

**Rusty Mogagabe****LRC Oral History Project****11<sup>th</sup> August 2008**

Int This is an interview with Rusty Mogagabe and it's Monday the 11<sup>th</sup> of August (2008). Rusty, on behalf of SALS Foundation in the United States, we really want to thank you for taking the time to participate in the LRC Oral History Project.

RM You're welcome.

Int I wondered whether we could start the interview if you could talk about your early childhood experiences, growing up in South Africa under apartheid, and where you think your sense of social justice and injustice developed?

RM Well, basically, I was born and bred in Soweto, Johannesburg. I attended school, I mean, junior primary school and junior secondary and high school in Soweto, and the...Basically, I would say, that my sense of justice and social injustice had...pertained at that time, I mean, I think even now there's still some social injustice, was basically, I mean, aroused by interaction with my family, my friends and also with...at school and the teachers then, you know? And who most largely are the ones who were able to conscientise, I could say...or ja, conscientised us about our surroundings and the social injustice and the political oppression. And...but my family also, I mean, my extended family also played a role in seeing, to that effect, we, as we were growing up, should be aware of our circumstances, as well as our...the social injustice and more particularly the racial oppression of apartheid at the time where we lived in the township. And you know, I mean, how it is to live in a township...

Int So where did you grow up?

RM Soweto.

Int Soweto, right...

RM Ja and we only went to, you know, black-only schools and the trains, you know, all kind of...this kind of segregation. And then, I mean, it also, I mean, opens your eyes to say, I mean, you know, the first time that you have any interaction or come across white people, it's if you come to town, or only you see those people that come to do some kind of work in the township and that...you realise that, I mean, as you grow up, I mean, you are in this situation whereby it's, like, you know, you have a township for blacks, township for coloureds, so-called coloureds, Indians, and all those things, and at school you never interact, you never meet, right? And I think throughout my schooling career, I mean, the first time that I have, in a schooling scenario, had to interact with, I think, Indians and so-called coloureds, was at university level. However, right through my school career up until Matric, like, it's grade ten or standard twelve...standard ten, there was only us in the situation. But, I mean, the focal point that, basically, which I can say, triggered our awareness and our political consciousness was the '76 upheavals, I mean, at that time, I mean, I was at a school

called Orlando High in Soweto when this thing happened, and it happened right there and that's when we felt physical...the physical brutality of apartheid and the Police Force. Whereas before then, you had to feel, I mean, the social injustice and the political oppression that in fact, you know, they determine as to where you'll be born, you know, where you'll stay, where you'll go for education, where you'll buy, you know, and where you'll have any social amenities. Those ones you...were part and parcel...was part and parcel of your life. But, I mean, the physical brutality, I mean, of apartheid happened in '76 during the upheavals. And at the time I was doing what you call JC or form three, and that really aroused our political consciousness and it also, I mean, gave the struggle some impetus, you know. And then you realised that, in fact, the social and political injustice, right, has also a dimension of brutality, and coercion, and force, aligned to it, and then you realise that, in fact, this is how, in fact, it has been retained. Because, I mean, at school, and at home, and in the township, right, you were always told and always informed about the struggle that had taken place, I mean, the imprisonment of (Nelson) Mandela, (Walter) Sisulu and the others, you know, the political movements of the time, being the PAC and the ANC, and that these people are in Robben Island for their political belief for fighting for the liberation of the black people, you know, and all those things. I mean, that kind of political conscientisation came, and you're always, I mean, always encouraged at home, that even you should try your best also, to contribute and be aware, you know, of what is happening politically around you.

Int So...it seems to me that you came from a family where there was support for political activism?

RM There was encouragement that you should be politically aware.

Int Right...

RM Not to be...

Int Not to be active?

RM Not to be active, but to be politically aware (laughs). Because for a family to inspire and encourage you to be active, would also be like consigning you to arrest and detention, you know, but they'd say: be aware that this is what is happening, and make whatever contribution you can. But, you know, these organisations are banned, immediately you associate with them, you are going to be, but you're going to be aware that this is what is happening around you, yes.

Int And then I was also wondering in terms of when do you finish high school?

RM I finished my high school in '79.

Int '79?

RM Ja.

Int So, during 1976, what happened then?

RM 1976 we didn't write.

Int Right, ok, and were you in the forefront at all...?

RM No, not necessarily but I was part and parcel...

Int ...part of the student...?

RM ...of the upheaval, you know, I rem...I did participate in that, but I couldn't say I was in the forefront, I mean, the people in the forefront were like: the Tsietsi Mashininis, Kgotso Seatlholo, inaudible, Trafomo Sono, and all those people, but we were mobilising and we mobilised for that, that's why, I mean, we couldn't write. And when the schools re-opened in '77, we were not allowed to re-register at the Orlando High, and we had to roam around to find a school, because they said you also, I mean, we know you, you're not supposed to be here, you know? And there was a man who was the...he was not the Minister of Education, I think he was the, sort of, the Regional Director of Education, I think his name was called Strydom, he was in charge of the schools in the Jo'burg/Soweto area. And he had already given instructions to the principal...because they also changed the principals you see, to say, I mean, those which you think are not good enough, shouldn't allow in the schools. So, I had to relocate my schooling and find myself at a school called Naledi High...

Int Oh?

RM ...where I matriculated.

Int Now Naledi High has a very famous reputation, doesn't it?

RM In fact, in fact, to tell you, I'm part of a process, or I can say, a movement...no, let me say a process, whereby the former students of Naledi High, during that period, are trying to start an entity or...of...or an association of the students during that time. This is what's happened, I attended that meeting about three or four weeks ago, and what was discussed there was, they want to correct the history. The history as it says, seems to state that this upheaval, or the...ja, I mean, the upheaval and the resistance to...from apartheid at the time, started at Morris Isaacson, whereas on the contrary, it all started...

Int ...in Naledi...?

RM ...in Naledi High. So there is that process which is coming in place which they want to form an association to correct this thing. And they say when the people say: the march to glory by...which resulted in the '76, I mean, uprising and upheavals, was not in Morris, it started in Naledi High where the students in Naledi High marched, right, to collect all students in other schools, to protest against Afrikaans, and apparently also there has been some police brutality about students being beaten there. And this is there...is also unfolding now to put that into place. So, it was, I mean, I went to Naledi High, I think, in '78, I think, ja, ja, and that was that part of that history that, in fact, this is what transpired.

Int Ok. So, when you...

RM Apparently it is...it led this '76 revolt.

Int Really?

RM Yeah, it started...

Int That's interesting.

RM ...in Naledi High, started in Naledi High, I mean, I was there and they tell me, ya this thing started here. I said: no, me, I came here in '78, I said: and I studied here. And they said: and they went through Morris Isaacson, and that's why, in fact, then they mobilised them, and then they were moving now to all the high schools, up until they met the police in Orlando West, where the shooting took place, and Hector Pieterse was shot and, you know. Yes.

Int The other thing...?

RM But at the time the '76 riots happened I was in Orlando High.

Int Right, ok. So, when you finished at....matriculated at Naledi High, what happened then?

RM When I matriculated at Naledi High, I then enrolled, I mean, at that time I then enrolled at the University of Fort Hare, and the reason why I...one chose Fort Hare at the time, was because of its political consciousness, I mean, and its political background, I mean, most of the leaders, if not the whole leaders of the struggle, had come from the University of Fort Hare. I mean, (Nelson) Mandela, (Oliver) Tambo, the leader...the former leader of the PAC, you know, Smangaliso, right, and all those people came from there. And it also, I mean, was still like a hotbed of politics, and also one of the other things was that it was also, for me, an opportunity to have a change of scene. I mean, I grew up in Jo'burg, I schooled right through in Jo'burg,



and I felt that I think one has to have a...to get some, I mean, new ideas and a cross-pollination of ideas, and honestly you'd better move to another territory, an area, and that was that. I couldn't go to Wits because at that time they rejected...they didn't allow me. They told me that, in fact, I mean, I could not because of, you remember those exclusion of apartheid, that, in fact, you go to a black school or go to universities which are delineated for black people, unless maybe the studies you want to undertake are not available there. So, when I applied there for law, I mean, Wits said definitely they couldn't take me. You've got to try all these other universities.

