

Clive Plasket**LRC Oral History Project****2nd September 2008**

Int This is an interview with Judge Clive Plasket and it's Tuesday the 2nd of September (2008).. Clive on behalf of SALS Foundation, we really want to thank you for agreeing to participate in the LRC Oral History Project. I wondered whether we could start the interview, if you could talk about your early childhood memories, growing up in South Africa under apartheid, and where you think your sense of social justice and injustice developed?

CP Well, I grew up on various mines, gold mines, in the Free State gold fields and on the East Rand. So I don't suppose that's a particularly promising place to start off. But I suppose the...it was...I went to a private school, a Catholic school...two Catholic schools in fact, and I suppose the fact that one wasn't getting government education made something of a difference. My parents were not particularly liberal, I suppose, but had a well-developed sense of right and wrong, and even though they were products of their time. And I suppose all of those things helped a bit, but it was really at university where...and I studied History that I started realising that something was wrong. And the moment one starts studying, to start...the moment one starts studying South African history, and it's not the version that you were given at school, your eyes start to open, so I suppose that's really where I started seeing things differently to...to I suppose, many of my contemporaries. As well as that, I went to the University of Natal, which...and at that time the Law School had a number of members of staff who ranged from liberal to left. And so the way law was taught was not the black letter law method, and we were introduced to the sort of social elements of law, to the point where we were even taken on tours around Pietermaritzburg in buses to see how the Group Areas Act worked, what it did to the geography of the city. Those sorts of things all have an impact, you know?

Int Sure. And the period that you went to university, what period was that?

CP I started in 1977. So it was quite a rough time in the history of the country. A year after the Soweto uprising and everything that went with that. '77, '78 there were wide scale bannings of organisations and individuals and so on and that...and the student body had obviously something to say about that. I think initially I was fairly much on the fringes of that but one noticed it happening. And of course that...once that starts happening one has to work out where you stand on these issues. And to a large extent that's fairly obvious. And of course (Stephen) Biko died in, what, '77. (Neil) Aggett '81. You had those sorts of things happening, people dying in detention fairly regularly and those being used as issues to mobilise around among the student body.

Int Right. Were you involved in NUSAS at all? Was NUSAS active on the Pietermaritzburg campus?

CP Yes, it was. I was a NUSAS supporter certainly. I was involved in the Law Students Council, not directly in the Student Representative Council as such, but when we had

NUSAS referendas as we did on two or three occasions I was actively involved in that.

Int Right. I'm wondering, also, Clive, in terms of actual discourse, do you think in terms of...political discourse and conscientisation, do you think that started for you at university or do you think earlier as a child you might have sort of picked up a sense that things were slightly different, or not as they ought to be in the society around you, in terms of just observation or, newspaper, or something that particularly gave you a sense of what was going on?

CP I think there were...there were bits of...developing bits and pieces of developing a political consciousness while I was at school, and certainly in the latter part of my schooling. When I look back on it I realise that. But it was very rough around the edges and quite unfocused and I suppose it was once one got to university and, as I said, started studying South African history, that it achieved some sort of a focus. And I think there's almost a natural progression from that, and the injustices that stand out towards public interest law. And again in Pietermaritzburg at the Law School, it was very...particularly strong on public interest law. People like Lawrence Baxter who was the leading lights in Administrative Law teaching us. Julian Rickett taught us Labour Law, which was then an emerging new field of study, I suppose. And so the...the history sort of fed into the law, as it were.

Int Right. And in terms of your deciding to study law, were there particular influences that made you feel that law was something that you wanted to follow as a profession?

CP You know, I've...that's one of the things I've thought about many times and I'm not quite sure what the answer is. The reason I started studying law was because I was doing a BA and...when people said, well what are you going to do with it, you know? I didn't know quite what the answer was. I knew I didn't want to be a teacher for instance and so the answer was...I'll do law. A BA Law. And we were again fortunate in having a really good introductory course to South Africa Law, and...which was probably the Law School's best advert, and so, I just continued with it and I must say by the time I'd started my LLB I'd realised that I really did enjoy this. It obviously worked for me. And I've kind of figured that...I don't know what else I'd...I suppose there are some other things I could do but this...this works for me as a profession. I've always enjoyed practising law, researching law, writing about law and so on. So, I obviously fell into the right profession. I'm not sure where chance and design fit into it all but somehow it kind of worked out.

Int I was also wondering once you've done your BA LLB, what did you do after that in terms of Articles and subsequent practice?

CP Well, I...I did an LLM after I'd finished my LLB.

Int Ok, and at the same university?

CP At the same university and I taught there for 18 months as a leave substitute, and got paid less than the person who used to clean our offices. I found that out when she came to me with a tax problem and showed me her salary slip (laughter). But...ya, so we got paid pretty poorly as leave substitutes then...

Int ...I can imagine...

CP So I taught there for 18 months and then I got a job teaching at the East London campus of Rhodes University. And I spent two and half years there, which was also, in a very, particularly interesting period, and I'll tell you about that in a moment. And by the end of...must be in...I finished my LLM in '86 and I left there the end of '86 and joined a firm called Cheadle Thompson & Haysom in Johannesburg, did my Articles there, practised there for five years, I think, before I moved to the LRC. The period in East London, I think, is also an important period for me, because I got down there, I was the first full-time law lecturer at that little campus. And I...soon after I got there I was approached by various people to help out with giving legal advice for trade unions and community organisations, little advice offices that had been set up. And it...in...I got there middle of '84 and of course I...the early part of '85 things started...the uprising that had started in September '84 in the Vaal Triangle, it really spread through the country. March '85 you had the Langa Massacre down in Uitenhage. From there you had...well, it wasn't much after that, June '85 Matthew Goniwe and the others were killed...limited State of Emergency. And for us in East London trouble started in August '85 after the funeral of Victoria Mxenge. She was buried just outside King Williams Town, a place called Rayi. And in fact I went to that funeral with the late David Webster, who was a friend of mine, and Helen Joseph as well. She spoke at that funeral. But straight after that there'd been a build-up of security forces in East London, and straight after that the trouble started in Duncan Village. And we set up a...a number of us set up a medical and legal clinic, if you want to call it, one of the Catholic churches, where we had doctors and nurses helping people who'd been shot or injured. And I provided the legal services, such as it was, but basically I made sure that people got legal representation when they were charged. The police tried to close us down and we brought an urgent application which Sydney Kentridge argued...in this court in fact. And...so from there on I was heavily involved in what was going on in the township, Duncan Village and around there. And at some point, I'd been...I was, I suppose, really out of my depth. We had these huge search operations that became almost commonplace where the cops would move in, they'd cordon off the whole area of the township and they'd search every house and put a big cross with a piece of chalk on each house that they'd search. And then everyone in the street that they would find who wasn't...who hadn't gone into a house, they would just load up. And at that stage I figured that this was...this was way beyond me, so I phoned Fink Haysom, who I didn't know. I phoned, and I said, listen, I'm phoning you from East London, I work at the university, this is what's happening here, can you help? And he said, he'd catch the next plane down, and the first case we did involved a kind of by-product of the search operations. A guy who happened to be walking through the street when one of these searches happened, and didn't have a house to go to, got loaded up, got taken to the Fleet Street police station, and he found himself being tortured with electric shocks soon after that. And we were able to identify who'd been tortured before him and that chap, we tracked him down, that chap told us who was tortured before him, and we got a whole lot of applicants,

and we brought an application, again in this court, and again argued by Sydney (Kentridge) and Bob Nugent as his junior, for an Anton Pillar order to search the Fleet Street police station for the torture equipment. And strangely we...we...the court accepted that it had jurisdiction to grant an order like that, but they said that we didn't need it, our case was too strong. We had enough evidence to sue for damages, we didn't need to get the torture equipment, which was a very...I thought, a very...well, everyone thought, a very strange way of going about things. So by the end of that year, '86, all of these things happening, I figured that the...that I should go into practice, and I joined Cheadle Thompson & Haysom and moved up to Jo'burg.

