't really gotten off?

TB No, not at that point. So, because certainly if I'd gone to university first I in fact would not have gone to the army and the consequence of that is that I probably may have left, or of course when...by that point would have certainly End Conscription Campaign had got going by that point. So who knows what would have transpired, but, and certainly I then went off to university, got the army out of the way.

Int That's two years?

TB Well, at that point, while I was there they made it two years but they said if you're going off to university you can do it for a year and then go off to university. So, in effect, I ended up doing 13 months. And then certainly made a decision thereafter there would be no camps and no further involvement and had no further involvement in the military issue. There was, I think, for an 18 year old, for some white South Africans that was a big issue. And so got that out of the way, thankfully. You know, I've often looked back and thought, well, one shouldn't have gone, and but I think if we're going to look at history we've got to look at history in its time and we've got to give a **inaudible** type interpretation to it. And so yes, then it was off to university and there I, that time I played a lot of rugby at that time and was involved in the rugby fraternity there for the first couple of years. And I then stood for the Student Representative Council and...

Int Which university did you go to?

TB At University of KZN in Durban. And I subsequently ended up being President of the Representative Council, chairperson of RAG, and through my role in the Student's Representative Council, and a person I was friendly with then and I remain friendly with today, a person by the name of Chris Swart, is that we together just...and one or two other students I might add...you know, at that stage said, well, we're doing these law degrees, how can we use our skills to bring about a more fairer society in which we live in? So...and what for me was interesting is that I don't believe that at university the law faculty necessarily changed me around human rights law. That's not to say that there weren't people within the faculty who were not committed to that, for example Professor (Tony) Mathews he's now died, was a very well known human rights academic, liberal academic, and there were others. But certainly I would say that my...what I term my life education, in fact took place through my interaction of being involved in SRCs, NUSAS, and then at a national level, meeting other students of colour from other universities. And who began to challenge me even more about my role as a white, young South Africa and what I would do. A very meaningful experience for me, there was a...I'm a Christian, and there was this

organisation called SUCA, Student Union Christian Action. And they were of course seen to be right on the left with the Christian circles and I was often, ya, seen as being that and sort of the...I always felt that perhaps the SCAs and the YMCAs tended to look at one with a little bit of...mistrustful would be the right word, but **inaudible** look at one in the usual way. And because one was seen to be on the left in, you know, in student politics. So, and those were the late seventies, early eighties, in a sense flowing out of the Soweto uprisings and what that meant. Those were the beginnings of the war, serious turbulent times, so to speak. Of course things had gone back to the fifties and the sixties. And so those were important days for me, they helped me to formulate and articulate some of my...many of the views from which influenced what I went on to do later on in life. While I was...as President of the SRC I ended up being sued by the head of the Political Science Department because this little bit of background there was that Rick Turner was a person who was killed under questionable circumstances and his successor was a person who subsequently it transpired would deliver lectures to the military and so on, and quite frankly, this is all a matter of public record, Professor Clifford **Borne**, was not a very academic and if Turner had academics or students flowing into this lecture theatres, Clifford **Borne** had the opposite effect. People simply moved out. And it got to a point where the third year class was down to three and one didn't have to work particularly hard in this Political Science class to pass. And certainly there were other academics in that department who you did have to work hard for. And anyway the student newspaper, Dome, did an exposé on him and flowing out of that it was seen to be defamatory. And I was then sued in my capacity as the President of the SRC. The person who defended the six or seven of us on the SRC, together with the then editor of the Dome student newspaper, was a chap by the name of Chris Nicholson. Now Chris Nicholson at that time was Director of the Durban Legal Resources Centre and so that was my introduction into the Legal Resources Centre and in particular to Chris Nicholson and Richard Lyster. And that matter by the way was ultimately settled. And of course while I was at university one of the things we thought we would do is we would open up non-profit law centres later on. But Arthur Chaskalson, and Chris Nicholson in a sense, led the way. And just through my experience with Chris Nicholson in that case, the Legal Resources Centre was the place where I always wanted to go and work.

Int Really?

TB And I can remember in my...and this litigation was going on during my final year in first year out of university.

Int So you'd finished an LLB...?

TB Correct, ya. So I thought, well, that's where I want to go and become a Fellow. And I had some discussions with Chris Nicholson, and Chris' advice to me at the time was, Trevor go find the biggest law firm in Durban and go in there and get trained, they will train you the best. And he said, and then we can begin to talk. So I then went off and did my Articles with a firm called Garlicke & Bousfield. And now one of the things I can remember is when I went for my interview the first question they put to me is: what are do you doing here? We're capitalists and you're a Pinko!

Int Pinko? What does that mean?

TB It's not quite a Communist but you're a socialist liberal leftie. What on earth do you want to come and work in this commercial law firm? And I half expected that answer, and so I then gave them what I thought to be an honest answer is that they were a very, very good law firm and that I sought to acquire skills and that I'd been told by a number of people that in fact that this is the place where I would acquire them and that I would do no better. And so it was a very, very aggressive interview and halfway through the interview I decided: I don't think that I want to work here. And the way that interview went I eventually said to them that whatever they thought or whatever I thought, that one thing was clear is that democracy would come to this country. It didn't matter, I didn't know how long it would take but I certainly hope that it would be during my lifetime, and that all of us would have to adapt one way or the other.

Int So this must have been the early eighties?

TB This would have been...the interview would have taken place in 1983 because I joined them in 1984. And so I in a sense ended up giving them a little bit of a lecture and they stood back, and I thought, well I'm definitely not going to get this job. And what they then did is just to show who was the boss and who was a little more skilled at that stage; they then proceeded to ask me legal questions that I would never ever be able to answer. And so the bell rang three times and every time I got it wrong they would say, booing! You know, and this is how this interview went (laughter). So, anyway we then shook hands and I thought, well I don't think I'll be back here again. Anyway a week later I got a letter offering me a position. And to be fair to them, they subsequently said to me, it's because I took them on in the interview and they saw that I would take other people on for the benefit of clients. And so they...so it was a good time there. And they spent a lot of time telling me that I was a leftie, and I can remember on one particular case there'd been the big Baker's strike down in Durban, and the firm of course, G & B as they were known, had acted for management and they'd won the case. And I can remember senior partner coming into my office one afternoon and saying, excuse me Trevor, we're just off to a cocktail party to celebrate the victory, bye! And so I said, enjoy the cocktail party. And anyway I think then just fast forward a while, then we moved to 1986/1987, you're now into the State of Emergency, I'm practising commercial law...

Int Did you stay on?

TB No, I then moved to another firm called Miles & Moorhead, which was a...for me it was a fantastic move. They were just a small firm; the senior partner of the time was a man of impeccable liberal credentials and sense of decency, a sense of doing the right thing. And...in particular the two partners that I worked with there, and taught me an enormous amount. And they gave me the space to do some human rights work. So I then started to act for one or two people, and people who were in detention at that time, and so forth. And I think really came to...it came to a point where they and I were having discussions and it was really, Trevor where are you heading? We see

where your...you know, where your future and where your real interest lies, what's the future all about? And what I then did is I thought, I must go back down to the Legal Resources Centre. And that's what I did. At that time Chris Nicholson was on sabbatical, and he wasn't around. Richard Lyster was at the time managing that office, and I said: Richard, you know, I need to make some choices. And Richard said to me that he would have a discussion with Arthur Chaskalson. Which he did and at one point I then got a call from Arthur (Chaskalson), and Arthur (Chaskalson) said that they would like to talk to me and I was then offered a choice...I remember Arthur (Chaskalson) saying to me, well, do you want to go to Grahamstown, Pretoria, or Cape Town. I said, I'll take the last one first. And that's what then happened is that I was...I was then offered the position which I was delighted to be able to...and again I felt very privileged at that time, I really did. And so off I went down to Cape Town. And at that time they were starting the big Crossroads (refers to KTC) case and Steve Kahanovitz had been seconded down to Cape Town from the Johannesburg office. And, so I thought that initially that I would probably work on the Crossroads matter, but I think that the way that the case had already began and...what was very interesting for me was that part of my even joining the LRC I prayed through that. And for me I had always had a real sense of God calling me to also to do this kind of work; you can rationalise things at the sense of the social level but certainly for me I always felt that God called me to do this work. And I can remember one morning, and praying and I felt God saying to me I might send you anywhere to do this kind of work, and I...this has been a prayer during a quiet time, it was almost as if God was talking to me. And after about three or four days at the...Charl Cilliers at the time was the Chairperson of the Board of Trustees, and I'm sure, I remember it was about twenty to two one day and he was down there for the Crossroads matter, and he said, well, and they're going to be talking to you possibly about going to Johannesburg. And, you know, initially I was a little surprised but...because I'd only been down in Cape Town for six weeks. But that decision was right because people like Steve Kahanovitz and Matthew (Walton) were deeply engrained in that case, and I had no doubt it was right that Steve (Kahanovitz) needed to stay on that matter. And I think also I was probably a little bit of an unknown quantity but I don't think that was the main issue. It was that Steve (Kahanovitz) and Matthew (Walton) and others were working incredibly hard on that and it made sense for Steve (Kahanovitz) to stay. So the arrangement was, we think this case is going to last about six to eight weeks, and would I mind going to just look after Steve's (Kahanovitz) practice in Johannesburg. And I said, sure. So I always thought I was going back, so I said to the digs in which I stayed, I said to all my mates, listen just leave all of this, I'm back here in about two months. But that case went on and it went on and I think I ended up being in Johannesburg for about probably eighteen months, two years. And at that point, I'm not quite sure who spoke to me about it but it could have been Arthur (Chaskalson), I think it was, and said, well, you know, one needed to talk about being in the LRC permanently and in a permanent place. I was of course already a permanent employee. And it was just felt well, perhaps you and Steve (Kahanovitz), chat about it. So Steve (Kahanovitz) and I chatted about it and by that time I'd settled in Johannesburg, I was happy to stay in Johannesburg and I guess the same applied to Steve (Kahanovitz), and also so Steve (Kahanovitz) stayed down in Cape Town, I stayed in Johannesburg and continued to work for the LRC.

Int Right, interesting trajectory (laughs).

TB Yes.

Int I want to take you a little bit back, because...you mentioned that your parents were very liberal and had had...exposure elsewhere, etc. But in terms of...what I was curious about was when you went to school, what level of discourse was there that made you aware that it was lonely, that you were different, and that you came from a far more liberal background?

