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This is an interview with Andrea Gabriel, and it's the 21st of January, 2012. Andrea, thank you for agreeing to participate in the Constitutional Court Oral History Project.

AG It's a pleasure.

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| wondered if we could talk about early childhood in terms of family background and in terms of some of the key formative influences that may have led you down a particular career path?

Well, early background, we grew up in Pietermaritzburg. Dad was a teacher, mom was a dressmaker. And | think of the two it was definitely dad and mom together who were very firm in their demands on us. Commitment to academic excellence. So those were the early formative influences. But it was also influences at school around student boycotts and that, and | was...] became head girl at school. And | still remember that that was the year that the national government gave little South African vierkleur (four colour) flags to each of the head boys and head girls, and there was a big ceremony, and they would come to school and pin it on you. And our first real act of defiance was to shake their hands and say, no thank you, we don't want the flag (laughs).

Wow that must have been something...

That was something, because our teachers were incredibly outraged, you know, what attitude but my sister was also very active in the struggle through the Communist Party. And she still is quite active. So those were the early influences.

I'm curious, in terms of politicisation, you say your sister was active in the South African Communist Party, | wondered, in terms of early childhood and parenting, what the discourses were, and what your experiences are and awareness of social injustice was, for you to understand and make sense of your political conscientisation?

Ja, well, we...it was difficult because dad was a teacher and he was a Civil servant, so he objected to the student boycotts and that. Mom was very supportive about everything, but we had a very active community in Pietermaritzburg, starting from the youth groups and the ANC was quite strong, so was the SACP. In terms of the injustices, | mean, it was visible. It was visible, you only had to look at the block of flats next door to us to see the

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poverty and the presence of...we used to call them mellow yellows, the Security Branch.

Is that because of the vehicles they drove?

The vehicles, | still remember all of us saying, â\200\230nantsi mellow yellow, nantsi mellow yellowâ\200\231 (here are the mellow yellow, here are the mellow yellow) (laughs). And then when my sister became quite active in the Communist Party, we would have the Security Branch outside our house. And they would tail her and...you know, at the time it was all quite fun, taking on the authority figures and that, but it got quite rough. My sister was arrested and | had to keep that away from my parents, go and bail her out, so it got quite rough.

How old were you when that happened?

| would have been in high school. So that would have been anywhere between standard six to standard ten.

So quite young and you had to take on that.

Very young, ja, very young. But then she took on a hell of a lot more. So that...| think the student days were really the activist days, and as we came through primary school we would follow what was happening in the high school down the road, and when they went on boycott we would start to get really itchy. | donâ\200\231t think we fully understood what was going on, except when they introduced the Tri-cameral system.

And that was 1983?

That was 1983, and everybody went on a boycott, including (Amichand) Rajbansiâ\200\231s son (Vimal Rajbansi), who was in our school, which pissed my father off, as a civil servant. He was...you know, he was justifiably concerned, that our actions would affect his continued employment. So we kept a lot of things away from him. So those were the early influences.

In terms of your personal experience of social injustice or your observation of racial disparity, how early on was that?

Oh, we were born with it. We were born in an Indian community, it was mixed Indian and coloured. Africans were in the townships. When you walked into Church Street in Pietermaritzburg, that was the first time you saw white people. So that much was pretty clear to us growing up in the community, that

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things were not the same for everyone. And then through the youth groups and the networking with other racial groups, you know, the sense of fury developed, and | think it was the same for all of us.

Iâ\200\231m also wondering in terms of the legal trajectory, at what point did you know that you wanted to actually study law?

| fell into law by default (laughs). Dad had plans for me to be a doctor, so | went into science for the first year and did really well in physics and chemistry but hated, hated, dissecting animals. Hated it. And so | deregistered at the end of the first year and did legal studies. Which | decided | actually quite enjoyed. And so, ja, | fell into it by default because once | finished my first year | moved on to the second, and then the third. So | started with a BA.

And this was at the University of Natal, Pietermaritzburg?

Durban. Durban. | started a BA and then decided actually, legal studies was very interesting, it was logical, and Constitutional Law became my favourite.

