

**Anshal Bodasing Constitutional Court Oral History Project 18<sup>th</sup> January 2012**

Int This is an interview with Anshal Bodasing and it's the 18<sup>th</sup> of January, 2012. Anshal, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate it.

AB You're welcome.

Int I wondered whether we could talk about early childhood in terms of where and when you were born, your family background, and also what were some of the formative life events that may have developed your interest in a legal trajectory?

AB Well...I was born in 1977. My parents had gotten married two years prior. They're both from Durban North, from sugar cane farming families. My dad's family, actually, was quite prolific in the sugar industry, and are quite well known in the Durban North region, and some parts of his family are extremely wealthy, and people often assume that I fall into that category (*laughs*). I have to say I don't. But that being said, I'm very proud of that history because my dad's family were involved in a lot of community upliftment because of their wealth, including building schools. So there is a school called the Harry Bodasing School, for example, which is a farm school.

Int When you say farm, do you mean in a rural area?

AB In a rural area, in KwaDukuza, previously Stanger, around there. New Gelderland. So that region up the north coast. And my grandfather would tell us about our family's history and how his great grandfather had come to this country penniless, and basically came with knowledge though of sugar production methods, including some early agricultural technology, which he sold to the white sugar cane owners back then. And he would save this money and save this money, and when he saved what he thought was enough money, he bought property and was at one point the largest non-white property owner in KwaZulu-Natal, and he used this to build up his family, and build up a legacy here. So that was always in the back of my mind growing up. And, you know, I grew up in a fairly politically aware household. I remember in preschool I found some stickers, and they were May Day stickers of men with their fists in the air, and I stuck it on my school bag, and I got quite a scolding when I came home because I did it without my mother or father noticing. And that was quite controversial in the eighties to walk around with that on your bag (*laughs*). So I had to peel it off, and as a result damaged my bag and I was very upset. So I remember things like that being around, and I remember my dad teaching on weekends at underprivileged schools. So, you know, I grew up with a sense of community, and in the community that my parents

lived there was a lot of awareness, and when the ANC was unbanned, almost everyone on my street went and registered to become members. So I grew up aware. In so far as law is concerned, I never did think I would become a lawyer. I always thought I'd be a journalist. My mother always said I had a tape-recorder in my head that I could come back and relate verbatim what happened at school that day. First Mrs Naidoo said this and then so and so said that, and then you know what happened next. So, you know, I had a good recollection, good memory. But when I got to varsity, I studied law and politics and I thought I would go into politics or international relations, but something about the law attracted me. And it was around the time of the Constitutional writing process and it was in the news a lot, Codesa, the constitutional assembly, all those things were happening around, swirling around. So by the time I got into university, which was '96, we had an Interim Constitution that was in effect, and a final Constitution that was about to be passed. So I became very interested and I started reading more and so I kind of fell into the spell. And I remember, because I was in KZN I went to the University of Natal Durban campus, I remember distinctly walking past a notice board one day, and seeing an advert for clerks for the Constitutional Court, and I thought, oh, my god, I didn't know this existed. How do I get in? And a friend of mine had applied that year and she was accepted...actually she became Albie's (Sachs') clerk, Farzana (Badat), and I thought, no, I have to get in, and so I decided I'm applying too. And the way I got in, funnily enough, was that a clerk who Albie had hired, pulled out because of a scholarship that she received, and Albie asked through Farzana, to meet me in Durban, he came down for an environmental law conference, and we had a really sweet meeting, we had never met before. We met in the foyer of the Hilton Hotel, and we discussed a few things, and he asked me to come watch his presentation, which I did. And then I left soon afterwards and left a note for him at reception. And then a few months later he asked to write a one-pager self-reflection, which I did, and I sent it through, and a few hours later I got the call to say that I was hired. So you talk about unconventional hiring methods, I was hired very unconventionally.

Int That's amazing. I'm going to take you right back. I'm very curious about the idea that you grew up with a sense of community and sort of public service, and I wondered in terms of social injustice, be it racial or just economic inequality, I wondered at what point you became aware, as a child, of disparities in the society that you were growing up in?

AB I suppose quite early on. I would always...I had never interacted with white people. And whenever we went into a shopping centre where white people were shopping, I was fascinated by them, it was almost as if I was on an island and white people had landed on a ship (*laughs*) and I'd seen them for the first time. I was curious, I was fascinated. And I noticed colour, I noticed that they looked different, that they spoke differently to my parents and to myself. And my mother is quite light-skinned and because obviously I'd go home to her and see her, I thought, well she looks like them. Why? Why do I

look different? And I'd often ask her, mommy, why are you beige and I'm brown? And she would say, we're the same, there's no difference, you and I are the same. We're the same colour, she'd say, to explain to a four year old. And so I never really...you know my parents both speak very rudimentary Zulu, because they grew up on farms, so they always interacted quite jovially with black people, so I never really saw black people as a threat to me or to my community or my society, and whenever I went into farms...I mean, there's even a story of one of the cooks, when my grandmother grew up, who spoke Hindi, and he was a Zulu man. So I grew up with that kind of thing around me, so even though I did notice there were differences, and I noticed that on my street only Indians lived on my street, and in my school, only Indians came to my school. Except for once when a girl from Zanzibar arrived and lived in our community, and she was the first black child that I interacted with in my class, and her name was Aisha, I even remember her name. So, you know, we used to be fascinated, everyone, because of the separation, everyone in class wanted to touch Aisha's hair. Just to feel what it was like because Aisha looked different, but she was just like us. But she integrated very well. And, you know, as things opened up, by the time I went to high school, which was near Umlazi and KwaMashu, black kids started enrolling and coming to our schools and were friends with us. So it was a smooth kind of transition, but I did notice growing up the differences and the separation and the fact that there were some parts of Westville in which you could not live, that was for whites, and that black people lived in Umlazi, and that Indian people...I grew up in Isipingo...so Indian people lived in Isipingo. But I was never raised in a household to believe that I can't be friends with them as a result, I couldn't interact with them as a result. And certainly, as I became a teenager, my parents, especially my father, would sit down and explain to us what was happening in the country, and how things were changing. And even teachers at school would explain about Nelson Mandela. So I don't think we were ever left out of the loop. We were always kept in the loop in so far as we could understand. And then we were left to make up our own minds about how we would want to live our lives thereafter. My parents have never pressured us...you know, I've married a Jewish man. So my parents have never pressured us into believing one or other thing. I think we were always presented with the facts, and...I have two siblings...and then left to make up our own minds about how we want to live our lives.