TB Well, I just guess the sense is that for most young South Africans, and for their parents' well...you know, in the KZN experience was that they were never Nationalists, you know? But they supported the old United Party. And some of course described the old United Party as being the Nats in drag so to speak. Whereas my...certainly my mother was quite high profile, she worked in the old Progressive Party. The Liberal Party by that point had been banned. And so I sense, in that sense you either...and I think this was very much depending on one's particular experience. You kind of either moved into...either be it underground or overtly of course Natal Indian Congress, Communist Party...you know, and so on. Or you tended...and then with the banning of the Liberal Party, you either then tended to move into the old Progressive Party. So I was certainly aware that...and there would have been people like my parents and other...people in the Liberal Party in the sense didn't necessarily at that point support the old Progressive Party policy of...and I'm just trying to think what it...was of...ya, at the time, I think if you met certain requirements then you got votes, but certainly they were looking to expand. But certainly those were the...that was the policy in the sixties, and so...certainly there were people in the old Progressive Party who would have been liberals who would have simply supported universal suffrage across the board, but saw that if they took that line, that they were already getting thrashed at the polls anyway. And so, and I can just remember growing up, my parents working through these elections and, you know, their candidate simply getting thrashed. But the whole idea...and one question as well, do you carry on? I can remember this debate, it's just...you know, that kind of late sixties, early seventies. And I can remember my mother coming home one night and they'd finally won a seat. Harry Pitman was the chap who'd won a seat in the old Durban North. And ya, I know there were a lot of people who would not have been white, would have said, well, we're excluded from all of this and what's the meaning of it? I mean, this whole question of should (Helen) Suzman and (Fredrick van Zyl) Slabbert be in the white parliament? But certainly I grew up in a home which is that we're using this as a means to something better and...so...and because, so my mother ended up the old, I suppose, call it the Women's' Movement within the Progressive Party in Durban, so she had a relatively high profile. My father was approached to stand but elected not to do that because at that time, you know, he was in a sense growing a business and simply couldn't afford that time, so it was always working in the background, you know, and providing the support and getting people out to elections and so on. So...and ya, certainly within the community in which I grew up the Baileys were since...my father's own brother on one occasion said to me that he was not disloyal like my father, and told me that my father was disloyal to the nation, because my father did not support the government. And I remember explaining that to my dad and my dad said, ya, well, I can understand that. So certainly my mother on her side and my father on his side, they were the lone rangers, they were the different

people in their families, the rest of their families were all very, very conservative, typical white South Africans, either voted Nationalist Party or United Party. My parents weren't like that. And because they were kind of high profile...relatively...certainly my mother was more high profile. And so there was a reputation out there, and this was known at schools and so on. And so then, there's...at that sense one was, you know, one would say, but this is wrong. And in a sense, you know, whether one be aged twelve, fourteen or perhaps even sixteen, you know, one was seen to be different. And at that...certainly I would have...in the earlier years, at primary school, and perhaps really early years at high school. And would obviously...I went to a government school in Durban called Glenwood High School, and those were...I have to say were lovely days. And there were masters there who had a meaningful impact on my life. And you know, what was interesting was that the deputy headmaster was a chap by the name of Koos Basson, and he taught Afrikaans and set the Afrikaans paper, and I always thought as I went through school that he was the Broederbond man, within the white...within the largest English speaking government school in Durban. But Koos (Basson) was a decent man, and one of the things that he said to me has been an abiding message for my life, and that was: you never treat anyone else the way you would not want them to treat you. And I was subsequently told in fact that he wasn't the Broederbond. And then there were other...there was a teacher by the name of Anthony Hortop, and beard, and had played rugby, captain of the university rugby team, and now Toppo as he was affectionately known he ran a poetry society but he also coached the first rugby team. And Toppo as we knew him, also challenged...clearly his politics were of the left, and so he would always be...but he was also quite astute, the way he would challenge us. So for example his wife had taught at a school for people who were physically and mentally challenged. And so within the nature of what goes on in a classroom people might, as fourteen year olds pass comments about people who would have been challenged, and he would say, you never do that! You know, my wife is the headmistress at a particular school and these are wonderful people! They may be different, they may be challenged, but they're people! And he'd kind of move this quite cleverly the debates and so and around...and into issues of race and so forth. I mean, another example, and this is a small world, is that one of my history teacher's was a chap by the name of Rolf Nupen. At the time, his brother, Charles (Nupen), who worked for the Legal Resources Centre was in hiding, because he was President of NUSAS. And one of the things that...so Rolf, and of course his politics certainly wouldn't have been pro-government, would say: well it's very interesting that you've got to find of your brother's whereabouts through the newspaper. And so he was just getting these things out and just...so he was challenging us, perhaps in a less direct manner, than say, Hortop did. And then there were one or two other teachers who would, you know, challenge one along the way. And I remember at...once I'd finished school, having a drink with Hortop...with Toppo one night, and, you know, and we were talking about one of the things where he'd said to me, ya, you were perhaps the one of a very small number at high school now who certainly did not support the system. And he said, well, you know, I...you had to be careful but he said I learnt along the way. Now, Hortop had respect because he subsequently went on and coached the Natal School's Rugby Team, and rugby as we all know is a very big thing in South African schools. And so he could perhaps get away with things that others may not have done, but he said he learned. So for example...and this in a way tells how far this country's come, is that a...and someone might say: well, black people are stupid. And Hortop would say: but they're not! And he'd say: well why do you say

so? Well, because my father told me so. And his...and he would say: but tell your dad that that's not so. Maybe your dad's stupid for saying that. I can't do that sir, because he'll hit me. And so old Topy would say that he had to think of other ways of challenging, and he said, so one of the ways he learned was you needed to show proof. So inevitably these kind of conversations would come up but a year later and he would say... **inaudible** black people aren't very bright you know. And, well, why do you say that? Well, because my dad told me well that's just the way it is. And he said: but, are you sure...Topy would now also begin to say, but are you sure about that? You know, what about that black guy who played centre for Michaelhouse. And, because you know he came 4th in the maths Olympiad. No, never! So now he would say, stop the class, he'd go up to the library and he'd get the Michaelhouse year book and say, well, look, there it is. And so he said, so what he learned at the time was that you needed to present facts and alternatives to get debates and, you know, going. And, but, it was sort of a conservative environment, and one of the things that, I was obviously involved in the debating society at school, and there was a friend of mine, a chap by the name of Gavin Weir, and so we thought, well, we wanted to involved more people in debating, so we decided we'd start up a parliament. And this was in our matric year; now by that stage I was playing first and second rugby team and a prefect and all of those sorts of things. And so we started the parliament up and that year the standard eights were reading Alan Paton's Cry the Beloved Country, so we thought we'd invite Alan Paton – and of course he had headed up the Liberal Party – and to come and open the parliament. Which we did, so we put the posters up at school, and so Alan Paton was going to come. And on the day that he was due to...well, the day before he was due to arrive I was called in by the headmaster and I remember, Mr Dixon, as he then was, and said to me: Trevor, what's the meaning of all of this? This is politics. There are no politics in my school. And Alan Paton may not come. And I will open your school parliament. And that's what happened. And it shocked me how strange that standard eights could read his book, which was sending a very powerful message for its time anyway, but he couldn't come and address the parliament!

Int It's ironic.

TB Ja, and so that was the kind of set-up that we lived in, and that was 1976 by the way. And that would have been a month before June 16th.

Int Trevor, when you went to university, you were involved with student politics, but NUSAS at that time had broken away from... the black students had broken away from NUSAS so NUSAS was largely a white student organisation. Where did your interaction come from that you mention in terms of interacting with black students then?

TB The...well, there would have been interaction with black students on the campus, and because if you were going to do courses that weren't offered at any of the so-called black universities, but were only offered at the white universities, then you would make application to the minister and the minister would then give permission. Now there was a course at Natal University which was called Comparative African Government and Administration...or Comparative History...anyway there was a



particular course, it wasn't offered elsewhere and so a number of black students would come in. Now...and so there was obviously interaction there. And also interaction with some Indian students and some coloured students. And a number of them were taking that particular course. Now interestingly enough, one of those students was a chap by the name of Benny Langa, he was the brother of the present President of the Constitutional Court, Pius Langa. And so Benny (Langa) was a person I began to have some interaction with, and a couple of those other students. And you're correct NUSAS at that point then was predominantly white. My most meaningful interaction took place with this student organisation...Christian organisation called Student Union Christian Action. And people like Steve de Gruchy, and Mike van Graan was involved in it, and **inaudible** Taylor. And then Mzo **inaudible** who's now a bishop in the Lutheran church. And so...and the good thing...and the great thing about that was that...and obviously the common denominator was, yes, we were Christians but we needed to be doing something so Student Union Christian Action has a studenty ring about it and so...for example, the Cape Town SUCA body is used, because Mike van Graan is a well-known playwright in South Africa and always been an activist and continues to be so. So they use theatre in the streets to kind of challenge people and so on. And I think I often felt that we needed to be a bit more aggressive elsewhere around the country but certainly, it really meant that at the SUCA conferences, which one didn't necessarily get at the NUSAS conferences, there were people from the then University of the North. And from some of the theological black colleges. So it was there that one then started to meet students, you know, who were black from those other universities. So for example, the old Student Christian association had split, had become a Student Christian movement that became the black body. The SCAs had become the white bodies. And believe it or not, at one point, Andries Treurnicht, and he in fact I think was a full-time worker for SCA in time, and I think...and I'm open to correction but I have a sense that it kind of split in about the time that he was involved. So the SCA guys were quite radical and Cyril Ramaphosa at some point had been involved there I think, and...so it was at that point that one really began to be challenged in a more meaningful way about what it meant to be white, what it meant to be black. And then to begin to experience those sorts of things. So, for example, I can remember being...an occasion coming back from a conference and we had students who were black with us and on the border between KwaZulu-Natal and the Free State there's a place called Van Reenens and there's a big garage at the top of the, before you go down Van Reenens, going towards Durban from Johannesburg. And I remember us stopping and wanting to be served and, you know, we were told that we couldn't be served because we had people of colour amongst us. Another instance I remember going to the old Naval Hotel in Durban with some Indian student friends, and we all sat down, we thought we're going to have a beer...oh no, we can't serve you because you are...because you're white...sorry, because you're Indian and with coloureds. And so we left. And I can also remember being at a SUCA conference and we decided well, let's go and see this Voortrekker Monument. And so a group of us go, we're, you know, white and black and we were then told no, no, you can't go in, because only, people of colour can only come in on a Tuesday. So, you know, it was those sorts of things. And, but...you know, kind of brought out the...you know, brought out the apartheid issue. And...and you know, and so it went on. And at university when I was on the SRC, I knew that...well, certainly in my first year at the...on the Student Representative Council, it was in my second year, and I was still playing rugby at the time, and I'd stood for the Student Representative Council, I

got...I didn't top the poll but I think I came second or third. And the SRC had decided to go away for a...on a strategic planning weekend, but because I'd...at that point I was now the SRC, I'd been appointed chair of RAG, I was still playing some rugby, and my academics were taking a bit of strain, and I said: I can't go, I've just got to get essays out now, I've got to work. And anyway on the Friday night I got a telephone call and it said...I've forgotten the gentlemen's name, it was an Afrikaans sounding name, he said, I'd like to come and see you. And my mother was overseas at the time, it was just my brother and I...I mean, my father and I...staying at home, and I said, oh I got this call, these guys want to come through and see me, Afrikaans sounding...my father just said to me, well, they're coming here? You can deal with them in the lounge, and if you need to call me, call me in, but be careful. And they then came in and very friendly, told me everything about myself, told me everything about my father and his business, and my family. And our histories. And then said to me, well but you know, you're a rugby guy...but so just watch out for these SRC types. And they then asked me to work for them and they then told me they would look after me. And I told them no, in no uncertain terms, and I said that I would...I'd never do that. And anyway they then left but they were still very friendly, and...but that was the last time they were ever friendly.

Int I'm sure...

TB And, you know, subsequently, you know, I would then see them on the campus, and...but they'd always ignore me. And one occasion I can remember we'd just come out of a big student mess meeting, and I was...at that point, I'd become President of the...ya, I was President of the SRC at the time...but my deputy chair at RAG had been hitching a lift home and this guy picked him up and had wanted to chat to him, but what this...friend, Conrad said was...he then phoned me immediately and said, watch out, this guy picked me up, etc, etc, and he'd then written the registration number down. And anyway this guy then phoned and he said: listen, you just tell that guy, that when I saw him taking my number down, if he wants to get funny, we'll sort him out.

Int Gosh...

TB And I then just said to this guy, well, you can do what you want to do.

Int I was wondering, Trevor...in terms of the legal profession, what do you think actually led you to do an LLB? What were some of the influences?

TB Ya. Well, in me very clearly, you know, by that point, one was being challenged by students, and as I said earlier on, my kind of life education really took place outside the classroom. And it was those experiences that said to me, yes, definitely do law, you're going to do law because law controls the system, we need to change the laws that control the system.

