

Thandi Orleyn LRC Oral History Project 3" December 2007

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Thank you very much for doing this interview Thandi. Itâ\200\231s Monday the 3rd of December (2007) and itâ\200\231s part of the LRC Oral History Project; we appreciate you agreeing to be part of the Oral History Project. I wondered whether we could start the interview by talking a little bit about your formative influences and what may have...growing up in the South African apartheid system, and what may have ultimately led you to becoming a lawyer, part of the legal profession?

Ok...I think itâ\200\231s important for me, as you say, to put that into context. I'm originally from Port Elizabeth. My family is still there. I was born there. But my grandfather came from Jagersfontein in the Free State and he was in the First World War. And when he came to the Eastern Cape he had been transferred to act as an interpreter, court interpreter.

Your grandfather?

My grandfather. So when my dad came to Port Elizabeth, he was very young and grew up there. I grew up in a very open family, and when I say open, in terms of when they came to PE they were living in around Korsten, which was a mixed area at the time. I think, they first stayed in North End which had Whites, Coloureds and Africans, they then moved to Korsten which was declared a coloured area and then they were moved to New Brighton which was declared an African black area. So they were...I donâ\200\231t know that, Iâ\200\231ve been told about that history. But my parents were very conscious in the sixties, part of â\200\230POQOâ\200\231, which was what I can now say was the Black Consciousness Movement, the start of the Black Consciousness Movement. So I grew up in a non-racial environment with a strong Black Consciousness focus. And was exposed to what was happening, but I was fortunate to be born of parents, parents who were employed. My mum was a nurse and she became the Matron in Charge at Dora Nginza Hospital. And my dad, in a funny way, spent some time in a law firm as a paralegal. So the influences that I had were quite clear...I was going to be a professional. I was one of the first people...not the first post matric, but first university educated generation, although my mum and my aunt subsequently also obtained university qualifications.

After you went?

Yeah! In fact my mum and I wrote matric together. After my mum passed what was then Standard 8 at Lovedale College she went to do nursing training at Livingstone Hospital. I come from a family that went to schools that are now part of the historical school project. My mum went to Lovedale College and my other aunt...my other aunt went to St Mathews College. Oh, no, my uncle was the first graduate actually! My mumâ\200\231s brother. Iâ\200\231m not the first one. So, my mumâ\200\231s brother was the first graduate in the family. So I grew up in a very conscious family. In fact my grandfather on my motherâ\200\231s side was a minister of religion. So I grew up from a family that was very conscious. And what I was seeing is atrocities that were taking

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place that influenced me to take the legal profession. I wanted to give back to the community. What reinforced it for me was when Arthur Chaskalson did a road show to universities to sell his concept. The first time I met him was when he went to Fort Hare and I was part of the Law Students Association.

What year was this, Thandi?

That was 197...early 1979 when Arthur (Chaskalson) came. Late '78 or early 1979, I think. He came to tell us about his vision and the whole concept, so I was quite excited about it. But I had to wait a number of years before joining the LRC. I did my articles first...I did apply, but at that time I applied on the basis that if they had I could have articles at the LRC. But they were not offering articles and so I did my articles, then came back. As things happened I was dating a guy from Johannesburg, and after we got married and I had my first child, I was told that they had a vacancy and they would prefer to have a Black woman attorney., I came, I was interviewed and I got the position. So I started in 1985.

Iâ\200\231m going to take you a bit back.

(What Iâ\200\231ll do is Iâ\200\231ll close that door so no one disturbs us â\200\224Interruption and closing of rear

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room doors).

You spoke about growing up in Port Elizabeth and you spoke a bit about your family being a rather open family. Was your family politicized and what were the atrocities you witnessed that may have influenced you to becoming part of the legal profession?

As I say, my family was very politicized but were not playing any leadership roles in politics. I remember my father telling us how they got arrested in the sixties, people were just being taken in en masse. As you know in the sixties during the various trials, starting from the late fifties there were marches all over and people being arrested en masse. I remember my mum telling me that during that time there was also the atrocities that were found around the prisoners who were working in the potato farms and digging potatoes by hand, so there were boycotts of sale of potatoes and they were part of that. So they were of the broad struggle. PE, unlike areas like Johannesburg, I must say, until the late seventies or the middle seventies, after 76 definitely, these atrocities were not as blatant as places like Johannesburg. There were settled communities around the Eastern Cape, people who had their roots around the Eastern Cape since the late eighteenth century, early nineteenth century. So if you know the history of the Eastern Cape, I mean with the Xhosa people having settled in those areas as early as those times. So there were people who strongly had their roots...my motherâ\200\231s families come from the Port Elizabeth broader district. So it was only after 1976 that there was strong oppressive practices in the Eastern Cape. For instance with a lot of people disappearing, clearly as you know, Steve Biko died having spent time in the Eastern Cape. The notorious Sanlam building...I was once detained there as well. There was quite a lot of that. The PE Black community was very cohesive, very united and the resistance was very strong. But the area was more advanced in terms of what the Eastern Cape government had done, or the PE local