Int In terms of the university, was this at the University of Natal?

AB Yes.

Int You'd arrived, there had been transition in terms of the transition into a post-apartheid society, did you find that when you went to university, the university itself had transformed in any way?

AB No.

Int I wondered whether you could talk about that experience?

AB University, there was so-called little Europe, which was a completely white dominated...not deliberately, but that's where all the white kids would gather. Then there was a space where all the Indian kids would gather in a certain building, and then black kids. There was not proper integration, and even in class. So unless you went to a Model C school, which some of my friends did, you didn't really interact with other race groups. I certainly had predominantly Indian friends at university, who came to university from my high school. And then started making friends from other race groups, including coloured, black, and white. My first white friend was made at university. I had had coloured and black friends from school. Not great friends, but people who I'd interacted with, who I knew well, who I would recognise if I saw them walking down the street. So my first white friend was made in university, and I found it very difficult to interact with them. I don't know if I was scared, you know, it's such a long time ago now. But ja, university was definitely very racially divided in terms of socialising. You'd find the odd non-white kid, at university, in the rowing club, for example. Or participating in the cricket. We mostly kept to ourselves. But as I went on through university you could see that the kids coming in from school were different. So by the time I finished my LLB, first years were more integrated than we are. But that being said, I find that Durban is not integrated as Johannesburg. I don't know if it's because it's a small town, or because the three big population groups are so big that they mostly keep to themselves. I'm not sure what it is, but when I came to Johannesburg was when a revolution happened in terms of my socialisation in South African society. So I think that was my first real exposure to people from all walks of life.

Int I'd like to come back to that. I'm very curious, in terms of the quality of the legal training you received at the university and also the elements of constitutionalism as well as public interest, did you in fact feel that you had received an adequate amount of legal training in that?

AB Back then, there were not a lot of kids interested...students, interested in constitutional law; it was still very new. And there wasn't really a culture of inculcating human rights litigation, as a career path at the law faculty. That being said, we had brilliant constitutional law lecturers. Karthy Govender, who was also commissioner, and he might still be, at the Human Rights Commission. George Devenish, who's written at length about it. And later on Max du Plessis, who also teaches international law and comes with that perspective. So we had great lecturers. I would say the emphasis though at that point, I suppose for practical purposes, was on commercial law, because that's where most students would find careers, and that's where the jobs were plentiful at that time. That being said, the university, like most universities, had a law clinic, and it was a very active law clinic. We also had a programme



called Street Law, which was something you could take as one of your practical subjects in your final year. Which is basically to go to schools and teach kids basic legal principles, basic human rights, and that kind of thing. So there was the element of a human rights culture, but I think it built up...I wouldn't say slowly, built up steadily, from the time I arrived, and by the time I left it was quite strong and many, many students, from UKZN (University of KwaZulu Natal) have come clerked here. There was a kind of pride when you came to the ConCourt, because there was a point when I was here when there were five of us from our university, which is quite a big number from what most people see as quite far away, not so well known university compared to UCT (University of Cape Town) and Wits (University of Witwatersrand).

Int I'm also curious, when you came to Johannesburg you mentioned a watershed in cultural understanding, and did that coincide with your time as a law clerk?

AB Yes.

Int Right. So there was much transition for you...

AB Lots, ja.

Int And you were also in the Braampark building?

AB I was, yes.

Int I wondered whether you could talk about all of this, what was happening to you at the time, the memories and reflections on this tremendous transitional change for you?

AB I was...as I mentioned before, I was ecstatic at coming here and I was ecstatic to be Albie Sachs' law clerk, you know, having read and studied judgments, and Albie (Sachs) is, I think...this is an uncontroversial statement, he's seen as a more eccentric judge. He's not your usual run-of-the-mill...that's not meant as an insult to judges who are not eccentric, but, you know, Albie (Sachs) has an edge about him. Of course I didn't know about it as well as I came to know about it, but you know, there was some excitement in the air, it was my first time living by myself as well, so there were lots of new things happening. So I moved into my own apartment, and I was starting a new job, and it was a bumpy road at first, because it was my first proper, proper job. And Albie (Sachs) makes it very easy in the sense that he puts you at ease. He lets you find your feet but, you know, there's still work to be

done, and you've got to put in the hard yards, you've got to take some initiative, which was fine because, you know, I wanted to learn, and I was eager and when you're that age you just want to soak up any kind of information coming your way and learn and climb and grow. Arriving at the court, I arrived a month later than my contemporaries, and so the orientation was moved to coincide with my arrival. And it was just brilliant...

Int Your reason for coming then?