- Int ...you also said that somehow you really knew that you wanted to be at the Legal Resources Centre, was that because of the case that Chris Nicholson was defending, which you were involved in, or...?
- TB That was my, and in a sense, introduction to the LRC. At the end, the LRC was an organisation and where people were wanting to use the law as a means for change, and therefore it makes sense to, you know, to go there. certainly as students we thought as we...you know, you talk into the light, and so before the LRC had started up we thought, well, this is the sort of thing we would do. And, but then it, you know, Arthur (Chaskalson) and Chris (Nicholson) had, together with others, the (Felicia and Sydney) Kentridges and Charl Cilliers and so on, had started up anyway and therefore it made sense to go and join it.
- Int But if, and I ask this question often, if under apartheid...Parliament was supreme and could overturn any legal victories, what made you think that the role could be used to create social change effectively?
- TB Well, I mean, one of my principles said in law that the biggest mistake is to do nothing in any case. And you've got to do something and you never know how it might unfold. And the other point is that I, as I said earlier, I'd grown up in a family where apartheid was wrong, there was never any question about it, and so the view was you kind of do what you can with your available resources but to remain silent would be the bigger mistake. And certainly, you know, my folks always said after another election, we're in for the long haul here. And so certainly when I joined the Legal Resources Centre, and at that point I...at that point I even thought perhaps I would have still been there today because certainly even, you know, one could have argued, even in the eighties, that if the Nationalist Party took a pretty militaristic position that they could have held on for power a lot, lot longer than they did. So...and you know, one was really just...one was in there for the long haul.
- Int Absolutely.
- TB And I was astonished in the sense that things caved in as quickly as they did.
- Int Right. When you started off at the LRC, I know you went to Cape Town and then it was a bit difficult to gauge where you'd be, but Arthur (Chaskalson) created this sense of stability and you settled in Johannesburg. I wondered whether you could talk about your experiences in Johannesburg, the kinds of cases you took, etc?
- TB Ya, certainly. Well, when 1987 we were right in the middle of the State of Emergency and...in the Johannesburg office I took over Steve's (Kahanovitz) practice. And Steve at that point was dealing with a lot of detainees and there were also a lot of actions against the police for having...damages actions arising out of having beaten up individuals and so forth. So Steve (Kahanovitz) at that point had been co-ordinating the Lawyers Detainees Support Committee, so I was involved in that, so I co-ordinated that. And those really were meetings of lawyers getting together, who were

all at that time acting for detainees. And we would talk about things such as strategies, and particular cases and, you know, and so forth. So initially I spent a lot of time in prisons going, on the road, going to see detainees and instituting and continuing with these damages actions. So that was the big part of it in the early days. And that certainly continued at least for the first year or two, so I would have got to the Johannesburg office in October 1987. And all of that would have continued pretty much through into 1988 and 1989. And that also took me into...because also now we saw the mass Democratic Movement getting going, we saw the rise of Civic Associations, and so I ended up acting for a large number of civic associations, and really across, what was then the old Transvaal...

Int These would have been affiliates of the UDF?

TB Well, they could have been. Sometimes they weren't, they were just simply communities. Often small communities in rural areas co-ordinating themselves and for many of them you're not getting services. This is all part of the wider strategy at the time to make things become ungovernable. And they would...obviously they would need assistance to negotiate around services. And so I acted for many civic associations. And I would go into places like Wolmaranstad and to meet with the civic association. Then there would be three or four other civic associations from rural areas, lining up to consult with them, and if needs be you'd consult with them under a tree, or you'd consult with them in the home of one of the activists. So you had a clear sense that these, and they were activists and they were challenging the authorities around services and delivery and so forth, but clearly it had a wider political agenda. And so...and often of course what would happen is that the services would be terminated. People need to get those services put back on. So...and I did a lot of work in, you know, in that regard. It was all going on at the same time where you were challenging police misconduct and those particularly being directed at persons of colour. You know one of the big things that we did, we secured the release of detainees, and by the time that I joined the LRC, the big legal challenges to the State of Emergency and so forth had by and large been fought, and some aspects of which had been won and some aspects of which had been lost. So the State of Emergency was in place and detainees...persons were being detained and so you were then just working within that particular paradigm. So ya, much time you're working with them. I mean, an interesting meeting was at the...through the Detainee Support Committee we also set up a meeting with Vlok, who was the then Minister of Law and Order. And we met with him in Cape Town. And I...I either went in first or second, and I thought inaudible that he would only give us 15/20 minutes, but he ended up giving...I was in there for almost two hours. And why I remember that is that David Dison, he was also a human rights lawyer at the time with Bell Dewar & Hall, and was on honeymoon at the time, and he said, well, I really want to go in first, I want to go home early because I'd like to get back on my honeymoon. I said, David (Dison), I'm not going to be long. But he said, alright go in. So I'm thinking I'm only going to be there 1/20 minutes but, you go in to the then minister's office and they've got all the files there and he's got his advisors, and as I said I was in there for two hours and trying to argue for releasing...one of the things that I remember saying to Minister Vlok is that my guys, most of them had been incarcerated for up to fifteen months, and I said, you know, one of the things you've got to do is apply your mind to whether they should be in or out. Now I said, well when did you last apply your

mind? And it became quite apparent that Minister Vlok had never applied his mind (laughter). And I said to him well, you're in violation of the law because you've got to apply your mind. And anyway we then left, with him saying that he would look at all these cases. So I certainly didn't secure any releases at that point. Anyway, in fact almost all of the clients that I was representing at that point were subsequently released, flowing out of that meeting.

Int That's wonderful.

TB So...ya. So I secured releases not through court actually interestingly enough but again I think through that meeting with (Adrian) Vlok, through the Detainees, you know, the Lawyers Support Committee, as it was then known. And what then...also 1989 interesting time in so far as the Group Areas Act was concerned. And in Johannesburg, Hillbrow and Berea historically predominantly white seemed to be hip young whites moved into those areas when they got married and then moved into the suburbs. And what we saw in the late eighties and early nineties was that a movement of interesting enough, so-called coloured folk from the Western Cape moving up to Johannesburg, Indian folk moving up from KZN, needing somewhere to stay. And whites moving out into the suburbs, landlords saying, well, we need to keep letting. And so we saw the gradual breaking down of the Group Areas Act. Of course what would happen is that landlords would then sometimes proceed to evict these coloured and Indian tenants who would perhaps...would often end up being exploited, more so than their white counterparts, and **inaudible** work as well is the Group Areas Act in place, so the landlord would say, I'm doing you a favour, you need to pay a little more. And so initially my clients who were being unlawfully evicted, were Indian and coloured, and that came through the LRC, again through the activists, through people like Cas Coovadia, and through people like Barbara Creasy who's now in fact the MEC for Sport, Art and Culture – she was an activist. And people like the Dangors, and the Transvaal Indian Congress, and they would bring these clients who were being unlawfully evicted. And so we would defend these matters as a matter of course. So for example, in one particular case, I remember having **inaudible** actually to evict the entire block, and so I remember getting about 48, I think it was, particulars of claim, and so we thought, well, we must defend these, so we entered 48 appearances to defend. And put in 48 requests for further particulars. So you'd to serve a file of papers on the opposing side that were very high, and then of course that meant that costs were beginning to run, and for the opposing side. And inevitably they would want to talk. And so that's how we defended most of those cases. And sometimes we had to go to court. And what also would happen is that there's a crisis, they'd just be evicted without court orders. And particularly there with Mahomed Navsa and we would work through the night and take papers ready for the following morning, and often we would just think on our feet. And because now you want to put people of colour back. What rights do they have? They're staying their, you know, unlawfully. But anyway, there were legal answers to those questions, often which were thought up, at two in the morning, and then we'd go into court the next morning. And certainly that really meant that in so far as landlords were concerned and I certainly wasn't liked. I can remember on one occasion there was one chap who we'd entered appearances to defend, requested further particulars, and was starting to be very costly for him, and so that case was running and then in another building his tenants came to the Legal Resources Centre. And I remember charging out there at

half past five that night, to go and consult with the tenants who'd been locked out, and who do I see, but this chap by the name of Mark Seal, and so he said to me: you are Trevor Bailey, and I saw his fist, his arm go back and just about to punch me and he pulled back at the last minute. And he had words to say to me, he was outraged, and I said to him that I would continue to act for my clients. He told me to leave his property, and it made sense to do that given his aggressive nature, and I said to my clients, I'll see you back at the Legal Resources Centre. To Mark Seal's credit, I walked into the office and the next morning he was sitting there waiting for me. And he'd come to apologise. And he said: I was out of order and I'm sorry but you're making life difficult for me. I said: well, life doesn't have to be difficult for you, I'm running two or three matters against you, let's talk about all of those. And we did, and we settled them.

Int So you did a lot of negotiation, it sounds like?

TB Ya, in fact a lot of my work was negotiation. And, you know, part of the problem too is that a lot of the law is against you anyway, so it was better to try and negotiate these matters. But obviously the ones you needed to fight you did but certainly in the end my practice at the LRC ended up, wasn't so much litigation based. Which was quite interesting because I joined and my formative years there were primarily all litigation based. But that is just the way things were going. So...and perhaps another matter I should talk and around Group Areas, and this is a story worth telling. Is that...again, in areas like Mayfair, **inaudible** and Homestead Park, for example, particularly was a white area but quite understandably because it was in and around close to Mayfair and Selwyn, it made sense that Indian folk would begin to gravitate into the white areas. Now what happened was that the state then instituted prosecution against sixteen essentially Indian families, and coloured families who'd moved into Homestead Park. They came to us and we defended these cases. Now often what you would do in terms of defending the Group Areas cases, you would need to take a...you were always in fact in a way at the LRC, really practising law with a shield as opposed to a sword. And so what you would always be doing is you would be looking through the Government Gazettes and saying well, ok, this is a Group Area, but has it been properly designated and the person who determined that it would be a Group Area, was he properly authorised? And you would need to go through these Government Gazettes to make sure that all of these things had been done. Well, in the Homestead Park matter everything on this occasion had been done correctly, and so the question was, well, we must look to another way, we've got to find a defence. So the defence I decided to put up there was that things had changed. And there was...those days the Appellate Division Authority that had...I suppose what we should do is let's go back a bit. There was the famous Goldstone judgment where Richard Goldstone, he was then on the...a High Court Judge, said, you can't evict people without alternative accommodation. So we would always explore that case and invariably one could find alternative accommodation amongst my clients so it wasn't necessarily an argument that was going to wash. But anyway we would always try and use that as a base. And by the way I say, look it wasn't an argument that was going to wash in the context of my clients, not that it wasn't a good reasoning by Goldstone **inaudible**. And we had decided that we would run our defence on the basis that though there was an Appellate Division Authority that didn't help us, but things had changed since that decision had been handed down twelve or fourteen years before. And that we were