Int Right. So, then...from there onwards where did you go? Did you do to university in Turfloop and that was the 19...?

RM No, Fort Hare.

Int Fort Hare, sorry. And during the 1980s it must have been quite...

RM ...hectic.

Int Yes, exactly.

RM Absolutely quite hectic. In fact, I mean, when I was at Fort Hare, I mean, I think during my second year of study, or third year of study, I was elected to be the President of the Law Students Council. At the time...at Fort Hare it was called a Juridical, I mean, Society, and it was, obviously, during the period of turmoil, political turmoil because throughout my tenure at Fort Hare, in each and every year there were always strikes, strikes and expulsions, and we'll come back and then we'll go through. But the only thing that we had to...to obviously impress upon people, was that we should not lose a year of study, which we also, I mean, we lost, when...during the '76 thing, I lost a year or two...and then that, in fact, even if we were expelled, we'll come back and write, and there will be more strikes, and there will be revolts, or uprising at universities and all those things. In fact, I mean, during our stay at Fort Hare, that was when the period when the UDF was formed, I think it was formed in...somewhere in the 80s, '81 or '82, yes, during that time. But it was, obviously, I mean, a period of political turmoil, I mean, the students, I mean, obviously, opposing the state, and also during the time when we were there, Fort Hare fell under what was called the Independent Bantustan of the Ciskei, so, obviously, I mean, at that time, I mean, there was always, right, friction and resistance to the Homeland System, to such an extent that, in fact, the Ciskeian authorities sometimes used to come to universities and create havoc, and beat up students, and assault students, and arrest people, you know, and also the authorities were also a bit conservative at the time. But, I must, say, I mean, I enjoyed my stay, otherwise, at Fort Hare, because, I mean, the...one's sense of political consciousness and politics education, I mean, was, obviously, I mean, to some extent honed...your skills were honed, and to understand what the struggle is all about, and that, in fact, it's a national liberation struggle, you know, and that as students we are also at the forefront and the vanguard and should mobilise and resist apartheid, and particularly resist what was called, at the time, Bantu education, you know, that the kind of education that is being given at the

universities, the black universities, is different from the white universities, is basically to keep you in academic sterility, I mean, that was, I think, the term that was used at the time. And that we should see to that, in fact, this is...doesn't prolong, or, in fact, get perpetuated, and the students also did that. Then after that...and then we came to...then I came to Wits. I did my LLB at Wits.

Int Ok. Great. So that was 1983, '84?

RM I think I did my LLB at Wits, I mean, the degree there was...the degree I did, the B.Juris degree, the junior law degree, was a three year degree, and '84, I, ja...

Int ... started your LLB?

RM ...started at Wits, ja, I started at Wits.

Int So, when you were at Wits, did you do Practical Legal Studies?

RM Ja. In fact my association with LRC, started whilst I was at Fort Hare.

Int Oh really? Tell me about that?

RM Ja. You remember about the Section 10 Rights, that, in fact, for any black person to be arrested and in the cities, they had to have those Section 10 Rights to be able to work. So, it was during the period of the Rikhotso (Rikhoto) case, you remember the famous Rikhotso (Rikhoto) case?

Int Yes.

RM And then, as the President of the Law Students Council there, I arranged for the Legal Resources Centre to come and give a talk about the Section 10 Rights and its implications throughout, even to students, and its implications throughout, I mean, society. And I think it was in '83, '82 or '83, then the LRC, I think at that time the chairperson or director was still Arthur Chaskalson, then they sent in Charles Nupen. And he came to give a talk to us. And everyone was impressed, and he also told us that: listen, I mean, this is what we did about...what the LRC's all about, Public Interest Law, you know, fighting for people's rights, political rights, social justice and we also have a Fellowship...that's when I came...Fellowship programme, and all those things and this is the kind of work we're doing. And one, at the time, was never interested in Commercial Law or being attached to commercial affairs, because of one's political consciousness, and the eagerness to contribute to the struggle, most of us saw the Legal Resources Centre as a place or an institution best placed to further, you know, the rights of the people, and, in a way, I mean, to further the struggle through the law, as we are saying at the time, so that's how we came. So when I was at Wits I already knew about LRC and I kept my association with LRC.

Int That's fantastic...

RM So, when I came to Wits I did the Practical Legal Studies.

Int Now, when you were at Wits, by that time NUSAS had split, in the 70s with SASO and I wondered whether...in terms of student politics, what you'd gotten involved with?

RM You know, you know, I mean, during...the split also cost a schism in the sense of the political inaudible or the political inaudible at the time was that we're not going to use white facilities, even if you're at a black university you still maintain that, in fact, you are a member of the oppressed class, you are here for a special purpose and therefore you should not at all participate in any social event, or use the facilities or amenities in the universities. And that, in fact, the...when the students had to meet, like the university, you know, they call it inter-varsity sports and everything, the...it was now amongst the black universities, and NUSAS was excluded because someone perceived them as liberal and, you know, and all those kind of things. And it got...I think, I mean, it only stopped, if I may say, maybe when, I think, more or less in '88 or '89, when...or '90, when there was this...the unbannings of the political organisation and all the rest, is that, in fact, I think these are changing now, we can now obviously work together. Because during that time, because of this schism between NUSAS and SASO and all those things, even at white universities like at Wits, they had a, what they call, a...what they call BSS, I think, Black Students Society, which operated outside the parameters of the Students Representative Council, as it represented the interest of blacks and was...The SRC was perceived as representing the interests of the white students, and only maybe in issues of common cause, but basically, they operated along those lines. And, I mean, that was basically a problem at that time, and it did have some impact, basically, on people's...on what...how they can...how they conduct themselves or inaudible in the white universities.

Int Sure. So, when you were in your final year of your LLB, did you apply to the LRC as a Fellow?

RM Well, I did the Practical Legal Studies and...

Int Did you come to Hoek Street?

RM No, I went to Hoek and to Pritchard and to Sauer...Pritchard and Sauer, there at Elizabeth House, where we did our practicals there. And...for the whole year...and we were encouraged, in fact, by the people who were there, Paul Pretorius, Charles Nupen, Geoff Budlender that in fact, we should apply for Fellowship, right, so, because obviously they need Fellows and they would like to have, basically, people who at least have an inkling and an idea as to what kind of work the LRC does, rather than having people from...Because, I mean, we're coming from Practical Legal

Studies, we did practicals at LRC, you know, we see...not that you're doing, like, major cases, you know, you do, like, maybe consumer things, we do the Section 10 Rights, you know, we do those Labour matters, where you write letters and you interact then with it. I mean, the best way is to get those who did PLS to come and do a Fellowship. And then we applied and then we were taken.

Int That's fantastic. So, when you worked here during your Practical Legal Studies, did you also work with Mr. Zimmerman and with Pinky Madlala?