AB Albie's (Sachs') previous clerk, asked as a favour, to stay on a month longer, and Albie (Sachs) said if it was okay with me then she could. And I was a friend of hers, and so of course, I was okay with that. And she had gotten one of the Court scholarship to study abroad and was leaving in August so wanted that extra month. My arrival here was just an eye-opener, because although all clerks come in with their own perspectives, when you sit together at a table and realise just the different personalities, the different completely diverse backgrounds, you know, you're just humbled, even though you weren't arrogant at the beginning you're just completely humbled and you're like, oh, wow, this is such a privilege, we're so privileged. We arrive there and we're in awe of everything we see and the fact that we're meeting judges and they're our celebrities (*laughs*) in our legal world, just like some people have sports stars or actors that they look up to, we have these judges. And we were all there because of them. They drew us towards the ConCourt. So it was really very interesting. but I was also struck by the fact that I didn't really understand that this was being built when I arrived, so I was struck by the fact that we were in an office block. It was not my experience of what a court was. A court was a big building that looked official, and I came in and I parked on the first day and I was like, so where's the Court? (*laughs*) And I was told, well, it's in that building on the...I can't remember what floor it was, so whatever floor it was, on floor x, wow, there's a courtroom in there. And then when I went on my first tour, I was very surprised that they had managed to, you know, set up and run a Court on two and a half floors. And sporadically placed, was art works, including the famous Blue Dress, and, you know, I was told minutes after I landed, oh, you're a Sachs clerk, you've got to learn all the art off by heart because you're going to be doing tours. And so I got really nervous, and I thought, I know nothing about art, I'm completely uneducated when it comes to art, I'm really going to have to learn these names off by heart, and remember the artist and the name of the painting or the sculpture or whatever it was. So it was an education I never expected to receive. I thought I'd learn more about the law but I ended up learning so much more. And also making friends for life, because people who I clerked with, who started at that point with me, I'm still really, really good friends with, and I keep in touch with, including my co-clerk, Zanele Majola and...but I haven't spoken to her in a while...Kate Hofmeyr, Isabel Goodman, some of the interns from overseas who I'm in regular contact with via email and what they're up to and what we're up to. Just, it was, you know, eye opening in so many ways, making new friends, meeting people from different cultures, learning about their

cultures, including from Canada and the US. And then the law, which was the central focus, and then the art stuff, and ja...

Int I'm also curious, Anshal, in terms of the chamber itself, you mentioned Albie (Sachs) as being an eccentric judge, in your words, I wondered whether you could talk about how the chambers was perceived, both by you and the other law clerks in the chamber, and then amongst the law clerks more generally?

AB For me, I'd have to say, I fitted in quite easily, into Albie's chambers, because I liked wearing bright colours. I wasn't a black and white girl, which I now have to wear black and white to go to court, and, you know, when I came in and I saw that, well, the set-up wasn't...it was formal but it was not strict. We were...so at the time, Zanele (Majola), my co-clerk and I, two Durbanites, were these colourful women, young women, in Albie's (Sach's) chambers, and Albie (Sachs) himself was colourful, so we were this big bold chamber, always putting on hard hats and coming to the site, which was a building site. We had the privilege of putting on our hard hats and getting into Albie's (Sachs)...at that time he drove an old white Honda Ballade...we would get into his car and drive down here, and we would come inspect the buildings with him. Again something, I've never inspected a building site before. We would get to do fun things like, Melinda Gates, Bill Gates' wife, had come into town, and she wanted to see the site. So Albie (Sachs) asked us, would you like to come and see Melinda Gates? Yes, please, Albie (Sachs), we'd love to come see Melinda Gates. So there was a bit of, I wouldn't say jealousy, because that's too harsh and it's the wrong word, but I'd say light green (*laughs*) coming towards us, but not in a malicious way. In a sporty fun way, like, oh, there goes the (Albie) Sachs' clerks again, off on some non-law related exploit. But it was fun because I think Albie (Sachs) realised, without being patronising, that Zanele (Majola) and I came from a different world than his, than the one, which we were exposed to when we arrived here. He took us to an Irma Stern exhibition at the Standard Bank Gallery. I'd never heard of Irma Stern before, but Zanele (Majola) and I dressed up one evening...we didn't dress up actually, we came dressed up to work, and when evening came, we again got into Albie's (Sach's) car, or her car, I can't remember, and drove off to the exhibition. So we got to do fun things outside of work, but when it came time to work, it was work.

Int Interesting. Tell me a bit about...

AB It wasn't really messing about, because when Albie (Sachs) got into his stride, then he just wanted to go. So you had to be ready to go, even if it meant missing lunch, or coming in early, or leaving late. I remember once, we had already moved to this building, Judge (Johann) Kriegler had already retired, but he had chambers here so he had come in to do some work, and we were both leaving, and I don't know if it was nine or ten in the evening, and he saw me and he said, why are you here so late? There's no promotion on this side