therefore going to try and distinguish this Appellate Division Authority. So that was the defence. And also the other defence was we're going to be as dilatory as possible. We were going to ask detailed requests for further particulars. And then if they weren't, you know, sufficiently answered, we would then bring an application for further and better answers, so...anyway we did that and eventually we couldn't avoid but going to trial and then our issue was let's be dilatory in the trial and the magistrate didn't like what I was being, what I was arguing and I have to be honest too, is that I wasn't wild about what I was arguing either, but this was the strategy. And anyway, I remember interestingly enough, getting back from court one day and saw an article in the Star newspaper, which said, Reprieve for Pageview residents. Now, the history of Pageview was that they'd all been moved out, forcibly removed under the Group Areas Act, and there'd been this ongoing battle and by the Pageview residents, you know, to go back to Pageview. And anyway, there was this small article in the Star which said that President de Klerk had given the residents a reprieve and they would be entitled to go back to Pageview. And I thought, well, if he can let them go back to Pageview, my clients can stay in Homestead Park. Now what was interesting, this was at a time when de Klerk had already given his famous speech in Parliament. And he was now about to head off on his first overseas trip and to be received in the capitals of Europe. And I thought I must take advantage of this. And I discussed the matter with Mahomed Navsa, who by that time, I think, had become the Director of the office if he wasn't the counsel. And Mahomed said, ya, definitely, make the call! So I telephoned the State President's office and not of course expecting to speak to him but I eventually got through to his most senior advisor, and of course I had to be very careful about the telephone call that I was making. But it went something along the lines of this, and was that we understand that there is a separation of powers. And we can't ask you to interfere with the judicial arm of the law...of the State, but we just think that you need to know the following facts. And I then told him the facts. And I said, you know, we're just aware also that the President's about to head off to...off on his trips and he might...it's possible that he will be questioned about this. And we didn't know whether, just given the speeches that he gave in Parliament and the way the country's going to go, that it makes sense to be prosecuting these **inaudible**. Now I remember making that telephone call on Monday. Or it was a Monday or a Tuesday. And the senior person was a very articulate man, I remember he was a doctor, if my memory serves me correctly it was a Doctor of Law. And he then thanked me for understanding the position that the Executive arm could not interfere with the judicial arm, which was all clearly a fictitious conversation that was taking place. And he said to me, in his view that was not the way that government wanted to go, and the way the President wanted to go. He said, but he would talk to the President that evening. He said the President was flying off to Port Elizabeth and to address the Municipal Association...conference. And I'm sure...Association by another name at the time but he was going to address them and he then said could he please have my home number? Didn't have cell phones in those days, and asked for my details, and he said that he would get back to me. And he said he would speak to the President on the plane. And anyway, he then phoned me at half past eleven that night, and he said, listen, he had been on the plane with the President, but he said, the way things had gone, they just hadn't been able to get to this matter, but it was going to be dealt with and that he would talk to me in the morning. And I said that was fine. What then happened was that I had problems with my motor car. And...that's right, he was going to talk to me at seven thirty at the office. But anyway he'd made the call because Mahomed had spoken to him, I think. And anyway he then just left a message

to say that I should just go to court. Anyway I then went down to court and the prosecutor who had been prosecuting these things was a...for some obscure reason he'd been unnecessarily aggressive around this case. Anyway so I then went into his office and as I walked in there, and this guy was taking off, he was clearly upset. So anyway I walked into his office, at that point not knowing what the position was, and he then made some sarcastic remark to me about, did I think that I was clever? And anyway, then to cut a long story short, we then went into court and all of those sixteen cases and the other ones that I didn't know about and had apparently also been set down for that day...they weren't my clients...were all withdrawn.

Int Gosh...

TB Now it's my understanding, that that was the last ever attempted prosecution under Group Areas at places in South Africa. I never read of any further cases, I mean, I monitored it, but certainly it's my understanding that that's how prosecutions partly came to an end.

Int That's an incredible story, Trevor, amazing. The power of negotiation clearly...

TB Well absolutely. And then that just takes me into another big matter at the LRC. And it is, ya, about the power of negotiation, is that things had moved on and now black folk had moved into the inner city and there were evictions that were taking place continuously and my practice at that point had now become predominantly a property based one. Because by this point the, you know, detainees by and large had been released and the State of Emergency was at an end, we were now moving towards a negotiated settlement. And so these eviction cases were coming thick and thin. My life changed to the extent that I would spend at least a part of a weekend, in fact almost always a Saturday, sometimes a Sunday morning, and most nights generally, with the exception of a Friday night, and consulting with tenants in their buildings around the conditions, and because there was clearly now exploitation going on, landlords again were still saying Group Areas might still be in place, but there was exploitation going on. There was also another dynamic taking place, is that your traditional landlords were moving out, they were leaving their buildings, so you in a sense found a poorer tenant moving into the buildings. You also found perhaps a poorer landlord moving into buildings, you then saw decay and you saw overcrowding with all its consequent problems. And that would then lead to rent boycotts which in turn would then lead to evictions. And so at that time if I looked at the Star newspapers that often there were just pictures of families and their belongings just strewn across the street. And so we were involved in that, and that really was the, what I spent in fact almost my entire life then doing. Now there was one particular case that came before us, an entire building had been evicted, it was all over the newspapers, it was on 702, and there was barbed wire, police there, a mass eviction in this particular building. And so the usual thing of course was through the activists and get hold of the LRC, and I was given this matter on this Friday morning. And so I phoned the attorney on the other side and I said, can we talk. He said, definitely not. And his message in short was get stuffed, he didn't use that word, but that was the message. And so, I then thought, well, we have to take a technical approach to this one, so I then phoned one of the clerks or the fellows, at the Legal Resources Centre



in Johannesburg, her name was Sandy Paul. And I said, Sandy, this is the judgment, I just want you to do a search on these two PTY Limiteds. And so she did. And she eventually came back to me quite latish in the afternoon, and in fact very late in the afternoon, and she said, Trevor, I can't find either the plaintiff registered as a company, and I can't find the defendant, which interestingly enough, who's also a company. And because normally you'd have fifty tenants, but this time around it was a company...PTY Ltd. Because apparently there'd been...the landlord had entered into an arrangement with another company who then became the tenant in a turn that this defendant, and then had sublet to all these tenants. And so they'd got an order against the tenant and all those that occupied through the tenant. So I thought, I think we've got a case here, because if this is a non...if you've got a judgment in favour of a non-existent legal entity, against a non-existent legal entity, this judgment amounts to a nothing. Or this court order. So I phoned the attorney and I said to him, this is the information that I've got and I can prove it. So he said, send it to me. So I said, with pleasure. So I sent it to him, within ten minutes I got a call back he said I'm taking instructions. And I said, you've got to take instructions tonight, because I'm now preparing papers to go to the Supreme Court as if it was tonight. And so I was duly working through all the night because it had been a **inaudible** long day. And anyway what we then did is that we came back about 20, 30 minutes later and we said I've got instructions, and they didn't want to put them back, we'll talk on Monday morning, I said no, and you put them back, we'll talk on Monday morning. So eventually about half past nine that night then we managed to reach an agreement that they'd all go back, but we then agreed to meet at half past nine on Monday morning at the offices of the Legal Resources Centre. And it was really through that I met Mr David Gorfil who owned this building, and in fact owned another seven, six, amongst others. And he started off, he said, by the way my name is Awful Gorfil, as you probably know (laughter). And what was interesting is that in that negotiation, and Gorfil's attorney played the bad cop, and that was a guy by the name of Hector North, from attorney's Schwarz-North. Anyway, we then, over a period of time, we then negotiated a settlement of that matter. And what was very interesting is that (Hector) North was quite an aggressive guy, and, but at the end of the matter, once we'd settled that and we'd signed the agreement, he took me aside and he said to me, I just want to thank you. He said, this has been a real learning for me. And in terms of how, he said, you caught us out on the legal issue, he said, but I'm not worried about that. He said, on that side I was given instructions, I acted on them, you know, as a lawyer you don't go and do a company search on your own client. And he said, but with everything else that went on around us in terms of settling it and, you know, and this had been his first dealings with the Legal Resources Centre, and he said, he was impressed. Anyway, flowing out of that then there were other cases where (Hector) North was still involved and (David) Gorfil was the client, and it was very interesting that (Hector) North then in fact became the good guy. Because he'd seen the power of negotiation. And because you can win cases in court but, you know, even if you win the legal war, do you win the peace afterwards? And so, flowing out of that, my relationship from, with a guy like Hector North having been extremely hostile at the beginning, ended up being very positive, and he ended up always being reasonable and then looked to the negotiation point. And Hector (North) was a good attorney. Quite frankly he'd seen what negotiation could do. There may be another explanation to it. Because subsequent to this matter, and in fact what this...that particular eviction did is it started another massive project within the LRC which became known as the Seven Buildings Project.

- Int Yes, I've heard of that from Odette Geldenhuys...
- TB And of course, Odette (Geldenhuys) and I were working on that and I then not necessarily need to tell you all about it, but it was that...
- Int No, I'd like to hear about it.
- TB ...that set of...that piece of initial litigation led to negotiation, tenants were put back, then flowing out of that, (David) Gorfil then says, I've got another six or eight buildings, that quite frankly I want to get rid of. And so we then started, with Odette (Geldenhuys)...Odette (Geldenhuys) and I worked a great deal on that case. Odette (Geldenhuys) did enormous amounts of work. And the long and short of it was that we then put together a structure and it took a number of years to find the appropriate funding and so on to enable the tenants to buy those buildings from (David) Gorfil. And so that took us into the world of: how do you form a tenants association? Do you form a Trust? Do you form a Section 21 Company? So it all became quite commercial at that point. What was the best structure to house these buildings? Do you do it together? Do you have...does the structure own all seven buildings or do you have separate structures? If we're going to get the funding, what are the tax implications? All of those sorts of things. So we then needed to look at how housing associations were structured in other countries: Sweden, Canada, United States, Holland, United Kingdom, and elsewhere. And so those were all big learnings for, you know, for us and obviously then needed to seek advice from tax consultants and, you know, others. But I suppose just going back to (Hector) North a bit, what he also did is that, we ended up having and seeking advice from Anglo American Property Services at that time and that was really run by a guy by the name of Gerald Leissner. And he was very helpful in the advice that he gave us; I think Gerald (Leissner) also was a guy who had a social conscience and wanted to be seen to be doing the right thing and so on. And it was interesting because one of the things we then needed to do is, you'd have often, before you go into meetings, you'd have these strategy meetings, you know, what were our various positions if things didn't emerge, and during the course of one of the consultations, and old Gerald Leissner says to us – we were talking about negotiation – and he said for him the best negotiator he'd ever experienced was with a guy by the name of Harry Schwarz. Now Harry Schwarz at the time was a member of parliament for the, I think by that time were they the Progressive Federal Party or...? And it was just interesting that the negotiations I'd had with Hector North, and he was from the firm Schwarz-North, which was Harry Schwarz's old firm. But (Harry) Schwarz of course had been in Parliament for fifteen/twenty years before that and hadn't really been involved in the firm. And although, I don't know, but it did seem to me that (Hector) North had probably never worked with (Harry) Schwarz on ongoing matters of negotiation, because (Harry) Schwarz had been down in Parliament. But it was interesting that (Hector) North at one point was saying to me, I've really...this has been a useful experience for me, and then in and around the same matter in a way, one deals with someone else who then just simply says that the founder of that firm was the best negotiator that he'd ever had dealings with. (Harry) Schwarz had then towards the end...in fact I think by that point, (Harry) Schwarz had become ambassador to the United States. That was really his last calling. I know, the

first thing he did when the new government came to power was to resign. But again just a little anecdote, I suppose. And so that was the...so the Seven Buildings Project was an enormous project. We took a great deal of time, forever consulting with tenants, and with their representatives and with other NGOs. Now one of the NGOs that we worked with at that time was an organisation called COPE. And COPE had as one of their employees a chap by the name of Monty Narsoo. Now Monty (Narsoo) was a guy who'd never been to university but he was a man who was extraordinarily erudite and bright and a deep thinker. And Monty (Narsoo) was someone I also learned a great deal from. And so Monty (Narsoo) did a lot of negotiations with the tenants and so forth. And one of the things that we used to talk about is there was no body where...because what was needed often here was mediation. And we in a sense were doing all the mediating but there was no person we could say, well, you be the mediator. I'll talk a little later about arbitration and how we introduced that into inner city disputes. But the Seven Buildings Project eventually happened, but ultimately after I'd left, and this is not the reason, but it failed. It was the first project of its type and the whole idea, and that Seven Buildings Project was that we were going to buy the buildings, the tenants would then stay there, they would secure tenure in one form or another through payments of rent over time. The difficulty was, is that once that project got handed over, in other words, once it moved out of the LRC is that the real learning for it was that you've got to manage buildings, and you've got to have management skills to do that, and you also then got to have a, in a way, a single vision from the tenants. And then unfortunately what happened those things weren't very clear, although we'd spent workshops, training and facilitating and...I mean, an interesting thing is that at the time one of the persons who facilitated a workshop for us, and was a woman by the name of Helen Zille. And it was the only experience I've ever had with Helen Zille, but she worked with us for three days and there was this extraordinarily hard-working woman, and hand on the button, picking up nuances and so on, and so...ya, it was just interesting that, you know, of course we know where she is now, and...but you know, she did good work over that time for us. And that was just at one of the training and facilitating sessions that we had with the tenants to empower them and so on. Anyway, unfortunately that project, ultimately...