And theyâ\200\231d have been teaching that by the time you got to university?

By the time. We were very fortunate to have Karthy Govender and George Devenish, and thatâ\200\231s when the constitutional scheme and the inequity of it all became visible. And Admin Law was just developing the frontiers, pushing the frontiers of administrative law were just developing. And | was very fortunate because when | started my LLB, a human rights group interviewed for researchers, and | got a job there. And it was called the Community Law Centre, which | think was my true education. And what the Community Law Centre did was to train rural paralegals. So we would go out to communities, set up paralegal centres, hold community meetings, they would select paralegals, they would be trained on-site and four times a year we would bring them into Durban for more formalised training. So it was run as law clinics, the difference being that it was really way out rural areas. And some of them were no-go zones at the time because of the internecine and violence and that. So that | think was really my true education. While | had the theory at university, there was the real practical stuff, where people were thrown into jail, workers were treated badly, communities, kids, would be hurt by animals in the game reserves, and not get any compensation. So that to me, Roxsana, was | think my real education.

In terms of student politics at university, were you involved at all?

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| wasnâ\200\231t really involved because | was so fully committed to the Community Law Centre, which was my brand of politics, and we had to be very careful at the Community Law Centre. For us to go into the areas, the no-go areas, we had to work through the chiefs, and it was important that all of us were non-partisan. So we were able to work in IFP areas, and ANC areas. But work at the Community Law Centre was easily eighteen-hour days. Easily eighteen-hour days.

This is in addition to carrying a full course load?

Ja, ja, ja. And | loved the work. | loved the work. | worked with such fantastic people. It was set up by an American woman called Carole Bakey and we started with six people...

And this was at the university itself?

We were located...it was affiliated to the university, but it eventually moved off campus. But the Board of Directors and that were largely from the university. And that is what consumed my time in the time that | did my LLB. And then | worked for the Community Law Centre after | finished my LLB. But through the prodding of Carole Bakey, also a very big influence in my life, an extremely committed human rights activist, | applied for and got a Fulbright scholarship, which took me off to Georgetown in the US. And | still remember Karthy Govender telling me, study all the constitutional law subjects that you can because things are changing in this country. So | left in 1993, and did my Masters in Constitutional Law, but | had a interdisciplinary focus so | did law and sociology, law and politics, law and...and then a whole lot of constitutional law subjects. And then, came back, unemployed, absolutely unemployed, no money, not a penny, moved back in with mom, sister supported me, and one day my telephone rang. And it was somebody who introduced himself as Pius Langa. And of course we didnâ\200\231t have the Internet and all of that. | didnâ\200\231t know who Pius Langa was, | had no clue until he said to me, Iâ\200\231m a judge at the Constitutional Court. | said, yes, judge. And he says, Iâ\200\231ve got your CV...1 don â\200\231t know how he managed to get it...and Iâ\200\231d like to interview you to be a researcher. He interviewed me in Johannesburg...no, in Durban, because he had rooms at the Durban High Court. | didnâ\200\231t even know how to get to the High Court. So | phoned Carole and | said, this man called Pius Langa wants to interview me, he says heâ\200\231s a judge, where is the High Court? (/Jaughter) And Iâ\200\231d also had an interview the very next day with the Centre for Applied Legal Studies, so | told the judge, | said, Iâ\200\231ve got an interview with CALS tomorrow, and he said, then I'll interview you today. And that was that. | started with him the very next day. | had to borrow a car...

What was the interview like?

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Intimidating, very intimidating. But he was such a gentle person. I think that the scope of the work was intimidating. He said to me, one of the first cases weâ\200\231re going to be working on is the death penalty case. So I mean, I was fascinated. And Pius (Langa) is a man of such dignity but such gravitas, that you canâ\200\231t help but be intimidated when youâ\200\231re in front of him. And he was also much older than me and I was quite naive and young. Anyway, I started work the very next day in Johannesburg. Ja, and we went straight into it, and I walked into a room covered with lever arch files in the death penalty case.

And this was in the Durban office or Braampark?