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government had done...the white government had done in terms of the services and amenities in the communities. Itâ\200\231s only a little bit later in new areas like Kwazak hele, Zwide, and so on, which were developing in the middle to late sixties I think, where there were still the bucket toilet systems. The funny thing is the old township which was New Brighton, had tarred roads, and electricity. I grew up in a house with electricity, and running water. So I canâ\200\231t say that I was in a very disadvantaged environment or we as the community of New Brighton were blatantly disadvantaged....There were quite a lot of people who came from that community who have been very active politically. People like the Pityanas: Barney Pityana, Sipho Pityana. People like Vusi Pikoli, who was a colleague whoâ\200\231s now...who is the suspended NPA director. And there are a whole host of other people who are actively involved, who come from Port Elizabeth. Saki (Macozoma) slightly younger than me...oh, we are the same age actually, Saki Macozoma. And a whole host of other people who are known now in political circles, who are part of our generation. The generation before us was also very politically and culturally involved. Port Elizabeth had a very strong sports culture. So we had various ways of articulating our resistance. And the sports resistance was very strong in PE. My dad was in the administration of sports with people like Dan Qege whoâ\200\231s just died. They formed the Kwazakhele Rugby Union. At home we were all sports people, we were in athletics, rugby and cricket and were part of the broader South African Sports Union. The Union had affiliates from rugby, cricket, athletics, boxing, a very strong culture. And so our political life was not concentrated in one area. It was concentrated in various areas. So I grew up in an environment that had a strong cultural background. The present Minister of Sport will tell you thatâ\200\231s where he learned ballroom dancing and he became a ballroom dancing champion for 5 years. So I learned dancing early on...ballroom dancing. You know, so we had a strong, not just political, cultural, religious, the community in New Brighton was value based, very strong, So yeah...

Itâ\200\231s very interesting listening to you because it seems to me on the one level you had quite a normal life in an abnormal society.

Yes.

And Iâ\200\231m curious Thandi, what was the impetus to actually become politically involved, because you mentioned you were detained, Iâ\200\231m presuming thatâ\200\231s after â\200\23176?

Yes. In fact after â\200\23180. In 1976 I was already at university and as you know the 1976 uprising came through the high schools. And I remember leaving the university because then it spread throughout. When I got home we set up, as the university students, a committee. And we decided to engage with the high school students so that we can manage the process. So in Port Elizabeth the process was very managed. And you will note in Port Elizabeth if you look at the history of the 1976 riots, they started getting out of hand, post August 1976 and then thatâ\200\231s when the rogue elements started to take over, started to burn schools, but we tried to manage. Also in Port Elizabeth, although it was led by students, we had strong support from parents. We never had like, what Iâ\200\231ve heard from people who were involved in places like Soweto, Katlehong that there was a generation gap, where the parents were there and these young people and students were here. In Port Elizabeth we had a strong support from

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parents. I remember holding meetings in the middle of the night, and as students at Fort Hare we used to go back and come home because we decided to continue the struggle in the areas where we were lived. So we were managing it. We didn't write our exams in December 1976, and we wrote early 1977 in January. Our approach was both the toyi-toyi as well as the negotiations. So we started early on in managing both. In 1977 we went back to University, we wrote exams and then started the 1977 academic year a little bit later. And then later on as you know in the year Steve Biko died in September and then again we started the process of rioting. And that was in 1977 when we got arrested. And we were charged en masse. They charged us in the City Hall. The City Hall was turned into a magistrate court, charges were laid against you and you get sentenced all in one group. And I remember they were refusing to charge us as women. So we insisted that we get charged and for that insistence I was convicted...we were convicted as a group. And I remember when I started my articles in 1981; Fort Hare University refused to give me a certificate of good conduct that would enable me to be registered to do my articles. I had to threaten the university with court action, we drafted the court papers, served them, and then they relented and agreed to give me the certificate. The Law Society wouldn't register you for articles without a certificate of good conduct.