Int Right, ...from '86 onwards, with the States of Emergencies, from what I can gather, Cheadle Thompson & Haysom was really at the cutting edge in terms of political trials and working with detainees, etc, as well as the trade unions. I wondered whether you could talk a bit about the experiences you had there?

CP Well...we acted for...vast numbers of detainees, as I suppose most firms involved in that field did. And we had a dedicated paralegal who would set up...who would look after the needs of the detainees, but obviously attorneys had to do the visits to prisons, so we spent a lot of our time going to prisons and consulting with our clients. Initially one...we had a fair amount of success in getting people out, bringing applications, essentially *habeas corpus* applications, to get people out of detention. And I remember one matter that I was involved as an Article Clerk. We got seventy or eighty out in one shot, where the union of which they were a member was the applicant. Half of them then got charged, which I suppose was fair enough if they...rather than detention without trial, and of those, some of them got...a fair amount of those got convicted and we won on appeal, so it ended up being quite a long involvement with that group of people, but it ended up well enough in the end. But of course as the Emergency progressed, the Appellate Division tended to close down the avenues for getting people out, and by the end of the Emergency it was virtually impossible to win a case. The interpretation of the regulations was such by the highest court, that you couldn't trump the say-so of the arresting member of the police. It was as simple as that. If the man could sign his name to an affidavit that was basically good enough. And that, I suppose, brought about a different approach and at some point our clients started...decided to go on hunger strike, and all the attorneys involved in representing them joined in symbolically for a few days. I mean, it was...I must tell you, not a pleasant experience going without food for three or four days, I think it was.

Int Is this the co-ordinated hunger strike with Sandile Thusi? Or was that later?

CP I'm not sure...

Int Ok, because this was a country-wide hunger strike?

CP Ya, this must have been in... '89, ya.

Int Yes, then that's the one.

CP And it actually worked because the government...what they did eventually is they set up meetings made...the Minister of Law and Order made himself available to meet with attorneys, and everyone would go up to...would go down to Cape Town, go in and say, we act for these guys and say, well, these people must be released, and he'd listen and he'd look at his Commissioner of Police, and they'd hum and ha, and the bottom line is that most people were released and I think that hunger strike made a huge difference in breaking the back of the Emergency.

Int Sure, I'm also wondering, being at Cheadle Thompson and Haysom, they'd come through CALS, Centre for Applied Legal Studies, and so, Paul Benjamin was there, Halton Cheadle...at the time, what was your interaction with the Legal Resources Centre, if at all?

CP Well, I obviously knew people there and we co-operated on a lot of our...a lot of cases. We were involved in similar sort of issues. I also did a fair amount of work in the rural areas, particularly out beyond Zeerust, in the Western Transvaal, and so that brought one into contact with very...very directly with the LRC's...a big...a core focus of the LRC, I suppose. And a lot of that work was...even the Emergency work was quite carefully co-ordinated, it didn't just happen. We used to have conferences of people involved in Emergency Law, as we called it. Involved in Land Law. And the whole idea was to focus our energies in the right directions, bring the right cases in the right courts and so on, from the right facts. So that you didn't have people just going off in all directions and ending up with the wrong cases being brought to court and bad precedents being set. So...and in that context, people like Geoff Budlender in particular, played a very central role. And of course, I mean, for most of us who were junior to him, he played an important role in guiding us along and helping us.

Int I'm also wondering, there's a perception that Cheadle Thompson & Haysom was in the trenches during the eighties and that perhaps the LRC must have been at that time really cautious, even though it had key cases that it won, test case: Komani, Rikhoto, Mthiya. What's your sense of that kind of perception?

CP Look, I don't think it's entirely accurate. You speak to someone like Moray Hathorn and the work he did out in the Eastern Transvaal, that was pretty hairy stuff, you know? The moment you go up against powerful interest groups, you're looking for trouble in an environment like we had. And so it's...I don't think it's in...it's fair to say, well, they were...they weren't in the trenches. They were sometimes doing different sort of stuff, they had a focus on consumer protection for instance, which we wouldn't have had. But at the same time with that rural work, is rough stuff at the best of times. You're dealing with police who are used to not having anyone looking at what they're doing, you're dealing with powerful interest groups in those rural communities. Whether they're white farmers or traditional leaders aligned to the homelands, or whatever, who don't play games. So, you know, rural work was...was dangerous stuff, I think.

- Int In terms of the relationship with the Black Lawyers Association, CALS and the LRC, and Cheadle Thompson & Haysom, during the 1980s what were the dynamics? ...As you said, there was some co-operation between Legal Resources Centre and Cheadles, but in terms of the others?
- CP Well, I was a member of NADEL, and most people, if not everyone at Cheadles was. And there was always a very close relationship between NADEL and CALS, for instance. And to a large extent, I think with the LRC. There were some people in the LRC who were members of BLA. I'm not aware of any tensions between, say, NADEL and the BLA inside the LRC. And, you know, there were some tensions between NADEL and the BLA at the time that NADEL was formed, and the BLA moved out of it. They were a constituent part of it initially, but they moved out for their own reasons. But I think that by and large there was a fair amount of co-operation. I don't...you know, it's a few years back now but I don't recall serious tensions.
- Int Fair enough.
- CP And certainly when we, in Cheadles, instructed correspondents out of town, I never thought, well, I'll find someone who's a member of NADEL. In fact I used correspondents who were fairly high profiled members of the BLA, so I...I'm...I certainly can't think recall any serious tensions between...organisational tensions. And I don't think it really surfaced in CALS either. I may be wrong...
- Int I'm also wondering... you were at Cheadles right through the 1980s...
- CP Well, from '87...
- Int ...
- CP ...to '91.
- Int ...so what prompted your move to the Legal Resources Centre?
- CP Um...well I'd...from having spent a few years down in East London, when I moved up to Jo'burg I was keen to get back to the Eastern Cape at some stage. And...I suppose, in mid-'91 the time was about right. So I phoned Jeremy (Pickering) one day and asked if he had a job for me and things got set in motion and next thing I moved down.
- Int Could you talk t about your experiences at the Legal Resources Centre when you started?
- CP Well...at that stage, the LRC here must have been the youngest office. It had been started by Jeremy (Pickering), as you probably know, who had been in Port Elizabeth