Braampark. Covered, covered with files, and I looked at this and I thought, oh my god, where do I begin? Where do I begin! Because there were amicus briefs from all over the world. And it was set down for three days. So I went to a fellow clerk and I said, â\200\234where do I begin?â\200\235 And she said, â\200\234Read the heads of argumentâ\200\235. So thatâ\200\231s where we started. It was absolutely fascinating getting to grips with that case. And of course other cases were coming along, the Zuma case (S v Zuma and Others), and those early cases. But what was very interesting is that the day before the hearing for the death penalty case ((S v Makwanyane and Another) began, we had the official opening of the Constitutional Court.

And this is 1995?

Ja, I think around then, 1995. And Nelson Mandela came to open the Court. Now all the clerks had to meet him, then of course we were just utterly intimidated by this massive figure who walked in and shook our hands and told us he was quite intimidated by all these lawyers. Anyway, I still remember, when he stood up to open the Court, he said...and these words will stay with me...he said, the last time I was in a court room, I was waiting to hear if I would receive the death penalty. And the death penalty (S v Makwanyane and Another) hearing started the very next day.

How interesting!

It was. It was such a splendid moment. Your hair stood up. Ja...and the people I worked with were...we were so committed. In those early days we didnâ\200\231t have that magnificent library. There were just a few books, our computer systems hadnâ\200\231t been connected, so we were working with books at the Wits library and we were trying to get the resources in, while getting the work done. So again, very long working days. And thatâ\200\231s where some of my biggest friendships were formed with those early clerks, because we worked such long hours.

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Can you talk about some of them and who they were, and the chambers, and how you made sense of a Court that had just began and was so new?

It was very new and I think that's what made all of us get along. Because everything was new. The judges were new, the premises were new, the work was new, the people were new. But because of the nature of what we were doing, it meant that the judges and the clerks and the staff had to work very closely together. Pius (Langa) and I would be there until ten, eleven o'clock at night. We would work on weekends, other clerks would be there. I'm still friends with a great many of them. In the early years we had Paul Farlam, Johan de Waal, Patric Mtshaulana, Hoyt Webb, who was an American, because Arthur Chaskalson had two clerks. Then there was me, there was Justine White, there was Yasmin Carrim who came in with the second lot. Adila Hassim, who took over from me. And we're all incredibly good friends, to this day. The bonds that were formed. And I was involved in the first part of the certification judgments (Certification of the Constitution of the Republic of South Africa), so we literally worked twenty, twenty-four hours together, in producing things. And there was a very different side to the judges, because we worked such long hours together, we all just interacted as equals. I mean, I can still remember Judge (John) Didcott, he would light his cigar and come and sit on the couch in my office, because I also smoked....

What was he like?

You know, I'm now at the Bar, and they speak of the dreaded (John) Didcott. He was apparently an absolutely rabid judge on the Bench. He didn't tolerate fools gladly. But I saw a completely different side to him. He was my smoking buddy. He never ripped me apart. I couldn't believe the stories that people said about him when he was a judge in the Durban High Court. Ismail Mahomed would walk past in the afternoons, and now my chambers would be open and there'd be clouds of smoke coming from (John) Didcott's cigar and my cigarette, and that would lead to the next cigarette and the next, and Ismail Mahomed would walk past, knock on the door, frown at both of us, and wish us goodbye (laughter). We had very light moments, you know.

I'm trying to understand John Didcott as a person, and as a judge, and what are your memories of him?

Ooh, he was a perfectionist. He was an absolute perfectionist. I remember... I forget which judgment it was, but he wrote the judgment and we were responsible for the editing and the formatting, which invariably got done the night before because it would be handed down. And somebody had emailed him the final edit, and our phone rang at ten o'clock at night, with a really furious (John) Didcott. Somebody had changed his full stop to a semi-colon, and he hit the roof, hit the roof, demanded we remedy it and didn't want any