Did you do that through the LRC?

No, no, no, it was... in Port Elizabeth, the law firm of Kondile & Somyalo where I did articles were very supportive, as I said, we had a strong support from our parents. Kondile & Somyalo were my parents's friends. They decided to take up the case and apply to the Supreme Court. So we were accorded...then my articles got registered. Ingoing back to 1977: having been charged and found guilty, the women were not put in jail. The men were put in jail for some time and then they were released. I continued with my studies, 1978 was a calm year, and it was the final year towards my degree. I graduated in 1979 and I started my LLB., I had obtained a BA degree and LLB was the post graduation degree for law. When I was doing my final year LLB in 1980, we again rioted. We started again with the 1980 uprisings and I was in the...we didn't call ourselves the SRC, I refused to be in the SRC, but we were the steering committee that was managing the uprising in university and interacting with the students and everybody else across the country. People during those times would see what was happening in the streets, the burning, all that thing, but I must say that the uprisings were very controlled at the top. We were managing the process in a controlled way. But you can't control everybody. Sometimes events develop a life of their own. But we managed it quite...I would say, I mean I was part of that, so we managed it quite well. We would have meetings in the various universities, in the various centres, we would address students, we would address people, and so in 1980 then the police strategy... was to target individuals. So we continued to be targeted, we continued to be on the run...that's when I decided I'm not going back on campus, and I was on the run for some time. And I got caught late in 1980, that's when I was detained, but not for long, thank god. And yes, so I decided in 1981 to register for articles and then register with UNISA, later continue with my studies. So I mean, from my personal perspective you having asked about...it's been...it's been a consciousness being born and growing up in a family that had strong values...Christian and strong moral values. So it came from that part. Not from a personal sense. There was a sense of a community deprivation. Because I always felt

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that as an individual Iâ\200\231m very ambitious, I had a lot to give to the country and the community, I could be anything, so there was a feeling by just being a black person I was discriminated against. But the broader atrocities were in relation to what I saw as what was happening in the country, what was happening to people who were more disadvantaged than I was. And coming out of a family that from both my father and my motherâ\200\231s side who have been very conscious from the...both my grandfathers were born in the...what is it? This is the 21%, in the 19" century, you know and having been fortunate to go to school both of them. So I came from a family that have been...

Iâ\200\231m curious, you mentioned that your grandfather had been involved as a court interpreter. Do you think that might have had any influence on your legal career trajectory?

Um...look, as I said, my grandfather was a court interpreter,...my dad was a paralegal for some time, so there was a consciousness. I wouldnâ\200\231t say that is the defining moment for me. I think it was...the thing is I knew I would be a professional person. I would go to university. That was a given, you know. And so it was, I think, what made me decide on law, was being conscious and knowing what apartheid is doing, and at that time...and even then when I was at university, I was brought up in a family where you made choices, and when youâ\200\231ve made those choices you have to see them through. And the choice for me to continue with my university studies was also a choice I made consciously having considered all the options. I could have gone to exile. I could have done other things but I made a choice to fight the system through this way.

You know, you also mentioned to me that the first time you met Arthur Chaskalson, you heard about the Legal Resources Centre, really was in 1979, thatâ\200\231s when the Legal Resources Centre in fact started. I'm wondering, Arthur Chaskalson coming and speaking to you at Fort Hare, what impact did that have?

It was great, I mean, it was momentous. Because here is a man, who is a white man. I mean, there was not lots of interaction, remember that time between black and white people. I mean there were white people we knew who were in the struggle, who were doing things, you know, and all those things, but at the time for somebody to sacrifice his career, he was a rising star, and to say, this is what I want to do. For me it was a wow moment. And also once I knew I wanted to be a lawyer, [wasnâ\200\231t clear what area of practice and at the time, I mean, there was no career guidance. You didnâ\200\231t know what area of law to follow, as far as our role models were concerned they did criminal law, you know, divorce law and motor vehicle accident law. Those were the things that lawyers in the township did. And as you know..., our offices were in the township because of Group Areas Act. Black lawyers couldnâ\200\231t practice in town. So there was a whole host of things. So for me to listen to him and I thought, actually this is what I want to do with my life.

Thatâ\200\231s really amazing.

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Yes, it was. And also...I don't know if you've interviewed Arthur (Chaskalson)...