and he moved up to set this up a few years before that, I think, about '87...maybe '88 I'm not sure. And what...I think, the first...there are various phases in the history of this little office, and I think when I got here they were in the, what I would say, is the first phase. They'd started this office and were doing most of the work in the rural areas in the small towns around here: Fort Beaufort, Adelaide, Cathcart, way up to places like Barkley East. And those places were really rough, I mean, most of them were really rough in the 1980s. The cops were a law unto themselves. Employers were a law unto themselves, and they believed they could do what they wanted to because no-one had told them differently and no-one had shown them differently. And so the first thing the LRC had to do was establish some law in these places. And so they did work that would now properly be done by the Legal Aid Board. They took damages claims against the police, individual dismissals of employees, consumer protection cases, and so on and so forth. As well as that there were, you know, the bigger land cases and so on. There was some interesting stuff relating to detainees' right to legal representation – the Rudman case came from here...well, one part of that case came from here. But...essentially, I think, at that stage the idea was to throw the net as wide as possible. Do as many cases as possible in as many places, so that you just started making people realise that there are actually rules that apply in a civilised society. And that people who are at the receiving end realise, or are made aware of their rights. And all of that also links in with the advice offices that you find. It was also about strengthening the advice offices and giving them some teeth. And that was the situation when I arrived here. My initial focus when I got here was more in the Ciskei and towards East London, and the reason for that was really two-fold: the first was from having been in East London from '84 to end of '86, I had a lot of contacts down that part of the province. And the second was: that the Ciskei, by that stage, was strangely run by a military junta but it had a Constitution with a Bill of Rights. A funny little Bill of Rights, not very long, not very intricate, but a Bill of Rights nonetheless. And it seemed to me that it was where we should start getting ready for what was to come. We could learn a bit about constitutional litigation. And so I want...I was quite keen to focus on the Ciskei, and of course the homelands have always been under-resourced, or were always under-resourced as far as human rights lawyering was concerned. And in fact, I'd only been here a week or two when I got...a friend of mine from King Williams Town, pushed a case my way involving student leaders who'd been excluded from one of the techs in the Ciskei, and we brought an application and got them back. And that started my practice rolling. Then there was a State of Emergency that was declared in the Ciskei by the Xhosa regime, and between Jeremy (Pickering) and I, we brought a nice, big challenge to that. We initially got a little bit ahead of ourselves, we were going to make great law on *locus standi*, and said, well I live in the Ciskei, I can be detained under these regulations at any time, I can be banned under them at any time, and that is sufficient to give me *locus standi*. I don't need anything more of a direct interest than that. And our idea was to develop some idea of public interest standing, if to use the terminology of our present Constitution. We didn't know fancy terms like that then. But then we got cold feet just before we were going to argue this thing, so we popped in a supplementary affidavit in which we set out why our applicant feared that he would be detained or banned or whatever. So we kind of played safe there. And we argued the thing and the argument was really that it was...that the declaration of the State of Emergency was unconstitutional against the Bill of Rights and against the Constitution, more generally. The judges sat on the thing despite it being urgent and they waited and eventually the State of Emergency was lifted. And I think they were quite relieved

that they could say, well, we don't really have to decide this anymore, but we got our costs, so presumably that meant that they...if they had been required to decide it, they would have decided it in our favour. So those were the sort of initial cases involving the Ciskei and its Bill of Rights. I did one or two others in that down there, but by...must have been...April/May '92, I got drawn into the Goniwe Inquest. So that was...that became my major focus until '94...

Int Could you talk about that...the Goniwe Inquest?

CP About May '94 we finally got the judgment there, and then there were the damages claims, which took a while longer to settle. But ya, you obviously know about the first inquest, which Arthur (Chaskalson) did...Kobus (Pienaar) was involved in that as well...which ended up fairly inconclusively. But Arthur's (Chaskalson) argument in the first inquest was really the starting point for us for the second, because what he'd done is he'd taken all the little bits of evidence that pointed to some organised force behind all of this, as showing that this wasn't just a random act of so-called "black on black violence", as the police had tried to portray it, but something a whole lot more sinister. And then of course when that signal was leaked and was published in the New Nation, one was able to give what Arthur's (Chaskalson) argument, a whole lot more content...context. Anyhow it ended being a long and a very interesting inquest, because essentially what it was...what it focused on, was the way the national security management system worked, with the State Security Council at its top sort of parallel system of government. You know, the civilian organs of government here and next to them this securocratic secret structure, which was set up precisely to co-ordinate the total strategy. And the major decisions relating to security were being taken there, obviously. And this is where the signal came from. It came from the chairperson of the JMC in the Eastern Cape, that these people had to be permanently removed from society. So what we're really doing is we're...the entire or most of the inquest, was about cross-examining from us, outside, cross-examining expert witnesses on this system of government and on counter revolutionary warfare strategy and those sorts of things. So we had to do a lot of research on all of that to make ourselves experts. And frankly by the time we started the evidence, we probably knew a whole lot more about this than any of the other legal teams in court. And when we started looking at the inquest documents, we were able to fit it into the sort of theoretical framework of how this all worked. And I think in the end of the day, that's really what made all...made a lot of the difference. Of course it also helped having the author of the signal get abandoned by the South African Defence Force, and we arranged for him to be represented, and the first thing he did was come up with a whole lot of other documents relating to the Ciskei, in fact, where his boss had suggested certain people be killed there to engineer whatever his plans were there – a thing called Operation Katzen. So, ya, it was a...it was a very interesting inquest, and it...

Int Did you work with George Bizos on that inquest?

CP Ya. The team started off with me as the attorney, Arthur (Chaskalson) was going to be the senior counsel and Jeremy (Pickering) as his junior. Then Jeremy (Pickering) got his acting appointment so he fell out of it. Arthur (Chaskalson) stayed in it for a while but he was...being devoting more and more time to drafting the new Constitution, so

he was...he found it difficult to stay in. And then George (Bizos) and Mahomed Navsa came in. So in the end it was Nicolette Moodie and myself as the attorneys, and Mahomed (Navsa) and George (Bizos) as counsel.

Int And the working relationship with that case... how did that work?

CP Um...look...at times George (Bizos) drives you a bit crazy, you know (laughs).

Int (laughs) I'm sure in quite a good way too...

CP And we had a few spats and, you know, unfortunately he's difficult to take on, old George (Bizos), because he does have a strong personality, but if you're the attorney and you're running the thing, you bear ultimate responsibility and sometimes you have to disagree with your counsel as to the way we're going...you're going. But that said, you know, with retrospect there were times when I think I was just a bit uptight about things and...when I've worked with him subsequently I've relaxed a little bit and gone with the flow a bit more, I suppose. But...no, overall I think we worked well and we worked effectively and we worked bloody hard, you know. I mean we would come out of court, we'd have...go back to our hotel, we'd have supper and then we had a room where we would work till probably midnight most nights, preparing for the next day. So we...it was hard work while we were doing it, but it paid off.

Int Sure. I mean, George (Bizos) certainly speaks about you and Nicolette Moodie spending endless nights working on things and having things ready by the next morning, so he certainly speaks about that. And I was wondering, that photo, was that at the hearing or was that at the TRC?

CP No, that was at the TRC hearing into the Biko case.

Int And working with Mahomed Navsa, what was your experience?

CP Well, I think Mohammed is a fine lawyer and he's...he's incredibly hard-working. I enjoyed working with him and we've always got on well, you know. And in many sense he was the glue that held it together, I think. He's difficult to work with in the sense that he works a whole lot faster than anyone else. He reads incredibly quickly, so you'd take a record and he'll be through the thing before you're halfway through. No, but he really is a fine lawyer and I think we all worked...we all clicked as a team, ya.

Int So that took you to '94, and then subsequently at the LRC?

CP Well, I mean, in between that I was doing other cases too. And I was directing the office.

Int Right. So you took over from Jeremy Pickering?

CP Mm.

Int Quite early on?