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other changes, blah di blah di blah. So there we were from ten to twelve revising the edits, printing out enough copies so that they could be handed down, and copies handed out the next day. But apart from that, he was a fantastic legal mind. | mean, they all were. All of the judges were. And | think, each one of them, because it was such a vast disparate group of skills and personalities, each one of them brought something special...something special. Albie (Sachs) with his artsy-fartsy, always creative, chambers always looked the best with the most colour. Pius (Langa) was a lot more conservative by comparison. And then youâ\200\231d have Arthur (Chaskalson) who was just a great big granddad to all of us. Ackermann (Laurie)...ja, (Laurie) Ackermann kept to himself quite a bit, but he was such a personable fellow. (Johann) Kriegler was the personality on the Court. (Johann) Kriegler and Ismail Mahomed, they were the two...whatâ\200\231s a pleasant way to describe them...they were the two loudest voices (/Jaughter). And the minute, you know, cases were heard and you saw (Johann) Kriegler lean forward and Ismail Mahomed lean forward, you knew the poor counsel was going to be eaten up alive. And then a very good influence, | think, on all of us, was Kate Oâ\200\231Regan. Because she was younger, more approachable, we werenâ\200\231t so intimidated by her. But she was just a hell of a nice person, and always had time to chat. Weâ\200\231d frequently have meetings in her chambers, weâ\200\231d bring our lunch along.

Even though you werenâ\200\231t her law clerk?

Ja.

Thatâ\200\231s really interesting.

Ja. And we had, you know, we formed little groups, we started newsletters, we had a library committee, and most of the judges would co-ordinate that, so ja, in those years, | mean, | was there for eighteen months.

Why were you there for so long?

Well, what happened was, through Ismail Mahomedâ\200\231s pushing, | got another scholarship to go to India. Because, you know, Ismail (Mahomed) said to me, our Constitution is new, thereâ\200\231s no point in studying only first world constitutional law, you really need to get to the third world to understand equality, anti-discrimination. To understand how a Bill of Rights works and how it doesnâ\200\231t work. So he said, why donâ\200\231t you go to India? Put me in touch with a law school and | did my second Masters degree there and got a scholarship to go. | still remember when | graduated, Ismail Mahomed flew in as the guest speaker.

Oh, thatâ\200\231s wonderful!

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To give me my degree. | mean, | was so touched, | was so, so touched. So because of the change in the term times, | stayed on for an additional six months with Pius (Langa). And then left in June.

What was your experience of learning about Constitutional Law of a third world country?

Terrible, terrible. | mean, that was another true awakening for me. The Indian judiciary has been so phenomenally creative in their application of the law, you know, with their public interest litigation, and that's the stuff that | studied.

Incredibly, incredibly brave. Real judicial activism. But you...what | learnt there was that there are limits to judicial power. Very, very real limits. Especially with the public interest orders that were being handed down by the activist Court, and court orders would just be disobeyed. They would just be disobeyed. There was a horrible case where...and it just infuriated me, fifty-three prisoners were...fifty-three workers went on strike and they were arrested. And there was an order sought, habeas corpus proceedings, for their release. Government released them but blinded all of them.

Really?

Blinded all of them and released them blind. It was an absolute outrage in India. That was the level to which the Executive would treat the judges with absolute impunity. | mean, it's that kind of experience that shocked me. The other thing that shocked me obviously, was the caste system, which was very new to me, and it was a glorified form of apartheid. Nobody spoke about it but you could see it. | mean, | could...the construction work on the school, there were little kids, tiny, tiny kids, four or five years old, carrying bricks. Entire families would be employed to construct and to work. So it was that kind of massive injustice. That's the thing with India, there's so much wonderful

happening, but the poverty just hits you. It hits you, and the inequity hits you, stares you in the face. So it was very difficult, it was very difficult. But it was, and Ismail (Mahomed) was right, it really was a good learning curve for me, because, yes, there's good that can be done with a Bill of Rights, but unless you have a committed executive and a legislature that carries through, you hit a brick wall and systems fail. And that's what's so alarming in this country at

this time, is, you know, the mutterings from the executive that we want to review judicial decisions. | mean, what lunacy is that.

Of the Constitutional Court?

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Of the Constitutional Court. Itâ\200\231s absolute lunacy. They ought to be reading the decisions and obeying it. What does this review mean? It doesnâ\200\231t bode very well for the Executive, it doesnâ\200\231t bode well at all.