RM Ja! Mr. Zimmerman, Pinky Madlala, you know, I mean, it was obvious...I mean, as you can say, a convivial atmosphere, it was an atmosphere whereby you are exposed, right, because basically, I mean, the law profession was structured in a formalistic way. Attorneys have their own firms, then advocates are sitting at the Bar, right, but at the LRC, you have a unique situation where, under one roof, you have advocates and attorneys, you know, who you can obviously, I mean, interact with, and also, I mean, seek advice and guidance in your thing. And it was absolutely, I mean, great, at the time, I mean, Mr. Zimmerman, Sis Pinky Madlala, you know, and also Mrs. Kentridge.

Int Felicia Kentridge?

RM Yeah, Felicia Kentridge also used to come in there, and it was, I must say, I mean, absolutely something one always thinks about and was something one treasures, there, our stay...

Int ...What do you treasure about your experience in particular?

RM At the LRC?

Int Yes...

RM Well, I treasure a lot of things. First of all I treasure the grounding, right, the guidance, right, the education, right, that's what I treasure, and I also treasure the interaction which I had with the professional staff, right, at that time. And I also treasure the kind of work that the LRC did at that time. I think I learnt a lot as to how, basically, to handle matters, how to deal with issues, how to negotiate, you know, how to draft the pleadings, what to look for, and all those things, you know, and that's what I treasure. Because, I mean, you had a wealth of experience from Arthur Chaskalson downwards, right, and the kind of work that you did, you know, you also...and you also said, you know, the kind of work you have to do is a dual work, you're doing the work of an Article Clerk, at the same time you are doing the work of a pupil or an advocate, so, as to how you must draft and how an advocate and attorney, how to take instructions, you know, how to put instructions on paper and what to look for from clients, how to ask questions about a client's case, and all those things. And I treasure that time. And the kind of cases we do, most important.

Int Ok. Tell me about those cases that you did?

RM Well, we did the resettlement, you remember there were those resettlement whereby they were moving people from areas to other areas and, I mean, we did most of...some cases and we won them.

Int Forced Removals?

RM The Forced Removals. We won them. And I remember that I also participated, I was involved in some of them because at the time, I was assigned to Paul Pretorius as advocate, and he used to tell me that: listen, I mean, do the drafting, this is the research you do and all those things, and we used to do the work, come back and sit with Arthur Chaskalson and analyse, I mean, the case. Analyse the strength and weakness of the case, that's another important thing, analysing the strength and weakness of the case, and know how, I mean, obviously, to present the case, and the discussion and the debates about all those things. And also did more of the labour work and the Section 10 Rights, the Consumer Law and...The LRC didn't do, at that time, more, I can say, political...what you can call political work, I mean, I think at the time I was there, it was when they were dealing with, you remember, the Delmas Trial?

Int Right.

RM Ja, which obviously was handled at the LRC. And these are the kind of thing that gave me joy and that gave me a sense of fulfilment that one is doing something, rather than going to the corporate law firms where the only motive is profit. Whereas at LRC, that's another thing was that, I mean, you assist everyone without having to charge. And that instilled in one, a sense of Public Interest Law, of even now, sometimes you take cases for free because, you know, I mean, the reason and the basis as to why you're doing that, you know, to secure people's right, to secure some gains, even now, it's still with me, if ever the people come and say: I don't have money...because I come from that kind of background, you know, of Public Interest Law. You readily accept the brief, whereas, I mean, or if there's someone who comes from...who from university went to Commercial Law firm who do...the first thing that he consult with client was to say, I mean, do you have cover? If you don't have cover, tough luck, sorry, no, we can't assist you.

Int Right. I'm also wondering, in terms of working with people, who were some of the people that you worked with that you learnt the most from?

RM Well, I'll say, all round, I learnt from all the professional staff all round. But, more particularly because I was assigned...you see, as Fellows, we were assigned to what you call our masters...

Int Like a Principal?

RM Or principal masters, so I was assigned to work with Paul Pretorius, others were assigned to work with (Mohamed) Navsa, right, and others were assigned to work with Nupen, Zimmerman, you know, and...yes. At that time this, I think they were the counsel there at Pritchard Street, at Elizabeth House. But more particularly I worked...I worked more closely with Paul Pretorius and as well as (Mohamed) Navsa, right, and, I think, and Nupen, Charles Nupen. And I learnt more from the experience, you know, and also I did also have occasion, I mean, I think all of the people who were there, to interact with Chaskalson, Arthur Chaskalson, about cases as I tell you, when we did that removal case, we'll do our draft, me and Paul Pretorius, and present it at the meeting, discussion, a meeting with (Arthur) Chaskalson and we'll go through the papers and I, obviously, learnt the analytical aspect of analysing the weakness and strength of a case, and the importance of putting on paper, what you put, because it can be damaging or it can win your case, depending on how or what you say in your pleadings, you know what I mean? So they say you don't just say anything, if you are not sure that you don't have proof for this, or evidence for that, you rather not, you know, plead this kind of a thing, you rather leave it out, because you may not be able to prove it in court.

Int So, I'm also given to understand that when you were here, socially, it was a very interesting time because you...there were lots of people around, you played table tennis...

RM Yes!

Int ...the teas and lunches. What are your memories...some of your memories about those sorts of things?

RM No, I mean, you know, I mean, those times I mean, it was a, I mean, an interesting scenario, and a convivial atmosphere whereby the formality of a typical law firm was removed, right? Whereby if...during lunch time you'd engage in all this table tennis and all kinds of sport with professional staff, right, and what most people also looked forward to, was their traditional, what they called the traditional monthly lunches at the LRC. You know, and it was absolutely interesting, because during those lunches it was not only the professional staff working at the LRC, but there were also outside people who'd come like, Sydney Kentridge, George Bizos, you know, Karel Tip and all those people would be here. And then one will have to interact with those people and it was interesting, I mean, to be amongst those people, those giants and to share ideas and to get all kinds of guidance and inspiration from them. Absolutely interesting, I mean... I mean, the lunches were good, because it was not only the food, (*laughs*), but the company which was there, I mean, and the...I mean, and people which you used to brush shoulders with and interact, and it was absolutely marvellous. And the kind of spirit that flowed through the LRC at the time, from the admin staff to the professional staff, right...was really one of brotherhood and sisterhood, you know, and you're being treated that well and you are able to approach anyone else with whatever

problem you have and, you know, and deal with it rather than understand, in a formal law firm, these things never happened at all at that time, of course, yes.

Int So then you finished off in 1986, end of '86?

RM Ja.

Int And what happened after that?

RM End of '86 I finished off and then I sought Articles, right? And the Articles I couldn't get because, I think, for various reasons. Some law firms would say to me, you know...I went once to one law firm, I think, and he said to me...I think inaudible Incorporated, if I'm not wrong, and they said: you know, I mean, one of the things that we are obviously, I mean, excited about, your experience and background and your academic qualifications, but there's something lingering, you know, inaudible whether you'll fit in, in our situation because we are a Commercial Law firm, you know, profit-driven, you know, and we feel you may not very well fit in, in this, because you come from a background of Public Interest Law where no money is asked up front, and we don't know whether you'll be able, you know, to fit in whereby you have to ask clients to pay money because we are profit-driven. And as a result of that, one couldn't get any...any Articles. But, at the time also I was finishing my Latin, because at the time, Latin was also a big problem, because it was one of the requirements of doing that. So, I couldn't get those Articles but the Articles that I got were not, I mean, some of them were...when I realised what kind of work they do I realised I wouldn't be able to fit in, in this kind of...which I realised as...so more or less like a capitalistic-driven outfit, in that sense. Some of them were...because, you know, they used to offer little and they tell you it's going to be that, you know, so, I didn't. I did some studies then the next following year I...then I joined the Bar. Because my, obviously, intentions all along was to go to the Bar, and going on and doing Articles was to get more experience of an attorney's job, but I'd already had that kind of experience through the attorneys, there...you know, Geoff Budlender, Mr. Zimmerman and the rest, you know, as to what he does, but I thought maybe even you have to go to the professional, I mean, Commercial Law firm, then maybe you can get the other part of your experience, but it couldn't be. So I ended up joining the Bar, which was my long-term intentions, in any event.