CP Ya. I would think it was probably the beginning of '93, I started acting as director. I'm not sure when I was...I can't remember off-hand when I was appointed as the director. But I certainly acted from the beginning of '93 or there... '92, or thereabouts. Till I left. Um...what I started doing at that stage when I was director, was looking at changing the focus of the work. We all knew that the new Constitution was around the corner, we're going to have a Bill of Rights. We even had a fairly good idea by, I think, mid to end '92, of what was in that Bill of Rights, because there was...the committee that had people like Hugh Corder and Lourens du Plessis in it, were churning the stuff out, it was being discussed. And my approach to it was, we must be...we must start gearing up for constitutional litigation and not have to play catch-up once this all happened, so we had to get on top of how the Constitution worked and how you use it. But I also felt that by that stage we had to get beyond the legal aid approach to public interest law, and that you had to start getting focus. And we had a fairly big practice in which we...against the police for damages, for unlawful arrest, and detention, for assaults and so on. And what we started doing was focusing, so we figured, let's look at the places...you know, instead of just taking every case that came along, those...we would look at areas that we identified as problem areas and then we would saturate them with litigation. And the first area we chose was Cathcart, and we whacked it till they...the police started behaving there. The second major area was Barkley East and up there. And Brian Sephton was working at the LRC, Sarah's (Sephton) brother, and they of course come from Barkley East so he knew people up there and he was able to get the cases nice and easily and he obviously enjoyed going and working up there. And he brought a number of cases against the cops, one after the other, where...he got to the point where he would put something to a policeman that you didn't do this or you didn't do that, and the guy would say, but of course I did. Last time I was in this witness box you said I had to do that when I got a search warrant or whatever it was. And we actually...I think in the areas we focused on, reduced the incidents of police abusive power quite dramatically, without any fancy challenges or anything like that, just focusing on where the problem was worse. I was also involved in a important initiative here where between the ANC and various other community organisations, a commission...a sort of informal commission of inquiry, I suppose, was set up into policing. There'd been problems with policing, with gangs, and what have you, and the police's response to it, to these problems. And members of the community wanted something to be done. And Gugile Nkwinti who's now in the Provincial Government, figured that one had to channel all of this anger and so on, into some way of trying to fix the problem. And he drew Rob Mitchley who was the Dean of the Law Faculty, and myself, into this commission, or the idea, and we...it was eventually set up and given terms of reference by community organisations and the police themselves, and it had a colonel in the police on it – Peter Meister. It had...Fikile Bam was on it, Lex Mpati, Rob (Mitchley) and myself. And what we did is we got the Centre for the Study of Violence in Jo'burg to come down and start interviewing people so we can get ideas about what people wanted. And they

interviewed the cops, they interviewed youth organisations, civics, political parties, the whole spectrum, and in fact brought everything together in a big meeting that just looked at solving...at finding a way of solving the problem. And our commission report was actually about implementing what this big meeting had come up with. And that involved community police fora, community visitors scheme where people were given the job of inspecting the cells and interviewing people who were arrested to make sure that they weren't assaulted or maltreated and so on. And in fact that commission, or our recommendations were used as something of a blueprint for the rest of the country and actually worked very well here. So that was one...again the idea behind it was rather than sue for damages for one individual who's been assaulted by a policeman in Grahamstown, let's find a way of fixing the system. Ya, that was '92, '93 this gradual change of focus. We were also at that stage involved in a fair amount of land work out towards the Ciskei, Whittlesea area. Some of it involved people who'd moved onto land and didn't want to move off it and wanted that land given to them. That involved claims for land in...which were brought before a commission that was set up. A fairly toothless commission, I suppose, chaired first by van Reenen who was an ex...a retired judge, and then McCreath, also a retired judge. And I represented people in both these commissions at various times, and basically the...you had these big populations of people that had been brought and dumped in the 1970s and they didn't have enough land; there was white owned land all around them and you had a recipe for disaster. And my approach to it was whatever the legal niceties of it was and whatever you manage to prove in terms of the rules of evidence, here was a political time-bomb waiting to explode and had to be addressed. These commissions didn't really come up with the answer but in fact just the sort of unpacking of the issues in front of the commission spurred the government on – and this was before '94 – to start some land redistribution in that area. And Brian Sephton then took over that work a year or two later, and actually acquired farms for people and raised funds through government, and those...I don't know what's happening on those farms now but certainly a fair amount of land was acquired and...

Int And that's quite early land restitution work, wasn't it? Quite early on?

CP Ya, that would have been 1993, the first people got extra land under the old government. And then from then on.

Int In terms of other cases that you did, that you feel were very representative of public interest law and what it means to do public interest law, what were some of the other cases you worked on?

CP Well, I think the most important cases that I did at the LRC, apart from the inquest...actually before I get to that, the other one that has to be mentioned is the Bisho Massacre. And before I get to that the remainder of the Goniwe matter. Because the inquest was one part of it. And the whole idea of the inquest was to find out who was to blame. And we got a finding that it was the Security Forces; the judge couldn't say whether it was the police or the Defence Force, but it was agents of the state. So we sued on behalf of the dependants. We sued the government, we sued the police and the Defence Force. And it took a while to sort that out but eventually they settled. The argument was that these claims hadn't prescribed, as they normally would

after...well, six months actually in terms of the Defence Act and the Police Act at the time, because the state had deliberately covered up who was responsible. So they couldn't benefit from their own fraudulent conduct as it were. As it happened they...we didn't get to court on those, we eventually settled them for...I can't remember the exact amount but it was...it was over a million that was split between the four families. And then there's...of course just after I'd left the LRC, I was brought back into the Amnesty Application, in the policeman who'd done it...applied for amnesty, and I helped George (Bizos) and them with that. The Bisho Massacre claims, now that would have happened in September '92, I think it was, where people were gunned down by the Ciskei Defence Force, when they were going to march on Bisho. And we ended up acting for a fair amount of people in that. I would think in the region of 20, 30, 25 people. Some very seriously injured, obviously some killed, we were acting for their dependants. But two guys who really were very, very seriously injured and in wheelchairs as a result, the state dragged their heels in settling that for so long that one of these guys died in the meantime, waiting for his claim to be settled. The other guy got a very good payout of well over a million. A very impressive guy from Fort Beaufort who was studying to be a teacher, and I hope he is one now, I'm sure he's one now, ya. But I think that was important litigation too, you know, that...someone had to step up and take those cases, even though by that stage we kind of moved away from individual...or were trying to move away from individual damages claims, but that was of such a big issue...big incident, that everyone had to pile in and help. I think that was a...you know, I wasn't directly involved in that, I had some role in it, but some of the other people in the office ran those matters.

Int I'm also wondering, Clive, in terms of running an office, being a Regional Director, what were some of the challenges? What were some of the tensions in the office? What were things that you felt you required support of and what was the level of support from the National Office? Historically, these were very turbulent times and the LRC was undergoing its own transition.

