

Diane Terblanche

LRC Oral History Project

21<sup>st</sup> July 2008

- Int This is an interview with Diane Terblanche and it's Monday, 21<sup>st</sup> July (2008). Diane thank you ever so much for agreeing to participate in the LRC Oral History Project. On behalf of SALS Foundation, we really appreciate it. I wonder if we could start the interview by...if we could talk about your early childhood memories growing up in South Africa. What was it like, and where did your sense of social justice and injustice develop?
- DT I grew up in a very small town in the Eastern Cape. Then Eastern Cape now Western Cape, called **?inaudible** and out of...we're a family of nine children and my parents grew up on a farm. Lived on a farm until I was about thirteen years old, so my early memories is really about a very rural environment, a rural upbringing. No electricity, no running water. Having to fetch water from the river. Coal stoves, you know, that type of upbringing. Very few inhabitants also in the village. At the time, I recall there were about two thousand inhabitants in total in the town and it was also essentially a mission station, a Lutheran mission station. So my memories has really been a childhood of living in a coloured community...never seeing either black people or white people, except for the occasional traveller. So essentially that's how we grew up.
- Int I'm wondering in terms of growing up under apartheid, you described this environment, which is quite sheltered in a way by its own default, but I wonder at what point you can sense, as you're growing up in this environment, a sense of things are not quite what they should be...in terms of social justice, maybe your community is not treated properly, your family? At some point I'm wondering, where did that come from?
- DT Sure. It was very late in my life, yes...because exactly that is also what I wanted to you to understand that it was a isolated and an isolating environment. And...for myself for example because we were a big family, the times that I went into a town and saw people of other races was very occasionally when my parents could take us. So that is the type of sheltered and isolated and isolating environment and living I lived until I was thirteen when we moved to Grabouw in the Western Cape and I went to high school in Somerset West...and even then also going to a coloured school basically pre-dominantly Afrikaans also, and so I would say my first exposure has really been at university, not really before.
- Int So in terms of university where did you go? Did you do law immediately?
- DT I did law straight away from high school, yes.
- Int Where did that come from? What were some of the influences that made you decide to do law?

DT You know I'd love to say it was a great philosophical (laughter) thinking that went through my mind, it was really not that. I went to university, never gave any thought really about what I wanted to do. Had a vague idea that maybe medicine would be a great thing to do because of quotas I couldn't get into university where I could study...

Int You mean racial quotas?

DT ...racial quotas at university at the time. I started university in 1979 so due to racial quotas, of course my grades were not that great. Didn't get into UCT, which would have been the school where I would have had to study medicine. At Western Cape there was a dental school, so those who couldn't get into medicine became dentists. And others just basically took their pick of what other careers were on offer, so the choice was essentially you could do teaching...right. And if you did teaching then you also had a scholarship; so either you went into a career where you could say I am going to become a teacher and then the government paid for all your studies, because my parents certainly couldn't, which also dictated my choice of doing a BA Law. Because with a BA Law I could always say that I do a teachers diploma later and get the funding to be funded for my law degree, my first degree. And then the thinking then that I'll go in to an LLB ultimately. But at university, you know, the time of the UDM, really, really difficult times politically. A time of really getting to see people of other races and starting to appreciate, but you know the things that you always has taken for granted, maybe they're really not so simple and then maybe that's not what they should be. So I got involved at University with legal aid work and I worked in the legal aid clinic of the university, practically from my first year. That's at the University of the Western Cape. And I would go out to communities and realise you know there are really people who are in such distressful circumstances and that's what I wanted to do, is to help those people. So I would religiously go every week, Wednesdays, sometimes twice, get to the legal clinic, go out, go into the communities and try and help them with legal advice on whatever issues they had. So that's essentially how it started for me.

Int You also were there at a time...you started in 1979...the LRC started in 1979...from what I can understand, having interviewed other people, Mahomed Navsa was at the university, did you know him?

DT Only from, by sight, and only really a little bit by reputation because Mahomed (Navsa) was always exceptionally clever. Very, very gifted, you know, very intelligent. So I knew him by the fact that he was always highly regarded for his intellect, even at university. A person whom I studied with, who was also at LRC from my first year till our last year, was Jakes...um, Jakes Francis...Ellem Francis, yes. Ellem and I studied together over the same period of time but also coming of course from very different backgrounds, you know. But yes, some of the LRC people I knew from them but others I really got to know when I started working for LRC.

Int Seeing you were involved in community advancement work for the advice centres, so that's a form of public interest right there. At what point did you then...and also I'm

just curious, from what I can understand UWC and then UCT, they had joint advice programs...