Int Ok. So you joined the Johannesburg Bar?

RM Ja

Int And then subsequent to that, where have you been?

RM Well, I've been at the Johannesburg Bar since.

Int Really?

RM Ja.

Int Gosh...

RM No, I've been at the Johannesburg Bar since, ja, right through.

Int That's a long time.

RM No, it's a long time, I mean long time, as I was thinking maybe somewhere also I must take a break, you know, maybe, and do other things, you know?

Int Are you enjoying it?

RM No, I'm enjoying it...I'm enjoying it, I mean, it has its ups and downs, you know, I mean. You know one thing which I will recall is when Arthur Chaskalson told us that: you know, you will understand when you go to the Bar, you're going to meet different kinds of people. You're going to meet people who won't like you because of what you are, or the colour of your skin, you're going to meet people who have got communist ideas, you're going to meet people who are capitalistic-driven, and you're going to know that the Bar has got a selfish element on it because you are on your own. You know what I mean? Even you've got to, obviously, generate income to pay your bills and all those things, you know, and at times it cannot be good, and at times you have the work, at times there is a lull and all those things, so all this I was prepared, and it's happening, right through that, you know?

Int So, from what I can understand, not only is there crisis in the Cape Town judiciary, and there's also crisis in the Johannesburg Bar, and now there's attacks on the Constitutional Court judges and there's general attacks on the judiciary. How do you as a...member of the legal profession...how do you understand it, what are your concerns, and with respect to Public Interest Law, do you think organisations like the LRC, which are mandated to take on government, do you think that they have an important role to play, and do you think there is space for them in South Africa?

RM Well, I mean, as you say, you know, that was one of the...you know, during these lunches and all that, that was one of the issues which were, obviously, I mean, canvassed and debated, as to what is the future of the LRC. I mean, in a democratic society and in an ANC-led government, would the LRC still, obviously, take on cases against the government? Now, and, I mean, the question was, will the LRC as it is, a Public Interest Law firm, represent the interests of those who are in need and who's rights are being trampled upon...if the need arises the LRC would rise to the occasion, irrespective of the colour of government or the nature of the government then. And against this background, I will say, I mean, the LRC has still has got a massive role to play with regard to dealing with the issues...Human Rights issues, and the social issues that affect people, the social injustice, and, in particular, with regard



also, to dealing with whatever attack is on the judiciary. I believe it can, because I believe that this kind of attack on the judiciary or what is happening now, obviously, has the effect of the public...undermining the public's confidence in the judiciary, and as well as diluting or diminishing, I mean, the independence of the judiciary.

Int Ok...

RM And that, in fact, the independence of the judiciary must be maintained irrespective of who is in government, and especially, if it will undermine public confidence in the judiciary and relate, obviously to lawlessness or anarchy, that should at all cost be stopped.

Int Ok. So, in terms of post '94, the LRC has had a situation like many other NGOs and, civil society organisations, where funding is a huge issue, and given that background, it's said that it's very difficult to attract lawyers, particularly young, black lawyers because they...they're really highly sought after in Commercial Law firms; what's your sense of what's going on?

RM Well...no, that's true. I think that's fact because, you see, I mean, after 1990...before 1990, the...most of those lawyers who were, like, doing Public Interest Law as well as taking on these political cases, right, so-called unpopular causes, at that time, survived mostly on funding, outside funding. After 1990, because of the changes, right, this funding dried up, right? So, in a sense it also resulted in those who...those lawyers who were doing this particular kind of work, having to look for new niches, right, for...or to continue their practices, and as a result, that kind of consciousness of civil, I mean, rights litigation, human rights litigation, political, I mean, cases, I mean, diminished, and now there was a change. A ninety degree, obviously, turnaround whereby in fact now, those of us who were doing this work had to find other ways of getting the work, and it changed from the political work, the social injustice work, to getting these, sort of, the mainstream litigation, you know? And as a result of that, the...a new culture came into being, whereby now, because of the political work having diminished, and therefore the lawyers being unable to tap onto that, the law firms, right, now had to, obviously, change focus and shift onto, what is called, I mean, the human rights or constitutional litigation, and the commercial litigation, right? And as a result of that, even the universities didn't concentrate much on these kind of things, you know, I mean...I mean, we used to do Public Interest Law, I mean at Wits, used to do PLS, used to do all this, whereby, I mean, the whole focus was shaped, more or less, like labour matters, you know what I mean? So...and those were funded cases, so when it changed, right, the established law firms now had to continue with this kind of commercial work and even now, the focus from university was to get into a good Commercial Law firm. And as a result of that, because people were saying: the struggle is over, so, there's no need now, you know, to go and do these kind of cases because there won't be any political prosecutions, you know, there won't be any resettlement, there won't be Forced Removals, and there won't be, like, whereby workers are retrenched en masse, you know, I mean, those Labour...massive Labour cases that we did, you know, and all kinds of things, therefore, I mean, the focus shifted to Commercial.

- Int But, as you well know, that's really not the case because if anything in the post apartheid era, there's been lots of evictions, Forced Removals, for example the TAC case, Grootboom case, which deal with key Public Interest litigation?
- RM No, absolutely. But the focus, that changed, because most people realise that, no, but now, in fact, the struggle is over, now is the time now to get into commercial experience and do Commercial Law, because there was a time, and still now, there is that perception that a lawyer, whether he is an advocate or an attorney, doing commercial litigation, implies...insofar to imply that that person is not only going to be successful but he must be a brilliant advocate.
- Int Sure. Just coming back to Public Interest Law, it seems to me that in South Africa, there continues to be a need for Public Interest Law organisations...?
- RM Absolutely.
- Int ...and what do you think are the areas which require Public Interest Law organisations, like the LRC, to function?
- RM I'll tell you what...I'll tell you what my view...my view is the...because, you know, Public Interest Law, right, obviously, engendered some inspiration and interest in lawyers, young lawyers or students, prospective lawyers, at university, because of the gains and the kind of work and the publicity which these...their gains got through the media. And I believe that if the universities can also now, refocus, you know, their attention to Public Interest Law again, you know, with a new focus now to say, as I say, I mean, we need housing, housing was a problem then, it's still a problem now, absolutely still a problem now. And it's got to be tackled, you know. You have Consumer Law, was a problem, it's still a problem now, it's still there, you know? And you have now, obviously, what you call the Human Rights culture, you know, where people's constitutional rights, I mean, are being, obviously, addressed and are being upheld and that should be. But, my belief is that, I mean, the teaching of Constitutional Law should focus more, right, on those areas in which the poorest of the poor, right, are suffering, right, and that if they focus that, then I think you'll still have more of the aspiring lawyers thinking now this is the right way to do it. And they remove this aura of Commercial Law, which attracts more students to go to Commercial Law firm. But, I believe that there is now, more than ever, also a pressing need for Public Interest Law, right, to be aroused and to be resuscitated and be revived, right, and be reshaped to fit in with the present scenario. I mean, we've got all kinds...as you say, I mean, there are all kinds of situation that arises about this kind of thing, I mean, there is abuse, I mean, of children and women, that can also be part of Public Interest Law. Schooling, you have also a problem about those things, you know, and those areas...I mean, you still have police brutality. It was there, it's still there, you know, I mean, and those kind of things could be, obviously, highlighted.

Int I was curious, earlier on, when you told me that you had contacted the LRC and got them to come to the university, and speak on...about Section10...?