CP Um...I think the first problem was taking people along on this change of direction because some people were comfortable with that work and they didn't want to learn new tricks. And when I was trying to convince people that it would be a good idea to know something about the Constitution because we were going to be litigating using the Constitution, I was told by one guy, well, look, you can play your games with the Constitution, I'll just continue doing proper law. So that sort of...antagonism, I suppose, to learning new tricks is part of the problem. My way of dealing with that was to develop my own practice the way I wanted to, in the direction I wanted to take the office. And then bring the other guys along with a more focused approach to what they were doing. So if you want to do consumer protection cases, tell me what the impact is, tell me what the focus is, what do you want to get out of it? Not just, well, we like to help people who have consumer protection problems. We need to...all about moving away from that first phase, which was entirely correct for its time, but once we'd consolidated our presence in this part of the province we had to take the next step, and that next step was focusing and moving towards a more...more of a sort of impact litigation approach. And I suppose that ran into the new order. You know, April '93, '94, we had the new Constitution operating and the first cases we did involved access to police dockets in criminal prosecutions. And I got approached by

someone who was doing a murder trial in the Ciskei High Court, doing a *pro deo*, about helping with this kind of issue of getting access to the police docket. Because at that stage, prior to the Constitution, the rule was once privileged, always privileged, so the docket, or the contents of the docket in the hands of the prosecutor was privileged and he or she had no obligation to make what was in there available to the defence, except in one or two narrowly circumscribed instances. And so we argued this case in the Ciskei, using Canadian cases and American cases, and a New Zealand case, and an English case, and so on. And actually bringing comparative insights to bear on South African criminal procedure. So that was the one docket privilege case we did there. Just after that we were working on one to bring here, in this court, and we got information that the state was setting up a nice, cosy, little case in terms of which the Commissioner of Police...the police would bring an application against the Attorney General, now the Director of Public Prosecutions, for declarators that what was in the docket wouldn't...didn't have to be disclosed. So our case was nearly ready so we just banged it in and applied to be joined in those proceedings. Our case involved a prosecution in terms of the Suppression of Witchcraft Act. (laughter) Anything would do. We just needed a case to get us into court. And we argued it here. Mahomed Navsa led Lex Mpati. Those were our counsel. We argued the thing, it took five days of argument before a full Bench and we got a...we ended up getting a really good judgment: Phato, which won the right...a full Bench decision, won the right of access to the docket in the Eastern Cape. And now, even though the Constitutional Court has trimmed that back a little bit, the practice in all the courts is you get access to the docket.

Int Ok, so this is a landmark case...

CP Ya, it changed the way criminal trials were run. It made them fair. I mean, before, the prosecutor would sit, for instance, on a fingerprint report. Wouldn't tell anyone it was there. Wait for the accused to put a version: that I wasn't there. And then trap him with a fingerprint report. You know, so...and you know that's not fair. It may be nice that the state manages to nail people who commit crimes, but you do expect them to do it fairly. And now all that happens is if the person knows up front what the state's case is, it may be that in some instances they try and tailor their evidence. For instance now, often in rape cases, if there's DNA evidence the version will be consent. But at least you've now narrowed the issue and you test it on its merits. It doesn't mean necessarily that accused people...well, it limits the...when an accused knows what the case is that is against him or her, it also means that sometimes they plead guilty. And I would think more often than before.

Int Currently the Grahamstown office is really very small, but at the time that you were heading it, you had quite a staff, and I wondered whether you could talk about that, because I understand that in terms of racial dynamics, there's a lot of racial polarisation in the office and I wondered whether you could talk about that?

CP Ya...at its zenith, we had Lex Mpati, who's now the President of the Supreme Court of Appeal. We had Gerald Bloem, Jannie Coltman, Brian Sephton, and myself. Those were the lawyers. Lex (Mpati) was in-house counsel, the rest of us were attorneys. We had a paralegal – Rufus Poswa, and we had, one, two...three administrative staff. The

trouble really started...after Lex (Mpati)...Lex (Mpati) had left by the time the trouble started, I think. And it really got quite nasty, I mean, it involved...I think the heart of it was that Gerald (Bloem) wanted to be the Director. And they also...I also started discovering a few little problems with one of the other chaps who was sort of taking... people would come for help and he would say, the LRC can't do it but I'll do it. And he was taking money for doing cases...

Int This was an attorney?

CP ...And we also had two Article Clerks. Sorry, I'd forgotten about them. So...

Int So there was someone who was moonlighting, in effect?

CP Ya, ya. And I instituted disciplinary proceedings against him for this. And I thought that was the responsible thing to do but I discovered that I got criticised in some quarters for doing it.

Int Was that from the National Office...?

CP No. No, I was supported by the National Office. Initially...oh, on the Directorship thing, we were coming up to an AGM and my Directorship had to be...was...had run its course and I was either going to be replaced, or not, or reappointed. And the procedure that was followed was that the National Director, who was Geoff Budlender at the time, would come down and he would interview everyone in the office and canvas their views, and on the basis of that...and I suppose the assessment of how you were doing, make a recommendation to the Trustees. And he did that and he reckoned...he reported that the majority of people wanted me as the Director. A minority wanted Gerald (Bloem). And that went to Exco first and then to the Trustees. And then the shit hit the fan. He was accused of having manipulated it and getting it...and in fact, in effect, lying. And so at the AGM he went and he canvassed everyone again and came up with the same result. But by that stage it had got nasty and people were being accused of sort of more or less treacherous conduct in not backing someone of the same race, you know, that sort of thing. It really was nasty and unpleasant and it got people on Exco...Exco made the recommendation, as I recall it, to the Trustees...people sitting on Exco were accused of breaking the ranks of racial solidarity by being party to recommending me and, oh, it was...it really was horrible.

Int But where was all this coming from? Was it coming from your office, was it coming from the LRC more generally?

CP Um...it was...to an extent it was in this office, but most people actually did support me as the director, and it acquired a weird kind of racial dynamic as well in the sense that the white members of staff and African members of staff were more or less together on it, and they...no...the African members of staff, particularly the admin

staff, were saying, it's these coloured guys who were trying to assert themselves. So it got...it had some nasty potential and it really was a thoroughly unpleasant time to...in that office. It also sort of had an echo in some of the other offices, and it...so I was certainly aware of it, in Exco meetings I'd be attacked by someone or taken to task by someone and you could see that it was a link back to here. So it was...ya, it was very unpleasant. What tended to happen...then I then went on sabbatical, and that must have been '96, I think, '96 some time, and so one of those guys ran the office in the meantime and I came back after four months of sabbatical, or whatever it was, and I discovered that actually no new case has been taken, nothing had happened. The place had just slowed down. At about that point, I'd been...well, it was a bit before that, but I'd started working on the problems of social pensions, and by the time I'd got back from sabbatical, it had got a whole lot worse than it was before I'd left. And I just found it, well, the easiest way to do things was going to be to do it myself, and they could get on with what they wanted to and I would run the cases, I'd do the work. There was also another aspect to it, by the way. I was...I'd wanted to...I'd been thinking of leaving the Side-Bar and becoming an advocate during my sabbatical. When I said that, Gerald (Bloem) said he wanted to as well, so eventually I said, well, you know, we can't have two advocates in the office. So he went off and he did his pupillage and he came back as an advocate. But then I got berated for not, kind of, spreading the skills of constitutional litigation. Because I was also...had right of appearance in the High Court and I appeared in some of my own cases, constitutional cases. Which I thought was quite strange because I'd been told that I must get on with this funny constitutional stuff and they'll do the real law. But anyhow, that came back to bite me. You know...my approach to it was, well, you know, I skilled myself. When I saw this coming I started ordering books from overseas and I started reading and I started thinking and I did all that at night and over weekends, and by the time the Constitution came along, I was...I had a basic idea of what had to be done and how it all worked.

Int At no point did you think of working for the Constitutional Litigation Unit around this time?