For the Executive or for the Court?

| think thereâ\200\231s little they can do to the Court. | think that is the one given. Judicial independence being what it is. | suppose they could pack the Court, but where in the world doesnâ\200\231t that happen? But | think, you know, those fifteen years gave us such a solid foundation that it would really take a long while to unravel the good thatâ\200\231s been done. A long while. Ja...and so now Iâ\200\231m at the Bar, and most of my work is public interest litigation because, you know, those early years at the Constitutional Court, the experiences that it gave you, | mean, when | got to the Bar, Iâ\200\231d been gone from Durban for about ten years. Nobody knew me. | didnâ\200\231t know the attorneys, but just the fact that | had come from the Constitutional Court meant that | started getting briefs fairly quickly. And so thatâ\200\231s a large part of my practice. | also do tax and VAT and other work to pay the bills but public interest litigation is a large part of what | do. Iâ\200\231m a senior counsel now.

Yes, | know; Iâ\200\231ve heard very good things about you and your practice.

Thank you.

Thatâ\200\231s wonderful. Andrea, Iâ\200\231m also very curious how your experience at the Constitutional Court....if it has at all, helped you in your day to day with functioning in your work? What were the lessons that you took away from working with Pius Langa, and from learning from him and other judges from that time?

Critical thinking. Critical thinking, creative legal thinking, not being bogged down by case A that says x and case B that says Y. | mean, | remember Kate (Oâ\200\231Regan), Kate (Oâ\200\231Regan) was always looking for a new path, and...and just working and watching the way they approached cases, the way they unpacked legal issues, it really developed, | think, for all of us, our levels of critical thinking. And that to me is the biggest lesson that | took away from that. Also discipline, you know, because the hours were long, and legal work, itâ\200\231s long hours. And it is very scientific. You know, in that sense it does tie in with my early science background. Because it involves a very careful process of critical thinking, which carries its own form of discipline. And then to watch the brightest minds in the country, that was such a gift. The way (Johann) Kriegler approached a case, and then to see the perspective from Kate (Oâ\200\231Regan) and then in a different perspective from Ismail Mahomed. And then Pius (Langa) who was always the regal one, and his approach to it. Ja, that was the biggest gift. | donâ\200\231t think that the learning curve in that time was lo st

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on any one of us. We knew it from day to day to day, that we were a privileged lot working in that atmosphere. And there were very difficult cases where thereâ\200\231d be disagreements with the judges, amongst themselves, and then those disagreements would filter down into the clerks and weâ\200\231d have our own mini debates about which judge was wrong and which judge was right, and ja...so thatâ\200\231s it, itâ\200\231s the critical thinking skills, and the discipline, that | think that | took away from there. And also just watching masters in action. It really is inspiring. You strive to be like them.

In terms of the cases that appeared when you were there, in the eighteen months, the first one was the death penalty, | wonder whether you could talk about that? Also you had very important and prominent counsel come in...

Oh, yes, that was the other big learning curve. It was watching the masters in action. Wim Trengove, Jeremy Gauntlett, and silks from Durban who were there in the first case, | think, State versus Zuma (S v Zuma and Others). And there too, just watching these advocates in action, was an absolute inspiration for me. Itâ\200\231s what led me to the Bar. | mean, | remember the death penalty case (S v Makwanyane and Another) went on for three days, it was Jan dâ\200\231Oliveira, who at the time was still the state attorney, and he argued valiantly for the death penalty to be retained, but | think the enormity of what they were asking for wasnâ\200\231t lost on anybody. And Wim (Trengove) was just brilliant. Wim (Trengove) was just brilliant. Jeremy Gauntlett, always brilliant. David Gordon, excellent stuff. And then in those eighteen months, many advocates...some junior advocates went on to become senior counsel, and we mingled with them a lot, as well. because you know, with the legal community being what it is, weâ\200\231d have dinner with them, and got to talk about practice. | remember | had a lot of inspiration from Jeremy Gauntlett, who spent a lot of time talking to me about practice and where to base myself: come back to Durban? Stay in Johannesburg? And he said, go where you'll be comfortable and lead a good quality of life, and the work will come. And heâ\200\231s been quite right. And there too, you know, friendships were formed. Weâ\200\231re still very good friends, Wim (Trengove), Jeremy (Gauntlett), Gilbert Marcus, ja...

