

Judge Edwin Molahleli**LRC Oral History Project****14th July 2008**

Int This is an interview with Judge Edwin Molahleli...at the Labour Court in Braamfontein, and it's the 14th July (2008). Edwin, thank you ever so much for agreeing to be part of the LRC Oral History Project, we really appreciate it on behalf of SALS.

EM It's my pleasure.

Int Thank you. I was wondering whether we could start the interview by...if you could talk about your early childhood memories, what was it like growing up in South Africa when you did, and what was...where were...what was your sense of social justice and injustice, where did that develop, and also what was the trajectory, some of the formative influences that led you into the legal profession?

EM Well, I guess, right from the time I was born, I was born at a critical time that my parents were being forcefully removed from a place called Manzeville, it's north of Krugersdorp...very close to the Krugersdorp town, it's walking distance, and I'm told by my parents that they...in the early life of their lives, and our grandparents used to walk to their workplaces. So, it was literally an easy life, in a sense, though I'm told my grandfather was quite actively involved in politics. Unfortunately he passed away, just after the forced removal, and sometimes I ask myself, and I lost the opportunity to ask my grandmother, whether the removal could have influenced his health.

Int Right...

EM But we...when my parents were moved, or everybody in Manzeville was forced to be removed, there was a portion that remained, that resisted and still remain today, but my parents and grandparents were in that portion that was closer to town and had to be forcefully removed. When the removal happened, my grandparents then found or, were encouraged to buy, in a rural area called Oskraal, and my parents remained in Kagiso, which was this closer area to the Manzeville area. I moved with my grandparents, and as I say, a year after moving, it should have been 1957, '58, my grandfather passed away, so we remained with our grandmother and that was about...how many were we? We were about eight, nine, my cousins, my brother, and that's where we attended school. Now, the irony of it all was that, when they were moved and encouraged to buy in that area, they were promised that the government would do everything for them, and that they should just move there. On arrival in that place, we suddenly found there was no school, and I was moved, as small as I was, by the endeavour of my grandmother, she immediately organised the community there. She organised a school, and I must say my grandmother wasn't even educated, but what really today, when I look back, it moves me quite greatly, is the fact that she...education for her was priority number one...but be that as it may, she, together with the other community members...and this community consisted largely of people who came from various parts of the country, who were forcefully removed, so most like a dumping area. But, today, when I look back at it, I pride myself for one thing,

because it was a conglomeration of various people from different backgrounds, though mainly Africans, but of various cultures, various languages, and now and again, and again I use this when I sit in court, when anyone tries to speak any of the languages and suddenly I respond, I can see people kind of look at me and think: ooh, this judge knows Shangaan, knows Venda, knows Zulu, knows Xhosa, knows Tswana, knows Sotho, whether I speak the languages as proficient as people born in the languages, you know, but I can communicate quite effectively. So that's really the background, but just to also complete on my...the role of my grandmother, in 1975, '76...'74 in fact, there was a movement to give the then Bophuthatswana homeland its independence, and I was still very young, there started being resistance, and one of the things I remember my grandmother saying is: this corrupt (Kgosi Lucas Manyane) Mangope, which was the leader of Bophuthatswana homeland, is now coming to take away from us what we have done. At that stage they had already built six classrooms, I think, but these were not built by cement, these were built by mud, and every Friday, we had to use mud to kind of, cement and make the place look nice as a school. And I started asking myself: but, there's been so much of community work done by the village community members, I've never seen anybody from the government coming to help, so why would they want to come and take a school like that? But, be that as it may, later on, when (Kgosi Lucas Manyane) Mangope took over, the school was taken over from the community. Look, one would criticise the Bantu State, but when I look at the school today, it is one of those things that one can't...you can criticise the apartheid system, but it was one of those things that I think they did much better than in the other area, because they then built a school in proper structure.

Int And you went to that school?

EM I went to that school. I went to...I used to travel, and I took my kids the other day in the car, I used to travel six kilometres, and you can imagine from the age of say eight or seven, I went to school at the age of seven, and we used to travel those kilometres, cold weather, at times we would walk to school on barefoot, eating sometimes, you ate in the morning or you ate in the afternoon when you came back home. But, you know, interesting enough, at that stage, because I guess, our parents emphasised education, we kind of, didn't see the sufferings as such, and because there was a community involvement, every time one of us didn't go to school, you'd not be reprimanded by your grandparent or parent, everybody in that community was a parent. And also interesting, there was an old man who was a former teacher, who had retired, he was seen almost as the king of that village. That village didn't...because it was a conglomeration of people from various areas, there was no person formally as a king or a chief, but because of the role he played in the community, we kind of elevated him to the chief of the village and he was, kind of, in charge of discipline and order and we knew, all of us, as we grew up, if Ntatema Mabula, as he was called, was to be seen to be coming, we had to make sure that everything is in order and we behave in a good manner. Yes, so that's my primary school, and then high school I went to a village, because the school went up to standard three. Standard four, five, six, I had to go to another village, which was a much developed village called Rabukala, again I had to walk approximately about the same distance, five, six...oh, I forgot to mention that when I...the long distance I travelled from sub A, we had sub A, sub B, standard one, two, I travelled that up to standard one, by the time I went to standard two, the school that I said my grandmother and other village people had put

together, had already been established and it was literally five hundred metres away from my home. So, suddenly as I was about to complete my lower primary, I was walking a very short distance. Yes, and then I completed my standard six, and then I went to another village called Kgabalatsane. Kgabalatsane was an old established village, very popular. I remember there used to be a poem in Setswana that said Kgabalatsane, the village of shadows, the village of peace, happiness, the only snake with you is that there is drought, and communities used to struggle as far as drought was concerned. So that's where I did my JC (*Junior Certificate for high school*). Ironically in this, and probably it'll answer your question about the political consciousness, I wasn't aware that that's the way things are happening and consciously being aware of the oppression. But one of the other things that happened as I grew up, was that this area is very dry and I must say the Afrikaners when they encouraged people to buy into those areas, misled them, and a lot of people who bought into that, believed that the area was just a barren land, very huge, and people believed that it was cheap and they would easily move out of wherever they were staying and they would be able to make a good living out of agriculture. It turned out, as I say, Kgabalatsane, which is not very far, the whole region there, it's very dry.

Int So it's not fertile land?

EM No fertile land, water scarcity and the extreme. But you know what really got into me, and I started asking myself, remember at this stage the question of understanding white people is a little bit removed for me because...

Int ...hmmm....

EM ...I hardly went to my parents in Krugersdorp, most of the time we were in that rural area. But what got into me is that my grandmother, she was a real organiser, she suddenly organised people and said: no, let's bore water! Extracting this water and let's bore water! And then she went to a small town nearby called Brits, and I remember coming back and people coming to our home and all these elderly men and women sitting under the tree and we were just not very far, and she's reporting to them that she has found a person who could come and drill water. And, ya, this person came; they did the check of where they can find water in this plot we were staying in. And then they picked up an area where there was water, and I tell you, I remember...they came in one day in the afternoon, the following morning they came and said to us: we've found water. And I thought: that's quick. And we went to this hole and we were excited, these young people, that there's water and we are now going to plough and all these things. And then they were meant to come and fit in the pipes and all these things. Three days or so, came two huge white males and they said to my grandmother: who said you must drill the water there? There was a whole argument, and then they said that only government-approved companies can drill water. And I couldn't understand, I got very angry, and they said: you've got to go and close that hole. They brought in the co-called government and I remember my grandmother complaining about it being too expensive and where they drilled, it is the deepest end before they could reach the water. So, I started at that stage, asking myself: but why should these people...and my grandmother kept saying: well, I thought I've moved away from the control in the urban areas where white people just

control us immediately, they tell us what we can do, what we cannot do. Ya, incidentally, my grandmother had a lot of encounter with the police, because she used to run a shabeen and they used to sell African beer, and at that stage African beer was banned, you could only sell...the only people authorised to sell African beer were white people in the urban areas. So she kind of, every time...she never sat us down and said: you know, they do this, they do that. The only time she would tell us, and in a very collected manner she'd say: you know, your grandfather used to fight and he used to throw stones. And she would tell us briefly about the struggles but never went into the details as to what was happening. But when I did my JC (Junior Certificate), don't know in terms of the grades, what grade it is, it was closer to Bophuthatswana becoming independent, and this area was right in the centre of, or let me not say the centre, but was in the larger portion of what constituted Bophuthatswana. So when I did my form one, we had a teacher, Mahuma, he took us to the bush, he used to attend a **inaudible**, a **inaudible** is known in South Africa as one of the centres of intensity of the struggle against apartheid where teachers and students organised themselves, and he would take us to just outside where our school was, and I forgot to also mention this, I must just...can I backtrack a bit on JC (Junior Certificate)?

Int Sure...of course.

EM When I went to do my form one, which is just after...post primary school, the school I went to also did not have buildings, we shared a primary school, so a primary school was combined with a JC (Junior Certificate).

Int Right.

EM And because the secondary school came in to seek accommodation in the primary, the first year secondary students were required to attend under the tree.

Int Right.

EM And this smiles for us because whenever it was raining, we knew our teachers would not be there (*laughter*), whenever there was too much dust, there was a lot dust in that area and wind, whenever it's wind, as I said, Kgabalatsane, the drought area, we knew there would be no school and we could go and play. So I did my first year of secondary school, complete from first day to last day, outside the...under a tree. But we had very good teachers, I believe. So it was at that school when they built another secondary, when we were moved, when we did our form two, that this teacher, Mahuma started taking us into understanding what was going on politically. He gave us some lectures about politics, the ANC, the PAC, but at that stage, you know, it was hard to, kind of, link what was happening to what we were being told. What we were being told sounded more like a fairy tale, you know, like how could they just remove people from here and do this...although we...some of us had some insight because we had seen removal of our parents and we started understanding why we were staying in that barren land, whereas our parents were somewhere else. So that's how I gradually started understanding the injustices of the past. I went and I did Matric in a place called Moroleng, which is just outside Rustenburg. But I may just pause also to say,

one of the other things that may have influenced me is that, at that early stage also, my grandmother was also actively involved in the church. When we arrived there, apparently there was no...the Anglican Church was not established in that area, so my grandmother established it and she was not good at reading, she was not fully literate, she struggled to read but she was not fully literate, so now and again whenever there had to be scripture reading, I had to do it. I remember right at standard two, I had to stand and read in the scripture, and so I started getting involved in the religious activities of the Anglican Church. When I did my final year at JC, I had to read the scripture at the cathedral, which was nerve-wracking, but now our priest also who was from the Motsepe village, and I'm sure you've heard about Motsepe, Patrice Motsepe, that's where the Motsepes come from in Macau ya so, getting involved in the church activities also started, kind of, giving me a sense of what fairness is, of what justice is and at times, even at that early stage, I would get involved in mediating between conflict in the church itself, be part of my grandmother as she would bring people to, kind of, try and conciliate whatever conflicts were. So I went to Matric...in fact I was supposed to go to the...to be trained as a church minister, but for some reason and some politics that emerged in the church, my bursary was never made available.