Int The Seven Buildings?

TB ...The Seven Buildings Project ultimately failed once it had moved away from the Legal Resources Centre through to personal issues between the tenants, the tenant management, the groupings, and so forth. But I've always believed, and continued to do so today, that sometimes you can learn more from errors than you can learn from the things that you do right. And it's interesting that the people...some of the tenants who became part of the management and the Trustees and so on, have subsequently since...to me, they've taken those learnings from the Seven Buildings Project into...because they subsequently became employed by the new government. And they have taken that Seven Buildings experience and the eviction experience, they perhaps experienced themselves, and into policies that were ultimately formed by government. And sometimes for example, like Monty Narsoo, moved into a very senior position within the Gauteng Provincial Housing Department. And Monty (Narsoo) phoned me one day and said: Trevor can I come and see you? And I said: well of course. And he said: you know, Seven Buildings took out about two years of our lives. And he said, at that point it was beginning to work, it hadn't failed at that point. And he said: but

one of the things that we always used to sit here in the office and say we need a body where we can take the conflict away from the site and the streets and we can place it in an environment where parties can resolve their problems. So we need some sort of dispute resolution mechanism. And out of that was...and as a result of that, was set up the Landlord/Tenant Act in Gauteng. By the Gauteng Provincial Government. Which I gave advice to Monty (Narsoo) on that. He piloted it through. And I must say it was with enormous pride that I sat in the Provincial Legislature on that Tuesday afternoon and every party in the house stood up and supported the Act. With one or two concerns but whoever it was it didn't matter whether it was the National Party, the...I think it was by that time, the Democratic Party, Inkatha Freedom Party, the ANC and so on. So that legislation went through and so began the Landlord/Tenant Board. At that point Monty (Narsoo) says, well, now we've got to set it up. And this now of course takes us now through to 1997/1998. And he says, well, what are we going to do? So I said to him, well I've got two or three months worth of sabbatical due to me. I said, what I'll do is I'll take a month off from the LRC, and I'll come in and get it going. And now...and that's what I did, at an administrative level. Now, what is important is to note that the Landlord/Tenant Act was...only had mediation powers. So you could lodge a complaint and then a mediator would be appointed and I was one of those who had been appointed – I was a member of the Landlord/Tenant Board who had a number of members, seven in total, and their job was to mediate these disputes. And so we set the Board up and we had a fair amount of success resolving disputes. So there was no doubt that the concept worked. Initially the landlords treated it with a great deal of mistrust, and but our difficulty was we didn't have powers to make rulings and orders to say: you will do. And we could also be ignored. But the Landlord/Tenant Board nevertheless worked. And it was important if you look at the chronology of where we'd come from and in a sense where we were going. So the Landlord/Tenant Board was the first of its type, and in the country it was the first piece of legislation of its kind in the new South Africa. It was also a very important piece of legislation because what it did is it gave meaning and content to the right of access to housing in the Constitution. Because what it meant is that you could...part of access to housing is not only the building of housing but it means it runs to quality of life, where people are being evicted you could at least try and resolve the matter, and then you could negotiate, and we had a great deal of success in, particularly around maintenance issues. Where landlords didn't maintain, and also tenants didn't always pay. And that's often the issue. But there were also cases where tenants were paying entirely but landlords weren't maintaining. And also the Jo'burg inner city at that time and its surrounding suburbs was still going through a process of decay.

Int Trevor, I was wondering whether we should stop at this point?

TB Ya. **(End of first interview)**

**Trevor Bailey**

**LRC Oral History Project**

**Second Interview: 6th August 2008**

Int This is the second interview with Trevor Bailey and it's the 6th of August (2008). Trevor, once again, thank you so much for taking the time, especially after a long and busy day, to participate in the LRC Oral History Project. I wondered whether... we stopped really at the point where we'd just started talking about the Seven Buildings Project and I wondered whether we could start with that, and if you could talk a bit about the complexities of that project and the LRC's role?

TB Ya. I can't quite remember exactly what we'd said last time around but I had started off by saying that the project began as a result of then...and all the tenants in a building known as Argyle Court in the Johannesburg inner city having been evicted. We then found after a company office search that there was no...that the court order in terms of which the landlord was purporting to act, was invalid and that the company did not exist in terms of being registered at the deeds office, or at the companies office, and neither did the company against whom the order was made, exist. And rising out of pointing that out to the landlord's attorney they then agreed to talk. And flowing out of that we then went into a series of negotiations. And the...in the short term the negotiations resulted in the landlord agreeing to write off about six months worth of rental, to allow the tenants to effect payment of the remaining outstanding rental by way of instalments. And that was quite important because often this was a poverty issue, and by arranging for instalment payments it meant that one was affecting people's bottom lines and they were therefore able to spend money on food and other things as opposed to simply paying the landlord. And it was also agreed that reasonable rentals would be charged because what it brought about the dispute, was the fact that the rentals were exorbitant. Another issue was that the tenants were being charged very different amounts for electricity, and so we then negotiated with the landlord for him to render standard electricity accounts until such time as the individual electricity meters had been repaired and/or installed. And because clearly in Argyle Court what had happened is that these buildings were now old buildings and the meters, amongst other things, were defective. And there'd been no maintenance and the landlord committed himself to maintain these individual units on the common property upon completion of maintenance forms by the individual tenants. That in itself was a very big job getting all those maintenance forms completed. And he'd also taken judgments against some of the other tenants and the negotiations resulted in him abandoning those judgments against our clients. That was important because the minute you've got a judgment against your name you're seen to be a bad debtor and then that affects your credit worthiness. So...and I can certainly remember that one took...abandoning the judgments, took some time, but we eventually got there. That was one of the non negotiable parts of the settlement. And also as I mentioned earlier that the overcrowding and decay had now become the order of the day and we worked through ACTSTOP to address that question, and that there was about educating tenants to say it's simply not right, that's why rentals are exorbitant. Of course the tenants would say, well, we sublet and we overcrowd in order to pay the rentals. But, and that's why the reasonable rentals was then linked to the question of overcrowding, but reduce the rentals, you'll reduce the overcrowding.

Maintain the building and reduce the overcrowding would have meant therefore better quality of life. And also...what I also want to say is that although the Seven Buildings Project started off with Argyle Court and in the end that series of negotiations affected seven buildings, hence the Seven Buildings Project. It involved 383 families and you can say well there are possibly on average five-six people staying in each unit. So that's 383 units, you multiply that say by six, then you begin to know the enormity and scale of the project. So ya, the individual complaint forms were...or maintenance forms were completed. What was also important was that it's still 1992 and Group Areas Act in place but the landlord agreed, despite the contents of the Group Areas Act to enter into formal written agreements of lease with the tenants. So there's now no longer an oral agreement of lease to hide behind the Act, and whether those written agreements of lease were valid, given the fact that the Group Areas Act was still on the statute books is moot but the important thing was that now tenants are felt that they had a greater sense of tenure in the building. So that in itself was a big win. I mean, the project itself received wide publicity and it's important in that for the first time a landlord had recognised that the solutions of a myriad inner city housing problems in Johannesburg didn't lie in confrontation but in negotiation. This was a landmark agreement and we used this agreement then to negotiate with a range of other landlords across the inner city and the surrounding suburbs. So that really deals with the agreement that then brought about the wider Seven Buildings Project. And so what was the Seven Buildings Project? It entailed the upgrading of seven blocks of flats and it's probably just worth mentioning what those blocks of flats were. The, as I indicated, Argyle Court was the instigator of the project by virtue of the eviction. And then there was, the other buildings were Branksome Towers, Claridge Court, Protea Mansions, Margate Court, Stanhope Mansions. And we in fact therefore dealt, and the persons on the other side were Gorfil Brothers Investments. That was the landlord. Yes, reverting then just to the project itself. As I indicated it entailed upgrading of seven blocks of flats in the central Johannesburg on a community based share block owned affordable housing system which would be managed by the owners. We started off in 1992, the negotiations and the project lasted effectively two and a half, almost three years. It took a lot of time. We found ourselves then during May 1994 submitting a detailed application for a capital subsidy. Now unfortunately that was initially rejected by the Transvaal Provincial Housing Board, because the subsidy policy didn't at the time provide for sheer block housing applications. So there were in a sense, and what had happened was that this was the first time that you would have tenants in block of flats, saying we in fact want to come to you as a group and we want to obtain a subsidy as a group as opposed to individuals. And the question is, well, how do we deal with that? I might also add that at times the eviction orders broke down, rather the negotiations broke down because the project was taking so long. The landlord's response was to launch applications for eviction in the High Court. And I always sensed that that was about trying to move the project along to get it back into the public domain. So that's certainly what he did in December 1994 and in fact they were able to obtain the court orders, we simply in the end didn't have defences to those, although we did try and argue in those court actions that the matter should be stayed because the project we were in the process of securing funding, and so on and so forth, but that didn't help because in the end the tenants even through the negotiations, unfortunately weren't always paying rental. Now some of the tenants would say it was an affordability issue, and I think for some of them it was. I think for other tenants that they were taking a chance, so to speak. In any event, as a result of those court orders a flurry of activity ensued. By this point there was a newly

constituted Provincial Housing Board; what they resolved to do and did was to set up a task team to further investigate the project. And because their predecessors had said this hadn't been done before and there were difficulties with it, the task team calculated that an amount of thirty seven thousand rand per unit was required in order to purchase and renovate the buildings. Because it was always our assessment that purchasing the building simply wouldn't be enough, you had to purchase and you had to renovate because of the decay – by renovating hopefully then the tenants were going to take some...would take some ownership both of the units and of the project, even if effectively the units weren't going to be specifically registered in their names. So the Board subsequently resolved to recommend to the Gauteng member of the Executive Committee for Housing, that in addition to the individual unit subsidy of fifteen thousand rand, that he make available a further two thousand, two hundred and fifty rand per unit in terms of the special circumstances – there was a provision in the...the discretion was afforded that where there were special circumstances then you could access an amount of two thousand, two hundred and fifty rand per unit. And so we accessed that maximum amount. What the Board also requested was the, for the Greater Johannesburg Transitional Metropolitan Council, that's really effectively the City of Johannesburg i.e. the Council, to contribute an amount of six thousand rand per unit towards the renovation of the buildings. And that's what they ended up doing, but that still didn't take us to where we needed to be. For the rest we had to go to the banks. And there the mortgage lenders agreed in principle, and subsequently did, to grant a mortgage bond repayable by the tenants, for the balance outstanding, to each of the share block companies purchasing the buildings, thereby manifesting the breaking of the red line. And that's very, very important because up until that time the banks would never...never publicly admitted to it, but there was what was known as the red lining policy. And that really meant that if you...since in essence the banks simply have got a map of parts of Johannesburg and they drew red lines, and if you fell within the red line you could never secure a mortgage bond.

Int Really?

TB And so what it meant is that landlords could never sell to willing purchasers who wanted to buy but could never secure a mortgage bond and so therefore what it meant was that it created an impasse.

Int What was that based on? What was the red lining based on?