of the ocean. You know, that was Judge (Johann) Kriegler's sense of humour. I said, yes, I know Judge, but you know, Albie (Sachs) needed us to stay, and when Albie (Sachs) needed you to stay, you made the effort and you stayed. And the reward, you know, came through all these fun things we got to do and also if we wanted an extra day off here or there, he'd allow us to have it. Because he could see that you were interested and dedicated and keen and passionate, and as long as you did your bit, he'd make the rest of it fun for you. Work itself, you know, for our own chambers, there were some cases, which were more prioritised, shall I say, than other more technical cases. Which we also participated in. And obviously when Albie (Sachs) was assigned writing of the judgment, then the work became even tougher. But I would say we had fun while working as well, even through the serious moments, because something would click in his head and then there was an anecdote, you know, or something about Albie's (Sachs) past or something that he would want to talk about, or question that he would have of us. He'd always obviously ask what we thought, and I think that was a trait running through the court; certainly when I was here, all the law clerks had wonderful engagement with the judges they clerked for. We were a really tight bunch of law clerks. We socialised together a lot, whether it be at restaurants or going out for a drink on a Friday, which is why I think made my friends for life. And a lot of the lead on that came from the judges, because you could see by the way they behaved and their sense of collegiality that it works and there's a reason for behaving like that, and so we took that lead, and the law clerks started having regular teas or, you know, we'd just follow their lead and it was almost trying to mimic the way they worked in our little microcosm. So it was really fun, and I think most clerks you'd speak to and I stand corrected but we'll see from your stats, would say that was the best time of their life, was the most fun time of their life. Because through all the hard work, there was lots of fun to be had, and there was so much to learn, and all the judges have amazing histories, whether they had been on the Bench before or not, whether they had come from an academic field. Like Judge (Yvonne) Mokgoro was a nurse before she was even a lawyer. So there was so much to learn and absorb, and at the same time, they had a knack of making it fun, and when work is fun you want to get up and come here in the morning. You'll stay till ten or you'll get here at six am, if you need to. You'll smile even though you don't really want to smile that day, just because everyone makes it so pleasant for you to be here. And that's how it was and, you know, I think it had to do with Arthur's (Chaskalson) leadership at the time and then Judge (Pius) Langa, who had become Chief Justice in the last few months of my time as a clerk, you know, just carried on that tradition and built on it. So it was really a brilliant time and I think a lot of the way we functioned here, I try and use it in my current life, and interact with people I work with very similarly. And this was my first proper job and everything I learnt here, somehow affects the way I work now. And also the way I live now and how I treat other people. There was no sense of hierarchy, even though it was there because they are judges, you are the law clerk, there is support and admin staff, there is cleaning staff component, but you never felt a sense of you had to look up or you had to



look down at people when you relate to them, you just look straight at them. So I will always remember that.

Int I'm curious when you say you've taken away lessons from being at the Constitutional Court. If you had to distil and unpack those, what would be some of the lessons specifically?

AB Well...always be nice to your secretary (*laughs*), you know, she can...it sounds silly, but you know, there was a period...I omitted from the story to tell you...in between my clerkship, when I took over the role of Albie's secretary for six months.

Int Yes, I've heard that, and I was going to get to that. Is that because Fatima (Maal) had left at that point?

AB Fatima (Maal) had left a while back. There was a secretary who came in after that and it didn't work out too well.

Int What was her name, the person who'd been in there for an interim period?

AB I think it was Candice. I'm not sure in what way she left, and I could be mixing up my timeline here, because there was also a secretary who's name I have to say, I've completely forgotten, but who was not here for very long either. And I can't remember if she came in after I served as his secretary or before. And then Janine (Daniel) from the general office had been interviewed, and Janine became...Janine Veldman now, she was Daniels, she's now Veldman...Janine became Albie's (Sachs') secretary. So he was let down and I was in limbo...

Int This is after your clerkship?

AB After my clerkship, I was not sure where I was going to go and if I was going to go back into studying or if I was going to try and hold down a proper job. Because in the outside world, clerking at the ConCourt is not seen as a real job. So it was quite serendipitous. I was thinking it alone in my head, should I ask? But before I could, Albie (Sachs) asked me. And I said, "yes, I'll do it for six months while I try and find something else to do". And I did, and I realised what hard work it is keeping schedules, making appointments. It sounds simple, picking up a phone and making an appointment, and writing it in someone's diary. But it's actually a lot of hard work, and it can get quite stressful. And Albie's (Sachs') life beyond the Court was extremely busy and always full. There was hardly a moment of respite, or I thought anyway, was my view, that he was hardly resting. Because he'd work long hours and he'd

have these interviews to do, and because the artwork was building up a nice reputation there were lots of interviews to be done, and people to take on tours. And I became...and because I was a clerk before, he would sometimes use me for dictation for judgments as well, thinking in his head, well, I could fill in the footnotes, because I've got the experience. So it was a really tough six months, but I enjoyed it, it wasn't like, oh, I've demeaned myself by becoming a secretary. But going back to your question about what lessons I've taken from being here, in so far as life lessons go, I'd say, listening. You learn to listen...well, I've learnt to listen better. From a professional point of view, sitting as a clerk robed in front, or even when you're not robing, and taking down meticulous notes of what advocates are arguing, was a very good lesson for me going forward. I'm now practising at the Bar. And trying to concentrate while your colleague is arguing, it takes a lot of your energy and a lot of your strength. But I've learnt how to filter out what's not important and how to hone in on the real points. And sitting and watching some of the best advocates in the country argue, was the best method of teaching me that ever. Gilbert Marcus and Wim Trengove, and David Unterhalter, Jeremy Gauntlett, and Judge (Mabuyseli) Madlanga, who's now Advocate (Mabuyseli) Madlanga, have all argued and I've got to listen, and so I've learnt from them what to do, and I've also learnt from my role, how to listen. So from a professional point of view, I think it was a great advert for the profession of advocacy, and also a great learning tool. I also learnt how to write better. I wrote atrociously when I first arrived. I wrote well...I've always been good with English and my English marks as a subject were always great, so I wrote English well, but writing the law is a technical language, so I learnt how to write better in so far as that is concerned. I really, really...it really taught me how to construct an argument, or watching how Albie (Sachs) went about writing his judgments, you know, you kind of imbibe that information. You don't realise it, you subconsciously pick it up, and like I found myself editing in a way that Albie (Sachs) used to edit, and drawing arrows in the way he used to. And I never consciously tried to pick it up, and I sometimes pull a face, which my husband says, is my Albie (Sachs) face. So I even learnt some facial expressions from him (*laughs*). And he'll say, "there's your Albie (Sachs) face again, what's worrying you?" Because he said that...you know, my husband interacted with Albie (Sachs) a bit as well, so he said that Albie (Sachs) used to make that face when he was concerned, or when he was pensive, and that I also have picked up that habit. And I just don't see it, I thought I always did that face, and he says, no you definitely, it's your Albie (Sachs) face. And now when I do it, I realise what I'm doing, and that's how I always think of Albie (Sachs), is whenever I do my Albie (Sachs) face, which is at least a few times a week. And then other lessons were just friendship and dealing with people from different backgrounds and I've just found it so much easier to strike up a conversation with someone, and so I think I...I was a sociable person before but I wasn't very open, and it's opened me up to all kinds of...like I can walk up to someone and strike up a conversation without feeling like, "what if I say the wrong thing, or what if I offend them by asking a certain question?" I just feel more at ease speaking to strangers. I'm always

making friends in the line at the Pick n Pay, you know, things like that. Small lessons and big lessons, and professional lessons.