Int Really?

EM Yes...and that got me very angry. That got me very angry because someone else was given that bursary, and rightly or wrongly, my perception was that this person was given this, and he was in the same school as us, and in terms of the grades, he didn't perform as good as we did, there's about four of us, and the perception we had was that it's because he was connected to some other people. So, I got very, very angry and I told myself: no more with the church. And then I went and I did Matric. When I completed my Matric, I was...at Matric we then started seriously getting into reading...I remember there was a King Lindswi from Botswana, he was a fanatic of soccer, but a very strong opponent of apartheid, and at one stage, there was somebody who passed away in that village Moroleng, I think it's one of the biggest villages where the Tswanas are concentrated and very close to Botswana. He used to come there for soccer and recruit people. And when this particular person who died, I think it was one person in the royal family, I remember Piet Koornhof, who was the minister, or somebody in government, responsible for Bantu Affairs, which is black affairs, was supposed to come and address at the funeral, and he spoke to us as students and said: are you going to allow this to happen? And I remember that we then started talking about organising and doing all sorts of things, but he had said to us: he's going to persuade whoever, not to allow Piet Koornhof to come to that funeral. I can't remember what happened there, but all I know is that Piet Koornhof never put his feet in Moroleng. But also at the same time in Moroleng, I was involved in what we used to call SCM, Student Christian Movement, and in '76, early '76, we invited Reverend (Frank) Chikane, the present day Director-general, to come and address us. At that stage he was quite involved in the Christian Movement, and I was moved, I mean, as a student we had been involved in Christian activity, by his approach. I recall he walked into that hall, which was also our dining hall and we had just eaten our...had our supper, and this is the minister, we thought he's going to come with his collars and everything else and he would stand there and preach to us, and the first thing that he did after, very politely greeting us and doing everything, he sat on the, kind of, balanced himself on the table and just like...wow...what is this? And

when he started preaching and he started linking religion to the politics and the conditions under which people lived, we, were all as students we almost kind of said: that's exactly what we should be pushing for, but a few months later...then there was the outbreak of the Soweto uprising and obviously us having had that bit of teaching from (Frank) Chikane, almost, kind of, embraced what was happening; we had a very progressive teacher. And I remember it was a very cold morning, June 16, and we went to assembly, there was no TV, none of us had radios, so we knew nothing about what was happening in the outside world. So, at assembly this teacher says to us: those of you who are doing history, do you remember Bastille? And we thought: now, this is assembly, this man is supposed to be talking about the word of God, he is now talking about the French Revolution. (*Laughter*). And he spoke for quite some time about the French Revolution and he linked it into the whole scripture and all that. And then, at the end, he said to us: your colleagues are being killed in Soweto, by the government. I remember that perfectly, and immediately, almost like water drops from heaven, the emotions just kind of went up.

Int How old were you, Edwin...in 1976?

EM '76, I was born 1956, so I should have been what...?

Int Twenty.

EM Twenty, yes, that's when I was doing my final Matric. And so we just immediately from there, all of us went back to our dormitories and we started singing, the principal couldn't just control us, and I was a prefect and we were meant to control the students and get them back to classes, but just spontaneously, we went back. There used to be a student called Gundisi, not **inaudible** but he had had an opportunity to read more than some of us, and he used to frequent Botswana, and he would come back...oh, and another friend of his...and they would come back from Botswana and kind of, tell us what kind of things are happening in as far as the Liberation Movement is concerned, but again, you know, we...restricted kind of information, I guess, you know, concerned and scared that there may be spies amongst us, you know, that kind of a thing. But in a sense, we, kind of, had a sense of what was going on, even though confused as to exactly what's the link between (Nelson) Mandela in Robben Island and people out in the...out in exile. So that's my Matric.

Int Right.

EM When I completed Matric, I did...when I did my Matric, I couldn't find space...boarding space and school because at that stage I had already formed at some level of politics and I said to my parents: I will never attend school in the urban areas I just hated them, and I'd rather go to boarding school because I thought in the boarding schools...there's a boarding school not far from our secondary school, called Sekitla, and the principal of Sekitla was Motsepe...

Int Right

EM ...and again if I'm not wrong, I may be wrong, I think he was the father to the businessman (Patrice) Motsepe. I may be wrong...or they were brothers. But he...we used to receive reports that at school in the evening, people...students meet and they talk politics and they...whether that was true or not...but that's what we were told and I wanted to go to a boarding school because I thought that's where I would learn a bit about politics. So I told my parents: no, I'm not attending in Krugersdorp, forget. So at the last minute, my mother obtained a space for me at Moroleng, but at the same time she also obtained space at a training college for her to train as a nurse. So you can imagine, mother and son, at school at the same time in the same area, it is quite a nice experience. So when I was doing Matric, we kept meeting with my mother and we would discuss where I'm going. She would say: no, you must go to university. For some reason I told myself: I will never go to our African universities. Because I thought: no, why should I go and legitimise these things, I just hated them. I just thought: I'm not for that. So when I finished, my mother had a big struggle to get me into university, not firstly that she could afford...the other thing was I struggled during my Matric studies, so I had said: I'm going to look for work and that's it, I'm not pursuing the studies. But I still wanted to read, so when I finished I said to her: look, I'll go and look for work and then I'll register with Unisa. So I registered with Unisa, doing part-time studies and...but my mother was just determined and she said: no, no, no, no, working and studying can't go together, you're not going to study, you're just going to gallivant around. So the next thing she said to me, she'd spoken to somebody...

(cell phone ringing). (Interruption for a brief while).

So, I...my mother then came home one time, and said to me: you have to go full-time. She spoke to Dr. Kambule, I don't know whether you know him, he's also one of the top principals in the school, in this country.

Int Ok....

EM A top mathematician, a quite involved human rights activist in his own right, but my mother was working with her daughter and her daughter called me and said: no, you've got to go to university. But the end of it was that I got a scholarship to...the UN Scholarship to study in Lesotho.

Int Oh, right....

EM So I went to study in Lesotho through the assistance of Dr. Kambule's daughter. In Lesotho, I must say I wasn't, kind of, in the forefront of student politics and activities; there had been instances where people said to me: stand for the SRC position. But I wasn't really keen to take the leadership position, but, I stood up and expressed my views in one way or the other. I remember the death of Dr. Margaret inaudible. At that stage, some of us were still travelling between home and Lesotho, I was quite scared because now and again, at the borders, we would be interrogated at length, why are you studying in Lesotho, are you a terrorist, are you this? I mean, one time I drove into Lesotho, my father had borrowed me his car to go and collect my stuff

because it was...we were closing the term, and the police literally just took out my tyres and opened the tyres and said: have I hidden the books in the tyres. And the next moment they would not even pump the tyres. I had to see to finish, which just kind of, making everybody very angry, I mean, you haven't done anything wrong, but you are just subjected to this kind of treatment, you know. But as students we were very naughty also, because we also picked up that the police were just as confused and as foolish as they could be, so now and again we would buy books because we knew the then government, books was the worst enemy. I remember I bought a book called "The Pornography of Power" and they just looked at the word 'power' and they called me and finally said: so, you're Black Power? And then I spent the...at times we just enjoyed sitting there and being interrogated, because sometimes you knew they couldn't make out a case, although sometimes we felt scared that you're risking. But be that as it may, I had my own little role in Lesotho. I also became a little bit involved in the church again, it was a time when they banned (Joseph) Leabua Jonathan's government, took scholarships of those students who were active, and opposed to his government, we raised funds as the Anglican Church. There were some difficulties in terms of finally implementing the plan, and I expressed my view, Father Lapsley then, was the...was in charge of the church at Roma.

Int Was that Michael Lapsley?

EM Michael Lapsley, we had some differences in terms of the...how the little funds which were raised could be spent, but, ya. So that was my involvement. And gradually from there, I started moving away from...or questioning my beliefs in as far as religion is concerned, whether indeed the religion is what it projects itself to be. Ya, but that's where I stand, I hardly ever go to church these days. But I must say, I still believe that even though I'm no longer that strong in the belief of the religion, that the religion plays a very critical role in moulding the young people. My children are church fanatics; they go to church every Sunday, twice in the day. And I encourage them to do it, although now and again, whenever I have a chance, I'll kind of, point to them the short comings of religion. And just last night, I had an argument with my daughter, and she was saying: people will go to hell, because they don't go to church. And I said to her: let us look at a person like Chris Hani. Chris Hani was a communist, an atheist, for all we know, you're saying to me that when he gets to heaven, he will be banned from heaven? I said: well, let's look at the principles of the bible. It says: treat others with fairness, and those that stand up for the injustice are the children of God, and therefore the fact that you don't go to church, but you stand for justice, you surely will qualify in terms of that criteria, the judgement will be granted in your favour, whereas you do have people that go to church everyday, but things that they do are as outrageous as any other things that hooligans would be doing. So yes, that's my standing on the...on religion, I believe it plays a very critical role in the upbringing of the children, and children must be encouraged to attend the church, unless they make their own choices, they shouldn't be forced. So, completing in Lesotho, I came back to South Africa, there was a lot of scepticism about people who qualified outside because of the attitude of the then government and I think all what they were trying to do is to discourage and belittle, people who studied in the neighbouring countries and outside in Africa and other countries, and particularly in law. At the time we were told that the Law Society did not recognise qualifications outside South Africa. So I then took a short, a very brief employment with an

attorney, who was quite progressive and he said to me: don't worry about your qualification, that you've qualified in Lesotho, you can try and do some courses, upgrade and whatnot, whatnot. But I spent a very...about six months there and I was not happy with the conditions and I left and I went back to do my LLB.

Int Back to the same university?

EM Sorry?

Int To the same university?