TB Well, on the basis that the inner city and the surrounding areas were in a state of decay. Landlords in themselves had begun...had gone on walkabout. And so weren't necessarily paying the City Council for services and so on and so forth. Some landlords had just simply walked away from the buildings.

Int Really!

TB And it's **inaudible** and even where they had mortgage bonds and said **inaudible**. Some of them had emigrated and so it was, in that sense it was difficult for the banks in a sense to, well so they said, to follow the money trail to reduce their risk. And I

always felt it was actually a short-sighted policy. And what the bank should have been doing was to simply look at specific buildings, at specific properties and at specific individuals. And if they'd done it on that basis I think the regeneration of the inner city would have started a lot earlier, instead they had the bank had a red line and if you fell within you never got any...you know, you weren't able to secure finance. So, and that blanket policy I think set back the city for a number of years. So we would argue that the Seven Buildings Project was significant, not only because tenants were buying in the form of a share block for the first time, but because the red line was broken. And then the other thing that came about was that the Council was having standard property rates assessment policies and we were saying to them that you needed to rethink that. And what they then agreed to do was to introduce differential property rates. So, the initial decision from the Council to do that was at the incident of the project. So that was another first for the project. And perhaps just a bit more about the differential rates policy was that effectively in a number of the buildings you would have businesses on the ground floor and then residential at the top. The Council simply would look at this and they would say, well, you've got business therefore you pay business rates. So here you had some of the poorest people in the city, paying business rates, so in a sense they were subsidising as business was the residents in the suburbs. And so it was clearly inequitable. So that differential policy, very, very significant, and again reduced the poverty aspect. So ya, so there was a substantial monthly savings to all the tenants. And to the other 274 affected buildings in the city. So, really if you look at it those 7 buildings had a domino effect to another 274 other buildings, and affecting thousands of tenants across the city. As a result then of the Council then introducing its differential property rates policy as a result of the fifteen thousand rand subsidy we secured, as a result of the addition of two thousand, two hundred and fifty rand discretionary subsidy, together with the City's six thousand rand subsidy, and then the balance and the commitment from the mortgage members and stop the eviction orders. And that then method we were then able to put in place the structures in the particular buildings through the tenant's committees and the actual structures, which in the end enabled those 383 families to then essentially buy their own homes.

Int Gosh.

TB That's the Seven Buildings Project in a nutshell.

Int Thank you for that, Trevor. I'm wondering whether...from when I spoke to Odette (Geldenhuis) she was talking about how difficult it was because the LRC hadn't really had the expertise in working on a project of that size. And I'm actually wondering in terms of...how you...did you have to work with developers, or what was the process by which you approached it?

TB Ya, Odette (Geldenhuis) and I realised at the outset that we didn't have the necessary expertise in some areas. So, for example, we needed a person who understood numbers. And so that meant, you know, dealing with the bankers. And what was interesting is that one of the more forward looking banks said that they were...their interest was to see if there was a way that they could fund this. And the Perm, as it was then known, was still in operation, it's simply now been bought out and is now



part of the Nedbank group. There was a forward thinking CEO at the time, a chap by the name of Bob Tucker, and he made available one of his...I suppose what you would call people who worked in the structured finance team, to look at the various ways we could...what was affordable and how we could structure it. So that was very, very important, and ya, quite frankly we couldn't have done without them. And we also set up a relationship with then Anglo American Property Services. Gerald Leissner, a very well known person in the property arena, and he made some of his team available. In fact, he also made himself available. You know, we always had the sense that Leissner and his team had a...that they were business people with a social conscience, but also with an eye on the money. They were partly...they were really interested in the Seven Buildings Project because if the project worked then it could be replicated elsewhere. This could begin the regeneration of the inner city because...so from their point of view the value of these seven buildings was absolutely miniscule in comparison for example, the value of the Carlton Centre there in Diagonal Street. So they had a real interest in wanting to turn the city around and so they saw the Seven Buildings Project as a means to that. And perhaps we were also a little, all of us, including (Gerald) Leissner at Anglo American Property Services, the LRC, and we were possibly over ambitious at the time. But partly because I don't think that we quite knew what we were getting into. Because it had never been done before. And so (David) Leissner was helpful in around issues of strategy and advised us at that level perhaps what was practical to ask for and so forth. And clearly what we also needed to do was to work with...we saw ourselves clearly as being the lawyers on the project, and so there were a range of other things that needed to happen. So for example, the tenants needed to be educated around what were their rights and their responsibilities, and what would that mean. And so there we worked with an organisation known as COPE. And particularly there the person on the project initially was a chap by the name of Monty Narsoo, and there was also someone by the name of Carien Engelbrecht. I can't quite remember at this point whether Carien (Engelbrecht) was now formally employed at COPE or not, but certainly the Engelbrecht, (Monty) Narsoo access together with Petal Thring at COPE, were very, very important. Interestingly enough Petal (Thring) now heads up the policy unit at the Gauteng Department of Housing and every time I see Petal (Thring) we always talk about the Seven Buildings and the learnings of that project for the housing department. And so there would just be a range of layers of influence that the project had. So we worked with COPE in that they worked with the tenants in terms of a lot of their socialising and educating and so forth. You know, in a way we saw ourselves as co-ordinating all of this and keeping an eye on and dealing with the various legal issues and so forth. We also worked with another NGO organisation known as Planact and somebody who was helpful to us there was a person by the name of Patrick Bond who's written substantially and is now a professor in, I think, the geography department down in Durban. Now what was interesting is that Patrick (Bond) was an American and a very committed socialist stroke Marxist as I understood it. And so from Patrick's (Bond) point of view at the human level, you know, this was all about social housing, state providing housing within a wider context. So Patrick (Bond) was absolutely important to us and again in terms of the numbers, if we were getting assistance through Nedbank and the Perm on how to structure these things, in terms then of going away, putting it all together, making presentations on the numbers, Patrick Bond, absolutely vital to the cause. So those were the main players; obviously from time to time we met with the Johannesburg City Council. In the early days, of course this was now before 1991, it was...would have then been Democratic Party

led; Ian Davidson was there wanting to do things but in a sense saying, we haven't been able to talk to the people in the inner city. Partly because we're seen to be...it's a white government, we don't seem to have legitimacy at that point, we want to get involved, we want to improve the city. So...and they welcomed the initiative and ultimately three or four years down the line they came to the party with the subsidy.

Int Ok. I'm wondering, you mentioned another case that you thought was quite important to discuss, was it Swani...?

TB Yes, there was the Swanieville matter; now, I was involved in that partly also together with Moray Hathorn, but perhaps we can just again talk a little bit around the Swanieville matter.

Int Sure.

TB Essentially the...one of the organisations that the LRC would have worked with from time to time was the Black Sash, and they referred the Swanieville residents to the Legal Resources Centre. In essence what had transpired there was that approximately three and a half thousand persons were living in shacks on the premises of one Mr. Swanepoel. Now, Swanepoel had previously demolished the shacks of residents who had failed to pay their monthly rental to him, in the sum of, wait for it, at the time, thirty rand a month. So if you didn't pay the thirty rand a month then Mr Swanepoel had no hesitation in demolishing the shacks. And what he also then proceeded to do was to threaten the residents with physical violence if they didn't pay. Upon being given notice of a hundred percent increase, so it kind of went from thirty to sixty, the residents requested us to negotiate with Swanepoel on this and on a number of other issues affecting them. An agreement was reached whereby rental would not be increased without the proper consultation with the residents and Swanepoel undertook then to construct a rent collection office and install four new boreholes on the site. And...but so, there was also the...and Swanieville residents...because there were a number of camps and so...so that was a general negotiation in terms of Swanieville per se. But more specifically in terms of Swanieville one and two camps – they were called camps because they were nothing more than that. And just perhaps then a bit of history around Swanieville is that it was on a farm known as Rietvallei near Krugersdorp on the West Rand. What he'd done is during 1989 he invited residents to become tenants. Hence what he was doing is sub farmers farm crops, he farmed tenants, i.e. people, and he promised to provide the essential services. Initially, they were going to get a crèche, and so he didn't do that, as I indicated earlier on at Swanieville generally they then went on the rent boycott. He then gave them, the residents, a month's notice to vacate the land. When the tenants made it very clear they were going to continue to stay on the land, and what he then did is he then approached Eugene Terreblanche's Afrikaner Weerstand Beweging, otherwise known as the AWB, to enter the Swanieville camps and demolish the residents' homes. And that happened. The then commander of the AWB confirmed through the Business Day newspaper that they'd written permission from Swanepoel to demolish the residents' homes and that they intended to do so. He also then went on television 1 & 3, SABC 1 & 3, and confirmed that he'd made arrangements to have them ejected. It's that point when they then approached the LRC. What did we do? We started off by

simply addressing a letter to him and placing him on terms to furnish us with a written undertaking by ten o'clock on the 21st of February 1992, not to demolish the residents' homes. He failed to furnish us with the undertaking and...but on the same day that he failed to do it, the then Transvaal Provincial Administration served expropriation notices on him. And then...and simply saying that these are now temporary camps, what we're going to do is we're going to expropriate the land from you and we're going to develop it. So it was a...and obviously this had been in the public domain, the state, even then in 1992 – it's post the de Klerk 1991 speech, there's now clearly a change in attitude even within the bureaucrats within government, they'd been monitoring this, there'd also been some negotiations and discussions with the TPA in that regard. So they did come to the party and I think we need to acknowledge that. But I also want to say is that they wouldn't have come to the party without the LRC's involvement, without us having highlighted the matter in the press. And so the effect then was brilliant. It meant...the expropriation order meant that he couldn't evict. Nevertheless the residents at that time were still very, very fearful because it's 1992, it's before the elections, what were the right wing going to do? There was also a sense of the right wing and the then commando of the AWB wanting to kind of make their presence felt, because clearly they were on the right and they certainly didn't agree with the changes that were going on in the country. And what brought about the fear, and the fear was that the 12th of May 1991 was a very significant date, going back again now in the minds of those residents. Because what had happened is that in the early hours of the morning 28 people had been killed, 32 had been injured, and 82 shacks were burnt down in a pre-dawn massacre at Swanieville. It was all over the press. At that point we drafted papers with a view to obtaining a court order, interdicting and restraining Swanepoel and the AWB from entering the Swanieville one and two camps, and from anybody assaulting and interfering with them. While preparing those papers, we entered also into a series of negotiations with the South African police to say you need to be there, with the TPA – that's the Transvaal Provincial Administration – as well as the Krugersdorp town councillor, who interestingly enough acted as an intermediary, I've forgotten his name. But he was absolutely vital. Because we never dealt with the AWB directly. They wouldn't want to talk to us anyway, but we needed this intermediary, and he was a councillor, so he had access to them and he had access to us. In essence what then happened is that through those negotiations, as I've indicated, the TPA came on board and the threat of the demolition subsided and we didn't need to seek the assistance of the court and ultimately Swanieville then was taken over by the TPA, and ultimately the Department of Housing, and delivered. The details of the development I don't know about.

Int Sure. I'm wondering whether there are other cases you want to talk about?