DT No. Not at that time. At the time when I was at university, '79, '81 the University of the Western Cape's program was a self-standing, independent program and... I also after...now that comes a bit later but maybe I can truncate it a bit and get to that. I also later on ran the legal aid clinic at the Western Cape. And at the point I ran it, I took it over from Murphy, John Murphy who was pension funds adjudicator also later in his life, who was also embarked on the fringes with the Legal Resources Centre, and at the time when I took over the clinic it was still very much a university based in sending students out and I expanded it to go more into the rural areas into places like Paarl and **?inaudible** and Wellington. You know, to go more out into the Boland and taking the students there and saying to people we're coming there so that it expanded quite a bit from a university base and a township around the university base program, to a program that was expanded further afield for the more rural communities. Maybe my rural upbringing (Laughs)

Int Absolutely....so you do your BA there and did you do LLB also at UWC?

DT Yes, I did it there after my BA Law.

Int Right. So at what point do you then have...so that must have been what 1982, '83, you might have there...?

DT I finished my LLB in '82, '83, and I started my articles in '84, the beginning of '84.

Int Where did you your articles?

DT I did my articles with Omar Vassen and Sonn and Abercrombie. Dullah Omar at the time had just left the firm. My principal was Percy Sonn and Vassen, who was still with the firm, and Abercrombie...and essentially you know I think that also shaped what I finally made a lifelong career out of the articles. And somehow, also not really so much by choice because all of us wanted to do our articles in the big firms and do corporate work and all the big things, you know. And essentially for black women it was not that easy to get articles. I got articles with this firm and at the time remember there was a lot of political unrest, a lot of cases, a lot of whipping cases. A lot of people's houses being burnt down. So I did many, many, many unlawful imprisonment cases. Many cases about people being whipped for protests, you know their houses being burned down and their goods being destroyed. So I did a lot of that work at the firm. Very much criminal law focused and I think that set my career, basically.

Int From what I can understand that firm was very involved in the larger political trials...

DT For sure. Yes, definitely.

Int Could you talk a bit about that?

DT I didn't get involved with that. I was too junior at the time. My principals got really involved and my principals were also very, very politically active. I come from a very politically sheltered environment and as a person I'm also not that courageous a person. But you know if there's an injustice and there's a way of addressing it and addressing it within a frame work, or even testing that frame work to address the injustice I can do that. But otherwise I'm not that courageous (laughter) as a human being. So I can use law and I can use law to the advantage of people and stretch the boundaries to help people, but I'm not Einstein, I don't have **?inaudible** do great things.

Int I'm just wondering as well, Diane, so you did this...everyone as you said wanted to go to the large law firms but for some reason, I think the way you're reflecting, it seems like this was a very good decision on your part to do articles where you did it.

DT I think so, because for me it's led me to a very, very fulfilling life and very fulfilling career. It really did. Because you know, I feel that I've really helped people along the way. I really hope I have and I do feel like that most of the time. Sometimes I feel maybe weren't so quite succeeded in this and in that instance but mostly I do feel that I've helped people.

Int And then after your articles where did you go?

DT After articles I stayed with Omar **Vassen**, with the firm, for another year and a half and then I went to do my Masters in the US. I did it at the University of Pennsylvania, Philadelphia, and I stayed there for about eighteen months. I did my Masters thesis on land reform and issues around land redistribution, land distribution, and so on...realised it's really not where my passion lies. My passion is more with the people and the issues that people face on a humane individual type of level. And even when I was there I was also offered to work in the US and I just couldn't bear the thought of being away from South Africa and being away from my family, so I came back to South Africa in eighty...at the end of '88, and started then at the Legal Aid Clinic at the Western Cape. First worked with another firm for a few months, **?inaudible** and his firm for a few months and then I started with Western Cape.

Int And you worked at the Legal Aid?

DT At the Legal Aid Clinic, I was the Director of the Legal Aid Clinic, yes. Had a small teaching component, something like six lectures or something per quarter.

Int In terms of the legal aid work that you did there, this was really the nineteen...

DT '89, '90, '91.

Int Things were changing?

DT Yes, things were changing not only politically but also around other laws around women and gender issues and how marital issues had been dealt with. There were very, very significant changes over that period when I did my articles into the time that I was at the Legal Aid Clinic. But what I remember from that time, at the Legal Aid Clinic that came so startling to me was already the levels of abuse of children and the vulnerability of children. Children were just not getting the protection they deserved. And it came to me most clearly in one incident where a woman came to me and said to me, 'you know, I got two daughters, thirteen and fifteen, and I'm married to this man and he sexually abuses them, what should I do?' And for me it really made me sit back and think: where one must get to, that you can't see what you have to do? That you can't see for yourself that first I must take my child away out of this situation of danger, and...a situation where their integrity is being compromised? And I reflected on this a lot. Where do people go to when something that seems obvious to other people just don't seem so obvious to them, you know? And so I joined Legal Resources Centre in '91 and a lot of my work has been around children and children's rights. Not the rights of parents fighting, 'I have to have this child and I have to see this child'. But essentially who looks after that child, where the parent can no longer see what is necessary to protect the child and who is it who must do that.