Iâ\200\231m also wondering, in terms of other cases that came before you, in terms of judgment writing, the whole approach that the Court took in terms of read-throughs, etc, | wondered whether you could talk about those processes?

It started off... think the early systems were that immediately after hearings...okay, clerks, we would get the brief, and invariably weâ\200\231d have to write memos. That was... wrote memos on every single case that came to our chambers. So the memos would basically say, yea or nay, encapsulate the legal research. It was a lot of foreign research because we had no precedent and...so those were the long hours. And then the judges would hold a meeting after the hearings, and | think they would allocated amongst themselves who would write the judgment. And then it would be up to your

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judge as to how he approached it with the clerks. Pius (Langa) would say to me, prepare the first draft of the judgment. Now obviously he would do the judgment but a lot of thought had to go into it. Weâ\200\231d have conferences with our judges, debate the issues and that. And then the judgments would go out to be reviewed by everybody. Dissenting judgments were always fun, always fun, but by and large there was a great deal of consensus in those early years, a great deal of consensus amongst the judges and you'll see that those early judgments were more or less unanimous.

What do you think led to that level of collegiality and consensus?

Well, it was a whole clean slate that people were writing on. And | think, in a sense, they were fairly like-minded. | think they had a good document to work with, with the Bill of Rights, and the Constitution to my mind is still a fascinating document. You had disagreements over issues of interpretation, but the commitment to protecting human rights was certainly a foundation that everybody had. And | think thatâ\200\231s what made it easy to build on. And it wasnâ\200\231t

just human rights cases that came along, in those early days there were territorial disputes between national and provincial governments over laws and legislative competence. And then when local government was introduced there were fights again amongst the three spheres of government. So those were more or less technical issues. But, ja, and apart from that | think it was just the blend of personalities in those first eighteen months, it was unique and it was really good. They all complemented each other in some way or the other. You had the philosopher, king Albie (Sachs), and really down to earth, uncle Pius (Langa). Uncle Arthur (Chaskalson) and Kate Oâ\200\231Regan, the legal luminary, and the feisty blue eyes of (Johann) Kriegler, ja...it was really a unique group of people to work with.

Some say that that was the glory years of the Constitutional Court.

Oh, no doubt, no doubt.

And the danger of that is that thereâ\200\231s a concern that perhaps subsequently, that the Court would not be functioning as collegially, etc, but in terms of your observations of the judgments, etc, what have those been, those observations?

Observations...| think by and large that commitment, that human rights commitment is intact. Obviously | havenâ\200\231t had much...Iâ\200\231ve appeared three or four times but | havenâ\200\231t had much dealing with the newer judges. So Iâ\200\231m not too sure what the dynamics are now. But from the judgments that have been coming through, | think youâ\200\231re beginning to see some very conservative judges, very conservative minds, but also, by and large, a fairly balanced set of judgments have been coming out. The human rights cases, well, recently |

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was involved in a matter for Lawyers for Human Rights, where people about to be evicted from a privately owned building, would be rendered homeless, and we managed to strike down the lack of municipal planning for that. And that, to me, was a really brave judgment.

What was that called?

Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another).

Oh, Iâ\200\231ve heard about that. So you were involved in that...

| was involved for the amicus for Lawyers for Human Rights. And it was an excellent debate because the question that was key and at the front of everybodyâ\200\231s mind, was who was going to pay for this? Who is? And the way we addressed it was, itâ\200\231s time that people took these principles of co-operative governance seriously, and there has to be a measure of planning and predicting from all three levels of government. And that comes through quite clearly in the judgment. So that to us was quite a lovely victory. But having to interact with the newer judges at that time, itâ\200\231s every bit as intimidating as it used to be. | mean, every time you stand up in that Court your heart is in your mouth. But you have some fascinating legal minds there. Dikgang Moseneke, he really is such an inspiration. When he asks you a question, you better breathe and think carefully about your answer because heâ\200\231s thought it through. So itâ\200\231s an excellent interaction. And Sisi Khampepe, | havenâ\200\231t had much interaction with her but Iâ\200\231ve met her informally. And also a good legal mind. Judge (Mogoeng) Mogoeng, | know very little about....