EM No, no, here at Wits.

Int Oh, at Wits, ok...

EM At Wits. But, you know, I must actually tell you about, talking about back at Lesotho. When I got this scholarship, it was late again, remember Matric my mother got me late into the school...

Int Sure.

EM ...it was very late, Lesotho's term starts in September. So once the scholarship had been approved and I got a telegram from Lesotho to say you must report somewhere...the 20th of September. Now the problem was, I did not have a passport, and I was then required to obtain a passport now because my surname is in Tswana, I was told I have to apply for Bophuthatswana homeland passport. And I just told my mother: I'm sorry, I am not going that route, I'd rather not have the scholarship. Which was quite naive, I must say, but probably being young, so the arguments at home continued for the whole of September, the whole of October, middle of October, my mother who was now becoming very desperate, started talking to a number of people. I remember the principal of the local school came to me and said to me: no, no, no, no, education can't be put below your passport issue, you must just go and get that passport. And he explained to me...when you get to the borders you'll be proud to know that they will take it and throw it into the dustbin. I kind of thought: no, but I'm not...I'm not going to take that passport. But then I got...it was on a Friday, I got a telegram saying: if you don't report for work on Monday...report for school on Monday, your admission will be cancelled. Of course, my mother panicked, my father panicked, and I started, kind of, thinking: no, I can't be doing what I'm doing. So my mother then spoke to somebody and said: no, why don't you go to the newspapers and say to the newspapers that they're refusing him the South African passport, and maybe the Home Affairs will be pressurised to grant him the South African passport. So I went to the Sowetan newspaper on Monday and I met with Agri Claaste, and during that period ?inaudible, Percy Qoboza, they were real heroes, and I couldn't believe when I got to the Sowetan and I report, I kind of briefed this receptionist about my problem, that she just screamed round the door and said: Bra

Agri Claaste, someone needs help here, and he just walked and said: come in. You know, you won't believe it, and sometimes even when I told my mother, I thought, you know: am I telling the truth here? At that time 'phoning Lesotho was a difficulty, I don't know whether it was because of government, or because of their own system that side, but he was on the 'phone and I was seated in his office. He 'phoned starting from about ten o'clock and kept not being able to reach, and he would drop it and do some little things, pick it up, 'phone again. At two o'clock he said to me: look, we seem to be...In fact he said to me: don't worry, I know I 'phoned Lesotho previously and I know in the afternoon, it tends to come easier to access. And he was telling me about the loading and all those things, of the lines. So he said: after lunch, I'm going to try again. I think he tried twice or thrice after lunch and then he said to me: no, I'm giving up, it looks like the lines are...there are bigger problems. And then he said he will send them a telex, I think it was a telex, those days we were using telex and telegrams...or did he send a telegram, I can't remember. But the fact of the matter is, that he then said to me: don't worry, it's gone through. And in essence he said to them: please do not cancel the admission, he will be coming. Then he sat me down and said: you're going to obtain...you're going to...from here you must go straight and apply for the Bophuthatswana passport. And he gave me a note to say...just go and show them this note, take this telegram with you, and just say to them they must give you a one day passport. And indeed, the following day, I went to the Bophuthatswana Consulate, in less than an hour or thirty minutes, I had a passport and there I was, on my way to Lesotho. But ya, that's...those are, kind of, standpoints that I took and I look at them today and I say: you know...sometimes when you have people around you that can influence your thinking, and you can listen to people persuade you, you may find in the latter part of your life, that you appreciate those kind of interventions. But really, one of the persons I really, really have high respect of, it's Agri Claaste, ya. So, then I came to Wits and again I was told, you have to apply.

Int For a South African passport?

EM No, now I'm back home, I don't have to apply for a passport, but I have to apply for a special passport. We...I can't remember who encouraged me to come to Wits, but somebody said to me...No, no, no, no, it was one of the community members...I used to drive a taxi, I was a taxi driver, which helped me to close the financial gaps here and there during my school days. So on completion in Lesotho and after I left this law firm, spent all my time now, working as a taxi driver, and one of these community members came to me and said: no, no, you're being wasted, you can't be a taxi driver, you must go and complete your studies...I said: no, I've completed my studies. And during that period, I had gone around in the factories...Krugersdorp is one of the biggest industrial areas. So I had walked from one factory to the other looking for employment and I remember one of the ladies who I knew, coming to me and saying: we saw your CV and they were talking about it at work, and some of our own black brothers and wives were saying: why should we employ somebody from University of Lesotho? And so I had almost given up, so I thought taxi driving would be my way, I'll see how things turn up. And then he took me to Wits and said: you must apply; we'll try and see if you can get a bursary. And then, once I filled in the forms, there was also a form requiring a permit from the minister, because I'm black. Then I just applied, and then I waited and waited. One stage when I went there a woman said to me: you know, there's so many blacks that have already been admitted in this year, I

have doubts that you will be...you'll get a permit, why don't you go and try Turfloop? Turfloop and Ngoye, and I looked at her and I thought: well, I don't want to go there, why should I go so far when there's a university here? And then there's a group of us who were kept hanging, about six or seven, and then one day we agreed that we were going to walk, march into the Registrar's office and demand that our problem be sorted out. Well we did that and we, kind of, made a lot of noise and three days later, we were told: you've been admitted. Then, ya...that's...I studied at Wits for three years...um...

Int What period was this, Edwin?

EM 1985, I had one course outstanding, which was Practical Legal Studies.

Int So you started in 1983, '82?

EM '83, ya, '83, '84, somewhere there.

Int Ok, right.

EM And fortunately, this Practical Legal Studies was taught mainly by people from the Legal Resources Centre. Arthur Chaskalson was one of the lecturers who took us right towards the end of the year, if I recall, and most of the time, as I understand, most of the Fellows were recruited from that course. I can't really say how I was chosen and recruited to go and...or why...whether somebody saw a potential in me or not, but all I know is that I was told: put in your application. Put my application and...in fact I don't even think I did put an application, I think...I can't recall, but I think somebody spoke to me and said: you must go to the Legal Resources Centre. I think it's Arthur (Chaskalson) or...Geoff (Budlender) also taught a bit, Geoff Budlender. Now I can't remember, but quite a number of the Legal Resources Centre people used to have portions of teaching on Practical Legal Studies. So I went to the Legal Resources Centre, blank as I was as a student, knowing very little about the practical law, knowing much about the theory of law, and it was a real exposure that for the first time one suddenly was confronted with the law that you studied at the university is not the same law, when it comes to application, and, ya, I had that opportunity. I worked within the paralegal section for quite some time and I had the opportunity of seeing Geoff Budlender, Mahomed Navsa, (Arthur) Chaskalson in particular. There was a case, a very prominent case of a chief in Mpumalanga, now I can't remember the name, who was killed by a very young policeman, a very young, white policeman who suddenly just dumped himself into the middle of a crowd that was holding a meeting at a school, and when he was approached to say what's going on, just pulled a gun and shoot at this person. That was one of the cases that not only opened my understanding and appreciation of the intensity of the complex problem of racism in the country. That...I mean, it was literally a boy of almost my age, to approach a meeting held, not by young people but by elders in the village and simply pull out a gun...I thought: this is worse than I've ever actually thought. But more importantly, the case also gave me an opportunity to understand the techniques of preparation. I mean, I saw Arthur (Chaskalson) and Paul Pretorius prepare the case that it took out

of me my understanding of law school where we thought a lawyer is a person who sits in a suit and he just sits there comfortably. I mean, I remember Arthur (Chaskalson) trying to estimate the distance...because this policeman said the crowd was attacking him. So he had to run and jump a very high fence, and I remember Arthur (Chaskalson) saying...Paul (Pretorius) was one of the fittest person at the Legal Resources Centre in terms of gymming and running...him saying: can you take this distance and let's just see whether this is practically possible, so, I kind of observed those practical...it was in a sense a practical training for me, in terms of understanding the skills and techniques of litigation. But also what was interesting in that case was that, not only did it involve the strict civil law, it also had an element of customary law, because the chief was married to three women and two of the women were contesting the inheritance. So it brought into it also the customary African law, which later on incidentally, I became a lecturer on, and I was also an external examiner, of customary law at Wits University. So it, kind of, gave me that incentive to appreciate, because at varsity, the African customary law is just a small portion which kind of was irrelevant, in as far as the day to day living of the people who applied that system. But that case brought to me that there is a reality there, that African customary law is an important aspect of the law, and actually can ensure that justice and fairness is applied. So, yes, I spent a year at the Legal Resources Centre, we did various things, it was in the middle of...the height of the struggle...we used to go out with...Mahomed Navsa was in charge of the paralegals...go to the legal advice centres. And then I worked...it was the end of my term in the labour unit with Paul Pretorius...who else was there...Karel Tip came in and out...I think at that stage Karel Tip was almost out of the Legal Resources Centre, setting up his own practice. But those were the people who were involved mainly in the labour matters. And then...out of the work of the Legal Resources Centre, I was suddenly fortunate, myself and Reagan Jacobus.

Int He was a Fellow?

EM He was a Fellow also. Who spent all his time mainly as a Fellow in the labour...with labour matters...I think he's now practising in Durban.

Int Ok. So it was Reagan...?

EM Jacobus. He may also be a useful person to interview.

Int Sure.

EM Because he...intellectually in terms of reading of politics and understanding, I think he was much more at a higher level and had a better exposure. I think he had been overseas also and had done some masters degrees. So we then got offered Articles at Bowman Gilfillan.

Int Right.

EM Which was one of the very important aspect of the Legal Resources Centre, I think one of the good things about the Legal Resources Centre, for me, was that at that stage probably even now, obtaining Articles as a black person, was not easy. But I guess because we were already exposed to the Legal Resources Centre and the Legal Resources Centre had created a very good network of people in the various legal institutions, we were almost taken upfront by...in fact, Reagan (Jacobus), if I'm not wrong, didn't even complete his year, he left in the middle of the year to go and take the Articles. I felt I wanted to complete, so I went to Bowman Gilfillan in 1986. I did my Articles '86, '87, but at that period I was also quite involved politically, particularly at community level, I was the secretary...there was a stage I was the chairperson of the civic and there was a stage when I was the secretary...I can't remember which one, but I was in the executive of the civic organisation in Krugersdorp and to some extent also involved with the UDF at the level of the community where I was. And then one of the things we organised was...oh, I must actually tell you about my wedding.