TB Perhaps, another one worth just sharing with you was the...a matter involving Majestic Towers. Now Majestic Towers was a building that was subject to the Sectional Title's Act, and therefore it was subject to a Body Corporate. Now the...really the Majestic Towers is a very, very big building, it's on the corner of Louis Botha Avenue and Empire Road. It's probably every bit of thirty floors. There's Majestic Towers on the one side and then another very large building on the other side known as Majestic Gate. Now what had happened is that the Board of Trustees resolved that domestic workers could no longer receive visitors in their domestic

quarters. And what was interesting is that we were approached by the then again Democratic Party sitting councillor, a chap by the name of Martin Sweet. And I remember taking the call from Martin (Sweet) in my office one day and he said to me: you've got to help me! So I said, well, then come in and let's talk about this case. Now (Martin) Sweet himself never owned a unit, so he could never be a party before us. So I said to him, well, if you...obviously the resolution was appalling, we felt that it violated rights. I said: you've got to go off, and you've got to find some sectional title unit holders as clients for me. And he then came back with two. One was an old, old man by the name of Mr. Kahn, and then a younger man at the time, by the name of Jonathon Stone, he was a young lecturer in the Department of Architecture at the University of the Witwatersrand. And so Jonathon Stone and Mr Kahn...I forget his first name, I think it was Richard...became our clients, with Martin Sweet badgering us at every turn to challenge this ruling. Now...and we did challenge it and we went all the way off to the High Court, it was argued by Arthur Chaskalson as our senior counsel and Mahomed Navsa was junior on the matter. And...the domestic workers, as I alluded to earlier on, didn't have what we would call, locus standi, or the power to bring the action because they weren't the owners. The owners of the property owned their units with what was known as an exclusive use of those domestic workers' quarters, but they had the exclusive use to it. And while the domestic workers may have stayed there, ultimately it was the unit holders who had the exclusive use to those areas and part of the right of the exclusive use was to say, well, we'll let our domestic workers stay there. So the net effect of what the resolution said and the Body Corporate hadn't...the Board of Trustees hadn't thought through this...is that they were then denying themselves the right to receive visitors to the area to which they had exclusive use, so it was somewhat anonymous. But, it wasn't anonymous if one placed themselves in that their picture is that they didn't want too many, read into it, black folk entering Majestic Towers, and that was all...also for them it was an issue of security. That was the...and that might well have been their abiding concern, but the point that we made in our papers, was that if in fact it's a security concern, then you deal with it as a security matter, you don't simply arbitrarily deny domestic workers from receiving visitors. And you know, we put up a range of affidavits from the domestic workers, and I suppose one of the great things around, and the privilege of doing work at the LRC, is you just simply met wonderful people, whether they were moneyed or whether they were not moneyed. And I can remember the...taking down affidavits of, I think we put up about nine or ten affidavits from the domestic workers, and just wonderful people! And generally they are! I mean, that's why vast numbers of South Africans have domestic workers in their homes. And so we got wonderful stories about...and I in fact stay here on my own, and my common law husband actually stays somewhere else, but he comes to visit me on a Friday and a Saturday. And yes, sometimes he does stay over but it's never the intention he would stay there permanently. And then another case of: I live here during the week, because this is where I work during the week, and then I go off to Thembisa or Soweto over the weekend, but from time to time my children want to come in and visit me. So we created just a picture of normal people, leading normal lives, who were doing normal things, were now being deprived of the right to do those normal things. And I can remember on...during the course of that, and then they had to call special general meetings and so on, and we were asked to come along and said yes we would come there to observe and also advise our clients, Mr Stone and Mr Kahn, at the meeting, and then at some point they put it to the vote. And of course what the Body Corporate wanted to do, was they wanted to get a sufficient number of votes to show that the

majority are in support of this. And so anyway, I...they called this meeting and I then picked up they hadn't complied with their own rules about calling a meeting. And I remember then discussing the matter with, you know, with Arthur Chaskalson, Geoff Budlender, and Mahomed Navsa, and the view that we took was it was their meeting and that we shouldn't interfere with what we were doing, we would wait the outcome and then decide what to do then. So we went along to the meeting and I can remember the...they'd gone out and got the top sectional title lawyer, or perceived to be anyway in the country at the time...and so he was running the meeting and giving them the advice but he'd make a mistake. And so decided to let that mistake stand and then exercise our rights at the end, so I can remember he even saying to me you have to count, and he was completely confident that he was going to win, which of course indeed he did. And of course we were happy for him to win, because at the end of the day it wasn't going to count, because he hadn't given proper notice and done a couple of things that he should have done. And of course in the papers this was raised but there was the...the LRC were there, the representatives, applicants, representatives were there and they held the count, and we got a majority so clearly it must be the right thing. And the judge said a number of things in his judgments and one of the first things he said, yes, clearly it was irregular, but he then went on also and said, it's irregular because you must comply with your own rules. If we don't...if we allow the rules not to be complied with then we allow irregularities and absurdities and unlawfulness to prevail. And then he then moved on to the issue of the majority having voted for their security concerns, and I can remember his...and he used...I can't remember the name of their counsel, maybe Mr Cullen or...and clearly there they argued security was a big issue and the majority had voted for it. And they were entitled to vote for these sorts of things because they were the Body Corporate. And I remember the judge at the time, and I can't remember his name off-hand, but saying that he wasn't as sanguine as counsel for the respondents in the matter about a majority always being correct. And he then told him, said that...because one of the things that Body Corporates have to use, they must act reasonably. And he said, clearly you've acted unreasonably here because there was a range of other things that you could have done, rather than just have a blanket ban on the right of domestic workers to receive visitors. So it was thrown out. And of course that case then received again a great deal of publicity and that brought in other cases. But of course there's always a little bit of twist in any tale. And certainly one of the concerns for example, that the Kahns had, was their domestic worker was saying to them, well you know, if I can't receive visitors here, I think I'm going to have to leave. We don't want to lose our domestic worker! And so for example even Mr Sweet, these sorts of things weren't...I think the Kahn issue...I think we put Kahn's issue in that...we put that in the papers, Kahns said that if she can't have visitors, she believes that she can no longer live here, and therefore I'm going to be deprived of my right to employ someone who I want to employ who meets my needs. And similarly with Martin Sweet, he was saying, you know, whether it's Pesach or whatever, you know, we need our domestic workers to be available to for example cook for my elderly father on a Sunday. And so it went on and...so that case, you know, of Stone and Kahn versus the Body Corporate of Majestic Towers was very, very important, again because it received a lot of publicity, that's one of the reasons why we took it, because it sent a message to all the other Body Corporates who were thinking along these lines and there were a number. And, because subsequent to that I had a number of approaches. And it led to one or two other little instructions and I can remember there was a matter out in Sandton where again for security reasons the Body Corporate took...you

know, they were going to close the gate from where the domestic workers could now no longer go from their domestic quarters through the gate and then directly into the main block. It would necessitate them going outside onto the street, and then walking, and it was a very, very large complex, and walking all the way around – and it probably was about 800 metres walk if my memory serves me correctly – and they were saying, well, we work at nine o'clock at night, then we've got to go all the way and walk out in the street and we fear for our safety. So that was a big issue, and we then...that one never got to court because in the negotiations I said to the Body Corporate, this is what we will go and do, and in fact when I said to them you can't do that, here's the Majestic Towers judgment, take it away, read it, get some legal advice, let's come back and talk. And that's what we did and we ultimately resolved that one. And I can remember the gentleman who was pushing this matter, his wife was a...she could cook, but he couldn't. And he only told me this afterwards and their domestic worker had also said if this issue is not resolved, I'm going to have to leave. And he said to me, Mr Bailey, how am I going to survive when my wife is away judging these international ballet competitions? And he said...I remember him saying to me, you know, I'm most grateful, I can't even fry an egg. So that's how we resolved that one and a range of other ones in Yeoville, but Majestic Towers was important for that one.

Int Definitely.

TB And perhaps another one we can talk about, not so much property related, but in around 1990/1989, government was now looking at introducing toll roads into...tolls into South African roads. And again, we acted for a group of tenants or residents in Ennerdale. And I won't talk too much at length about it because ultimately that case was lost. But not through us. What had happened was they wanted to introduce the tolls onto the roads, but the tenants were saying, but we drive through the tolls, through that road every day off to work. Now part of the legislation said that you could introduce tolls onto a road if there was an alternative route. And the tenants were...and the residents were saying, the alternate route that was being offered was known as the Golden Highway, which was a bit of a death trap. And they said, we want to be able to use the highway, the freeway, and we don't want the tolls because it's going to cost us money. So again I then said to the community leaders, well you need to give me a client for whom the court is going to want to help. And we ended up finding a resident who had a quadriplegic child. And we then launched papers on the basis of that I've always used this road and if I can't use this road then the alternate route is not a reasonable alternative route to the freeway, particularly this child of ours who is quadriplegic suffers asthma attacks and fits and I need then to get him to hospital fast. And the Golden Highway is not the route for me to use. And we launched papers; a lot of things were quite technical. But what had happened and to my mind unfortunately is that the...in the meantime they'd introduced tolls on the N3 between Johannesburg and Durban, and the communities and business people down on the N3 road had started their process before us, and they got to court before us. And they lost. I was...and then the view was taken in the office that the main point had been decided. I was always keen for us to go back and argue on our facts because I thought that maybe we could have distinguished and so on, but the view was taken that the battle...the real issues had been lost on the N3 and...so what we then ultimately did is just negotiated with Tolcon, as they then were, the tenants would be

given reduced fees through the tolls and they would pay a maximum monthly amount. So we tried to, you know, minimize any of the deficit, so to speak. So ya, that was one that was lost. And then in terms of...there was another thing, perhaps just going back to the inner city, was that there was another case where the tenants again...action was instituted to evict 48 sets of tenants in this building. And again, we got into all the legal action entering the appearances to defend and so on, and we thought, well...and probably because we'd been doing a lot of negotiation elsewhere we thought let's try...because the trick was always to at one level to try and remove these cases from the courts, particularly where we were acting as a defendant. And particularly so where the clients hadn't always paid their rent. And in this particular building what had happened...perhaps again the usual locus classicus, whereby the landlord didn't maintain, tenants don't maintain...sorry, don't pay or reduce rentals. And what I then did is I came up with the idea is that maybe we should bring in as part of the third party intervention is to refer it to arbitration. So...and what we then did is we go the attorney on the other side, and his client, to agree to this. Now, there's a little story around how we got him to agree to this, is that I would get into my office every morning and at twenty-five to nine, I would get a call from the attorney on the other side. And I hadn't met him at the time but it was from a firm Alec Oshri. And this guy used to...I always felt he was abusing me, the way he used to carry on! (laughter) So one day I decided, I'm tired of these twenty-five to nine in the morning telephone calls, to be abused by Alec Oshri. So one day I then...as day follows night, twenty-five to nine arrived and a phone call arrived, and so I decided this was it. And I raised my voice more than just raising, but I certainly wouldn't say that I was entirely shouting at him. It was all by design because I had to regain control of this process.

Int Sure...

TB And he didn't seem to be taking umbrage at all of this! (laughter) And he started to respond to me! And anyway, to cut a long story short, Alec Oshri at that stage was in his late seventies and in his early eighties. I'd never met him, he had a hearing aid, because obviously he couldn't hear very well. And so because I started to shout back at him to say, enough was enough, he could now hear me! And so I was able then to...and part of my saying enough is enough is that this matter needs to be resolved, we need an arbitrator, we need to look at a novel way of dealing with this thing, he could hear it and he said he would take instructions. And so the rest of my negotiations with (Alec) Oshri was shouting down the telephone because that way I knew that I could be heard. But to be fair to him he was actually a decent man. He really was. And he said, no he agreed. And so we then got into...and we agreed that we were going to move this matter to arbitration. And so one of the things I'd learnt on arbitration you've always got to set a terms of reference and also choose an arbitrator who's going to want to listen to you and hear you and understand you. So...and we then got into submitting arbitrators. We agreed they would submit three, we would submit three. So what we did is we decided we would, we needed to find...he acted for the landlord, we acted for the tenant...we decided we needed to find an arbitrator who was perceived to be pro landlord. And so we went around, we did our homework who was...and we essentially looked for a good liberal social conscience kind of person. We ended up coming up with a chap who'd been to Michaelhouse and was the senior, very, very senior...I've got a feeling he was with an Anglo American Property Services. And I just wish I could remember his name, and

he was recognised as being a landlord friendly fellow, but we knew he had a social conscience and also that he would do the right thing. And so, certainly what we did outright is we simply said to them, no, your three we don't accept, but we'd had our guy, we put him in. And they came back and they said, we accept him. So we got our arbitrator, not that we had any...knew him or anything like that, we could never seek to compromise him, but we'd done our homework about who he was and the kind of...the sorts of way he'd want to come out, just given the kind of guy he was. And of course that's exactly what he did. He went in and put up a very good report, and it was all factual: I went in, I inspected all 48 units, this is what I found, this is unacceptable, must be repaired, and I think a reasonable rental, within my knowledge of working in the area, is X amount. So...and we came out of it, and clearly we were victorious in it. And that we were also were aware that we...and partly was to never ever gloat but just to say to the tenants, justice and fairness has been done. And so that case was very, very important because what it did was that it introduced arbitration as opposed to just mediation and negotiation, into inner city disputes. And it was then conducted under the Arbitration Act and that of course...and the arbitrator's decision, certainly the ones that...and the arrangement that we had in terms of our terms of reference was going to be final and binding, and they were bound by it. And I must say (Alec) Oshri delivered, his client wasn't happy, but you know, he delivered on that. And the reason why I just mention that is on our previous occasion we've spoken about the intervention of the Landlord/Tenant Board which came out of our experiences then. But I use that example to then...at the Landlord/Tenant Board to say that we needed the arbitration powers and in fact I even gave them that, the arbitration award, to the department to say, this is the way we've got to go, and that was used and presented to the National Department of Housing when they introduced the Rental Housing Act, which gives the tribunal arbitration powers.