Not yet.

But he is such a humble person and he's always been like that. And to look at this great man...I mean he's turned out to be greater than I thought he would be but still to look at this guy, listen to him, and in his quiet way he's a great motivator. So that for me was a momentous moment.

Thandi, I'm going to go to 1985 because clearly you decided to come to Johannesburg, you did UNISA, and then you did articles...

In 1985.

1985, and so during the eighties, early eighties, were there any significant moments, critical points before you joined the LRC that you want to talk about?

I've talked to you about 1980 and how I left university and then I did my articles in

Port Elizabeth. I mean, for me what reinforced it was the fact that I was not...I had to threaten the university with court action for them to enable me to register for articles. The sad thing was that my parents had to intervene for me to get articles. I couldn't

get articles in the big white firms. And my mum had to talk to Mr Kondile and Mr Somyalo, now judges, Judge Kondile and Judge Somyalo were partners at the time, and my mum went to talk to them and they agreed to take me to do articles with them. So those were some of things that were reinforcing to me that I was taking the right path. And also looking back, I mean, these guys were so professional. One of the things I learned as soon as I joined the firm was that they were proud of the work they were doing. They were as good as any other law firm. They had reported cases...so I could see in the law reports I was reading, the instructing attorneys were Kondile and Somyalo, so I was very proud of that. I was also proud of the other people who had done articles with them. Barney Pitso was one of them, he did articles with them. And despite the fact that Barney was political at the time and was also being persecuted by the system, they had the convictions of their beliefs to keep him as a candidate attorney. And following him was Boy Majodina who also became a human rights lawyer. So it was a law firm that I was proud of, its professionalism. And it's

confirmed by the fact that both of them are now judges and Judge Somyalo is the judge president of the Eastern Cape. So I'm very proud of that. We did quite a number

of cases, including political cases. And people...we used to brief Advocates like the present Judge President of the Constitutional Court, Pius Langa. Also the judge of the Constitutional Court, Luise Skweyiya. Also Advocate Moerane, who's a Senior Counsel. So all those people used to come to Port Elizabeth. You know the Eastern Cape was full, in the eighties particularly, lots of criminal...of political cases. So they were the guys who were willing to come and take the cases and do those cases. So I was learning under people who have been proven to be good lawyers at the time. And I was quite excited about the type of work I was doing. And we also represented people...although I only had more cases when I came to Johannesburg when I was at the LRC. In PE there were few cases because we were so far removed from

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Johannesburg. There were a few cases in terms of the pass laws, the influx control and that kind of thing. So I was exposed to those cases.

So coming to the LRC, the LRC had had by that time major pass law victories, Rikhoto, Komani, what was really your decision, I know you mentioned earlier in your interview that you had planned on trying to get articles at the LRC but they didn't offer it. So coming to Johannesburg, was the LRC a logical choice coming from the firm you had come from?

Yes, it was. It was definitely. For me it was a logical choice. I had wanted to come here, and as I said, when we decided to get married...so I had to move to Johannesburg, you know, those days, even now I suppose a woman follows the man. And so...that was the place to be. In fact when I got the call to apply here, I was at home. My son was about 9 months old at the time. So I had decided to take a break and just decide what to do whilst I had my son. I hadn't planned to...I'd planned to stay for a year at least before deciding what to do. So for me it was like destiny. There I was sitting breastfeeding and there was the call, and here I was, you know...

So starting in 1985 at LRC, what were the particular types of public interest cases that you took on?

There was some...I mean, as you say, after the Rikhtos, after the major cases, there was residual pass laws, pass law cases we still charged down to the Bantu Affairs Commissioner. And...but mainly, there were a few South Africans but mainly they were targeting foreigners like Zimbabweans and Mozambicans under the pass laws! So we defended them. The Black Sash would find them waiting there with a list of people, go down to the stinking cells and do that, so I did a fair amount of that. I came in, when we had set up as a structure, advice centre program, which was led at the time by Mahomed Navsa. I don't know if you've interviewed yet?

No, not yet.

A judge now of the Supreme Court of Appeals. So Mahomed (Navsa) and I at the time...he was the advocate, clearly I was the attorney, so the two of us were the team that basically developed the advice centre program. And it was the link between the LRC and the communities. Before we were doing that through the...

Hoek Street.