Int Oh, right...

EM In the midst of all this.

Int Ok. This was '85, '86?

EM This is '85 now.

Int During your time at the Legal Resources Centre?

EM Yes. I also used to lecture part-time at what was called Khanya College. This was mainly black students from various universities and Khanya College was one of those progressive institutions that tried to assist black students in terms of tutoring, lecturing. And 1985 December, in our community we then, and remember I said I was part of the executive, we then decided to call a consumer boycott. And funny enough, and ironically, I was the one who was to put the proposal on the consumer boycott. I had been tasked to go and read about the Alexandra bus boycott and to go and find out...at that stage, Soweto had already embarked on the consumer boycott. So I reported at this meeting on a Sunday, as to what happened with the Alexandra bus boycott, who was involved, and how effective it was, and what we could do, because our consumer boycott was also going to be combined with the bus boycott. No, no, in fact we had resolved to take...to go on the bus boycott, the consumer boycott had already been taken by other areas, so I had to report also on the two, and I remember one of the comrades saying to me: but comrade, you're not telling us, you're not giving us direction, give us direction, what do you think should be done? Here we are in Krugersdorp, here are the problems with this bus company, there's a lot of racism. I mean, we picked up that the bus company that was providing the services in certain white areas, in Carletonville, Fochville, information that came through was that old people in those areas, white, were not paying for the buses because they were aged, whereas in our own communities, our aged people when they went to receive their pension, had to pay in the bus. But to cut the long story short, we embarked on the bus

boycott, we, kind of, took a partial resolution to embark on consumer boycott. Two weeks from there, I was getting married. We went to another meeting on a Sunday, where we finally said: from Monday, or from some day, I can't remember whether it was Monday, but I remember the meeting was on a Sunday, there will be consumer boycott in Krugersdorp. I then said...well, I didn't even say it, another close friend of mine, who was my best man at the wedding, then stood up and said: but, Edwin, you're not also disclosing that you are at an advanced stage in preparation of your wedding. I said: ya, indeed. So again the topic became, what do we do, do we cancel, do we do what...and a joint decision was taken to say: no, look, just go ahead, we wouldn't want the adulation in the street, we don't want cars hooting in the street...you know African weddings, it becomes a real ceremony, I mean, cars hoot, and screaming, singing and all those things, he said: all we would want you to do is just have food ready. If you are to walk in the street with your bride, just make sure the distance is very short and it's just in your street and you go home. And then...now in terms of the African wedding, the first day it's at the wife's place, the second day is the husband's place. Now, even though I was clearly on the side of...or seen politically to be quite involved with the progressive or with the Congress Movement, I still had very good relationship with the AZAPO people, with PAC people, in fact the closest personal friend of ours was the wife to Mike Matsobane. (Mike) Matsobane was the former secretary general of the PAC. So even though I had been seen and known to be where I belong, I still, at a personal level, had good relations with those people. So on the first day of the wedding, as we just came out of the car and I look up and I saw a group of PAC and AZAPO people. Well, at that stage we wouldn't say PAC but we knew who fell into which group in Black Consciousness and whatever, and I'm in trouble, because everybody had embraced... all the political formations had embraced the consumer boycott. And I spent an hour and a half negotiating myself to say: well, look, my own political organisation had given me permission, and they were saying: but ya, no why this selective choice, you're being treated differently and all this. But the long story is, and I guess, that's where I also started developing the skills for negotiation and facilitation. Because then I persuaded them and they said: fine, can we agree that you will do this, you will do that? And I said: fine, I will do that. And the wedding went on and we completed. Following day at my home...now this chap...I was actually going to ask Cecilie (Palmer) the other day, what his name was...there was a white chap, very tall, well built, and he was from New York. I've been trying to remember his name...Peter seems to strike me, but I can't remember...

Int Was he part of the SALSLEP Foundation, or was he...?

EM I think so, I think so.

Int Right. Not Jamie Kilbreth? And was he from New York?

EM He was from New York, or was he from America? He was from New York because I once met with him in New York. But his name just keeps just inaudible. So I informed the Legal Resources Centre...I think a memo was sent or it was mentioned at tea...that because of the volatility of the situation in the township, unfortunately, white people should not attend the wedding. That was...and it was, kind of, accepted and I

said: it's not safe, don't come into the township. And he was very tall, as I say, and so as I walked out of the car again, I look up front and I see this white man (*laughter*).

Int That's funny.

EM It was the funniest thing. And then you can imagine my poor wife is wanting this man to concentrate on what's supposed to be (*laughter*)...His focus is all over the place and supposed to be jiving with her in the street and...And then I just said to her: look, I've got to sort out something else.

Int Gosh...

EM What I said: I have to sort out something else. And of course I left her, and there she was all by herself...I went straight to this man, I said: what are you doing here? And of course I was scared, terribly scared. And there were some neighbours who I knew where they stand politically, and then one of them I knew, he was a strong Black Consciousness person. And this man was talking politics with these people (*laughter*), and then I thought: what do I do? And that man, no, I'm here to celebrate with you. But because of his openness and his engagement, everybody was engaging with him, but what really turned the tensions off, was when food was served. In the Tswana group, there's a popular meal made out of corn. It's not...what is mabele like...I can't remember what mabele is called in English. But you ferment it and then you cook it and then it's got a slight sour taste. So, he gets served with this and then he, kind of, takes the first spoon, and he says...and everybody just burst out laughing, he says: *whoo*, this salad is nice. (*Laughter*). But ya, that was one of those, kind of, real...and you know what was interesting, is that he spent the whole day there until late in the afternoon and some people from the Legal Resources Centre, they...Thandi Orleyn was there and I, kind of felt, with Thandi (Orleyn)...because she also had been involved in the paralegal, had visited centres, and had an understanding of township dynamics so I thought: well, everything else would be under control. Ya, so that's what happened as I was leaving the Legal Resources Centre.

Int It's a wonderful story because it shows that someone from abroad, just ignored the, the idea that it would be dangerous and came to celebrate your wedding.

EM Yes, absolutely, I mean, and...naive as he may be...but he had one belief...I remember one time we were going to Duduza, and as we were entering Duduza to go and visit the advice centre there, we saw a whole crowd of students coming up and I said: look, we can't go in there, we've got to turn back. And he had a strong belief...I mean, his understanding of the congress principles, that South Africa belongs to all, I mean, went beyond his own safety, I mean, he, kind of, could lay his life, barely as it may be, that: let me be killed because I believe that we all stand for those same principles. But he missed one point, I think, that there were other people who had strong views arising from the treatment that they have had, that every white person was to blame, you know, it was an emotive thing. But, yes, so we approached this group of students, and he stood there, and the students come to us and we engage with them, and ya, finally they accepted that we're on their side and we should be let in, and I said: and

I'm not going in, I'm going back, because when they come from wherever they would have gone, I don't know what's going to happen, there's a *tsotsi* element in it, but ya, that's one person...and I say I still need to look into my notes and see if I can find the name, you know. The last time I heard, he was in the...I don't know whether you call it...a direct trade of environmental.

Int Oh, really...

EM I think he was a prosecutor...

Int Oh right....

EM ...in Washington DC. Somebody said to me that's where he was.

Int Gosh...

EM Ya.

Int I will definitely ask Cecilie, it sounds very interesting.

EM Yes. So that's how I left the Legal Resources Centre.

Int And so you went to Bowman Gilfillan?

EM I went to Bowman Gilfillan.

Int May I ask, at that point in 1986, was Bowman accepting...black lawyers?

EM Bowman had a long history of accepting black lawyers.

Int Ok.

EM Apparently, one of the people...and I don't know whether Sissy...no, I don't think Sissy went to the Legal Resources Centre.

Int Sissy Khampepe?

EM Yes.

Int She was there?

EM She was there, oh, ok. (*Laughs*). Sissy Khampepe also went to Bowman Gilfillan and it was long before us. Rata **inaudible** who is a judge now at the High Court, also went to Bowman Gilfillan, if I'm not wrong, Rata **inaudible** said, either him or someone before him, no, him...he was the first black person to be taken at Bowman Gilfillan.

Int Right, and do you know when that was?

EM Oh, no. It was long ago...oh, because I know when I was doing my degree in the eighties, Rata **inaudible** had already established his own law firm, and it was...

Int Ok, so that would have been pre 1980?

EM Ya. It should have been even pre...because in the '70s...in '76, '78, I know his firm was already known in the human rights sectors, I mean most of the students...we knew that if there was a problem we had to go to Rata **inaudible**. So it possibly was in the '70s that he started at Bowman Gilfillan. But Bowman Gilfillan was generally a liberal law firm, I think one of the trustees of the Legal Resources Centre was based at Bowman Gilfillan.

Int Ok.

EM I can't remember who, but there was one of the senior partners who was based at Bowman Gilfillan. But in general, I would say, like most of the big white firms they would take black people in, I wouldn't want to take any particular ideological criticism to it, but in terms of advancement of training, from my side and I guess Dunstan (Mlambo) and Reagan (Jacobus) would share the same view, we were given opportunity different to what we saw other Article Clerks being exposed to. I mean, me and Dunstan (Mlambo), in our first year, we already had our own, kind of, mini-practice. I mean I had my own clients even as an Article Clerk.

Int Gosh.