Int Anshal, in terms of the key judgments during the period you were here...you were quite fortunate in that you stayed for a much longer period...

AB Yes, I did.

Int So that was two and a half years, from 2003 till...

AB 2003 to December 2005. So 2005.

Int I wondered whether you could talk about some of the key judgments that happened during your time?

AB The key judgments were obviously...the biggest one was obviously the Wouter Basson (*S v Basson*). I remember the Court being...the Court in its entirety, not just the judges, being very tense and on edge, just because of the publicity that the case brought with it.

Int Would you mind giving a little summary of what the case was really about, just for people who aren't familiar?

AB Oh, my god, I don't even know if I'm going to do a good job summarising the case (*S v Basson*), but Wouter Basson was tried...actually...I need some time to think actually. Actually heard him on an interview on the radio recently. The NPA (National Prosecuting Authorities) charged him...gosh, with a number of charges, and I've actually got here...I don't know if we can stop the interview to do this, but I've got some notes...

Int Sure, I'll do that.

(Interview resumes after a brief intermission)

Int We were talking about some of the key judgments and I wondered whether you'd talk about the ones that particularly had a profound impact on you?

AB Well, let's start at the end then, because the last judgment that I worked on with Albie (Sachs), and my co-clerk at the time who was Chesné Albertus, was the so-called gay marriages case (*Minister of Home Affairs v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home*

*Affairs and Others*) . And that was famous because we do live in – unfortunately in my view – a socially conservative society and there are still a lot of stigmas attached to, not just gay relationships but the fact that homosexual people are allowed to marry...it offends most people's religious sensibilities and if not religious, then cultural sensibilities. So it was a very sensitive matter. We knew the case was coming to the court because we watched it go up to the SCA (Supreme Court of Appeal) and I think Judge Edwin Cameron...I can't remember who the other writing judge was, who wrote the judgments there. There were two judgments that came out the SCA (Supreme Court of Appeal). So we were waiting for it to come here and I remember being excited, I just somehow had a feeling that we would be asked, or our chambers would be asked, Albie (Sachs) would be asked, to write the judgment. And it happened. And I was beyond excited. But Albie (Sachs) had asked me to calm down because we still had to hear arguments, we still had to receive everyone's point of view, and, you know, I think it's well known that Albie (Sachs) is not a religious person, he's a spiritual person, he doesn't really subscribe to any religious point of view, and in so far as being a Jew is concerned I think in a cultural way he sees himself as a Jew. So...and I consider myself a religious person and my co-clerk at the time...we had also Edwin who was our intern from Ghana. All had...my co-clerk and I had a similar point of view and Edwin didn't. He was not so sure about how he felt about the subject.

Int And this came from a religious point of view?

AB A religious and cultural. He was just...he was a very religious guy, but that being said, we had to leave all our personal views aside and we had to focus on the law. And we would sit and have lengthy discussions about it, and on what was being asked. And looking back you could see the progression of gay rights and lesbian rights cases (*National Coalition for Gay and Lesbian Equality v. Minister of Justice*; *Satchwell v. President of the Republic of South Africa and Another*; *Du Toit and Another v. Minister of Welfare and Population Development and Others* (*Lesbian and Gay Equality Project as amicus curiae*); *J and Another v. Director General, Department of Home Affairs, and Others*; (*Minister of Home Affairs v Fourie and Another*; *Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others*)), come up through the ConCourt from the decriminalisation of sodomy case (*National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*) to pensions ((*Volks No v Robinson and Others*), then to the adoption of children(*Du Toit and Another v Minister of Welfare and Population Development and Others*), and it all kind of built up to marriages. And there was some poignancy about it, only because, you know, you could tell...I'm talking about the day of the hearing...you could tell that the people in Court there, and really hopeful, very emotional...it was a very emotional subject, and the amicus who had made submissions *Doctors for Life* (*Doctors for Life International v Speaker of The National Assembly and Others*), that was also very emotive kind of presentation, submission. So I just remember that Albie



(Sachs) being who he is, really wanted to write a judgment that would consider all points of view, and then from a legal...you know, fashion it in a way that says, if you leave the emotion aside, here is the logic and this is how the law works, therefore this is our conclusion. And that is why it is unconstitutional that and violates Section 9 equality clause, that homosexual people or gays, cannot be married. And I think we were expecting a backlash or even, you know, a lot of negative media. But actually it was such a positive reception, it was such a wonderful feeling. And I remember the date that the judgment was handed down, it was like we had been through so much in trying to formulate this judgment. There's a brilliant line in it, I wish I could remember it, it always stood out to me, and it's about tolerance and tolerating people's differences and tolerating things that you are not comfortable with. And that always stuck with me. And I try...whenever I think about it, when I'm being intolerant of something, I always think about how you've got to look at the other side, you've got to see where people are coming from when they say the things that they say. When they use prejudicial words, when they use hurtful words. And so for me it was not only about the law, it was learning about tolerance of difference, and I just love the whole writing process and it was definitely an effort from all three of the clerks and Albie (Sachs), and he was travelling a lot over the time of the writing period. I think the judgment took longer than we thought it would take to finalise, and was eventually handed down on the first of December, 2005. I'm not sure when it was heard but I think it was quite early in the year, and there was some restlessness and the media always tried to infiltrate (*laughs*) the court to try and find out from the general office, when will this judgment be handed down, when will that judgment be handed down? And when it was, it was a huge presence in court and there's a famous picture of the judgment being handed down in Albie's (Sachs) book, *The Strange...*