Int ...I just want to take you a little bit back because, you know, obviously at that point you were dealing with a lot of gender issues. Maybe you could talk a bit about that in terms of how the laws were changing in South Africa?

DT For me it was more about...because of my exposure at the time was a lot around marriages, we did divorces, marital issues, until it came out of our ears. The issues around Muslim marriages and this notion of universal partnerships and how you deal with that and how women are being protected or not within that environment. How women are being protected within marriages or not, you know. Something that comes to mind for me for example is exactly how sometimes laws can change and how people can still not have the protection of those laws. I remember doing a divorce, not a divorce...a re-arrangement of the matrimonial property **?inaudible** with a client, who's married in community of property, who's quite a bit older than his wife and then they wanted to change from in community of property to out of community of property. And I was representing the man. And I could see that this man is busy telling his wife things, which are not necessarily...they're right, you know, but if you dig a bit deeper then you realise he's telling part of the truth but not the whole truth. Not the truth that makes her realise but 'shoo' my rights are being compromised. Which puts one as an attorney in a very compromising situation because you can also not go and now start advising the other party. And for me the difficulty was saying to this woman, and I actually got to the point where I said to her: Look, we sat in a consultation like we do now and I said to her, you should actually get your own lawyer, you know. You've got your rights and I can't advise you on these things because I'm representing your husband. You should get your own lawyer to advise you on this or at least have somewhere to go. And that is why I think many times on

gender issues and general issues people really never really fully got what they said to you. Up to today in my view.

Int Why do you think that is?

DT Because I think, and this is why I asked you the question that I, what LRC going to do with this, for example, because I think there is just such a need for organisations such as LRC to assist people to make those rights meaningful to them. Where people can come to a situation where they know somebody can help them and actually take them through the depth and the breadth of what their rights really mean. For them to be able to use it. Nobody does that. Nobody does that. And it is such a problem.

Int I'm also wondering, how did you actually....from the UWC Legal Aid Clinic, how do you then get to the LRC office in Johannesburg?

DT Oh, ok. I got married. My husband is from Zimbabwe and he worked in the US for a long time and we met in the US. So when I came back to South Africa he also came back and we decided this is a good point to settle. Between Johannesburg and... between Cape Town and Bulawayo, because my family is in Cape Town. So that's how that came about. But my decision was still to come to public interest work cause I wanted to continue with that type of work.

Int Ok. So when you decided, why the LRC? How did you come to learn about... the LRC and had you heard about it before? Had you known about its work? Did you know people, such as Arthur Chaskalson and Geoff Budlender? Of course you'd heard of Mahomed Navsa, so I'm just wondering if you could talk a bit more about it?

DT You know, this in a way is...somewhat of a drawback for me, I think. LRC has done such great work. But you know it is actually not very well known beyond this small group of people...you know. So if you're not a person, like myself, moving in those circles of Arthur and Sydney (Kentridge) and Felicia (Kentridge) and those, you really don't know, much about what's happening with LRC. The person who's done a lot in terms of giving more exposure to LRC and what they do, is really George. George Bizos, yes. Because he's been so closely linked to the LRC for so many years that one almost intuitively know that when George is involved somewhere, the LRC is also involved in that same thing. And I think he's been a great ambassador for the LRC in that respect. And then of course the fact that people like Arthur went to the Constitutional Court. Mahomed went up to the Supreme Court of Appeal. Many of the members have become judges of courts and really outstanding leaders in legal areas in their own rights over the years. But no, the short answer is that I really didn't know the LRC through all the great work they've been doing, but really through people I know who are at the LRC.

Int So how did you then come to the LRC eventually in 1991? Was there a vacancy? Did someone mention it? How did you decide?