Hoek Street law clinics so we had moved it and we moved here to Pritchard Street. And so LRC had decided to set up the advice centre program, I was appointed specifically as the attorney in the advice centre program. And so we did that, we did advice centre work, going out to the communities, taking cases there, advising there, doing the training, we basically developed the training programs. And also it was, as you know, by that time, the unions were quite...black unions were quite strong and it

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was after the amendments. You know the Amendments. There were early Amendments and then there were the 1987 Amendments. So there had been...1979, I mean, [get confused. But there had been the various amendments to the Labour Relations Act at the time the Industrial Relations Act. And so where we started...in fact Charles Nupen was here and he was already doing the labour cases with Paul Pretorius who was an advocate. And I started taking labour cases as well and acting for the trade unions, acting for individuals. So that became the major practice. I remember one year, was that December 1985 or December 1986? When we had the Baragwaneth strike and we acted for the trade unions there. We were here over Christmas preparing an urgent application to court, to the industrial court, so that was the time. The other thing, the first state of emergency was declared in 1985, so I was acting for quite a number of people. Bongani (Mkhabela) husband...Ish Mkhabela was one of my clients at the time, and a couple of other people who I acted for. And I remember, that continues because we had the 1985 state of emergency, then a short one in 1986, then the big one in 1987, and I was highly pregnant at the time going to the prisons to consult with clients who were arrested on the state of emergency.

I mean, you've pre-empted the question I had to follow, which was the fact that these were really horrific times, the eighties, height of resistance, height of repression, and certainly it sounds like the cases you took on were largely political and they were related cases. I'm wondering, if under South African it's a question I've asked different people and got different responses if you know, parliament was supreme, why do you think that the victories that the LRC had and you know, and cases, why were they not overturned, which parliament could have easily done?

You mean the parliament?

Yes.

My view and as you rightly say, all these are personal views, I would be interested to hear other people's views. But my view, and maybe this is also influenced by the fact that I was in the Eastern Cape where the repression was very under-handed. On the surface we lived a normal life, but it was very much under, under, under, under the radar, until clearly with the Steve Biko death, then...and after that they were so scared, again in PE things were done less overtly. You know there was more covert work. But for me it's always been the...I very much believe in equilibration, the balancing of the positive and the negative. And what balanced the apartheid, the atrocities, was this kind of myth...or this...there is a word I lose, it comes and it goes in my mind...that when the National Party believed that they were civilized, everything was done in terms of a value system. So according to them they were doing the right thing. You know, unfortunately there were things they had to do it's like when you beat up your child to make sure he grows up to be a good person, you know you justify it. So the oppression was happening but it was justified by them in a certain way. I mean, they justified things in the Bible, they had to keep their international standing in certain ways, so they had to keep this veneer of civilization, you know. So that was the paradox in terms of how they managed this whole process on the one hand. The old English approach, which was less refined with Afrikaners, in that they would sit with you around the table whilst they despised you on the other hand. As the

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Afrikaners said, look we don't despise you actually, we're not like the English, but we think we've got to live separately. As long as you agree to go and live in that barren land and we live in this Canaan, according to them, it's fine. We will give you something to make it bearable for you there. And so...and you could see it, people who had accepted at varsity, who had accepted or who lived under what was the Transkei and the Ciskei, they lived better lives than us who didn't live under the homeland system. And there were bursaries for the guys who came from the homelands and independent states. And which made...I mean they had a good life at university. And I've come to a point where I don't judge people. Maybe some of them were our peers, grew up in an environment in the Transkei where Mantanzima had been the head of the country since the late fifties, early sixties, so they grew up under that regime, so they knew no other, you know. And so they saw it as a way of circumventing apartheid, some of them. And maybe that...I don't know, history will judge all of us. So from my perspective it was a...it was this kind of double standard, you know, that enabled these things to happen. Here we are, we have got an independent judicial system, we have got the executive and administration, and in terms of the administration we believe the policy of separate development is the right one. But everything can be taken to the courts, you know, and then the courts will deal with it. And I think some of the judges...there were some of the judges clearly who were political and there were some of the judges who were legal, and they lived generally, they say generally man can live in silence. But I think the regime managed to live in silence.

Interesting. I want to piggyback on that question. The eighties, there were these States of Emergencies, consecutive almost during the mid to late eighties. And I'm wondering why the LRC offices weren't bugged, weren't closed down, threatened? What do you think were the reasons?