RM 10 Rights, yes.

Int ...yes I'm curious, at that point, did you think that the law could be used as an instrument of social change?

RM Ja, I'll tell you. At that point, and even when I entered LRC, I realised the limitation of using the law to...for political gains or to advance the struggle, right? But, at the same time I realised that, you know, even post apartheid, right, one was still faced with these kind of things, and hence these things should be vigorously, I mean, defended and they should be vigorously fought. I did realise that, in fact, there is no way that through fighting cases through the courts, will bring a change in the political system or a change of government, there are also other ways of dealing with that. So, but, the legal system was one of the means, you know, that will contribute to the plight of the people, and also, in a way, advance, I mean, the democratic struggle. But I...the limitation, I was absolutely conscious that that definitely can, you know, and because sometimes, you know, it depends on who sits in there and interprets the law. But at times, you can make those gains and those gains were made, I mean, the Section 10 Rights, I mean, were monumental gains, with regard to the stay of black people in the cities, absolutely a monumental gain. And that was not advanced with other means of struggle but through the law, and I realised that you can, through Public Interest Law, make certain gains, valuable gains for the people and use it very obviously, I mean, effectively, in that sense. But there's always, as in anything, there's always, I mean, limitations, in everything that one does. But, I value that, that's why I went to the LRC to say, I mean, you can make a contribution, however small. But, Arthur Chaskalson used to say to us: you know what, these files that you handle, you must always be aware that they represent people's interests, people's livelihood, people's freedom, you must do them to the best of your ability, even if it's an issue of having to see to that someone gets his UIF payments, to you it may be just a UIF payment but to that person, maybe, I mean, make the difference, you know, between poverty and starvation. So, you get it for him, it will maybe help him to survive and also feed his family, and you must fight as vigorously as possible like you fight any other case of detention, and all those things. So, I mean, one has to realise that Public Interest Law, right, has got a major role to play in the lives of ordinary people, and I still feel that it still can do that.

Int Sure...I've asked you a range of questions, Rusty...

RM No, I don't mind.

Int ...and you've been very good about this. I'm wondering whether there's something I've neglected to ask you which you think ought to be included as part of your Oral History Interview?

RM Well, I mean, I must say, I mean I was passionate, I'm still passionate about Public Interest Law. I realise its benefits, you know? You only realise its benefits after...whilst, I mean, being a student you think, you know, you think about political struggles and all those things, but once you are in that kind of a scenario of Public Interest Law, you realise that, in fact, there is so much suffering and there is so much to be done, for the ordinary people, you know? And that obviously kindled, I mean, the passion of Public Interest Law in me and...which I value, you know, I mean, that's part of the history of my life, a part of my life that I value most about Public Interest Law.

Int So now, at the Bar, what is your practice predominantly?

RM Well, I mean, at the Bar, I mean, initially, as I told you, that those of us who come from a Public Interest Law background, when we went to the Bar, obviously, will never be able to get so-called commercial briefs. And we continue doing Public Interest Law as well as the so-called political case, you know, intimidation, public violence, and all that stuff, and we survived on that, and did also Labour. Because most people wouldn't touch Labour at that time, you know, for various reasons, you know, communists, you know, it's going to bring socialism and all those things, but, when you look at it thoroughly, and when you are involved in it, and you realise that in fact, it's securing the interest of the workers. And at the Bar then we survived on that, but as I told you, after 1990, these cases were always funded, when the funder dried, we had to change focus. We now, most of the time has got to move now to do, and we're still doing civil claims against the state, I mean, this is obviously a continuation from the LRC. I learnt a lot from the civil claims against the state as to how to deliver them, and we still did a civil claims against the state and we now moved more to do other matters like the MVA. I think this is one of those areas of work, if you have been told that most black lawyers in this country used to do a lot, and we also moved into that, and then, also then, after 1994, started doing state attorneys' work. You know, prior to that, it was the preserve of the white people and particularly the Afrikaner lawyers, so, after 1994 then they opened up and we started doing the state attorneys' work. And as it is now, I mean, as one grows at the Bar, right, I mean, you tend to specialise, right, and rather do like a general dealership of work. Now I do all these unopposed...the divorces, you know, the MVAs, and all those things.

Int So, you've specialised?

RM No, ja, I do more civil work.

Int Civil work.

RM It's more civil work, I mean, I used to do a lot of criminal work, that's another thing which we used to do then, I mean, and the criminal work was not like the usual which has been done, the robbery, the thefts, it was more...In fact, I remember when we were debating about these kind of political cases, the intimidation, public violence, sedition and treason, I mean, even though they are called political cases, at the end of the day,

they are simply criminal matters. Same like anything, because you've got to go through the criminal courts and it is a criminal offence, and we used to do most of those, then they also dried up, you know? Because at the time these things stopped, of the intimidation, the public violence, all this kind of people being charged with all those things. So I used to do criminal but it stopped, right, and then you move more now, as we...unless you want to maintain a speciality in this criminal work, you move now more into Civil Litigation.

Int Right.

RM Yes, which is something I love. And also Labour, I do some Labour, too.

Int Ok. I'm wondering to end the interview, I wondered whether you could share a particular memory, whether it's of working with particular people at the LRC, or a client, something that you actually treasure...?

RM No, there must be...

Int ...but, one in particular that you think is representative of your experience at the LRC?

RM Of my experience at the LRC? You know, I mean, I wish to tell you I used to do a lot of things. We also used to represent, I mean, I'll tell you, I mean, some of the cases. We also used to represent the...at that time it was not a popular field, and it was neglected, I think, the domestics, right, who had no legal protection at that time. I mean, their contracts were Common Law, you know, and all those things, and we used to represent most of them for the dismissal and the treatment that they did. And the, obviously, responses which we got from the employers at the time were: I can do whatever I like. But, we used to do them, like, through the, at that time was called the Department of Labour, we used to take them through conciliation, that was the only way that you could do that. And, I mean, one realised, I mean, the vulnerability of this class of workers then, right? The other class of workers which also, I mean, also, I mean, springs to mind, it's the security guards, even at the time they also didn't much protected, but they had little protection and we used to deal with a man called Bartmann who had what you call a company called Springbok Security, and I think he was closely connected with the politicians there. And we used to go to his office to represent workers, and every time we had to go...the first time we went there, I mean, one of my colleagues told me: no, you must be careful, that man, he's rough and you know, he can do all...and we walk into his office and he's got massive dogs, very massive, I mean, I think it was deliberate also to intimidate us, and it was the first time I see such a massive dog in my life, you know? And he used to come in, you know, and roar, shout and say whatever it is, you know, he's giving these people work, we are now trying to interfere, he gets these people from the Homelands and what we say, I mean, he must comply with the law, the law says minimum hours, and all this, and overtime, and all those things. And he used to, like, try and throw us out and threaten to set the dogs on us and everything, and we'll say: no, well, I mean, if you say the meeting's over, all over, but we'll pursue this thing. But we find out the next day then a letter will come from him or his lawyers to say: ok, fine, this person is

reinstated and I'm going to pay him all that is due to him, in terms of the law for the minimum hours work, and all those things. And, I mean, that used to give us joy to say, I mean, even though this person is politically connected, you know, we can use the law, I mean, effectively, you know, to sort him out and as well as, I mean, to make gains for these poor workers.

Int Right.