- DT That's a good question. I can't even remember...I can't even remember?
- Int Ok. So you started in 1991?
- DT In '91, in April.
- Int Ok, and then you started as a full-time attorney. Was there a specific area of law that you were particularly working on at the time? As you said...
- DT At the time you see what happened is we were all in different program areas and if I recall correctly, for myself I was very much into the...advice centres. Remember LRC always used to run a whole network of advice centres, and the advice centres would be based in different regions of the country. And so you'd have our work in the office, involving also...having candidate attorneys and training up candidate attorneys, and running cases within the office. My portfolio has always been Supreme Court litigation, so I did a lot of civil matters in the Supreme Court. Mostly out of police brutality cases...people who got...lose...the use of their legs or their arms or whatever the case may be. Really got injured badly in police detention, I used to do a lot of that. And then I also did a lot of environmental justice matters, you know, when power stations are located, that type of thing, and then eventually really converging around constitutional issues, but we all did a bit of everything, you know. You can't say that we were that specialised. We all had a turn where we did constitutional work. We did Supreme Court work. We did inquest work. I did a lot of work around inquests also but mainly around children. Where children died in a hospital, a child died during birth, a child died because of abuse. I did that type of things, quite a lot of that. And also looked quite intensively into how to protect the rights of children, you know. And then I also had responsibility for travelling; I travelled a lot. To advice centres because we used to give support to advice centres. So we had to go out to the advice centres every week or every second week, and I used to do the area from Johannesburg and **?inaudible**, Kimberly down that area and come back all the way up and spend the day at each centre. And people would be there and we'd help the paralegals with whatever cases they have. Bring back what they can't handle and help them with what they can handle and so on.
- Int Ok, when you started at the LRC, it was still in some ways... had the old leadership, Geoff Budlender was there, Arthur Chaskalson was National Director, etc, but at some point in the time that you were there until 1996, things started shifting and changing...Things were changing in the country anyway. I wondered whether you could talk a bit about that, about change of leadership, how that impacted on the LRC.
- DT Ya, you see...it changed. You see what also happened with...every organisation it's essentially also a microcosm of what happens outside of the organisation. And within the LRC, you know, there was also issues, tensions, white/black, male/female types of issues and...pretty much, from my experience, pretty much a very closed unit, very...these are people one understands in retrospect, it's been coming on for many years and they're very close. They almost probably think alike. So it was not a circle where as an outsider you could just get into. I don't think so. So one pretty much is

left to the point that you say, for me, this is what I want to do with my life. It is great that these guys are here, they can give you that support, technical support and so on. But it's pretty much because of your own approach and view of life. But yes, there was a change of leadership. Arthur (Chaskalson) left at the time. Mahomed (Navsa) became a National Director, then Mahomed left to go to the High Court. There were some sorts of issues around that at the time when Wim Trengove came on board, and that was about the time when I left in '96, end of '96.

Int I wonder if you could talk a bit more, because earlier...there was a lot of tension between NUSAS, the NUSAS grouping, and other people, people of colour would come in as Fellows, etc, so quite early on in the LRC's history. And then the racial tension's always been something that's continued at the LRC. I'm wondering in your time what were some of the issues around race, what were some of the issues around... gender and how did they play themselves out?

DT I can tell you boom, boom, boom, how I saw it, is that it was pretty much, very much also a white driven, white led, organisation. And in a way, there was leadership in a way...but you didn't really feel that much, a sense of you, a part of that. You were there basically to do the work and you did the work and so on. But you did **?inaudible** certainly, you didn't feel a sense of being taken, that I've been taken in a confidence of the leaders on the vision of the organisation, that type of thing, no. Though we were expected of course to do our work, to do it in a certain way and so on. But for me, I think it was mainly people stayed because they had their own view of life and their own values and their own aspirations they wanted to achieve. It's a really difficult thing because I...there were many, many issues around race, even within LRC. Ya, there were really tensions around that, and whether people really got...their due. And uncertainty about whether you got your due because you were white...and a male or whether you're not white and a female. Ag, it's always been those tensions, ya.

Int Earlier you told me that you studied with Ellem Francis, now he was also at the LRC as a Fellow and then he continued onwards. When you were there he was also there at that point and I'm wondering whether there was an alliance with Ellem, for example, whether racial issues were part of...did you feel somehow that you were being sidelined in particular ways, or even discriminated in particular ways?

DT No. I think it was pretty much the black grouping having issues with the white groupings and whether it was **?inaudible** I'm not sure. Definitely one didn't get a real sense of being...but you know it's the more unspoken, the more unsaid, the more...things that you feel and you can't really say this is the case...it's more that type of thing. So as one looks back, and you know, and with the benefit of hindsight one often also wonder whether it is not just the fact that we were just so sensitive at the time to all these things and so...adamant often that things are happening because I'm black and maybe it wasn't that, you see. And with hindsight I really...at the time I remember I felt very adamant that one is discriminated against because you're black. But with hindsight you know, maybe it wasn't that, maybe it was just the time in our history when we just really, really sensitive and sensitised to those issues. And then in a situation of change and change-over, probably it became more accentuated. But



certainly the sense was that one felt that there's a black/white issue with the LRC, yes.

Int Can I just ask you, Diane, in terms of the subtle forms of racism, how did those play out. Did it relate to cases and who was given cases? What were some of the practical, subtle racisms in the organisation?

DT That's so hard to say.

Int How do you experience that kind of subtle...is it division of races if certain cases are given only to white lawyers, or do white lawyers make decisions or was there no socialisation?

DT It is more the association than anything else. That the sense that there's a closer association with your white colleagues. That was more for me the case. Because I certainly felt much more like I'm on the outside. And I ascribed it to being black. But now you see, thinking back, one asks yourself, was that fair?

Int What do you think?

DT I still don't know (Laughs).

Int It's interesting....it's interesting your reflections on that because having interviewed other people there seemed to be lots of tensions around race certainly and so I was wondering how you experienced that? And also as a woman, a black woman, how that works out? But you were also there at a time when there was a lot of change in leadership and I'm wondering how that impacted on the LRC itself?