I think one of them is...what was good about the setting up and you'll hear when you...I don't know if you've heard already, maybe from Sydney (Kentridge) or Felicia (Kentridge) giving you the start up, and you'll hear from Arthur (Chaskalson) and people like Mahomed (Navsa). Mahomed was an intern, he started off as an intern...and one of the good things that Arthur (Chaskalson) did and they did, the founders, clearly was to make sure that they get respectable people in the profession, in business, because they had to play to this, you know, schizophrenic approach of the government. So they have respectable people, Charl Cilliers, who was the chairman for a long time of the trust, was a very respected Afrikaner, very respected businessperson, very respected lawyer in a big law firm. And then you had people like Arthur (Chaskalson) and Sydney (Kentridge) who were eminent jurists, and others. And they had a couple of people, Judge Kriegler, who agreed...so you had these people who were also Afrikaners, who were also respectable, and so it was difficult for them, and also they managed to get the Law Society to agree to their practising. So there was a cloak of respectability. You had the people...you know they'll say, unlike the toyi-toying youth, black youth who are throwing stones, you know, you've got these respectable people. So I think that's one of the reasons. The other one is again, they wanted to present this facade to the international world. So it was important to show that there were structures that were opposed to government and they were not putting them down. There were burglaries. LRC people were bugged. People were followed. There were some covert operations in relation to it but it was all done

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underneath, not to show. So that is my view. That is my sense that that was the approach. And also I think the LRC itself was careful to walk that tightrope. You know we were doing legal work. We were not toying-toying, we were not a subversive organisation. We were lawyers, we were practising law within the system. I mean, we were criticised, as a black person I was criticised as being part of the LRC.

By the government?

No, no, by other black people!

Why was that?

Because it was felt that we were...we also had lots of debating amongst ourselves as black practitioners at the LRC. And I had colleagues who were with the Black Lawyers Association and there was engagement between the LRC and the Black Lawyers Association. Firstly the Black Lawyers Association felt that because the LRC was an organisation started by white people, it was able to attract more funding and they couldn't. And secondly it was more protected, whereas the Black Lawyers Association wasn't. And also for us black practitioners within the LRC the question was whether we were selling out, you know. And the question was whether we were not propping up the system. You know, if you were going to the courts and fighting a losing battle in some instances, were you not propping up the system? Because the National government could turn around and say, there's the LRC, you know, it's practising and we're allowing it to, so we are sell outs. So there were quite a lot of those issues we had to deal with.

I've heard some debate, certainly when I interviewed people in America about the Black Lawyers Association, and now you're telling me a different perspective, as a black lawyer engaged in these debates, what is your sense of the fact as a black person about these kind of difficulties that arose with the black lawyers and the LRC?

Look, we made choices in life. And the black lawyers in South Africa, even now, then as it still is now, as I've outlined, practised under very difficult situations. And you can see it now when you've got to appoint black judges. We were barred...I mean clearly as a lawyer your practice depends on the clientele that you can attract. And whoever says what, people will go to people they know. Relationships are formed from a young age, you will have an affinity with certain people, therefore you will go to those people. You know, it's a natural thing. When I start on this I get angry, because you find people who are now attacking BEE, but the thing is the people I grew up with are the people who will give me business, and if you take away the cloak of black and white, in any society you will give business to people you know. You won't give business to somebody you don't know. Take away South Africa, take away the race issue...

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It's world over. So people are being disingenuous when they start attacking BEE or black people now on that basis. You know corruption is something else, which was there in apartheid as well. So my view and my belief was, I was in this non-racial environment, there was room for black institutions as there still is room for black institutions. We made choices and I grew up in that environment, I think I'm steeped

in non-racialism, so I'm not going to change. Whilst also people believe that there's a

contradiction between non-racialism and Black Consciousness, there isn't, you know. And so that is how I have grown up. Whereas there are people who believe, who are Africans and whatever, however now you define it, but who believe that African is a black African and therefore there is no way that they can allow white people to come in although they may collaborate with them but they've got to work in a different way. And I respect them for that and I've had engagements with my BLA friends and colleagues. And we've agreed to differ. So you had people who were frustrated because they were practising that, they didn't get by choice or by being barred, for

whatever reasons, we were not exposed to the big firms and we were not exposed to commercial work. So mainly, like me when I did my articles, doing motor vehicle accident cases, doing criminal cases, divorce cases. I remember in my...when I was doing articles, we had only one file on estates which had been there for years and all of us went through it and we tried to understand estates through reading that file. So a lot of the areas of law, black people weren't exposed to. So people will say now, these