In terms of the first time you appeared before the Court, what are your memories of that? Especially standing in front of these eleven judges, as you say, itâ\200\231s not easy.

It was...| have never been so scared in my life. It was the J and B (J and Bv Director-General, Department of Home Affairs and Others) case, where, it was a lesbian couple, and the eggs of one were used to impregnate the other, within an anonymous sperm donor, and twins were born. So that was J and B(J and B v Director-General, Department of Home Affairs and Others). We called them by their initials. And | was appointed the curatrix. And Angus Stewart in my chambers led the charge for the parents, who Home Affairs would not recognise both of them as the mothers. They said there can only be one mother. Which is absolute nonsense because one was the gestational mother and one was the biological mother. And you know home affairs being Home Affairs, no we donâ\200\231t have a space on the form for two parents. So we had to strike down this and...I mean, it was just ludicrous. But it went all the way to the Constitutional Court. And | had to do my curatrix report, and

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obviously we won in the High Court, Magid found in our favour, and then it had to go up for confirmation to the ConCourt. And I got hold of the Legal Resources Centre to contact the Registrar of the Court, do you actually need the curatrix there? And the message came back, yes, the curatrix has to be here and must address her. Oh! My heart stopped. My heart stopped. I didn't sleep the night before, it was terrifying. It was absolutely terrifying. But they were so gracious when I stood up, thanked me for the report, and they were very generous in their judgment over the report and asked practical questions that fortunately I was able to answer. And that was a novel case. So we won that, and I still remember sitting with my first glass of wine once we got to the airport and going, aaaah, thank you god, there is a god, there is a god (laughs). It was terrifying. But I was so grateful to be there with a very good mate of mine, Angus Stewart. So both of us were...and at that time they were televising some of the judgments, and they ran a little bit on the TV news that night. I still remember Angus (Stewart) phoning me, why didn't you tell me my hair was crooked? Why didn't you put my hair right? (laughs) But were overjoyed with that judgment.

And you appeared of course before the first Bench?

Yes.

And your experiences of going in front of people that you were so familiar with?

Terrifying. Terrifying. Just terrifying.

Did you get a nod from Pius (Langa)? (laughs)

Oh, yes, I got a nod from Pius (Langa), a nod from Kate (O'Regan). Kate (O'Regan) always smiles. And every time you appeared Kate (O'Regan) would lean forward, she'd be genuinely interested in what you had to say. So I would focus on Kate (O'Regan), because that's where the strength came from. Ja, it was quite terrifying. The second and the third experience weren't that bad, but it's the most difficult thing. It really is difficult. It really is difficult. I remember the first time, I heard questions coming at me, and because of the acoustics in the room and the semi-circular Bench, I had to actually make mental notes of where the questions were coming from, because it's easy to get lost. You just get all these questions coming at you. But it went well, ja, it went well.

And any other significant judgments that you've been involved in?

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Iâ\200\231ve been in quite a few, Iâ\200\231m just trying to think. | did lots of the early, as a junior counsel, lots of the early cases on national and provincial government disputes. Because remember, KZN (Premier of Kwazulu-Natal and Others v President of the Republic of South Africa and Others) and the Western Cape (Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others) were always pushing the boundaries, so we struck down bits of the Systems Act, and the Structures Act (Democratic Alliance and Another v Masondo NO and Another). We went for Category C municipalities (Uthukela District Municipality and Others v President of the Republic of South Africa and Others) who were deprived of all funding in one year. That kind of challenges that we did. And then the early cases, ja, those were the power sharing cases. And then other human rights cases, you know, largely eviction matters, land claims. And recently the Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another) case. Ja, Iâ\200\231ve been involved in quite a few as a junior counsel with senior counsel.