Int     *Alchemy of Life and Law...*

AB     Ja. And there's little old me sitting in front of him (*laughs*), with the thing, and I think that was one of the most stressful days trying to get everything in order, making sure the footnotes were in, but it was also a huge sense of relief, and I was so proud of what we had written. And I remember Judge (Dikgang) Moseneke calling me to say congratulations that it was finished (*laughs*), because it had been such a long process, and I'm not sure if judges have told you about how they work with the judges conferences and going through each judgment line by line, and coming back with edits. So it was a really tough time, but a most fascinating time. And I have that judgment close to my heart, not just because of my own personal beliefs and because of the victory I saw in it, but also the process we went through as a chambers to finish it, and things we learnt from writing it. And especially Albie (Sachs) who had changed what he had written so many times; not the essence of it but the tone of it, and the words, which makes such a big difference. Because you can take something away in essence but I think he was very sensitive to the fact that people who did not believe in gay marriages needed to understand why the

Constitutional Court was saying what it was saying in legalising it and asking Parliament to make an Act legalising the union or the marriage between homosexual people. So it was a really...I just remember working flat out and that for quite a few months. All our energies were geared towards that.

Int I'm wondering, in terms of that judgment and perhaps other judgments, what do you think were some of the challenges of adjudicating cases with eleven judges as well as cases that came forward that dealt so strongly with key issues, for example, the same sex case, there would have been a lot of morality issues that would have been in the public discourse?

AB From an adjudicative point of view, I think the thing that always impressed me about the judges, even though I never had an opportunity to work closely with anyone except Albie (Sachs), was that the Constitution was paramount, and the interpretation of the Constitution had to be done in a way that did not derogate from the constitutional principles, from all the things that were discussed at the Constitutional Assembly, from the meaning of the rights that were contained in there. And that always impressed me because I never knew what any of the other ten judges' personal views were. I couldn't tell you what they thought of the concept of gay marriages. But I had faith, and I don't know if it sounds naïve, I just got the sense from the judges that they were there for a purpose and that was the upholding of the Constitution and that they would strive and work towards that, no matter what was presented to them. And I always got the sense that that's what would happen when any case came here, and no matter how controversial and no matter how difficult it was from public perception point of view. For example, *Makwanyane (S v Makwanyane and Another)*, which is the death penalty judgment...the death penalty is still debated in this country despite the fact that we have a ConCourt judgment saying that it is illegal to kill people who have committed crimes and it goes against the values of our Constitution. So I think from that point of view, being a clerk, and also being a citizen, I'm always comforted by the fact that I know that the judges who sit on that Bench, are committed to the Constitution, no matter what is going in their private lives or how they feel in their own...or what their private views are. So, I think the only...like I can't remember in my time here any direct battles about any matter. I remember lots of debating and the brilliant thing about the way the judges worked was that...I mean, notwithstanding the fact that you could write a dissenting judgment if you didn't agree, there was also...from that sense of collegiality that was entrenched by Arthur (Chaskalson) and his way of managing the court, they respected each other and would listen to each other, and would email each other at all hours of the day or night, trying to put forward their point of view about why they think it should be this way or that way. And through debate and conversation, would either come to an agreement about the way forward, or would differ completely and then would go on and write their own judgment, but always respecting each other. And always a sense of awareness of the other's intelligence and what they bring to the table. And different points of view, because they've also come from different backgrounds. So also respect

for the different points of view with which they have come, and where they've come from and what they've been through in their lives. So I don't think the law clerks ever sat here worrying about the fact that the Constitutional Court might hand down a judgment which we know our friends in the legal fraternity out there would lambast us and of course the court has gotten criticism and many judgments are written about quite critically by constitutional law academics. But I think having been on the inside, you know what a difficult and time consuming process it is. It's not that, oh, the court listens to twenty cases a year and it takes them so long to come out with a judgment. And there's a reason behind that. And it's because every word is gone over quite meticulously and everything is thought about very carefully before it's out in the public domain because this is the final arbiter, this is the final word on the topic and on the issue when the ConCourt writes a judgment and hands it down. So a lot goes into it and because there are eleven people working on it, which is a good thing, because these eleven people represent diverse views, I think it makes it all the more sound, from my point of view. So even if I didn't disagree with a judgment that came out while I was clerking here, I was satisfied that enough had been done from a work point of view, from a thinking point of view, from a research point of view, by the people on this side of the fence. So ja, very tough but, you know...and the judges were always very aware of that, and I always admired them for how completely...dedication is just not the right word...they were just completely invested in this process. And I think all of us who have worked here realised the value of working hard and realised the value of just being meticulous and of looking over things twice and of looking at other perspectives. And I can add that to one of the lessons that I've taken.

Int It somehow transpired that you ended staying here for two and a half years, how did that work out?

AB After the secretarial stint, I was accepted at Columbia University, and yet another of Albie's (Sachs') clerks who was meant to come start clerking that in 2005, let him down. And I decided, well let me ask him if I can stay on. And I did ask him, and he said, yes, that I could. Look, I don't think everyone was happy about that at the Court, but I don't think it was the Court. I think the six months as a secretary kind of added to it, but I think some people had stayed one and a half years previously, and so it wasn't totally new.

Int When you say, not everyone was happy, what...?