DT Ok, now let me come to the point where Mahomed (Navsa) was appointed as a High Court judge. He was very young. I don't know if you recall? He was really young when he was called to the Bench. And at the time he was called to the Bench, George (Bizos), was in the Constitutional Litigation Unit. Mahomed...and I'm not sure of how the, I can't exactly recall the sequence, but he was National Director and then he was head of the Constitutional Litigation Unit. When he was Head of the Constitutional Litigation Unit there was somebody else as National Director.

Int Was that Geoff?

DT You know I'm sorry I can't now recall quite exactly. What then happened is Wim Trengove then came in and Wim also has quite a bit of aspirations. At that time he had lot of aspirations around constitutional litigation, and Wim (Trengove) also comes from a legal background with his father being a judge and Wim being white and so on. So when Mahomed (Navsa) was called to the Bench, it was...the thinking was that it was being manipulated so that he can vacate that position, so that Wim can take

over in the Constitutional Litigation Unit. So it's almost a sense like Mahomed (Navsa) wasn't quite ready but he was being pushed out of the organisation. And that you see gave more meat almost to this perception around racism.

Int How...how would that have been manipulated with Mahomed (Navsa) getting a position of a judge. Is that...that's more senior, in my estimation than being Head of the Constitutional Litigation...?

DT You know, look at the time. Because at the time when you look at that and now of course remember I, I remember that...and I'm also bearing in mind that it was also time when it was a real push for more black judges and for transformation in the judiciary and all of that. But it was also a time when we had a new Constitution where for a lawyer, it was in my view and maybe that's just my view, if I were to have, if I had a choice between being a judge of the High Court and heading up the Constitutional Litigation Unit, I would go for Constitutional Litigation Unit. And there was tensions around that, you see. So...so even though on the face of it, it looks, it almost looks like it was a sweetened pill in a way. Like also Mahomed was very young, and maybe that's just my own views now that I bring to bear on this whole issue. I, for example, do not believe that people should go into positions where you make choices and decisions about other people's livelihood and the way of living and what they should and shouldn't do, when you're still very young. When you've not had your own life experiences, you see, to draw on. And life experiences that you can then apply in that type of situation. I don't think that is appropriate. But you see that's just me, and Mahomed (Navsa) was really young. And...also in a way if, if you ask me, I would say he was still quite immature. He's very clever. Very, very intelligent, very clever, but I felt that he had an immaturity then to be a High Court judge.

Int What makes you say that about 'immaturity'?

DT Because of how he related. Let me...and this one I'm going to ask you to definitely take off the record but I just want to illustrate to you what I'm talking about. I don't know if you know that Mahomed had a...had a thyroid condition. He had a thyroid condition, medical condition. That caused him to have very severe mood swings. He would go from one extreme to the other, and basically people understood it most of the time because most people knew that he had this issue. But what happened is, there was this young woman...Nicolette Mood at the time. And she had a guy...there was there also a fellow came from the US, Peter, I can't remember his surname now. And Peter and Nicolette had a relationship, and there was some sort of argument that ensued between Mahomed and Peter, and Mahomed (Navsa) being the most senior in the office, tried to throw Peter down the stairs in the office. Now you tell me...

Int You mean physically?

DT Physically. Now you ask me...then somebody come to you and say to you a few months down the line this person is going to be made a judge of the High Court...you see? So I just needed to say that type of thing was what gave me a concern. You see?

Int How was that handled?

DT It wasn't (Laughs). It was just basically later on when everybody calmed down and apologies and that was that. So you see why I talk about maturity? Now this obviously I'd want for you to just take out. For me it is, it is that type of issue and there were many outbursts. Cecilie who phoned me to set this up, Cecilie's always been Mahomed's (Navsa)...personal assistant and she really, really kept him on the level, so to speak.

Int You mention Mahomed Navsa's thyroid condition, but in fact a lot of people aren't aware of this. In fact this is the first time I've heard of it. I am just curious how Fellows might have handled all these explosive incidents? Do you have a sense of that?

DT Uhn uhn. We just all, for myself, one just knew that you just don't mess, because you just don't know. For myself that's how I thought. Now I'm not, you see now I'm speaking and I'm sure somebody said to me that he's had it and he's been treated and all of that. So always when I looked at what happens around the office and outbursts and so on, I realise also because I, myself, I was also a very volatile person and I still am many times quite volatile, and I know that at LRC, for example, people would say that I'm a real slave driver. You know, really expect a lot out of people and people come to me and say to me, you know, the one thing that I think...how I think about you when I think of you, is that you're a slave driver. You expect too much of people. And people have said this to me many, many times. But what I also didn't know, and I also was prone to outbursts, you know, and I don't know if that was the environment but later on I have found out that I had a thyroid...over-active thyroid issue. And to me it was just such a pity that I found it out after I probably made so many enemies along the way (Laughs). So that is...so but, when there...so for me the thyroid, if that was actually true, that he had that condition...but for me to explain that type of behaviour, that's very volatile, you know, very explosive. But it was just one incident that stands out in my mind. But he would walk into a room and just throw it open and just go off you know, **?inaudible** angrily and he would walk in and just **?inaudible** you know. But he was very, very volatile. That's my experience of him. Maybe he was a bit mad because he's so clever (laughs). Arthur (was very close to Mahomed and Mahomed was very close to Arthur. I don't know. One didn't get a sense...he definitely didn't handle it where anyone of the ...I certainly didn't see how he handled it.