And the experience has always been terrifying, you say?

Well, itâ\200\231s much better with the senior counsel who has to stand up and argue. But still, terrifying, terrifying.

And have you noticed differences as the Court has gone along in the first fifteen years, have you noticed a difference in the judgments that have been handed down in terms of style, etc?

Apart from that conservative element that Iâ\200\231ve identified, there havenâ\200\231t really been differences. | think they've become a bit more streamlined, the judgments are not as long as they used to be. | know the Court was criticised quite soundly for that. Ja, but no groundbreaking new trends that Iâ\200\231ve noticed.

Iâ\200\231m also curious, whether in your observations you think that the criticism thatâ\200\231s been made that socio-economic rights havenâ\200\231t been satisfied by the Constitutional Court, what do you think of that criticism?

| think itâ\200\231s a justifiable criticism. | think, certainly, you know, you take for instance, the Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another) case, | think that criticism is probably not warranted in all respects. Because itâ\200\231s becoming clear that certainly in these eviction matters, and the housing matters, the Courtâ\200\231s been quite activist. They have been quite activist. So maybe that criticism is not fully justified. But again, you know, it goes back to what | learnt in India, there are limits. There are limits to what courts can do. Because at the end of the day

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itâ\200\231s true that they donâ\200\231t control the purse strings. They donâ\200\231t . So, | think the Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another) case has been the most significant one...housing rights case since Grootboom (Government of the Republic of South Africa and Others v Grootboom and Others), and it is very activist. And immediately after Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another) they handed down another one, on the same lines. So certainly in the housing sector, | think the Courtâ\200\231s been very strong. In terms of other socio-economic rights, | think our jurisprudence is still developing. Thereâ\200\231s a hell of a lot more room for childrenâ\200\231s rights, you know, that whole issue to be developed. Social security, social welfare, | think thereâ\200\231s a lot more room. And again, | donâ\200\231t think you can really blame the Court. | think it depends largely on what issues are brought to them. Iâ\200\231ve got a whole string of cases dealing with disability grants and social welfare grants that will eventually make their way up to the Constitutional Court. And look, | suppose, it is a criticism you could level against any court really, partly because of this clash between law and judgments and political will.

Iâ\200\231m also wondering Andrea, in terms of the achievements of the Court, what in your estimation as counsel and also as a former law clerk, have been the greatest achievements of the Court?

Well, | think itâ\200\231s greatest achievement is, it has become such a heritage, it has become a...what is the concept...a living heritage for us. You know, that building is just beautiful and the personalities that inhabit it are so strong. And itâ\200\231s...for those first fifteen years it has left us a wonderful, wonderful living heritage. | am proud to be associated with that Court. Iâ\200\231m proud. And theyâ\200\231re approachable. The judges are approachable. The building is inviting. Staff are friendly, and thereâ\200\231s that tradition of the clerks thatâ\200\231s continuing. So apart from their judgments, | mean, you can go from the death penalty case right down to the our equality cases, apart from that, just the fact that they are this living heritage, | think is just phenomenal.

Andrea, Iâ\200\231ve asked you a range of questions, Iâ\200\231m wondering whether thereâ\200\231s something Iâ\200\231ve neglected to ask you which youâ\200\231d like to be included in your oral history?

Oral history...I think what stands out for me for those first eighteen months, were the bonds that were formed. In my own circle of friends, interacting with the judges, lighting John Didcottâ\200\231s cigar, that kind of...you know, my relationship with Ismail Mahomed. He comes all the way to India to confer my degree on me. So itâ\200\231s...that is probably the biggest treasure | will take away. And | must say, thereâ\200\231s a sense of belonging. Even now when | walk into that Constitutional Court, | feel like | belong there.

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Thatâ\200\231s wonderful.

That is wonderful. That really is wonderful.

Andrea, thank you so much.

Itâ\200\231s an absolute pleasure.

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Collection Number: AG3368
CONSTITUTIONAL COURT TRUST ORAL HISTORY PROJECT

PUBLISHER:

Publisher:- Historical Papers Research Archive
Location:- Johannesburg

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