CP Well, I wouldn't have wanted to leave Grahamstown and I certainly didn't want to move back to Jo'burg. But the way the Constitutional Litigation Unit was conceived was as a resource that was available for the regional offices, so it was still the regional offices who would find the cases and identify the issues and run the case, but you'd draw in the Constitutional Litigation Unit to provide the sort of top-up expertise, if you like. And that's how I worked with them. We did cases in the Transkei involving the Transkei Marriage Act, you know, *Prior v Battle*, in which Wim (Tregrove) argued it and I...he argued it initially and then he pulled out and I did the rest of it. It sort of went in two stages really and so I argued the second part of it. We did these cases involving these regional authority courts, and again Wim (Tregrove) argued the Bangindowo case, he argued it initially and then he dropped out of the picture and I argued the rest of it. And then we did a follow-up to Bangindowo, which got completed after I'd left. I think I drafted the papers and got the thing going. And we fixed the...got a kind of victory in Bangindowo, but in the next one, Mfeni, we fixed the mistakes in the first case, in the first judgment, and got a...basically put those courts out of action, I would think. So ya, we worked with the Constitutional Litigation Unit, but they worked on our cases, you know. And that was the way it was

supposed to be. It wasn't supposed to be that they looked for their own cases...to an extent they did when they found issues, or got approached by other attorneys to help out, but the idea was always that the regional offices would still be doing the cases, because you know what the issues of importance are in your area.

Int I was also wondering, you're very well known, from other interviews I've done, for the social pensions case, and I wondered whether you could talk a bit about that and explicate what it was about and how it came about?

CP Again we've got to turn the clock back to start and I realised that I've always been involved in these things, these social pensions cases, and it started when I was a student. At that stage the South African government was trying to...was devolving powers on the KwaZulu government, short of independence, and one of the obligations they gave them was to pay social grants in the townships of Natal that fell within KwaZulu. And a few of them around Maritzburg were cases in point. But what they did too...and Chris Nicholson, if you interview him, will tell you about this in a whole lot more detail...what they did was in order to try and force KwaZulu-Natal to take independence like Transkei had and so on, they would short-change them in important areas, and say, but, you know, once you're independent then we'll really open the floodgates of aid to you, and so on. And one of these areas in which they'd been short-changed was social pensions. So they couldn't...they didn't have the money to pay them out. And Chris (Nicholson), as Director of the Durban office, took up this issue, and one of the way in which he...one of the things he did was he came to speak to us in Maritzburg, to the law students, and he said...wanted us to help by going and monitoring these pension payout points in the townships. So that was really my first taste of social pension work. We'd go out and you'd see this long queue, and this van or kombi would come and they'd pay out from there. And the queue would hardly move and next thing the hatches would come down, the kombi would speed off and just leave these people. People had been queuing...old people, had been queuing for...you know, since dawn. And so then we'd start and start taking statements and we'd send the statements on to Chris (Nicholson). So that was my beginning of my involvement in it. And then when I was at Cheadles and I was acting for a community that got incorporated into Bophuthatswana, one of the first things that the Bop government did...well, the South African government paid social grants for six months after the incorporation, into Bophuthatswana and then they said they no longer have an obligation, and now Bop has to pay. And the Bop government was determined to pay because that was the one way of, they figured, of getting the loyalty, or the dependence, of the old people especially. And the pensioners in Braaklaagte and Leeuwfontein next door decided they weren't going to take their...they boycotted pensions. And so...and the shopkeepers in those two villages just sort of gave them credit on the never-never, oh you can pay me back when you get your pensions back, and so on. And so I was involved in that issue, part of the bigger issue. And then when I got here, I was also involved in litigation around pensions in the Ciskei, because Gozo in order to push his party, made it a requirement that anyone wanting a pension had to get the endorsement of the headman, who'd been appointed by him, and was a loyal member of his party. So ANC people wouldn't get the endorsement and many pensioners were saying, I'm not prepared to go to that headman and get an endorsement. So we brought a series of cases, challenging this practice of requiring...of the pension officer, who was the local

magistrate, requiring the headman's endorsement before he would give someone a pension, who'd otherwise qualified. And we succeeded. And then we wrote to all the magistrates who were dealing with pension, and we said, this is the situation, you may no longer do this, and we sort of armed the advice offices with the judgments we got, and that actually killed that practice. People started getting their...so those were the leader. 1994 we started finding more and more people coming into advice offices and saying, well, my pension's just been stopped, I went there and they said I'm dead, and they won't reactivate my pension. Or they just wrote on my ID book, 'able to work' when I applied for it, and these sorts of things. And so I started doing one or two cases, applications to compel them to pay or to review a cancellation or whatever. But found that there was just more and more and more coming in. And at some point we...was it just after my sabbatical...it must have been...I launched, agh, about seventy applications, and got them in, and then we contacted the MEC for Welfare or whatever it was called then.

Int Who was that at the time?

CP That was a woman by the name of Marasha. And we said, look, we think we should talk about this. And so she came through and she sat down with us, and people from the Black Sash were there, and ourselves, and we talked to her and her officials, and she gave us promises from here to next week, walked out and just broke every one of them. So we started setting the applications down and taking judgments. And then we...the judgments weren't complied with. At that stage I'd left, Mark Euijen was then the Director. And so he started bringing applications for contempt and actually got me involved in arguing them against (Gerald) Bloem, who'd been at the LRC, was now acting for the State. Anyhow over a period we kind of got compliance with these orders. And it started raising awareness of the issue. I mean, I think there was some unease about this work initially.

Int From the National Office, or...?

CP Not so much from the National Office but within some people in the LRC. I think there was a sense of unease, here you're going against the new government...

Int The ANC government?

CP Ya. And litigating against it the way you litigated against the old government, and at much the same time there was a feeling in the LRC that was quite strong that we must work with government rather than litigate, and in some offices I think it had the effect that they just lost the ability to litigate.

Int Where do you think that impetus was coming from? Was it coming from certain individuals? The Trustees? Where was this sense that the LRC's mandate now in a post-apartheid South Africa had to change, in that it shouldn't litigate against an ANC government...or it shouldn't really challenge it, I should say?

CP Ya...I think it was born of the idea that we know people in government, we know ministers and we know DGs and so on and so forth, so we can talk to them. We can...to an extent there was this idea that we will get better results by sitting down and talking rather than litigating. And in some respects that may have worked but it wasn't going to work across the board. And when you had this sort of indifference to the plight of old people and disabled people and so on, that we had here in the Eastern Cape, talking wasn't going to help. We tried. I engaged, certainly, with the previous MEC, Trudy Thomas, I wrote a memoranda to her setting out what the problems were, and we had the meeting with Marasha and she made promises and broke them all, and then, you know, it doesn't help to keep going back and saying, please help us, you know. Then you actually have to draw the line in the sand and litigate. And the moment you...if you do get too pally, you will find it impossible at times to take that step back and now change the relationship. You're caught in it. You're partners. And you can't get away. So it's a very difficult one and I think it's one that the LRC has grappled with over the years and, you know, it was nice and easy when you knew who the enemy was and you knew that you didn't...that if you spoke to them it was only because you wanted to. You chose to. That was easy. The dynamics of the post-'94 situation was...made it difficult. I mean...I don't think it was necessarily people saying, well we mustn't rock the boat or anything like that. I think people thought, well we may be able to do...

Int You may be able to achieve more...?