Int When you say Arthur Chaskalson and Mahomed Navsa were very close to each other how do you get that sense? Where does that come from?

DT Mmm, well you know, when people are always talking together, sitting together and it could be about law but certainly I didn't perceive that closeness with anybody else. Maybe he did. Maybe I just didn't see it. Maybe it was just more obvious with Mahomed (Navsa). But I just, certainly where Arthur (Chaskalson) is concerned I had

more a sense of Arthur being a mentor to Mahomed (Navsa). And I didn't have a sense of Arthur being a mentor to other lawyers.

Int What about Geoff Budlender in all of this? Where was he positioned?

DT Geoff, I think, Geoff for me...you see when...I remember going...thinking back on LRC, Geoff was pretty much embroiled in the black/white issue, you know. Arthur was not that much but with Arthur maybe he was much more senior, much more experienced and so obviously wouldn't be interfacing with...we wouldn't have interfaced with him that much. Geoff was closer to us in terms of age, in terms of experience, in terms of being an attorney and not an advocate because that also makes a difference. Because Geoff was an attorney, a practising attorney. Arthur was a practising advocate, so there was also that difference in the level of which people operate. But Geoff was pretty much in the middle of the racial tension.

Int Why do you think that was, I mean apart from maybe the attorney....?. Did something happen? What was going on in the office at the time?

DT He was also at some point in time the Director of that office, and thinking back, and I can't recall the details but my sense was that it was around decision making...it could have been cases but I can't recall correct...it's just an overall impression that I can recollect, that he was definitely in the centre of that.

Int What prompted your decision to leave in 1996?

DT I...while I was in LRC I also got involved in consumer protection and I got quite involved with people in the international consumer protection community. Organisations like Consumers International... (*interruption*)

*Interview resumes*

When I was with LRC I got involved in consumer protection through international agencies like Consumers International, Consumers Union from the US, Consumers Association in the UK and so on. And then also was the time when...there's, there were batches of law reforms taking place, and at the time there were changes in the insurance legislation and there was a need for somebody to drive through certain amendments in the consumer interest and in the public interest. And I was then approached by, by Lord Michael Young, to start a consumer institute in South Africa, and I agreed to do that. And the person who referred Michael Young to me was Felicia, because I met...you know, because obviously I would have known Felicia (Kentrige), so Felicia referred Michael to me and Michael then spoke to me, and the person who funded the Consumer Institute was Joel Joffe. And remember Joel Joffe also had some closeness to the LRC, he used to be around that years. So I then started the Consumer Institute, funded by Joel but it was a very confined and specific mandate, really to look at financial legislation first. Legislation within the financial sector and to look at specific issues to promote consumer protection. There were two things around transparency and disclosure and the other thing was around interest. That people are charged that can...in terms of the then legislation could potentially

exceed the capital sums of the loan. So my job was really, essentially to lobby and ensure that those things were changed. And that was changed in '98.

Int So you started there, and what has happened subsequently? Are you still involved?

DT In consumer protection, yes. That's all I do. It's the only thing I've been doing since '97, the beginning of '97. Only consumer protection...I stopped with the Consumer Institute in 2001. I was then involved with a...Competition Tribunal, hearing cases out of the new competition law. From there I was then approached to join the Competition Commission. I then resigned from the Competition Tribunal and joined the Competition Commission as Head of Enforcement. So I then worked for the Competition Commission for the next three years, then realised that competition regulation is too narrow a focus on consumer protection. Much narrower than what I wanted to do, so I left the Competition Commission in 2004/ 5, I must just think of the exact date...and continued consulting on consumer protection issues for the South African government and other African governments and any entity who require some advice on that.

Int Do you have status as an NGO? How does that work now?

DT I work as a private consultant but I'm also chairperson of the Consumer Tribunal. And Consumer Tribunal hears cases on the credit legislation and then there's a new piece of legislation coming...going through Parliament right now, the Consumer Protection Bill, and once that Bill is through law, then we will also hear cases from the Consumer Protection Bill. So it's pretty much almost taking up all my time.

Int I can imagine. But...it seems to me that this work really stems from your work at the LRC...

DT Yes absolutely!