people are not...what is the word that is used? You are going to lower the standards, which is another thing that gets my blood pressure up. Because you've got to ask, what are the standards? And so there's always that debate. Also some of the things that I know the BLA was criticised for, was the fact that there was no professionalism, that they did not manage things properly. You know something there are things that are self fulfilling prophecies, and I've been...and luckily I grew up and I developed

within the LRC with people who taught me how to manage things. But if you come from a family that...and most of these people at that time had parents who had not even gone to school. You, of your own bat, your ambition, your whatever, you go to university, you become a lawyer. Nobody teaches you. It's like when people say, I'm going to teach you what they don't teach you at Harvard Business School. And I do that a lot because I do a lot of mentoring and coaching at the moment. Because there are so many things that people...that you can't get at university. You've got to get it

from your family background, you've got to get it from people around you. And if people thought if I pass my university training, I'm a lawyer, I'll move in and I'll be a

good lawyer, but they don't tell you that this is a business. And when people gave people money, they didn't give them money to build capacity. You know, so it was trial and error for a whole host of people. One of my partners now in business, Dolly Mokgatle, started at BLA, you know...and so you can't say there were no professional people there. You can't say that there were no good people there. It's that

people were learning by trial and error at the time and I think particularly the Americans were giving money to assuage their own consciences, and not giving money to develop people.

I'm just going to take up that issue of funding just very briefly. You have to admit

though because...you know regardless of where money goes there has to be accountability in terms of reports, etc. And I'm wondering whether that, from the discourses you were privy to, whether that was an issue, whether...the LRC has always been prided...when I read the Ford Foundation archives before coming

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here...itâ\200\231s always been prided on the fact that itâ\200\231s...Arthur in particular, has kept the books so stringently and that there was a very clear indication itself that members came here, where the money was going and how it was being spent, and that made them feel a bit relieved. Iâ\200\231m wondering what your sense is?

That was the main issue. That was the major issue that BLA was not accounting properly. I mean I think later on people...because we worked with Ford from here and I knew Alice and other people at Ford Foundation that continued to support the BLA and others, and later on they started helping in terms of capacity building and helping them to put systems in place. But initially that was the major problem. You know, that was the core of the problem.

Thandi, when you were at the LRC, and I think you spent, what, 9 to 10 years at the LRC?

10 years.

You were probably one of the few black lawyers, as well as one of the few female lawyers. Iâ\200\231m wondering what your experiences were?

Very interesting. Again my view is...and this is going to be quite frank...

Sure absolutely, thatâ\200\231s the purpose of the Oral History.

I have had this engagement with Harvey (Dale) before. You know, some of the things... people...and Iâ\200\231m sure there are aspects of me that people are uncomfortable with as well...weâ\200\231ve come...what I say to people is that people donâ\200\231t understand the damage that apartheid did from a psychological perspective. That for me is the saddest thing and we are not addressing that. And when I came to the LRC the vision, the principles, the values, everything, was what I brought into, everything that I believed in and everything that I wanted. But we came from different backgrounds. So that was there. You know, I think...I was not the first black woman. There had been two black women before me. Lillian Bagwa, who came earlier, but by the time I arrived she had just gone, so I didnâ\200\231t interact with her directly. And then, Pearl Mbekwa who stayed for some time. Pearl (Mkbekwa) and I were at university together. I know Pearl, found it difficult to integrate, and also she had personal issues that I donâ\200\231t want to get into. So where I came in as it were, as somebody who had a certain approach and I made a choice to address my being here in a certain way, so I did ensure that I got integrated. But I think my colleagues conscious or unconsciously did things that didnâ\200\231t make me feel welcome when I first came. Give a small example, where you...as I say, some of the things are not written, there are cultures that develop. Guys had been together in NUSAS and that kind of thing. You know, small things like you, at four, half past four, five oâ\200\231clock on a Friday...I mean, early on in the eighties when I just came...guys have congregated in somebodyâ\200\231s office and theyâ\200\231re just having a drink and you donâ\200\231t know whether you had to be invited, you know, or you needed to just come in, and when you picked up your bags and youâ\200\231re

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going home, whether you should walk in and say...you know, itâ\200\231s those kind of thing
s
that even now they continue. Particularly for women, not just for black women. For
women, those are the things that continue, that men are not conscious of the
exclusionary way they behave towards women. And at that time I felt it both towards
me as a black and as a woman. So those were the things that I experienced when I
first came. And also because you come in as a very junior person, you kind of donâ\200\231t
know whether to edge your way in, you havenâ\200\231t grown with these people, and people
have been friends for a long time, so I did feel excluded for some time. And as I say
Iâ\200\231ve always made a conscious decision, when Iâ\200\231ve decided to do something I
do it
until I get my own terms. So itâ\200\231s not a criticism but itâ\200\231s something that I
think itâ\200\231s
critical for people to know that at that time whilst people believed that they were
doing the right thing and they were conscious about trying to fight the system, there
were some, for me, areas where I felt unwelcome when I first came.