CP ...achieve more this way. And I think to some extent it was naïve. And I think you couldn't approach it in a blanket sort of way. Because governments work bureaucratically and you're going to hit dead ends and when you do, there's only one way and that's to get an independent court to tell you who's right and who's wrong. But I think...that all said, I think there was some discomfort with this litigation and...against the provincial government on pensions. It's not a sexy issue. It's about poor old people and poor disabled people and children and what have you, more often than not out in the sticks where they can't be seen. And...and it took a while, it was only really with the Nxusa matter that it was recognised as being quite an important issue. And much the same time, Nic de Villiers in Pretoria, started taking up pension issues too. But at that stage it was myself here and then Nic started in Pretoria.

Int This matter that you spoke about; the Nxusa matter; were you involved with that?

CP Mm. It was also after I'd left, but the whole idea, when we started bringing these numbers of application, the idea is, what do we do with it? What's the end game? And you could see that there's a systemic problem, and we knew that in the end of the day there had to be a big answer to it, and that involves a class action of some sort, of public interest suit or something. And all of this was leading to that in the end, and we'd worked this out that it had to get to that point, of the ultimate kind of test case. What we were doing in the meantime was we'd bring some application to compel decisions, others we were referring to the Public Protector. We brought the Human Rights Commission into it, and actually got nowhere with them. In fact, Nxusa, the Human Rights Commission...the chairperson of the Human Rights Commission, made an affidavit to support the application on the basis that we've tried to talk to the

provincial government, they won't listen to us either. So...but all of that contributed to the end result, I think. Then when I'd left the LRC...must have been '99 even...Mark Euijen had brought something like 14 applications, all from Molteno, involving cancellations of grants. People who had disability grants and their grants were cancelled. And it was part of a...of basically a big purge of the system. And he asked me to argue the thing. And for some strange reason they settled all but one, and that was the Bashula matter. They didn't settle Bashula for some strange reason. Because the facts were essentially the same as to how...the facts were the same as to how they'd cancelled everyone's. Someone made an affidavit to say, the way we do this is the following: and they set out the procedure, which didn't involve giving anyone a hearing. It was simply a...they'd look at the form and *kop (bangs table)*. And they said, in their affidavit, that is the system we use for all of these reviews throughout the province. And when we saw that, we said we need to win this case. That sets up the class action. And I argued the thing here in front of Jimmy van Rensburg, who's post I was appointed to when he retired as it happened. And when he started he said, but can't...surely this thing must be settled? We're willing to settle, and we hope it wouldn't settle. Our opponent said: it can be settled if he withdraws his application, basically.

Int The State?

CP They weren't going to settle. So we went ahead. One guy, his disability grant was cancelled without him being afforded a hearing, without him being asked anything. And (Jimmy) van Rensburg found that was unlawful. Once we'd got that, then we were home with...because the same principle applies to ten thousand, as to the one. If you do it the other way around, the judge may be a bit scared and he may water the principle down. But you start with the one and then apply it to the ten thousand.

Int That's essentially your test case approach.

CP Mm. And we had them on oath saying what their procedure was. And their procedure didn't involve giving a hearing. And on that basis Mark (Euijen) then started work on Nxusa. And I was involved in it sort of giving a little bit of advice and helping a little bit. And then I sat through the argument here and in Bloemfontein. And it had to win. It was the perfectly constructed test case. You bide your time and you get the right case...I mean, that's the lesson...talking about Geoff (Budlender) earlier...that's the lesson that Geoff (Budlender) teaches you that with the early Pass Law cases, the Influx Control cases, you wait for the right case, and you go on the right facts, and that's the way you make a test case. You don't just shoot from the hip...
(Interruption) ...

A pension case I did: Baqela, it was one of the first ones as well...involved...let me try and remember the facts...that's right, the regulations made provisions that when your application for grant was approved it was backdated to the date of your application. So if they sat on it for six months you'd at least get six months backpay. And the MEC, I think it was Marasha as well, put full page adverts in the newspaper saying she'd decided...she'd issued instructions that backpay was to be stopped. So we brought the application for Ms. Baqela from PE to challenge that and succeeded. I

mean, that was the...I think that was the first important judgment we got in this whole campaign.

Int Also, there was a point at which...it might have been after you left, where all pensions were stopped summarily. Is that correct?

CP No. What they did do is they amended the regulations to prevent backpay. What her mistake is she just did it by putting an advert in the paper. So she acted unlawfully in that respect, but at a later stage the regulations were amended to say that you were only entitled to your pension from date of approval. But then there are two judgments from this court that were to the effect that well, if you delay...if the department delays in processing your application, it can be ordered to pay constitutional damages, if you like, back to what would be...back for the unreasonable delay. And essentially what Eric Leach said in those judgments was on anyone's version, three months is more than enough to process a pension application. So you've got three months...you the government have got three months for free, after that you pay backpay for your unreasonable delay. So it's a slightly different way of skinning the cat.

Int (laughs) Ok. I also understand that there's been lots of issues around compliance from the government's side, and I wondered whether you could talk a bit about that and how there's been...a contempt of judgments, etc.

CP Well, it's been a major problem, in this province in particular, and I think in KwaZulu-Natal too. I'm not sure about the other provinces. But here, I mean, we had to bring these applications to have the MEC and the Director-General of her department and a few other people committed for contempt. And that ended up being a huge case. But...after that, you know, the problem didn't really go away. And there was...I mean, there's been a lot of litigation about it, some good, some bad, the (inaudible) judgment went to the SCA and unfortunately, again going back to whether, you know, good test cases, the facts of that one were terrible for a test case and it ended up with creating bad law. That's been undone to a large extent by the (inaudible) decision. Started here as well and went to the SCA and was confirmed in the SCA. (Inaudible) really fixed (inaudible) to a large extent. Ya, I don't know quite what to say but the provincial government seemed to take the view that they could decide which orders to obey and which not to. And I think they've...they probably are now aware of the fact that they are supposed to obey them all; whether they do or not is another matter. There's no reason why they shouldn't be aware of that by now.

Int Yes, absolutely. I'm also wondering, Clive, what prompted your leaving the LRC when you did? Was it 1997?

CP Ya, end of '97 I left. During my sabbatical I started working very basically on a doctorate. And I had been an academic, as I've told you, and I decided it was time to become an academic again. And I got a position at Rhodes.

Int At the Law School?

CP At the Law School. But then I continued to practice part-time as an associate at Nettletons, a firm next to the LRC. And actually had a very nice practice in the sense that I just did what I...did the sort of cases I wanted to, so I did quite a lot of LRC work when they needed help. And I did some stuff on education and a bit of land work. Did some nice work, some nice interesting work. And it all worked out nicely because you...teaching should be...teaching law at any rate, should be an applied thing, so I taught Constitution Law and Administrative Law and a course called Constitutional Litigation, and then Media Law for journalism students. So my...the cases that I was taking, would all tend to be Constitutional Law, Administrative Law, and I'd feed them back into my lectures in some way or another. And I'd write about them, I published articles on the issues that I was dealing with, if not the exact cases. So it all worked out rather nicely, as in, sort of feeding practice back into academia.

Int And then at some stage you were appointed onto the Bench, and I wondered when that was?