RM I mean, now, the other one which was interesting, you know, I mean, there were lots of these cases that we did, was basically getting the employees reinstated. I mean, we used to win lots of those things, at the time, we used to do it at the Industrial Council level. Before you go to court then have what you call a conciliation meeting and we're going in and the employer's called, and we set out our facts, we say, I mean, you know, there's lots of tension obviously, I mean, unfairness and procedural, you didn't give this person a hearing and therefore you should reinstate. And we used to do...win almost 90 percent of those cases at the Industrial Council level. And these people would be reinstated and, I mean, and they will come back and say: thank you very much, you know, for, I mean, saving my job and my livelihood. And that was absolutely...something which was absolutely fulfilling, to fight for the downtrodden and those kind of cases. I mean, there are various of them, but, I mean, the ones I'm saying is that what gives one a sense of fulfilment that you have done something, and that, in fact, you can use the law effectively, absolutely effectively, you know? So, there was one case whereby...which I remember well, which involved, you remember during the State of the Emergency...

Int So in 1987?

RM Yes. During the State of the Emergency there, the Legal Resources represented most of the people who were detained without trial, and it was this case that we did, I mean, I think firstly it was, I think, it was a political activist having been arrested and assaulted. And we brought in an application for their release and where...engaged the services of Sydney Kentridge then, was acting for us, and he went there into court and then, you know, and then the judge asked what is urgent about this matter. And Sydney Kentridge says: well, my Lord, I think one has to realise that, in fact, these people need treatment and that's the reason why we want them urgently to inaudible for treatment. Then he says, I mean: what's the basis of the treatment? And (Sydney) Kentridge says: well, my Lord, I mean, in effect it's, these people, I mean...the judge said, but there's nothing burning, there's no house burning or you can see the prison's not burning. And (Sydney) Kentridge says: no, in fact, my Lord, I mean, some buttocks have been burned (*laughs*) and the judge says: what do you mean? He says: my Lord, I mean, they have been lashed and they've been assaulted severely, here's proof. And he showed him the proof. And the judge then accepted that, in fact, this case is urgent. But then the question is, I mean, in terms of the detention laws, I mean, you can be detained without trial for 14/28 days and in fact, the other person must say: no, but what we can do, I mean, the fact is, I mean, these people have been arrested because of the Emergency. But, I mean, Sydney Kentridge argued that case very brilliantly, to say: what we are saying is, we are not challenging their detention, in terms of the Emergency Law, we are challenging their detention on the basis of



their health. So, therefore, there's no way in the Emergency Laws which says that even if someone is sick can still be detained. These people need the medical treatment, and the judge, I think, was flummoxed, and he realised that, in fact, no, in fact, that is true. And, I mean, that was one of the cases, because you couldn't win most of those cases then, that was one at the time, and then they were released. But, I mean, the interesting thing was that...I'd learnt is that when it came to an issue of cost, then they said: well, I mean, your clients have been released, now there is an issue of cost, what is going to happen? And then I was with...Paul Pretorius was the junior to Sydney Kentridge and the other side was saying: no, no cost. And Sydney Kentridge, I think, quoted a case, off the cuff, and he said: me and Paul Pretorius must get it. And we rushed to the library and we found that inaudible on point and I said inaudible, you know, this man must be really, I mean, brilliant, you know what I mean? And Sydney says: this is the year, this is the name of the case...you get the case, it deals with this kind of a thing, you know? And as we went to the library and he was arguing and he said: bring it as quick as possible, because the judge was saying: I don't think you can get a cost. And he brought that case in, absolutely on point, that was what was impressive about Sydney Kentridge's, I mean, memory, or to remember these kind of things. There was also, I mean, most of the cases we did on those...on the resettlement, ja. And the resettlement and the...there was one which I must tell you about, about the Pass Laws. This is the man which was arrested because they say his pass was defective, or something like that; he had a passport. And then we went to represent him. The State said they suspect that he must have, you know, imposed his picture on the passport, which didn't belong to him. And it dealt with the ethics of the whole thing, because, I mean, when inaudible me and Paul Pretorius were dealing with it he said: look, if it comes...he told the client: If it comes out that in fact you have imposed your picture on this passport and therefore this passport, obviously, is defective, and it has been tampered with, we won't be representing you. And he said: no, I didn't do that. And then the State came and said we'll want to postpone and seek this thing. But it came out that, in fact, there was some problem with this thing, and Paul Pretorius said: I think the best thing here to do to the man, he said: look, the onus is on the State to prove the guilt, but we're not going to assert the correct means of anything we know is wrong, right, and therefore we are going to withdraw, right? And then I said: but why? He says: no, but that's how it's supposed to be, you know? We cannot go in there and say: this passport has not been defaced or...and then withdrew. But, I mean, the crunch line is that...then the State postponed, but because the State, at the time, was, you see, it was using people who refused to do military service, and they were not keen to work hard, they didn't do their research. After about three weeks they postponed, after about a month, this man comes to my office, he says, I mean: the charges have been withdrawn. Says: how, why? He says: no, because, I mean, they said they can't prove. The case went to court and they were unable to prove that. Right? Then he says: well, I mean, as long as we didn't assert anything illegal about it, the ethical duties, as Paul Pretorius did say at the time, is that once you have found yourself in this thing, it's either can go to court and not assert the wrongfulness...the correctness of something wrong, or you withdraw and the best thing to withdraw and let the client, I mean, find another lawyer. And, I mean it was one of me learning curve with regard to the ethical duty of a lawyer, not only to the client but most importantly, to the court.

Int     Sure, and to the profession as well.

RM And to the profession. Don't assert something which you know is wrong, as being correct, you know? And they said...I mean, that's what it is. If your client tells you that in fact, yes, I did shoot that person, you can't go to court and say: my client will argue that, in fact, he didn't shoot. You rather, I mean, handle or defend the case on any other basis, but, not to unethically, assert that, because you, obviously, owe your duty to the court and to the profession.

Int Right.

RM I mean, those are most important cases. I mean, there were other Labour cases which we were involved in. No...too many of them.

Int (*Laughter*).

RM No, but it's quite a long time, you know, but, I mean, you know...

Int You have a fantastic memory.

RM No, but the fact is, I mean, at the Legal Resources Centre, at that time, we used to handle almost, like, one person, 120 files.

Int Gosh.

RM And we knew them inside backwards, right, and it was, I mean, one of the things that I know that, in fact, I was told at the LRC, which also...I also tell my pupils which I train, when I used to do...have pupils to train for advocacy, was that, in fact, everything you do, you must triple check, right? You've got to triple check it even if you've have done it, you must go through it again to see to that everything is correct, right? And that no letter would leave the offices of the LRC without having been checked by either a senior advocate or an attorney. Even if it's a letter that says, you know...asking for a client to come and attend the consultation. Let me tell you one thing which I loved at the LRC, and I thought...We used to write letters where we used to say...we told: kindly attend at the offices of the Legal Resources Centre on Saturday 8<sup>th</sup> June, right, to consult with...in connection with your case. Then we write to that, then there's one advocate who'll tear it, that was his style, then if he's not there, anyway we'll do that, we'll take it to another advocate, right, and then it will be changed, like (Mohamed) Navsa will say: would you kindly attend for a consultation at the offices of the LRC. And I used to say, but, I mean, if I say: kindly attend, what's the problem? Then he'll say: no, I mean, what you are saying, I mean, if you say that, it's different, it's how I think it should be. And at the time we used to have huge debates, very huge debates to say but, the important thing is that you must see to it that the client knows that he must attend. Isn't that more pedantic, he says: no, well, it depends as to how will the client, I mean, (*laughs*) perceive all those things. And, I mean, those kind of things which strengthened one's literary skills, writing skills, as