AB I just got the feeling that maybe from a fairness point of view about giving others a chance, and I completely understand that point of view, that, you know, maybe I could have stayed a month while giving him an opportunity to find another clerk. But I was so entrenched here by that time, and Albie (Sachs) was so used to me, and I was so used to his methods that it worked out for us. And I think I took some flak by some clerks who thought it was a

distinct lack of ambition on my part to stay here another year, because I'm not moving anywhere and there is no chance of upward mobility here. When you're a law clerk you don't jump to becoming a judge. You just...there's nowhere to go, you leave. So there was that criticism but I was so in love with life here at the time that I didn't see it. I don't regret it certainly. It was a brilliant year for me and I started dating my now husband at the beginning of that year. So things happen for a reason and I think that was the reason (*laughs*).

Int Several law clerks have met and married at the Constitutional Court...

AB How many more are there?

Int I'm not sure, I'd need to do some research on that. But I also wondered, when you were leaving, it was also at the time when Justice Arthur Chaskalson was stepping down as Chief Justice, I wondered whether you could talk about that year and your memories of those events?

AB It was an exciting year. Adrian (Friedman), who was Arthur's (Chaskalson's) clerk at the time, will tell you more because he had organised a secret tea with Arthur's (Chaskalson's) ex-clerks. And Arthur (Chaskalson) stepped down during that year so it was...I think it was in the first term, it was most likely in the first term of that year. And I think we were all waiting to hear whether Judge (Pius) Langa was going to be appointed. And I – at that point, he was the Deputy Chief Justice – you know, I had tremendous respect for Judge (Pius) Langa and I loved his sense of humour, and I was rooting for him (*laughs*) and we were so excited on the day that it became official that Judge (Pius) Langa was going to become Chief Justice. Somewhere in my archives, and I'm sad to say I don't know where, there are pictures which Adrian (Friedman) and I took of them removing Arthur's (Chaskalson's) name and putting up Chief Justice (Pius) Langa on the walls here. And it was a really moving day. And I'm lucky enough now, I'm working with Judge (Pius) Langa on the Press Freedom Commission, so I've been working with him since July last year, so I get to reconnect with some of my old court memories. It was a really exciting time and I think because you could see that Arthur (Chaskalson) was comfortable in stepping down and he was so at ease with it, and he knew in his mind it was the right decision, it was the right time, and he was going, that we didn't feel that it was tense, you know, it was just a very jubilant time and although it was emotional to see Arthur (Chaskalson) go. And I remember the law clerks we just didn't know what on earth to get him as a farewell present and we ended up getting the most nerdy thing ever. I think it was a subscription to one of the law journals, the *Journal of Human Rights* or something. I can't even remember if it was a year or six months, because we were like trying to cobble money together for a present worthy of this man, and we ended up (*laughs*) getting him a subscription to a law journal. But it was a really great time. I remember out on the lawn behind the building was



where the event occurred and Lorraine (Chaskalson) was here that day, and his children were here, Jerome (Chaskalson) and Matthew (Chaskalson) were here, and their kids were here, so the grandkids were here. And it was just a lovely outing, and the sun was out. Earlier in the day we had had the formal farewell in the court room where everyone robed and people from the profession came and other judges came and all sat up on the judges' area. It was just one big party. It was a day of celebration, and celebrating Arthur (Chaskalson). And it obviously left a big hole but I think Judge (Pius) Langa stepped in it quite...and filled it up in the only way he could have.

Int I also wondered, when you finally left the Constitutional Court, what did you go on to do?

AB I went on to a legal consultancy for a year. Funding didn't quite work out with Columbia so I had long since put that aside. And then after that year was up I went to the Bar. So I did my pupillage.

Int And now you are at the Bar.

AB And now I am at the Bar.

Int And you're also in private practice.

AB I'm in private practice having been at the Legal Resources Centre for the last two years.

Int I wondered whether you could talk about that decision to go to the Legal Resources Centre?

AB Well, it's a funny thing because before I went to the...before I came to the ConCourt, I applied for articles to the Legal Resources Centre in Durban. And it was very competitive and I didn't get in and I was very down about that. And then when I was clerking here I thought, should I try again? But then I thought, I really wanted to go to the Bar and I thought I'd wait until I went to the Bar and see how it panned out. But my husband (Adrian Friedman) had the same idea and I didn't know that obviously when we had met. We found out later. So after pupillage, he went to the Legal Resources Centre first, because he really wanted to and I could see that he was ready to do it. And I went into private practice. So I allowed him (*laughs*) the honour of joining the CLU (Constitutional Litigation Unit) . And when his time was up I thought it was a good time for me. My practice was a steady one but it hadn't taken off in such a way that if I left it I would have broken down all relations that I'd made. And I approached Janet Love and we spoke at length, and she talked about a new

vision for the CLU. Achmed Mayet had left and was the new director Tembeka Ngcukaitobi and he had just started in November 2008.

Int And he'd been a Constitutional Court law clerk.

AB He clerked for Arthur (Chaskalson). It's a very incestuous world. He clerked for Arthur (Chaskalson) and Jason Brickhill was in his department, so he was Jason's (Brickhill's) boss at Bowman Gilfillan. So when Jason (Brickhill) was pulled into the LRC (Legal Resources Centre), Jason (Brickhill) then pulled Tembeka (Ngcukaitobi) into the LRC (Legal Resources Centre). After meeting with Janet Love, I met with Tembeka Ngcukaitobi. We had a nice breakfast one morning at chambers and he told me about what his vision of the new CLU (Constitutional Litigation Unit) was, and I liked it and it accorded with my own views about where socio-economic rights litigation and access to justice litigation...where it was moving in the country and what we needed to do to help it move along. More pro-active rather than reactive litigation. And at that point he mentioned that they had secured Susannah Cowen, who's also one of Arthur's (Chaskalson) ex-clerks, to come and join the CLU (Constitutional Litigation Unit), and that I would be walking into a CLU (Constitutional Litigation Unit) where he was the director and Susannah (Cowen) was there and Jason (Brickhill) would rejoin after his pupillage. And when I heard this I thought, well, this is brilliant, it's just what I want, and I made my decision a few days later, probably about a week later, that I would accept the offer.