CP Well, I think it was 2001. I was down on the coast fishing and I got a call from the JP (Judge President), who asked me to act for five weeks in the first term of 2002, it must have been, I suppose. 2001...not sure now offhand...anyhow, so I had a five week stint as an acting judge, and then in the middle of that year I got asked again to act and then the following...no, I didn't act for a while, and I acted for a week at some stage because someone had to go to the Transvaal to do a case there, and I did his appeals for a week. And then in 2003, I got a sabbatical at Rhodes and I had the year off and the JP (Judge President) asked me if I would act for the first term of 2003. And I did that, and then during the course of my acting appointment there was a vacancy that had been advertised and I got asked whether I would be prepared to stand for it, and I said yes, and I got nominated and I got appointed.

Int Right. And you've been here ever since?

CP And I've been here ever since. I went back to Rhodes just to kind of disengage, and actually they were very good because you aren't supposed to just drop everything and move out when you're on sabbatical, you should go back for another year afterwards, but they...the Vice Chancellor said, well, we'll accommodate you, and so they let me go, though I went back for six weeks. At least my teaching commitments were sorted out for the whole year and then I started here middle of 2003.

Int Ok. In terms of the cases that get brought before you from the LRC, can you talk a bit about those?

CP I'm trying to think if I've...oh yes, yes, we've had one, certainly one that I can think of, and that involved the reform schools, or the absence of a reform school. *S v Z and 23 Similar Cases*, I think it's called. And there the problem was that kids were being sentenced to reform school, but the only reform school is in Mpumalanga, and they'd sit in police cells or places of safety waiting to be taken to Mpumalanga, and

sometimes they'd sit there for longer than they would have spent in the reform school. And so a magistrate approached the LRC to take the issue up, and they brought the issue in front of three of us. We eventually wrote two judgments. The upshot of it was that we...they had to report on their progress in implementing their plans. They apparently had plans for a reform school in the Eastern Cape, but just hadn't done anything about it. And so they were ordered to report three times a year, or four times a year, I can't remember now, and they...in would come a report every now and again, and initially, I think, they...it would be fair to say they dragged their heels, and then they stopped reporting, and then a letter would go out from the registrar to remind them that if they didn't meet their obligations they may find themselves in contempt of court. And then the reports would come again. But eventually the reform school got put into operation and I believe there are children who are now in the reform school; it's in Bisho, I think. So it worked. It's one of those instances of a structural interdict actually working.

Int What's your sense of the LRC Grahamstown office now? There's only one lawyer there effectively, do they litigate enough? Do you think that cases, there are enough high impact test cases that get done? Just from the outside looking in, what's your sense of that?

CP Well, there have been one or two important matters that they have brought that I'm aware of in this court. And I also know that they are involved in this whole issue of titanium mining in Pondoland. And that's, you know, obviously, a very important issue. I suppose you'd always like to see more, but ya, I don't know what their constraints are like, so...but I think there have been some very worthwhile cases that they have brought; *S v Z* is a prime example of that. And perhaps one that isn't directly within the scope of the work they usually do, but it was a worthwhile case, a worthwhile intervention and it's produced the goods. The Nxusa thing, they...Johan Froneman issued a structural interdict there and that dragged on for a long time, it's now been sorted out and finished. And again, I think an important...a case that had to be brought and had to be seen through.

Int And who do they brief generally?

CP Well...they briefed Mark Euijen. He left there and he's in private practice. He's done some work for them. Geoff Budlender's done some work for them. Geoff's son has done some work for them. I think Andrew Breytenbach from the Cape Bar argued one of their matters, *Kambule*. That's another important judgment. The judgment of Jeremy's (*Pickering*), as it happens. And then the other judgment of Jeremy's (*Pickering*) involved Saayman...involved a woman who was convicted for fraud and ordered to stand in the foyer of a magistrates court holding a placard to say that she is a convicted fraudster and she was sorry. And that's, you know, again, it's a case that isn't within their usual range of work, but I think an important case to do. And I think that's...it's an important part of the LRC's function is that when something pops up that does require someone to do something about it they should be able to.

- Int I'm also wondering, Clive in terms of the current context, judiciaries being under attack and there's lots of crises in the Cape Bar and the Johannesburg Bar, Constitutional Court judges are described as counter revolutionaries, I'm wondering what your sense of public interest law in South Africa and the future of it, in that context, and also particularly the LRC, not just the Grahamstown office but the LRC more generally?
- CP Well, you're always going to have government making mistakes. You can be more cynical or less cynical about why but government acting with the best of intentions is from time to time going to get it wrong and as a result people are going to get hurt. So you are always going to need bodies like the LRC to be there, to help people who find themselves hurt by government action. Where government's policies are not driven by the best of motives, it's even more important and one thinks of the, you know, AIDS litigation and so on. So you're always going to have that. And then even apart from government you're always going to have powerful individuals and powerful bodies in society that wield power inappropriately and abuse the power they have. And again you're going to...you need institutions like the LRC to deal with that. What I think makes the LRC work best is when they work with organs of civil society that are able to...like, let's say, the TAC, or the Rural Committee, or TRAC, or whatever. It's always been in those instances that their litigation has worked best. Perhaps something of an exception to that I think is the pension litigation here, where it wasn't driven by organisations because organisations were often not particularly concerned about those issues. What was happening as far as pensions was concerned was often quite hidden. It was only when we started bringing the cases that after a while people started saying well here is a serious problem. To an extent the Black Sash was involved in that but not always directly with our work. We co-operated very often but not always directly in...well, put it this way, the pension campaign that this office ran wasn't one conceived by the Black Sash and ourselves and driven. We started it there and drove it and linked up with the Black Sash as we went along. So I think that's perhaps a bit of an exception, and perhaps that explains why it took a while before it was embraced as warmly as it should have been. But the bottom line is you're always going to need organisations like the LRC. The issues may change a little bit but you're always going to need them. And then this mining of the Wild Coast is a good example of an issue changing, but the dynamics of power being much the same.
- Int In terms of rule of law issues, do you feel that the current government is mindful and respectful, given the level of lack of human rights discourse that you're seeing?
- CP Hmm...well, just when it comes to the independence of the judiciary as an element of the rule of law, it took the Minister of Justice and Constitutional Development a very, very long time to come to the defence of the judges and tell people to back off. And that was worrying, and that was noticed. To a large extent the, I think...the rest of the government hasn't had much to say about it; one would have imagined the President would have stepped in quite briskly. So I think there's very often an emphasis on administration, rather than on rights. On bureaucracy at the expense of rights. On the level of rhetoric, of course, there is an acceptance of the rule of law and so on, but it's not always evident in the way government bureaucracy works and decisions are taken and so on.

Int I've asked you a range of questions, perhaps exhaustingly so, and I'm wondering whether there's something I've neglected to ask you which you feel ought to be included as part of your LRC Oral History interview?

CP I'm sure I'll think of something when you've gone. (laughter)

Int That's always the case (laughter).

CP But I must say, I really do think that the LRC is an incredibly important body and it's played a really important role. I mean, it really has.

Int I'm wondering, Clive, whether we could end the interview, if you could share a particular memory, whether it's of a client, a case, or someone you worked with or something more generally about the LRC that really embodies your experience of being part of the LRC? (laughs) It could be after you've left the LRC as well.

CP Phew...hell, I hate questions like that. (laughter) No there's nothing I can think of off-hand, you know. But I thoroughly enjoyed working for the LRC despite some of the more unpleasant moments that I've told you about, but...ya, it was a great privilege working for it too, you know.

Int Clive, thank you very much for your time, which you gave so generously.

CP It was a pleasure.

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