EM I could start a matter from scratch to end...Must tell you an interesting story that frustrated me in my Articles at Bowmans. On a Friday afternoon, I get a call from Dr. Bernie Fanaroff. (Bernie) Fanaroff was one of the senior COSATU people, and he says to me: there are people at Kew, workers at Kew, have staged a sit in, can you please come and help? And I say: well, my principal, my boss, John Brand is not here. So he says: no, that's irrelevant, you just go there, you'll meet some Shop Steward, you speak to them, you then try and engage management on this issue. I'm still fairly new. But, excited as I was, I rushed off to Kew, which is just outside Johannesburg next to Alexandra. On arrival there, I found tensions of the first order. The group of husbands and wives who were outside and insisting on going into this factory where people are sleeping, and for some reason I suspected management or the police may have done it. Because there was a rumour that those who were sleeping inside were

having affairs, and all this, and all that, and the police, funny enough, usually in those situations, they would be throwing tear gas, they would be doing all sorts of things. I was amazed...I arrived there, the attitude was relaxed, and I said: what's going on here? But the long story of it is that I managed to engage with those who were outside making their demands, and the union managed to also indicate to them that this lie could be political, to undermine the very struggles that they engaged in. So I went inside and I spoke to those who were inside, and when I came out, suddenly...well, I spoke to...gave the briefing to those who were outside, and when suddenly there was a sign that they were accepting what I was explaining to them, the police became very provocative and I went to this one sergeant, or whatever, I said to him: but, we were in good terms, we agreed and this. And he said: no, I'm not taking instructions from you, I don't care whether lawyers or what...and there was just pandemonium, tear gas and everything else. But, the interesting part of this case, and I've used it whenever I speak to young people, to say: you know, an ordinary secretary can teach you even better than your professor, if you humble yourself and you work closely with the secretary. But John Brand had a secretary who was quite efficient, and whenever he was not there, I would go and ask: what do we do, or how do we do? So Monday morning I go to her, her name was Cathy, and I said: Cathy, I've got an exciting case now. She says: what now, Edwin? Because I've had my own kind of, picking up political cases here, and there was a time I took a criminal case, when Bowman Gilfillan's view was those, you specialize, and you keep to your speciality. So I said to her: here we go. And she says: what? Do you know the name of this company? And I said: ya, I know them. And as young as I was, radicalist...I know they're the worst so-called. And then she said: no, they are the biggest client of this law firm. (*Laughs*). You're going to have to recuse yourself, find somebody to do the case. Again, you know, when you're young, answers come quickly and I thought immediately, because we used to pass work to Sissy (Khampepe), Sissy (Khampepe) will pass work to me, I immediately thought of Sissy Khampepe and I thought: Sissy (Khampepe), 'phone Sissy. And she says: no, I have capacity. And I said: I'll speak to John (Brand) and I can assist you up to a particular stage in terms of handing you statements and who I've spoken to. Then I 'phone Bernie Fanaroff, and I said: Benny, I've run into problems, I have to recuse myself. And apparently he already knew. He...I think even when he gave the instructions, he knew that he had spoken...if he had spoken to John (Brand), John would have said to him: no, we are not taking this case. He knew that there wouldn't be...as clued up as senior people in the firm, so he said to me: no, in terms of the rules of the Law Society, you've taken instructions, if you withdraw I'm not reporting Bowman Gilfillan, I'm not reporting John Brand, I'm reporting Edwin Molahleli to...

Int ...the Law Society?

EM ...to the Law Society. But, more importantly, Edwin, I'm not reporting you only to the Law Society, this will come to our own comrades, and of course my conscience said: there's no way, (*laughs*) I'd rather be dismissed in this law firm (*laughs*). And then I 'phoned John (Brand), he was doing a case, I think in Durban, the longest case in this country which took fifteen years, I think...

Int Really, gosh.

EM ...or ten years, it's called BTR Samcor, this is the most protracted litigation in the labour field. So I thought John (Brand) would say to me: why did you do that, and you know the kind of senior mentality...you did something wrong...you're stupid...you're foolish...you should have checked. But he calmly says to me: ok, I'll see you on Wednesday or Thursday. And I thought: what? See you on Thursday, Wednesday, this man is not saying anything. So he comes on that particular day, I go to his office, he says: Edwin, you took the case because you believed you needed to defend somebody who was feeling unfairly treated. He started giving me a lecture on the ethics of law, he was very strong on ethics. He said: the ethical rules is that lawyers stand for justice and once you've taken that stand, you've got to pursue that stand...the whole issue about conflict of interest...it's a matter that will be dealt with by us, as seniors here. And then he said to me: first thing, try and negotiate that the matter be referred to arbitration, because the way it is now, it will create more tensions within the firm. It's going to take long if you go to court, rather push to go to arbitration. And surprisingly, I met with the lawyer who was an employee then, who is quite involved now, I think he's running his own practice, Advocate Heemstra. I went to him and I said: any possibility we can refer this thing to arbitration? Immediately he said: yes, lets' go to arbitration, this will sort out this whole mess. Ah, I thought: what? Just like that? I didn't know how to draft the terms of reference. So, I said: can we draft the terms of reference? He says: no, no, come in, let's sit down. He drafted them, gave them to me, he said: read them. And he actually said: I'm going to write them in the simplest language, you must tell me where you agree or you don't agree. And funnily enough, I looked at them and I said: no, I'm happy with them. And I went back to John (Brand) in the afternoon and he then said: gee, that's great terms of reference. Of course, we went to arbitration, which is under the auspices of IMSSA, the Independent Mediation Service of South Africa, which as you know, was at that stage run by Charles Nupen...

Int Yes.

EM ...who was also product of the...

Int LRC.

EM LRC. And well and behold, we won the arbitration. With all the intimidation charges and all those things, we won the arbitration. And ya, that...so, from that perspective, I would say, taking away any ideological criticism that you can level against Bowman Gilfillan in the bigger scheme of politics of the economy, as human beings, I think they did stand for what is good and fair. At the level of change and transformation, that's a different debate, and I'm sure if you interviewed Dunstan (Mlambo) around that day, he'll share his own views.

Int What was your experience?

EM My experience, you know, fortunately for me, I only worked as an Article Clerk. So my status remained...and I'll tell you how I left and came back.

Int Sure.

EM Unlike Dunstan (Mlambo), who completed his Articles, passed his board exam, and then worked as an associate, experience may be slightly different, because once you're an associate, you take full responsibility of...certain people have got to report to you, you then have Article Clerks also working with you and taking instructions from you. That's slightly different, and I've heard some of the other black professionals saying it was a bit of a challenge, to have white kids or white young people, reporting to you as a professional. That aspect of transformation and racism, I don't think you can write it off.

Int Right. The challenge was the fact that there wasn't...there was a lack of respect? What was the challenge?

EM It seems to me, speaking to some of the people, it was mainly around the view that they being black, how could you try and give me...

Int ...instructions?

EM ...instructions. But I think it's also the whole issue of cultural change in South Africa as a whole. You still find, in South Africa, if you go to parties, or any gatherings, white will group themselves there, blacks will group themselves there, and that, in my view, when it comes to workplace dynamics, it also informs the interaction. Because if I socialise with you, it's easy for you to communicate to me instructions to be performed, and for me to be able to engage with you as to the reasonableness of that instruction, it also, any of the difficulties that I may encounter in implementing the instructions, I may be able to come back to you and say: I have difficulties here, or can I amend the way you wish the instructions to be carried out? Now that socialisation, I think, it's still the biggest challenge that this country faces. I don't want to take it to the level of pure racism, there is still an element of racism in this country, but I think the biggest challenge...one of the things that I think could actually turn the tide around in as far as racism is concerned, and isolate and marginalise the core racist, is if at the workplace level, the cultural differentiation can be addressed. If we were able to address that, then I think it would be a major stride. But as I say, at Bowman Gilfillan, I can't really...I left the place when I was still fairly junior in terms of status, unlike other people...Mba, I think, Judge Mba, he was an attorney there, I think Sissy (Khampepe) also left when he was an attorney, Rata also, I think, left when he was an attorney. So their experience would be slightly different to mine.

Int Did anyone make partner at that point, who was black?

EM No, no. I think it's only now, recently that they have made partners. They actually had a transformation programme, and myself and Dunstan (Mlambo) and Judge O'Regan, of the Constitutional Court...

Int Kate O'Regan?

EM Kate O'Regan, were invited to a panel, where we discussed some of these things, and as I say, probably Dunstan (Mlambo) may speak to that...his experience, I mean, for the first time I heard his experience when we were on that panel.

Int Right.

EM Ya, so. But on the bigger picture scale, I would say...I would not complain about Bowman Gilfillan or the Legal Resources Centre, I think, within the constraints of the time and the mindset, they contributed to the extent that they could, in as far as empowering some of us. Speaking for myself, I don't know where I would be, had I not had the Legal Resources Centre exposure.

Int So you did two years, '86, '87, at Bowman and then what happened?

EM I was meant to do three years at Bowman Gilfillan, because at that stage in South Africa, if you did not have Afrikaans and Latin, your Articles had to be for three years. I did the second year, the middle or towards...no, towards the end of the second year, the political tensions in the country increased quite significantly.

Int Right. That was 1987, State of Emergency?

EM State of Emergency, and I was quite involved in the civic organisation...I'm trying to think whether...no, it was before the Inkatha violence, that the Inkatha came later. But what happened was that the state then arrested a number of people from the civic organisation, Sister Bennett Ncube, and quite a number of senior UDF members from our area. And funny enough, what led to the arrest, is what almost...not almost, in fact has become a source of tension for many years between comrades in our area. There was a person who masqueraded as a journalist from BBC, and some of us said: no, we don't trust this person, we don't know him.

Int It was a black person?

EM No, it was a white person.

Int Really...

EM I had known John...gosh, my memory is failing, there was a Jon who used to write from London Independent...

Int Snow.

EM I think so yes. So we knew him and we said to the other comrades: why don't we check with him whether this person is a genuine journalist? Whoever believed in it, believed in it, and I think the state had done their own work, the intelligence apartheid had done their own work and this person came and videotaped the proceedings of the meeting, what was said, he could come close, as close as he wished, to any one of us...

Int And this was 1987, while you were at Bowman?

EM Yes, it was '87. And then...or '88, beginning of '88, somewhere there. And then the next thing there was just a scoop of most of the leaders. I got taken in for a short while...

Int You were detained?