to the thing. But, sometimes it depends and I realise that sometimes it depends on who's your principal, who's training you, they've got...people have got different styles of writing letters and dealing with all those things, you know? But it was...then you had Mr. Zim(Morris Zimmerman), I must tell you now. I enjoyed Mr. Zim (Morris Zimmerman), you know, and his booming voice and the way he would...Mr. Zim's style was, you rather settle a case over the telephone with whoever is there, rather than risk going to court, because sometimes, you never know, your client can crack. And he used to sit in there and 'phone these employers and threaten them and settle it and say, I mean: give this man restatement. And, or: give this man his money or give him a good radio. Because, I mean, we used to do more Consumer Law with Mr. Zim (Morris Zimmerman), you know. And he will 'phone the furniture shop and say: I don't want to speak to a sales person, I don't want to speak to whoever, I want to speak to the manager or the owner. Then he tells the owner: no, this is the Legal Resources...he used to tell this up...this is the Legal Resources Centre, a Public Interest Law firm, right, we're here to fight for the rights of the downtrodden, and we're here to see to it that people are not being ripped off. This man has bought this radio and...or a car...most of the time it was a car, ja, the other thing we deal with is cars, whereby people would go to the second-hand dealers and...I'll tell you an interesting story. This man went to a second-hand dealer, car dealer, he bought a car, I think it was fourteen thousand, whatever. I mean, outside, the car looked well, I mean, the engine was cleaned and everything, as he drove the car out of...the car broke down, just outside the gate of the dealer. And when he went back to say: eh, fix this car, or there's a problem. Then the dealer will say: where's that contract? Then he shows that, it says 'voetstoots', so he bought it as is.

Int      Ok.

RM      Once it gets broken outside my premises, it's not my problem, right? And we had lots of those cases, lots and lots of those cases, and we dealt with this man, and he relied on the 'voetstoots'. And then there was a case, apparently, done by the LRC, I think it was before me, whereby it was said, I mean, if the person is an illiterate, right, or an ordinary person, it is the duty of the dealer to explain what 'voetstoots' means. And on those basis, you know, we used to win most of these cases. If...we took this man to court he went to...right to court, up and until maybe three days or four days before court, or whatever, it's only then he'll settle, otherwise he will refuse to pay, he says there's a 'voetstoots' clause, I mean, you bought it as is, you know? But we said, I mean, what does a man, an ordinary person know about 'voetstoots', he didn't bring it to his attention, and all those things. And that's why Mr. Zim used to say, Mr. Zim would come in and say: there is this case, decided in this, this says that even if there's a 'voetstoots' clause, there is a duty, especially when dealing with an illiterate person or an ordinary person, for you as the seller, to explain to this person as to what 'voetstoots' means, you know? And he didn't explain to that...even now he doesn't know it, therefore, I mean, it's either you do that, or we're going to institute summons, and all those things, and you're going to pay, and...costs, and all those things, you know? The only thing you can do is either give him a new car or give him his money back. And in that way, I mean, Mr. Zim, also, I mean, inculcated in us, I mean, the effectiveness of settling cases over the 'phone, which saves time and money, you know, and the risk of litigation. It was always said: litigation is a risk, you may sit with a client in your office, take instructions and think that is correct, he

goes to court, he cracks, it's something else. So, litigation is always a risk, it doesn't mean that what your client says is the truth, so, you always try to lessen the risk of litigation, and the best way to do it, is to settle this thing to the best of...but prior to litigation. Which was something I was also taught at the LRC. Try and achieve settlement before litigation because litigation is a risk, right, and it's also, I mean, it drains your financial resources, you know, you do your best and you negotiate. And one of the skills that I learnt at the LRC was negotiation, because we used to do negotiations at the Industrial Council for the workers, we used to do negotiations with the...in Consumer Law, with the shop owners and everything, and as to how you're going to approach a person. So, those were the things, you know, I mean...The other thing which I remember is that I was with one of my colleagues, I think I was with Joe Nxusani, and we had these, I think...I don't think...what it was...a farm worker, or whatever...employer, but we were supposed to serve, I mean, the court papers on him and we went in, I think it was somewhere outside Benoni, or whatever, and it was on (laughs) a Friday, I think, the last day to do that. And we went there to serve and as we entered there, I mean, I think this man opened the gate for us or...ja...as we entered there, and then he tells us: what do you want? We say, you know, as we have been told: we are from the Legal Resources Centre, we are Fellows, we are doing Public Interest Law, you know, for the benefit of the people, we understand you have fired some people, so and so, so and so. So what do you want? So, we are here to serve the Labour Court papers on you and this is the Labour what, what, what, what. And this guy says: ok, 'kom'. Then he went behind there and then suddenly as we're waiting there and I said: Joe, you know, there seems to be roaring, I hear that some dogs are barking, and I say: Hey, Joe (Nxusani), we're going to be in trouble here. As we are speaking then the dogs come, and we literally, you know, drop the papers (*laughter*) and run out. (*Laughter*). And run out, and we have left the papers there. And then we go there and say: hey, this is what has happened, this guy wanted to set dogs on us, then they say: no, do an affidavit of service, what happened? We say: no, in fact, we dropped the papers. Where? On his premises. Then we said: no, this is what had happened, we dropped the papers on his premises and all those things. And then they say: then you're going to do that, you're going to serve that to court to say this is what is happening. Then the court going to give us that. And then they say: next time you have to go there. I said: no, maybe someone else will go, we'll never go there, I mean...(*Laughs*). Those were the risks that one did, I mean, with, especially Labour matters and as well as Consumer matters. Some of them where you go to a furniture shop or these little stores that sell second-hand goods, and if someone there tells them: no, you cannot sell this thing because the law says this and this, this man, you cannot make him sign a contract and the man can pull out a gun and say: get out of my shop. Inaudible. So, I mean, we ran those kind of a risk of litigation, besides the financial one, that sometimes, you know, your life or, I mean, your physical integrity can be threatened, you know, you can be injured or anything, but, at the end of the day we'll sit after that and laugh about it and say, you know: this is how, basically these things are, next time we're going to be careful, you know, we don't enter this kind of things, you know, you stand at the gate and ask them to come by, otherwise you're going to be inaudible. But, I mean, those are the kind of risks that one assumed at the LRC, especially with Labour, where you have to serve these kind of papers. And people at the time, were...I think, even now, I mean, but people at the time, I mean, they saw two black guys coming to serve them, and they say: who the hell do you think you are? And...they set dogs on us, set dogs upon you, and all those things.

- Int Gosh.
- RM Mm...
- Int Rusty, thank you so much...
- RM Is that all?
- Int ...for your wonderful memories...
- RM Well, no, it's absolutely wonderful memories. You know, one of the other of my wonderful memories is the LRC AGM...
- Int Yes, tell me about that?
- RM ...where we used to go to, I think we used to go to Mount Grace and Durban, and the most thing that I...memorable about it was that here you'd have this AGM of the LRC, all the office...branch offices, right, all the eminent advocates and lawyers in the country, who were at the time, I think, the Trustees, I mean, the former Chief Justice, the lead Chief Justice Ismail Mohamed, you'll have Arthur Chaskalson, you'll have George Bizos, you'll have Sydney Kentridge, you'll have...who other, and there are others...and one will sit there and listen, I mean, to, I mean, their oratory, you know, and good raconteurs and everything, and, you know, learn from them. Because, I mean, these are the people who it could not be easy...I mean, interact with them. And it was absolutely...now sitting at the braai and listening to them arguing and debating amongst themselves about everything else, you know, and that was absolutely, absolutely, absolutely wonderful. And the...we...the way it was run, I mean, something you look forward to, and also to engage with the other people within the LRC fold, who were maybe at the Grahamstown, Cape Town, Durban...Chris Nicholson at that time, you know, and absolutely...One of those...and I said one of the things of the AGM, is the after...after the formalities where you sit, I mean, and have a braai and have a drink and they say no, then you are able to learn people, what they like about LRC, what they don't like about the LRC, what they think is going to be good about the LRC and what they think is going to be...because in the formalities people sometimes don't talk a lot, but in that kind of scenario...and then...I really enjoyed it because I also was surprised that people would be quiet during the formalities but, once we have that, then the real, I mean, feelings and views would come out, then. The other thing which I remember about the LRC is that there was a time when we were saying: no, no, we're working hard, no, we're working hard, we're working even more than people who are in the Commercial Law firms because they don't handle, like, 150/200 files, and we were clamouring for an increase, you know? And (*laughs*), and most of...We started this in Jo'burg, me, Joe Nxusani, Urmilla Bhoola, I think Nonhlanhla, and we were saying: I think we need more. I think at the time we were paid about nine hundred rands or eight hundred rands a month and then we said: no, we need more because we work hard, I mean we also come on Saturdays and do all those things, I mean...sometimes we come on Sundays.