Int ...and I wondered whether you could talk about that...the type of cases you did there?.

DT Definitely! For me...the...for me the biggest thing about LRC that it brought out, and that's always been LRC's approach, and I'm always happy that they never diluted that. Which is that you will always do things that **?inaudible**, and if those laws do not meet the needs of the people and there's a way of, of interpreting it...more flexible to give more people rights, then you do that. If it can't be then you lobby for it to be changed...you know? So that's been my approach also, looking at laws, looking at what's happening around us and looking at it critically and asking yourself, can this be improved, so that people have a better deal out of it, you know, because that's essentially been the LRC approach. To say, can never just take **?inaudible** and say you accept it. You look at it from all angles and you ask yourself, how can this be changed so it's better for people? But always within the framework of law and what is

just and what is right and what is fair. And what also... always protects the dignity of people.

Int I'm also wondering, were there specific cases that you worked on when you were at the LRC that you found particularly interesting or rewarding...either from a legal perspective or from a humanist perspective?

DT I always think about...I did a big case in...for a community in **?inaudible**, and in fact I spoke to LRC people after I left and even two, three years after I'd left it was not finalised. Around people's shacks being demolished and their goods being destroyed and them not getting their damages at the end of the day. And that for me has always been the biggest challenge of the time. The same type of case I did in Cape Town around Khayelitsha, when people's homes, shacks were also destroyed and how long it took for them to get compensated. The same story, you know. And the same thing, you know, I'm seeing now, you know. So many years into democracy you still find that people's homes, their little shelters are destroyed and they're just treated with total disregard, you know. And one asks yourself, where does this fit into our constitutional democracy that talks about dignity and respect for all, you know. It's very painful.

Int Absolutely. The one other thing I should probably ask I'm doing these interviews in the context where the judiciary is under attack and I'm wondering in terms of rule of law issues, how does an organisation, that deals with public interest law, whether it's consumer protection or...cases...that go against government, how do you then actually...how does an organisation like that function in a context where the respect for the rule of law might be...is being challenged as such?

DT But you must ask who challenges it? And I don't think it's a broad based challenge of the judiciary. I think it is very confined to certain circles and certain people with very specific agendas. I don't believe there's a challenge per se on the judiciary. Maybe I'm just saying that because I believe that...I totally believe we should respect the judiciary and their decisions. But then on the other hand you see, I believe that there's some things that are gone astray around the judiciary, you know. For example you've seen that we've had cases where judges are being brought up for drunken driving and nonsense like that. It's just a way of conducting yourself. I think there's a lot of that that people don't adhere to anymore. For example I have an approach that says, as a Tribunal, and I'm talking about the National Consumer Tribunal, how can you expect people to respect you if you don't behave in a respectable (laughs) way. How can you...and we talk often about the **?inaudible** compliance requirements that we have of the laws, and my approach has always been we have to comply with the laws. Because how can we go as a court and say to a person, you have to comply, this is what the law says, when you don't do it yourself. It is that, that I think people just don't take that seriously anymore and unfortunately it then gets exploited, you see. But I don't think... I think there's the issues around the re-structuring of the judiciary and I think that is something that should really not just be taken lightly and not just be based on a few views here and there...and politicians saying this is the way you believe it should go, but really what is going to meet the needs of people to live in a

just society. Where just and equitable decisions are taken. And one has a sense that that is, not maybe that entirely on the foreground, you see.

Int I'm also wondering, Diane, in terms of...when you joined the LRC it was at a time when Arthur Chaskalson was still involved and then he was leaving, from what I can understand, Arthur Chaskalson was very adamant that even though the LRC had been very...ideologically closely aligned with the anti-apartheid movement and the ANC...but when the ANC came into power it would still have to challenge the ANC as government. Wonder if you could talk about that?

DT Absolutely. And that's always been a very strong unique fine factor also. If there's something that sort of put us against each other is the issue of race, but if there's something that unified all of us was the issue about being apolitical. Not in the sense of not being a political human being but saying that each and every person, irrespective of their political persuasion is entitled to legal representation. And that's been a very strong unifying thing for me within the LRC. And I believe that it has to be like that for an organisation like LRC. In fact, I believe it, and I'm sorry to hear that the LRC is really struggling financially from what I've heard. It's a really a great thing because this is now when it's needed even more.

Int Quite apart from funding, which is an issue definitely, the other issue is that the LRC is unable to attract good quality back lawyers and the argument that's given often is that's because good young black lawyers are in such demand in the corporate world. I wondered whether you think that's a fair assessment?

DT Yes. I think it's correct. I think LRC has to say...we will offer people a remuneration that competes. Because it's also putting a value to public interest work, if that. Because if you continuously underpay people compared to what happens in a corporate sector, you're actually undervaluing the contribution people make in the public interest.