EM Yes. And then the first thing which shocked me, was when I was shown the video of this meeting with every one of us speaking and being heard very loudly, and I thought: well, there we go. I was at Bowman Gilfillan, Bowman then immediately on my arrest, or detention, same day, they threatened to bring an urgent application. And I don't know, probably because of the kind of, influence that Bowman had in a big law firm, suddenly, in the midst of the interrogation, I picked up the...in fact this guy put the TV and he said to me: look at that, you're a lawyer, you must tell me whether you're going to deny that evidence, will you deny it's you, will you deny it's so and so? I thought: well, it's going to be tough. But then we got called by some senior, or some person and...because before he left he said to me: you know what happens when you try and be difficult with us? I said: ok, I know. And he said: ya, so I'm pre-preparing you, be aware, that's where we're going, you become difficult with us when there's conclusive evidence of what you said, your involvement, this and this and this, I'm not going to waste my time. So I thought: well, he's kind of preparing to intimidate me. And then he get called, then he comes back. He says to me something about: who's your boss? I said: John Brand. He says: was he involved in political cases? I said: well, he specialised mainly with labour but in the seventies he used to be one of the key persons in those cases. And then his attitude kind of, suddenly changed, and he said: you know, Mr. Molahleli, we're trying to improve, the terrorists are coming and all that. But the long and short of it is that finally, they release me and they tell me that they will be coming back, and they would want my co-operation. So I went back and I sat with John Brand and John Brand said: there are two things, the plan is that they're going to include you, because they were still arresting other people, into the group that they have charged, second is that they're going to...they may want to make you a state witness. And I thought: over my dead body, I'm not testifying against my comrades. I can't stop them from prosecuting me, so I then said: I'm leaving the country. Funny enough, John (Brand) was hardly ever in the office, he was running around fighting all these cases. He comes in the office and he could see

that I'm terribly depressed. So he said to me: what are you going to do? I said: I'm leaving the country. There's no way I will ever go and testify, if that's what they have, and also I don't think I want to stand this trial. So he then said to me: well, I suggest you look at a scholarship. He then 'phoned the...not Harvard, the UNDP, he then says to me: go to the American Embassy, the American Consulate in town. I went there, it was in August, and then he says to me: you know what, we're closing today, you must bring your form back, but we're not going to take you for this term, we're going to take you that other term. So I took the form back in the afternoon and I said to her: you know what, if you take me that term, it won't serve any purpose, I may not be keen. So she then asked me. And I said: well, look, there are some pressure for me to leave. And she said: don't even go further, I know those pressures.

Int Gosh.

EM And, ya, later on she then told me that she knew about me, she knew about what was going on in our area and even though I did not know her, as soon as I walked in, she knew...that I may be applying for...

Int Gosh, and she was American?

EM Yes.

Int Wow!

EM And then, ya, the next thing I get a letter saying you've been accepted at Georgetown. (*Laughs*).

Int Fantastic. And what a nice university too.

EM Yes, now, what a nice university. So, then I left and I studied at Georgetown, I think it was '88, '89.

Int Did you do your Masters?

EM I did my Masters.

Int Right. It's a beautiful university, Edwin.

EM And the place also is very beautiful, a nice place to be at.

Int Absolutely.

EM So, when I finished my Masters, I came back. Things were starting to settle down in the country. The atmosphere was...there was still a lot of activity, but it wasn't like in the seventies and the eighties, early eighties, so now facing the reality of now looking for work. And I went to check John Brand and he said to me: no, finish your term. He says: please come and work the following day.

Int Gosh.

EM And then I worked with them and in the middle of that, I got approached by Edwin Cameron who said to me: don't you want to come and work at the Legal Resources...at the Centre for Applied Legal...

Int CALS.

EM CALS. And I went to CALS and I did all sorts of things, but mainly education and training of COSATU.

Int So apartheid had disbanded by this time, formally, 1990?

EM No, this is now 1989.

Int So you came back in 1989?

EM Yes. And just after my arrival at CALS...well, I spent six months at...must be a year...some period at CALS, and I was not happy with the transformation, and I had my own debates and arguments about where things were going, that were starting to employ, like most institutions, were starting to employ black people from Africa, and saying: this is now the transformation. And I said: no, it cannot be, the fact that you are putting a black face, doesn't mean transformation. And there was a whole argument about the quality of academics from...black academics from South Africa and all those debate, and I got a bit offended and I left. Although I loved CALS and the work they were doing was great, but on that aspect of transformation, I had a fundamental opposition to it...to their approach.

Int And who was heading CALS at the time.

EM It was Dugard.

Int John Dugard?

EM John Dugard, ya. Then...I'm sorry, John Dugard, by the time the argument came, John (Dugard) had left. It was Dennis Davis and ironically, Dennis Davis when he came in, he appointed me for a short period to be his Deputy. So, in a sense, personally I felt,

right, they're doing something, but my fight was at the broader Wits University, but more specifically at the Legal...at the Law Department, because they...one of the persons who they appointed who became a close comrade of mine, was Professor Gudu, who is now quite a leading human rights person. But he was from Kenya, I think, or that time he was...he had left Kenya, he was from Zimbabwe.

Int Right.

EM And I just took offence to it, I left, and I went to join Vista University, but Dennis (Davis) then pursued me, after six months I was back at CALS. Which...and one of the reasons why I went back to CALS, was that at Vista, being an apartheid establishment, firstly the environment was not very good for me, but I was determined to go in there and change and transform or make my contribution. One of the things that I got involved in was the Peace Accord Movement. Once I was there I got involved in resolving a number of community conflicts and you know how it started, ironically, is that in Kagiso, a fight broke out between...now I'm talking 1990...I think it was after the release of (Nelson) Mandela, when now negotiations was clearly on the cards, a fight broke out between the youth in Kagiso of the ANC and the PAC, and a very close friend of mine, this guy I said who was my best man, was kidnapped and assaulted, and left to die. My dog's feet were cut, because they tried to come into my yard, but I had a very vicious dog. So, then, we had to start talking negotiations between the ANC youth and the PAC. Now remember, I said to you a close friend of mine was Mike Matsobane's wife, so I knew the family very well.

Int Right.

EM So I spoke to my comrades and I said: look, we can't just go on killing each other, we've got to go and find out what is their problem. So they said: we're not going there, you go there. And I thought it was, kind of, comrades saying: we don't trust you, you can go alone. So I really believed as a matter of principle, that there was no point in the liberation movements getting at each other's throats. So I went to Mike Matsobane and he said: no, why don't you arrange a meeting with the others. And I arranged the meeting and the meeting was not very successful, bad exchange of words between the two groups, but the essence of it is that finally, they then said I should facilitate, be the go-between, the ANC and the PAC. Ironically that's where my skill as a mediator started, and I got then more and more involved into facilitation, mediation, and I started working very closely with Charles Nupen, with the establishment of the Peace Accord.

Int And this was with IMSSA?

EM This was now with IMSSA and the with the Peace Accord when it was established, we started...I was the chairperson of the Orlando Peace Accord...Committee, sorry, and I facilitated quite a number of mediations, particularly in the hostels. There was a notorious hostel here, known as Kwesini, where the army couldn't go in, the police could not go in, nobody could go in there, I mean, Inkatha itself had almost, kind of, considered that we...whilst this is our members, we have difficulties in controlling

them. But I went in there and managed to get everybody into the hostel. The story about what nearly happened to me there, that's also another fascinating story, but...

Int What happened?

EM (*Laughs*). You know, we...it's a funny story...we...I took one of the ladies from the Peace Accord office, and I said: the seniors have been saying we should actually try and get closer and work with people in the hostel there. I think Cyril (Ramaphosa) was one of the people who was saying those on the ground are not actually effectively going to reach out in the East Rand. East Rand was a war zone, if civil war was to break in this country at that time, I think the concentration was going to be in the East Rand.

Int Right, and that's 1990?

EM That's 1990.

Int After apartheid was formally disbanded?

EM Formally disbanded, ya. That's in the middle of the negotiations.

Int Right. CODESA.

EM So, I went there in the evening and I said to the police: we need an escort to go to the hostel. And as we drive across the township towards the hostel, it's like a ghost town, the windows are just closed, it's dead silent, you don't see any person walking in the street, dogs are not barking, it's almost like a totally deserted place. We're being escorted by two Afrikaner young boys, very young. We park in front of the hostel, I had already spoken to somebody and said: I'll be coming there, and I would want to meet with your committee, so you'll arrange and then we'll do whatever. But before we could go, we had to wait for him to come out. Just as the police parks, suddenly a huge explosion goes by; we thought is this a rocket or what's going on? Now, these two policemen suddenly take a u-turn, we, myself and this lady we then lie down next to my car, and what's going on in our minds is that these guys are going to engage, they'll probably call for re-enforcement and then engage. So, after an hour, they come back and I went to one of them and I said: so, what was happening? And...do you know Afrikaans?

Int A little, yes.

EM He says to me: Meneer, as ek weghaal dan volg jy. (*Laughs*).

Int Something about you following?

EM He says literally: if I run away, you follow me (*Laughs*). This is from somebody we thought was here to protect us. So this lady pulls my jacket and says: I told you, these are not people to protect us. But the long and short is that, the one person comes out we...then had a discussion and there's an agreement that the following day there'll be an open meeting where they...an explanation about the work of the Peace Accord and the importance of engaging in dialogue, and how should we deal with violence, and all that get arranged. So now I'm having...what was Peter Harris...Peter Harris was the CEO of the Peace Accord...

Int Really, right.

EM ...for him to go and explain, and other leaders. But the two of us have got to walk in first to go and assess the situation. As we walked in, there's a man lying down in blood, there are three or four guys next to him, we're walking with...there was a guy of the IFP was in charge of the Gauteng region, Khosa, what was Khosa's first name...um...

Int Matis?

EM No, no, no, no, no. Khosa, um, he was known...his surname was Khosa. So we look at him and say: what's happening here, these people are slaughtering this person? And he says: no, I'll sort it. Then we said: no, no, no, you're not sorting it out. And suddenly these guys as we start debating, they pick up this guy, they run with him, so the two of us are following them, we're going into a bush and then they say in Zulu: these two are now witnesses. So I turned to Peter (Harris) and said: Peter, we're risking now, these guys are going to kill us. Peter (Harris) now wants...he insisted, he wants to beat me up, I'm holding him, he says: Edwin, you just...leave me alone and...Now we're kind of...I say: Peter (Harris), these guys are saying we are witnesses and we are in the dense bush, there's nobody here...Themba Khosa...where is Themba and his other leaders? They'd remained behind. So we go back into the hostel yard, we then say to Themba Khosa...the agreement was that we will not bring into the hostel the media. The media will be outside...and the media included...I think CNN was there, BBC was there, SABC was there. We then said to them: no, we will keep them outside, we will bring the media as soon as we come out of the hostel. So we said to him: look, in the light of this, we don't see why should we keep to the agreement. Then he said: no, I'll sort it out. So he goes running after these guys, they bring this man back, there's a big meeting in the mini stadium of the hostel and then he's bleeding. He's bleeding and I keep watching him and I'm worried that this man is going to die. But as he's seated there, I then discover...because I kept asking myself: how come you're here when everybody in the neighbourhood had left? And I thought for a moment, this man must be a (agent) provocateur. What is he doing here, when everybody knows the neighbourhood has run away? And then I suddenly picked up: no, something is missing in his mind, he keeps making comments...they're quite funny and then kind of scream. But at the end of the meeting, I then say to them: look, I'm not going to leave a bleeding man in a hostel where he is not being attended to. So the youth says: no, you can't...you can't, this is our man, we found him here, what

was he doing in the hostel? We argue and argue and argue...no, at that stage I went outside to go and fetch my car, very popularly known car, particularly in my area. So, the car comes in, they say: no, he can't reach there. Themba Khosa was a very brave man, a real brave man, I mean he punched two guys, literally to push the crowd away, he punched two of them and he said: anybody that touch this car...but the mistake he does, he doesn't get me into the car, he gets into the car himself, by that time, the media had realised there's commotion in there, so they come in, cameras were just focusing. Now, firstly, remember I said to you I'd been an activist, involved in my own community, but now I'm also a mediator. So, the cameras are focusing on the car driven by Themba Khosa, in my own community, Themba Khosa was a persona non grata. Anybody being seen with Themba Khosa in the circles of the progressive movement was a sell-out.