Int So in your two years at the Legal Resources Centre, and being part of the CLU (Constitutional Litigation Unit), what interaction did you have with the Constitutional Court?

AB I appeared here twice as a junior.

Int What cases were those? I wondered whether you could talk about those?

AB In the Elsie Gundwana (*Gundwana v Steko Development CC and Others*) matter, and in a rescission application as a defendant. The Elsie Gundwana (*Gundwana v Steko Development CC and Others*) matter was basically the sequel to Jaftha and Schoeman (*Jaftha v Schoeman and Others*), which was about attaching houses without doing any further enquiries, and this was attacking the High Court rule, whereas the Jaftha (*Jaftha v Schoeman and Others*), one was the magistrates Court rule. And we appeared for an amicus. It was Geoff Budlender, Steven Budlender and myself, we appeared for the National Consumer Forum and we made submissions about what steps should be taken prior to attaching fixed property. So that was the one. And then the rescission (*Baphalane Ba Ramokoka Community and Others v Mphela Family and Others In re: Mphela Family and Others v Haakdoornbult Boerdery CC and Others*) matter had to

do with a land trial that was going on in the Land Claims Court, in which I was also involved, which is now over. And we appeared, not for your typical landowner, we appeared for a community who were deprived of their land and relocated to another piece of land in the late 1960s, but then purchased that piece of land. And that piece of land had become the subject of a land claim by a different community. The rescission was to rescind a judgment in which the community I represented made an application for the restitution of a third piece of land. The third piece of land had nothing to do with the applicants for rescission. So it was a bit of a confused issue. But, you know, there was a bigger trial and a very complicated trial about to happen in the Land Claims Court, which settled. The community eventually decided that they wouldn't claim our clients' property.

Int I also wondered what it was like for you to return to the Court and to appear before eleven judges?

AB Well, it was brilliant. Most of my predecessors and some of my contemporaries had actually appeared by themselves, including my husband (Adrian Friedman). I always just...I love this building so I just always love being here. It was really interesting because I had returned to a court Bench that was very different to the one that was in place when I worked here. And it was interesting to watch the new judges at work and how they worked and the questions they asked. To see all the new young law clerks and how they interacted with each other and whether it was very similar to what we did. And even walking into the building today, you know, brought back a flood of memories. I parked in a bay which is one away from where my parking was, and so it's very...the adage, the more things change, the more they stay the same, comes to mind because I think the people, the attitudes, you know, the essence of what it was like is still here even though there are different people at work here, different judges inhabiting these chambers. You could tell that the soul of the Court is intact, and from that point of view you can feel that...I feel, certainly, a sense of faith that it will continue. Somehow the universe has contrived to make sure that this is a very special place and will continue to be. So I really hope, I really hope that happens. And, you know, I always tell visitors to come look at this building and come feel what it feels like to stand in here. And I never know if they are going to feel what I feel, but I am sure that they will get a sense that there's something special here, going on here. And I remember when we packed up and moved to here, nothing was working. The electricity hadn't been connected, there was barely any running water, but we had a launch coming up. The 21<sup>st</sup> of March (2004) was around the corner, we had to unpack books, judgments still had to be written, work had to continue. We all pitched in, all the law clerks, we unpacked the library, book by book by book, and it's a huge magnificent library. So I will always associate it with all the special memories and watching the building being built from across the road as well. You can't get anymore, you can't write a better script for a movie. It was all taking place in real life, and it was a whirlwind of a time and...the launch itself was spectacular just for the sheer number of VIPs and

people who had made an effort from overseas to come here. Some law clerks, ex-law clerks, who interned here and made the effort to fly out from the States, from Canada, from England, so it was a brilliant time. And coming back always brings back those memories and it's a very special thing for me personally because I also met my husband (Adrian Friedman) here. So I can never associate a bad memory or bad thing with this place. And maybe that's wrong (*laughs*), I'm biased, my glasses are rose-tinted, but I don't care. I love it, and I loved it, and I'll always love it, and I'll always root for the ConCourt and for this building and for the maintenance of the artwork. You know, I got to do lots of tours, I've taken Indonesian judges, Iranian women rights groups, even school kids, which was brilliant, asking them historical questions and then imparting information to them, which they loved. And receiving thank you notes from school kids who loved their tour. I used to come in on Saturdays. Blue IQ had something called Orchid, which was like one of their divisions, who used to set up tours and they used me to do tours and I'd get paid something like three hundred rand for an hour tour, and I would do them on Thursday nights and Saturdays, and I'd come in on Sundays and I'd take various people on tours: bankers, businessmen tourists. So I had lots of fun times associated with this vicinity, including the women's jail. Two of my friends got married in the foyer there. One of which was a law clerk and the other is at the Bar; we see them socially still. So lots of wonderful things have happened here, and I'll never ever, every forget them. I just think it will stick with me for as long as I'm alive.

Int      Anshal, on that lovely note, I think I'm going to end. thank you so much for your time and generosity.

AB      Thank you. I feel privileged to be sitting here. I'm not sure how much good my memory has done me from a work point of view. Certainly from a personal and life point of view, you know, obviously those are the things that stand out. Thank you so much.

Int      And that's very important, thank you.



**Collection Number: AG3368**

**CONSTITUTIONAL COURT TRUST ORAL HISTORY PROJECT**

***PUBLISHER:***

*Publisher:-* **Historical Papers Research Archive**

*Location:-* **Johannesburg**

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