Int The other thing I wanted to ask you is...given me your background in terms of child rights. There are organisations that have been popping up. ProBona.org, there's the Family Law Centre, etc, with Anne Skelton. There are people...doing very good work. What's the role of LRC in all of this as a public interest law organisation?

DT I think it is still...what they've always done, test litigation. There are so many laws going up and into the statute books and the question is...do those laws deliver what they're supposed to? Nobody looks at that, you see. Because there are policies being put forward and then when the policies laws are changed, and then somehow between the policy and the law and the implementation of the law, things just can go horribly wrong. So the question is really about testing that. I think that's very important. And I think for LRC's really...what I would think...and the money's always an issue, is looking at those laws that's supposed to protect children. Do they protect children or how should they be changing, and running test litigation on those things. The case that they did recently that Achmed told me about is around child maintenance crimes and where the government decided they're cutting it off at the age of sixteen. And the

Constitution and other legislations say that the child is entitled to that right. A child is defined as a person that up to the age of eighteen. And LRC challenged that and said, no. But you can't cut it off at sixteen if the child is a person up to the age of eighteen. Now you see it's that type of thing.

Int In terms of consumer rights, what I can gather, LRC's always had a tension between having to see the everyday person with their problems, which is often a consumer issue, and looking at specialisations, environmental, refugees, be that what it may, social welfare, etc. How do you understand the tension, given the fact that we're now operating in a context where there aren't in fact advice centres in the townships and community?

DT An LRC can never be a legal aid clinic. An LRC can't be an entity that is going to be able to advise people as they come off the street. The only way in which they could accommodate it, and how I see LRC, is to use that as a basis for seeing where the problems really are, and then to find innovative ways of addressing it through legal practice.

Int So you think still impact litigation via the test case approach. Diane, I've asked you a range of questions, I'm wondering whether there's something I've neglected to ask you that you feel ought to be part of your Oral History interview?

DT Not really. I just wanted to...no I don't think so, hey. I don't think so.

Int I'm wondering whether you could share a memory, or several, of either colleagues that you worked with at the LRC, whether it was George or Mahomed or Arthur or anyone else, and also perhaps even a client, which really you treasure as part of your LRC experience?

DT Phew, there were many of those you know. But what always stands out for me in my mind because it becomes symbolic of...of what for me is such a big problem, is when people just don't understand, like they...things that they're going to...let me illustrate it. I did a case for a woman who was also a lawyer because her child died in Marymount Hospital. And the child died because the child was backing out, back in the birth canal for about forty minutes. And what happened, is it was her first child, and then the nurse said, the obstetrician he's not there to deliver the baby and they can't deliver the baby before the obstetrician arrives. And so she was holding the bedding between this lady's legs, and then the husband was there and the nurse couldn't manage to keep it there for all the time...to keep the baby in the birth canal so she asked the husband. So the husband actually stood there for forty minutes and held the baby back. Now for me that is just such an illustration of how our ignorance about what should or shouldn't happen can just create such a dreadful situation, you see. He was enlisted in doing something that was not right. But he didn't even know. And this is why I say for me it is so important that LRC, besides the test litigation, besides testing laws, also really begins to say to people that you know this is really what this right in essence means to you that you're entitled to.



- Int So educating on the law.
- DT Absolutely! I think so, you know.
- Int What was the outcome?
- DT Well we were going through the...through the...the post mortem. We were going through the inquest and so on, and we couldn't even finish the case because we just couldn't get doctors to give evidence in the case. Though it was clear that the child suffered of massive brain haemorrhage as a result. One of those...
- Int But constitutionally are they allowed to do that? The doctors not giving evidence?
- DT How do you force somebody? You see that, that is now when it comes to the legal thing, you can force somebody to say come to the court, but you can't force them to give evidence in your favour or to say what really happened, you see? That is why we even have rules around hostile witnesses in courts. Because you know if you have to summons a witness to come and give evidence for you, you're probably dealing with a hostile witness and you have to look at the evidence in a certain way. So it's that type of thing, that for me stands out. And the issues really around child abuse which is partly also why I have to leave. Because that was in 1993...I left in '96. (Sighs), it was just very hard to deal with that on an ongoing basis.
- Int The child abuse cases?
- DT Yes, really hard work. Really hard. And I remember another case that I dealt with of a young child who was also sexually abused by a neighbour, on basically a daily basis. And the only way the mother found out, is she found a bottle of peanut butter in their cupboard and she knew she didn't have money to buy peanut butter. And when she asked the child, that is what happened. The man had been raping her daily and giving her peanut butter, you know. And you know it's just the sadness of it all, isn't it? And the fact that so many children are left to fend for themselves. So it's often no fault of the parents but then what are we doing about it? I actually done that part of work for a long time and I talked to friends who deal with that type of issues in the medical field and clinical field and it's just very painful.
- Int Diane, thank you very much for a most thoughtful interview. I really appreciate that.
- DT With pleasure.

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