Int Why was that?

EM Because he was a member of Inkatha.

Int Ok.

EM And that period, Inkatha was, in certain sections of the townships, was very unpopular. In the hostel they were very popular and they had a very good following. Well, let me say also, even in the townships, there were certain sections that supported the IFP, but the majority of the people saw the IFP at that stage, as part and parcel of the apartheid system, so they hated...some people hated them with passion that they wouldn't want to see you associated with them. But ya, so my car is picked up, driven by Themba Khosa, comes out beamed out in the news that this is what's happening and I get home late in the evening, twelve or so, my parents and my wife and everybody's freaking out, thinking that...because you could even see some blood in the whatever was being beamed, and ya, in the middle of the night around about two, I get visited by comrades who now suddenly want to know what is happening. We thought you were mediating there, but now your car is being driven by the IFP, what's between you and the IFP. So you see how I was really caught in-between the rock and the devil, you know? But ya, so, we managed...the one successful thing we did was suddenly, we opened communication channels in that area.

Int Right.

EM And we were able to get it going.

Int Gosh.

EM Ya, so that's one of the stories that stands out, ya.

Int So were you formally with IMSSA at this point?

EM I was formally with IMSSA, I was quite involved with IMSSA, ya.

Int And then you went from there, from IMSSA, how long were you at IMSSA?

EM I can't really tell...until its demise.

Int Which is 2000?

EM See, I acted here in 2000, it's probably 2001, 2002, somewhere around about there.

Int So you were with IMSSA for a long time?

EM I was.

Int And you...did you...in that period did you work only with Charles (Nupen) or was it Thandi Orleyn...?

EM I worked also with Thandi Orleyn.

Int Right, ok.

EM And I was a potential candidate when Thandi (Orleyn) got appointed, in fact, can I say this to you, that I was chosen to be the director of IMSSA. What happened was...when Charles (Nupen) left, they advertised and I was sitting on the board, they couldn't find any person. The board then resolved that they would go to staff and ask staff to nominate any of the IMSSA panel or any other person, myself and Indu Moodley, we got nominated. Then the question was how we're going to deal with it. I was strong on the community conflict resolution, Indu was very strong on the labour side, although I had done quite a substantial amount of labour, but at that particular time my focus was on community. So, the board then said: the two of you must go and evaluate how you want to approach it, but we would still want to have an interview with you. And then, as things developed, Thandi's (Orleyn's) name came forward and came right towards the interview...the week of the interview and I was not even aware. When I went into the interview, I was told on arrival, that Thandi (Orleyn) would be contesting with us and I said: in a matter of principle...remember I worked with Thandi (Orleyn) at the Legal Resources...she was my supervisor at the Legal Resources Centre and I had had a good working relationship with her, and even at IMSSA, when we were doing cases, interventions, I had had contact with Thandi (Orleyn) and we were part of a group that was championing transformation of IMSSA itself, and other institutions. So I then I decided that I was not going to compete with Thandi (Orleyn), I then withdrew. So Thandi (Orleyn) then became the Director, and I worked quite closely with her from thereon, ya.

Int You know, IMSSA folded in 2002...2001, 2002...as you say, what would you attribute the folding of IMSSA to, why do you think it reached its demise?

EM Look, some of us at that stage...Thandi (Orleyn) had left, incidentally...some of us at that stage, weren't that involved in the...had left the Board...were not involved in the finances of IMSSA.

Int Right.

EM At a very late stage, when things had really fallen apart, in fact I was 'phoned by Thandi (Orleyn) to say: you must make sure that you attend the meeting. And that's when we were told that the financial situation of IMSSA was very bad. Most of the foreign funders had not come forward with the funding.

Int Why do you think that was?

EM I don't know, honestly. Some people blamed the Director that he did not perform what he was supposed to do...

Int Who was the Director at that time?

EM It was Thabo Ndabeni, ya. People blamed Thabo Ndabeni to say he had not done what he was supposed to do, him and the chairperson, the chairperson was Vincent Mntambo. So there were allegations and counter allegations, but, truly speaking, I never went into finding out exactly what the causes were, you know? But one of the things I was aware, was that NGOs were running into difficulty, because I was also running the Community District Resolution Body, which was responsible for setting up dispute resolution in communities. Because during the apartheid era, one of the things that emerged, was the People's Courts, and then myself, Paul Pretorius, Lavery Modise, and some other lawyers and dispute resolution bodies, **inaudible**, We were quite concerned with the movement of people now taking the law into their hands...and probably coming back to your question about the issue of justice and the rule of law in the country, we were quite concerned. There was a case where Mos Mayekiso of Alexandra civic society was...civic...was charged for the Bramley People's Courts. So, we got together and we said: look, something needs to be done because behind the People's Courts notion, there is a sense of the community wanting to ensure fairness and justice and resolve their own disputes to the best of their abilities. But what was happening was that the professionals were standing by and not coming in to assist, and I personally had my own direct experience of being involved in the People's Court. In our community, we had set up the People's Court and though I was not in the leadership of that People's Court, I had a lot of debates and arguments with people who were running that People's Court. Incidentally, this friend of mine I keep referring to, was charged at the People's Court and was summoned there and I went with him and I said: I will be your literal lawyer today and lets see what they will do with a lawyer now, it's not only just an ordinary member. And the way it was run, I don't think it was proper. People were judged purely on rumours, sometimes

individuals settled their scores, used the People's Court to settle their scores. But there were a number of cases, and interesting enough, around the gender issue. I was fascinated how the people's power could take over and deal with the issue of family violence, because most of the cases which we had in our People's Court were suddenly women flocking in to lodge complaints about: my husband has assaulted me. I remember a distant cousin of mine who had left the wife, and he was staying with some other girlfriend and the wife coming there and complaining and the young people say: no, it can't be right, we're going to go to this man. And they would literally go there and say: come, why are you staying here? You've left your wife and children. Now that's popular justice, you may judge it in the western norms of law to say it's wrong because you're not affording the person an opportunity, which is true. But at the end of it there was a problem, the legal system was failing the people on the ground and the people on the ground had found ways of resolving the issues. But what I was mainly concerned about, and I felt, something needed to be done, was the fact that if they approach the man and said: why have you left your wife, and he was to resist, he will be beaten up. And I just thought: that is wrong, that cannot be accepted in a civilised society, he must actually be allowed to put up his case to explain why he has left his wife and hear the case of...his case as to what has happened. But, I must say, when it came to the issue of women abuse, the People's Court in my view, was very important. And then I wish that the legal system as it stands now should have not let those...the learnings from the People's Court, to have just suddenly dissipated. I think we should have built on them, pulled out all the positives, cleared up all the negatives and continue with that kind of sense of administration of justice. So I was quite involved in the People's Court, we established the Community Dispute Resolution Centres, and we established a centre in Alexandra, in Kokstad, in Roodepoort, quite a number of areas in the country and did research around them. Most of them worked fairly well, the stats that was coming out was indicating...because we trained people on what it means...how to use mediation to resolve your neighbourhood, if people agreed to go to adjudication, to use arbitration, we would then bring in qualified professionals like lawyers. But in the mediation part, we would train people to act as mediators. So it worked fairly well, but, the problem was we didn't have funding, the new government, the international community having trust, and the government having legitimacy I guess everybody said: well, you now have your own government which is accepted by all of you, let it take responsibility, which is a good thing, but I think it was done too quickly. I think it should have taken time to let all these NGOs to kind of, build in their own capacity, particularly around the resources, because they, CDRC also, the one I'm referring to, also over time close down. Ya.

Int I'm wondering, Edwin, before IMSSA folded, you'd already got an acting appointment here at the Labour Court, is that correct, in 2000?

EM Yes, yes.

Int Ok, and so you did that for how long?

EM I did it for a term, which is about three months.

Int Ok.

EM Ya, I did come back again...did I? No, no, no, I did not come back, I then moved on...Thandi (Orleyn) was now at the CCMA, she then called me and said I must establish the Public Service Bargaining Council, which was the first of its nature in the country since independence. Where we had to set up a forum for negotiating labour dispute between government and the trade unions.

Int Right.

EM Ya, which took me...spent seven years there.

Int Really.

EM Yes.

Int From...so from about 2001 to...?

EM 2001 to last year, I left just when I joined here.

Int And you were appointed here as a judge?

EM Yes.

Int At the Labour Court.

EM Yes, on a permanent basis now.

Int Right, Well, congratulations.

EM Thank you.

Int It's amazing to me how many of the Fellows of the Legal Resources Centre are on the Bench.

EM Yes.

Int There's you, there's Ellem Francis at the Labour Court.

- EM Yes. That's...Vincent Saldanha has just been appointed...
- Int Right.
- EM ...but he's also acted for quite some time. That's true I was actually...
- Int Is he appointed here?
- EM No, at...in Cape Town.
- Int Cape Town, right.
- EM We've got Dunstan (Mlambo) at the Supreme Court...
- Int Fikile Bam.
- EM You've got Fikile Bam, you've got (Mahomed) Navsa, because (Mahomed) Navsa, I understand he was also a Fellow.
- Int Yes. He was.
- EM I thought he went to practise as an advocate there but I learnt just recently that he started as a Fellow and then he went...ya, he's at the...
- Int And Azhar Cachalia.
- EM Azhar Cachalia is also at the Supreme Court. There's quite a number of us.
- Int What do you attribute that to, do you think, what do you think the Legal Resources Centre does that it enables you to then get to...quite an important judiciary position?
- EM I think the one important thing that the Legal Resources Centre does, and did, like most other institutions, like the Centre for Applied Legal Studies, and other centres of learning, is that they provide a base and a forum for young people to enter into the profession in a very...you know it's almost like soft landing, if I may use that concept. You know, you come out of university, you don't know what you're going to do, you're thrown into Articles...and we've had stories of people who are doing Articles, you get into a commercial world where there is no time, people are focusing on making sure the firm works, you've got to meet the bottom lines, ya, people are driven by other considerations. Whereas in the Legal Resources Centre, I think, you get in there, the environment created by the centre itself is that of learning, so you come in immediately into a learning environment. But I think, and I don't know, I've

not kept abreast like others with the Legal Resources Centre, I used to frequent it during Pinkie's (Madlala) lifetime...