Int Trevor...the previous time we spoke about the importance of negotiation, and it seems to me that subsequent to having left the LRC, the work you do is very much related to rental housing, if I'm not mistaken, and the use of negotiation?

TB There's no doubt, where I really have to say as a result of the work that I did at the Legal Resources Centre, I was then fortunate enough to go and study in the United States. And one of the things that I made a point of doing while I was studying over there, was to take a course in third party dispute resolution in mediation, negotiation, conciliation. And...one of the questions that one was asked on the course at the beginning is, well, why are you doing this course? And I said to them: I'm taking this course because I've been negotiating, and essentially I've been party to third party resolutions and so on, and I said, I've done it all just on the run. Because I've never certainly done a course in third party dispute resolutions, so I said, I'm really here for the theory. I've kind of done the...you know, I've done the practical side of it and obviously I want to learn and to grow and so on. So...and while I was...and then...I left in 1995, it was a time when, you know, we were going to get a Constitution and we were going to move into an era of constitutionalism and that's really what one want...this was seen to be the area where one needed to move. And of course I did a...as part of the Master's degree, I did a course in constitutional law and intended to come back here and practise that, that was always the intention. But the professor essentially took me aside one day and said to me, I think you need to go into mediation, arbitration and so on, because I think that's really where I've seen that you



have some skills in it. The skills that I acquired for that come squarely out of being on the run and working at the Legal Resources Centre. So there's no doubt that the LRC provided the foundation for that. And ya, as we said, we took all the learnings and then as I said before, introduced the Landlord/Tenant Board and that was squarely...and Monty Narsoo oversaw that legislation with my assistance through the house but that came squarely out of Seven Buildings Project, no doubt about that. so for example, two weeks ago, Petal Thring, I've mentioned her earlier on, phoned me and said, you know, for now, this is what we learned at the Seven Buildings, we've got this policy issue here, I'm going to send you through this document, just provide some input on it. So there's no doubt...in a sense, I mean, I was very sad to leave the Legal Resources Centre, being an organisation that had been very good to me. And but what had happened, was that, when the Landlord/Tenant Board...the house...the Provincial Legislature passed the legislation, Monty Narsoo then said to me Trevor, now we've got to make this thing work. And I'd said to Monty, well I've got two months worth of sabbatical due to me, let me give you one month and we'll just...so we'll come in and we'll give it, you know, 40/50 hours a week and set it up, and that's what I proceeded to do. Again also just coming out of my studying in the States, I then by this time had become a fully credited mediator, arbitrator, facilitator, and my practice as an arbitrator had taken off in a big way. And I at that point needed then to make some decisions, because I...the Landlord/Tenant Board work was initially going to take a day a week, and I'd started to have some discussion with the director at the time, about how we were going to manage this...

Int And that was Bongani Majola?

TB Well, initially...at that time in fact, it would have been Moray Hathorn, but at that point...

Int The Regional Director?

TB Ya, the Regional Director, ya, Bongani (Majola) certainly was National Director at that time. And Moray (Hathorn) and I were saying, well, possibly a day a week could be done and we were also saying that the LRC wasn't going to do a lot of this work anymore, and I was in fact talking about running an environmental law practice. And so the idea was we needed to be involved at the Landlord/Tenant Board and maybe one day a week was now going to be manageable in terms of the LRC rules and so on. But I then realised when I saw what was coming in, it then became very clear that it was going to end up...going to require two or even three days a week. And it was at that point, one then decides well what does one do? And I then just took the decision that the country had moved on and that all the work I'd been doing at the LRC it made sense to...it was really for me, it was just a logical corollary to what I'd been doing at the LRC. So ya...so the Landlord/Tenant Board was set up, and there I was involved in that. We then realised through LRC learnings we needed arbitration and that then brought about at a national level the Rental Housing Tribunal, where in fact I'm currently...I chair that and I'm there up to three days a week. Perhaps what I should also just talk about in a sense of life after the LRC as well, I haven't even touched on the consumer law practice. And again, and a very important part of the work that the LRC did because generally...there were two ways to practice consumer law. You

either acted for the big companies, and that meant you were in a big commercial law firm, or in fact you needed to be in a place like the LRC or perhaps with the Black Sash, perhaps the Law Clinics, to then be acting for consumers. Because simply consumers generally wouldn't have enough money to pay lawyers to fight their cases. Now the...you've probably been told about Pinky Madlala who unfortunately died, and I think just in the context of the LRC I would have to say that Pinky (Madlala) was what I always described as my Johannesburg mother. Because from the day I arrived at the LRC she kind of took me under her wing, and spent a lot of time telling me that she thought I needed to get married (laughter). But I think people who knew Pinky (Madlala) would know that it was just done...she was a big woman, big heart, big spirit, big everything, and so kind of the one of the things you did is you got married and you had big families and so on. But so, Pinky (Madlala) did a lot of consumer work. And the way things kind of worked is that often also, obviously she was in the advice centre and they did enormous amounts of consumer work as well, but I...I guess through...I also did some consumer work. But I used to look particularly at the financial sector side. So as a result of that I then sat on the task force that looked at the restructuring of financial service providers in the country. And through that, and there was a person at the Legal Resources Centre, a colleague, Diane Terblanche. Diane (Terreblanche), in a sense, from the lawyer's side, drove the consumer in a big way. And Diane also, has been very influential in my life. Is that it was through Diane (Terreblanche) that...Diane (Terreblanche) nominated me to become the then alternate chairperson of the Consumer Court, which had also been set up, again through the learnings of what took place at the Legal Resources Centre, you then found another government department saying, consumers are being exploited, what do we do? And they set up this, what is known as the Gauteng Consumer Affairs Court. Again a first for South Africa. Pinky (Madlala) was an original member of that. I ended up being the alternate chair of that court, but effectively then ran it as chair in its early days, and I still sit on that court. And, but again, the learnings in the consumer arena, so that was another area where I'd been appointed to, again we see structures being set up as a result of experiences of LRC, as LRC people moving to that. So that was another position I was holding that again now made it increasingly difficult to...one needed to make choices, because the LRC had to continue working, and you couldn't have people working there two days a week. You know, you could...I'd played around with ideas, perhaps if I work ten hours, twelve hours, I could make it up, but you've got to be around, you've got to be there. So...that was another, in a sense, persuasive reason why I moved on but again for me it was the corollaries, we were just carrying on but we were doing things now as, you know, private adjudicators so to speak. And another area where the LRC in a way has influenced my life, is that one of my clients in the inner city was at that time, was a person by the name of...I was first introduced to her as Jane. This was Jane. And anyway...but her real name of course was Barbara Creasy. Barbara Creasy is presently MEC for Sport, Art and Culture in Johannesburg. Now, Monty (Narsoo), Barbara...Barbara (Creasy) would just bring the tenants in and night after night, and you'd think, oh, another late night! But, and she'd bring food in and also, and we would do what we'd need to do and consult. And also Barbara (Creasy) brought a lot of energy and...because also, you know, she was a political activist and it's just all about calling, passion and...that was important because, you've got to...to work at the LRC, to do it properly you've got to bring passion and commitment to it, and if you've been going all day, and now you're starting for another five, six hour session, sometimes 10/12 hour session...not that those 12 hour sessions happened too often,

thank you, but they were certainly there. People like Barbara (Creasy) would bring that in. And out of the blue, I in fact got a call one day and I was told, you know, there's the Provincial Heritage Resources Authority and that looks at the heritage and assets within the province that they have an appeal tribunal. And I was just asked for my CV and within a short period of time I was then effectively made chairperson of that appeals tribunal. And this is all rather interesting, because I then look at some of my other members on the committee, and one of the members...the person who gives me the appointment is Barbara Creasy...and one of the members on the committee is one Jonathon Stone. And so I thought well this is...and I'd kind of lost touch with Jonathon Stone but, yes, it was the Jonathon Stone who was the client in the Majestic Towers and who was the person who was prepared to, as he did together with Martin Sweet and Richard Kahn, to take abuse from all their neighbours on that matter. And so to this day I continue to sit with Jonathon (Stone) on the part of the appeals committee. And so it's just amazing how things have...one...again, Petal Thring, worked with her on Seven Buildings, worked with her on policy and so on. So I feel that...I've just carried on doing what the LRC has done but in a different way. One thing the...I think that the LRC taught me is that there's always an individual behind the case. There's always a story to tell. And often it's a story that's fraught. And when people come to see you, often it's the call of the last resort. And I've just taken that learning with me into my work as a private adjudicator, as an arbitrator and so on. To note that when people are sitting there, often they are fraught, they are stressed, where else do they go? And so what that means is that I've...and also I accept wholly and welcomingly that we now work...never know in a society that is going by Constitution. You're going to talk to Arthur (Chaskalson), Arthur (Chaskalson) probably will not tell you that he was central and fundamental to the Constitution but absolutely, I mean, that's another LRC contribution. But I guess what our Constitution does is it says that one, we must...it's a policy document, in a way it's a statement about our past, it's a statement about where we want to go to and so I've always...and firstly what I try and do is that the Constitution...ya, the Constitution also gives a...enables us to have reference to other jurisprudences around the world. So in the rental housing, consumer, even within the **inaudible**, there's no precedence, it's all new. So I've always taken the view is that I bring my experience as a human rights lawyer into the interpretation that one gives, and certainly always take the view that obviously one mustn't force the law, but we interpret the law in a particular way and we need to then interpret in a way of the kind of society we want to be, and slowly and incrementally just hand down rulings and decisions that are in fact going to enforce human rights rather than undermine them. Now why do I tell you this story is that obviously a number of my colleagues are commercial lawyers. And so their world of experience, nothing wrong with it, is that of a commercial lawyer. My experience is that of a human rights lawyer. You can read the same document and give two very, very different interpretations to it. So, I mean, I found that and on a range of issues that I've had to debate long and hard, and be quite firm, and in some instances even as a chair I've had to use my casting vote, I've done it on the basis of what I think our...with my background as a human rights lawyer, with the ideas that we now live in a constitutional dispensation, how do we enhance lives rather than inhibit...

Int Trevor, I could talk to you for ages, it's been the most interesting interview, but I'm aware that I'm taking time away from your family, so not another late night, but thank

you so much for taking the time and sharing your experiences and the important work that you've done with the LRC and subsequently. Thank you.

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