Then the idea was that, I mean, we were told, I think by (Arthur) Chaskalson, to say: well, you know the LRC is not only, I mean, the Jo'burg office, there are other offices throughout the country, if we have to give an increase to you here, also there are other Fellows there, therefore this thing must be debated at the AGM. At the AGM there was also some differences and people...no consensus, then they said: well, we will leave it to the Jo'burg office to see how much it is and then we were told that: listen, ok, fine, you do some survey as to how much clerks, first year clerks get paid at other firms. But what I'm saying is that, the long and short of it is that those that I thought were together, when it came to the push, then they said: no, in fact, you know, we're happy here, you know, (*laughs*) we don't want...we're not much clamouring for that, you know, maybe it's Rusty who feels overloaded because he's got too many files, you know? So, (*laughs*)...But at the end of the day, I mean, the increase was given, but it was given to all of us.

Int Right. (*Laughs*). So you had to be the brave one.

RM No, but I said: no, (*laughs*) at the end of day, you paint me as the stirrer, you know, of things, but now, I mean, once the gains have been, I mean, achieved, you're also benefiting from that, don't you think maybe, whatever the increase you're getting, you should give it to me. (*Laughter*). But, I mean, it also, I mean, at that time, I mean, it was interesting because, as I'm saying, the LRC was a unique place, because you...if ever you feel you have any disenchantment or you have any dissatisfaction or you have any grievance, right, you could, obviously, ventilate that, you know what I mean? You don't have to go and...to one person or, you know, grumble there alone, you could stand up and say: this is what we think the LRC should be done, this is what we want to be done and it will be taken, I mean, in good spirit, you know? And they were saying, you know, this is the first time this happens at the LRC, I say: no, maybe it won't be the last time, it may happen again, you know? You know, with the LRC we're representing workers who are dismissed because they also clamour for some increases. So, I thought maybe, you know, we should see as to how does LRC have to deal with that, you know? I don't think it's fair, because we're doing that, you know? And he says: ya, but you must know that, in fact, this is a Public Interest Law firm, we rely on donors, and all those things and...But it was taken in good spirit and the increases were granted and, you know, we are one of those Fellows who said, you know: the kind of work we do as Fellows is different from those that people do in the Commercial Law firms, because we are working with advocates and attorneys at the same time, whereas the Article Clerks are only working with attorneys, and they don't do a broad range of matters. In order maybe to attract...one of the reason advanced by other people at the universities when we're debating this Fellowship programme was that, in fact, it's like, a waste of a year because you can do a Fellowship, and still have to do your Articles. So, one of the reasons, one of the other things to do to attract this, is to make Fellowship part of the Articles, and we...I think we did put the thought at the time, and it was taken forward and ultimately then, when I was at the Bar, then I heard that, no, in fact, I mean, Fellowship is part of your Articles, which was another way of attracting, you know, clerks, people from the university to do this, because people will see it, no, but why should I do a Fellowship for a year and still got to do two years of Articles, you know, I want to go straight and qualify. And, I mean, we would clamour for that and put it forward and after we had left, it was now, obviously, I mean, implemented and I think the Law Society was obviously moved

and they agreed to that. Maybe it's something else which they should also do with regard to...I don't know now, how...what is the setup here, whether you still have advocates and attorneys?

Int They do have advocates and attorneys, here, apparently, the LRC does.

RM You know, one of the things the LRC should do, I mean, in order to attract even those who have aspiration of becoming advocates, is to...because, I mean, pupillage is now one year, is to also incorporate in the Fellowship, that maybe the six months, if one spends six months at the LRC, then it will qualify towards pupillage, then I think that people would be more inclined to come to the LRC.

Int Rusty, I want to thank you so much for your time...

RM Anything more...

Int ...and for your...and for your thoughts and that was wonderful, thank you very much.

RM You don't want any more?

Int I think it's...thank you so much.

RM (*Laughter*).

(Interview continues...)

RM ...Where, I'm more or less, I mean, successful.

Int Most of the Fellows who came to the LRC?

RM Ja, I'm most...I mean, judges, advocates, and all kinds of things, and even if that other matter can be started, it can be also be a good source of tapping some funding from them, especially if it is formalised to say, or say: you run it more like the...

Int University Alumni?

RM ...University Alumni and at the AGM of the LRC, which whereby, in fact, you meet everyone who is in LRC country-wide...

Int That's a good idea.

RM     And it's held in different provinces every year, and if they can say, I mean, we're calling an Alumni of all LRC students, it's going to be held at this venue, people will come, then I think it will be absolutely a good idea. It will present a who's who of LRC's protégées, at the time.

Int     Thank you so much.

## **Rusty Mogagabe–Name Index**

Bizos, George, 10, 23  
 Bhoola, Urmilla, 23  
 Budlender, Geoff, 7, 11  
 Chaskalson, Arthur, 6, 8, 9, 10, 11, 15, 23, 24  
 Kentridge, Felicia, 8  
 Kentridge, Sydney, 10, 18, 19, 23  
 Madlala, Pinky, 8  
 Mandela, Nelson, 2, 4  
 Mashinini, Tsietsi, 3  
 Mohamed, Ismail, 23  
 Navsa, Mahomed, 10, 20  
 Nicholson, Chris, 23  
 Nupen, Charles, 6, 7, 10  
 Nxusani, Joe, 22, 23  
 Pretorius, Paul, 7, 9, 10, 19  
 Seatlholo, Kgotsso, 3  
 Sisulu, Walter, 2  
 Smangaliso, 4  
 Sono, Trafomo, 3  
 Strydom, (Regional Director of Education), 3  
 Tambo, Oliver, 4  
 Tip, Karel, 10  
 Zimmerman, Morris, 8, 11, 21  
**Bartman**, 17  
**Nonhlanhla**, 23

### **Cases:**

Bartmann and Springbok Security, 17 -18  
 Delmas trial, 9  
 Detention and assault, 18-19  
 Forced removals, 9  
 Rikhotso (Rikhoto), 6  
 Consumer cases Voetstoots (Buy as is) cases, 21-22



Legal Resources Centre Oral History Project

**PUBLISHER:**

*Publisher:-* **Historical Papers, William Cullen Library, University of the Witwatersrand**

*Location:-* **Johannesburg**

**©2010**

**LEGAL NOTICES:**

**Copyright Notice:** All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

**Disclaimer and Terms of Use:** Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. These digital records are digital copies of electronic documents and the information contained herein is obtained from sources believed to be accurate and reliable. Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

**DOCUMENT DETAILS:**

*Document ID:-* **AG3298-1-116**

*Document Title:-* **Rusty Mogagabe Interview**

*Author:-* **Legal Resources Centre South Africa (LRC)**

*Document Date:-* **2008**