Int ...and she's passed away.

EM ...and she's passed away, what a loss, a great woman. So, I think the individuals also who were involved, not only were they involved in a career, but also an appreciation of the importance of training and development. Because I think, in this country, if we are to succeed in transforming the judiciary in particular, that is the starting point. I'm not sure whether at a broader level, there is sufficient commitment...there is acceptance of the need for training, but not sufficient commitment to appreciating the importance of development of professionals at an early stage, especially of young people. And I think this country...nothing wrong with it, but our young people are now focusing on material things and I'm just worried and concerned that the concept of access to justice will be seen in the context of commercial success and you may end up not having lawyers and activists committed to...ensuring not only the transformation of the society but safeguarding all the rights that have been enshrined in the Constitution. That's really my concern now, because if you don't have well trained lawyers, then the system is going to fail in as far as protecting the interest of the vulnerable. So from that perspective, I think, Legal Resources Centre and other institutions as I say, serve as a very valuable vehicle. And I must also say that I serve on the Legal Aid Board, and we have a very close working relationship with the Legal Resources Centre and you can see even from the perspective of ensuring that you defend the rights of the vulnerable, without fear and favour. There are a number of cases that the Legal Resources Centre has taken against the democratic government, which is not a very popular thing to do, but they've stood up for that principle and that for me, it's the fundamental way of ensuring that the constitutional principles of freedom of speech, the right to life, the right to access to resources, is protected, your environmental rights is protected, family values, protection of families is protected within the rule of law. So, in as far as that is concerned, I think the Legal Resources Centre is doing a fantastic job. What needs to happen is we shouldn't find the Legal Resources Centre in the same situation as your IMSSA, because one of the values of having IMSSA and its core strength was the fact that all the roles, stakeholders played a role in it, and it was a public interest serving body. Whereas, and again I'm not taking anything away from the new institutions, when you look at Kagiso, it's doing a sterling job, you still have most of the IMSSA people serving in Kagiso, but I'm critical of the fact that it is a commercial enterprise, it's a private company, geared towards making profit, I don't think they would have the same capacity as IMSSA in as far as playing the role of a public interest institution. So, I would hope that organisations and funders would appreciate the role of Legal Resources Centre, because if you look at the Legal Aid Board, it's a state-funded institution with very limited mandates of getting involved into cases, whereas the Legal Resources Centre would take any public interest case at whatever level. And as I say, so far they seem to have done a sterling job in terms of some of the cases I've seen coming out in the media.

Int You mentioned at some point that the Legal Resources Centre has been very brave in that it's...taken on cases against an ANC government, a democratic government. I've

come to South Africa and I've found...attacks on the Constitutional Court, the judges and basically on the judiciary. I'm wondering, what's your sense of what's going on?

EM I...

Int ...and are there concerns that a public interest law organisation like the LRC can function in this context?

EM I don't think so, look, I keep saying to other judges, fortunately I've served as an ANC activist...

Int Sure.

EM ...and I was...I didn't mention this to you...I was at one stage an Executive Mayor, so...

Int I've heard about this. (*Laughter*). I will need another interview with you about that.

EM Yes, so, I remember at one stage the issue of the judiciary was raised within the ANC and it was a lively debate, I think what the judges and the courts need to be cautious about, is that of suddenly seeking to immune the court from the society it operates in. The courts have got to be criticised, when a court delivers a judgment that's the opinion of that court, and if the public out there, be it in the form of political organisations or NGOs, seek to criticise the court, that space must be allowed. I think what is happening now, it is unfortunately that in any liberation process, people become very sensitive and any small thing that happens that seems to challenge or threaten what they have achieved, the fear invokes into them a reaction that when it comes out, may not necessarily be something that one would expect from them.

Int It is however unfortunate that people who are in the Constitutional...judges on the Constitutional Courts are branded as counter-revolutionary.

EM Well, by one person...

Int Fair enough, yes.

EM Yes, indeed, a very senior member of the...

Int National Executive.

EM ...National Executive. And yes, it is unfortunate because to the public out there it project that image in that negative sense. But, I don't think it's something that threatens the rule of law and the independence of the Constitution, I don't think so. I

really believe that in the ANC, you have people that have strongly...that strongly believe in the role of the Constitution, and incidentally I would say...I would assume most people who have been involved in human rights, in labour movement, would understand...personally understand the Secretary General of the ANC (Gwede Mantashe). He has strong views and strong feelings about fairness and justice. He was involved in the NUM for many years, and I have come across him in a number of mediations, in some of the strikes that NUM was involved in, how he drives his point home, he drives it in a very strong language, but I don't believe that...and he is a very sophisticated person, I don't believe that what he says necessarily is what he means to happen.

Int But it is a concern, isn't it, because if you look at the Legal Resources Centre it's...post 2000, it's been strapped for funding, as a lot of civil society organisations, and at the same time it's managed, very bravely, to take on major cases against government, even though it was so closely aligned, ideologically, with the ANC. What happens in a context where the respect for judges, the judiciary, the Constitution, starts to wane, you know, when there are attacks like this, and then how does the Legal Resources Centre, which is a public interest law organisation, which is independent of government, and its funding, although it does get funding from Legal Aid Board I understand, how does it then function in that environment, it's a concern?

EM It's a concern, but I say for me it's not a great concern in that it comes from one person. It's not pronounced as a policy stand of the ANC. You see, I would be greatly concerned if the ANC was to go to a conference and come out of a conference and make an official statement like that.

Int Ok.

EM And I think one of the things that's happening, it's a typical conflict in any given society, there is a conflict in the ANC itself, there is conflict between the ANC and government, that we cannot run away from, and that conflict manifests itself largely because of the Zuma trial. Now, that conflict, unfortunately, spills over on all aspects of South African society, and the judiciary it's the immediate victim or object of attack because it's supposed to arbitrate over that particular dispute. And so there'll be all sorts of anxieties around it. So, I'm not so worried, and as I say, I think once the Zuma matter has been resolved, we'll suddenly see that the court will get what it deserves. But yes, indeed, when statements like this are made in public, one worries, because it may, not only send a message out there but other forces may start developing an attitude towards the legal system and the courts.

Int I'm wondering, Edwin...one of the things that's said about the Legal Resources Centre is that it's unable to really attract good quality black lawyers because they are so in demand in...by corporate firms, so, for example Bowman Gilfillan pays so much to a young black attorney, and what's your sense of how the Legal Resources Centre can overcome...that difficulty?

EM Oh, it's a difficult one, because it has to do with individuals' own survival, it's a day to day survival of a person who comes from a background where he or she probably is not responsible for himself alone, but the extended family, most of your...our black people go to school, they have to pay for their bursaries and the parents cannot afford...and my associate was telling me, she's got a mother only, single parent, and she's out there in Mpumalanga, and now and again she 'phones, there's financial demands. Now if you expect her to be forever with me here, that's unrealistic. I think what needs to happen is, the big commercial firms must also come to accept the need and the important role played by Legal Resources Centre, because if institutions like Legal Resources Centre collapses, the respect of the law, access to the law and the balance of power between the strong and the weak fades away, and once that fades away, the legitimacy of the legal system, almost like in the apartheid era, starts getting into question. So, there is a need to find a way that your big law firms can also play a role in contributing to the survival of the Legal Resources Centre. Some of them have got resources enough who can probably sponsor an attorney, who can probably release some of their attorneys to serve in the Legal Resources Centre on a given period. Ya, and probably also find a way of contributing towards funding of bodies like the Legal Resources Centre but the problem is that you can't fund the Legal Resources Centre alone, there'll be other legal bodies like the legal...the Black Lawyers Association. I don't know whether they still have the legal litigation section, but I know in the days when we were at the Legal Resources Centre, they used to have their own litigation unit, they may put a demand also and say: we need to be served. So, the resources are quite stretched. I would have wished if the government could also make some contribution towards bodies like the Legal Resources Centre.

Int Sure.

EM But international funders, local funders, I think there's a need to sell out the Legal Resources Centre, and I'm not sure whether the Legal Resources Centre has done enough to brand itself, you know, to the South African public, and, more importantly, to the business to say: this is the value of the work that we are doing and why is there a need for business to support the Legal Resources Centre work.

Int Edwin, I have a feeling that I may require another interview with you because I wasn't able to go back and...ask you questions, but you've given me such a wonderful flowing narrative...

EM Ok.

Int I wondered whether we could stop this interview at this point by asking you is there's something...I'm wondering about a memory, a particular fond memory, maybe of someone in the LRC, not necessarily...while you were there, but of a client, or of someone you worked with, that you treasure even now?

EM Oh no, I treasure two people there...I treasure everybody. Every moment that I think back to the Legal Resources Centre I just treasure my engagement with everybody. But of significance is Mr. Zimmerman...

Int Yes, Morris Zimmerman.

EM Morris Zimmerman, he taught me so much and...about looking at the case not because of the client, the status, the position of the client. Morris (Zimmerman) used to say to me: this is an important client. Everybody who walks in there was an important client, and every single case, was an important case. But the other person who I really adore, was Sis Pinkie Madlala. The humility that she had, how she treated clients was just amazing. She was the most humble person that you could go to whenever the chips were down and she would speak to you like a mother, like a sister, ya. And the fact that with all her experience at the Legal Resources Centre, I've always been...I've always admired the fact that she would not hesitate to ask a question, from whether you are a senior or whether you are a junior, she's just always amazed me, you know. Ya, so these are the two outstanding people.

Int Edwin, thank you so much for a wonderful interview, truly wonderful interview and don't be surprised, that I may come back to have another interview with you. (*Laughs*).

EM Pleasure. Thank you very much.

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