In terms of...you didnâ\200\231t come through the fellowship program, you were a staff
attorney.

An attorney, yes.

Iâ\200\231m just wondering whether this racial dynamic continued right through to the
nineties? Because clearly there is a racial dynamic, in South Africa you canâ\200\231t get
away from it.

Yes, you canâ\200\231t get away from a racial dynamic in South Africa and even during those
times. I know people subsequently...and I'm sure you would get stories from people
who came in as interns, people who came in as candidate attorneys. I think itâ\200\231s
important that you interview them and I hope theyâ\200\231ll be honest with you. But I came
as an attorney and so I came in at a different level and I worked my way through, and
I became a senior attorney â\200\224 when I left I was head of the Johannesburg office. So
I
can say that I went through the ranks and I made it, you know. And one of the things
that I was proud of is I left not for anything but because I was asked to go and head
IMSSA, the Independent Mediation Service of South Africa. And a year later when
Geoff approached me to see if I could come back as national director, I couldnâ\200\231t
because at that time, I would have loved to come but I had to make sure that IMSSA
succeeds. So leaving IMSSA after a year would not have been the right thing to do.
But I felt proud that I was being recognised as somebody who could come and lead
the organisation. So from my perspective there were challenges like anywhere else,
like there continues to be challenges, but I think I overcame them. But it would be
interesting to note what people have said. I know when we did the...there was a
strategic session that was undertaken a couple of years back after I had left. And the
results that came through did indicate that people did feel some discrimination. Some
people felt that there was a differentiation. But those are the realities of the South
African environment. Um...we shouldnâ\200\231t run away from them. I think we should
address them, but we should not overplay them, and not overemphasise them.
Itâ\200\231s...whilst at the moment itâ\200\231s being seen as a racial division, over time
it is going to
be a class division.

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I agree with you. You know, it's a fine line to draw really between the fact that there is some sense of racial discrimination and there's also the sense that people who bring up this issue, may in fact feel more discriminated against, you know, and branded as probably having a chip on one's shoulder. Do you think that was the case at the LRC when these issues were brought to maybe staff meetings etc?

It becomes very difficult to address these issues because some people, and also their own socialisation, don't deal with issues as they come. Whereas as my approach is to

deal with issues when they arise. So I've dealt with issues...and where I feel, for instance this issue of coming and seeing the guys. I never dealt with it at the time, but later on I talked to Geoff (Budlender) about it, I talked to people about it, because I didn't think it's an issue I couldn't address in different ways. But...I'll give an

example: I remember one time something came up and I tended to be aggressive when I felt there was discrimination taking place, and I became very aggressive. And I told one of the ladies, who was a white she's since emigrated to Australia she was a

white secretary, she had just a bad personality. It was...now when I'm mature and wiser I know it was just her personality, but she was from Zimbabwe, Rhodesia, and came here and was working here, and I just got all over her. I just got all over her, and I may have overreacted, I don't know, but I think at the time it was the right thing to

do because she never came near me again after that outburst that I had. But for me I told people, I said, listen I'm a black woman who's gone through a lot of things, I've

got a chip on my shoulder, and I will deal with my chip but when it comes out I will attack you. So people knew. But generally other than that I would...you know, be fine. So some people won't do that and so...also even it happens now, people mask their inefficiencies or shortcomings by being aggressive and some people tend to raise the racial issue even before there is a personality issue. So it's some of those issues

that we've always got to be careful of. Maybe sometimes I introspect a lot, but those

are some of the issues we've got to be careful and got to be also self reflective.

Ok, fair enough. You know, I'm wondering Thandi, do you feel that as an attorney, a full blown staff attorney, when you arrived at the LRC, were you given the respect you feel you deserved or did that have to be gained over time?

It had to be gained over time. You know, it had to be gained over time and at that time it was difficult that's why at this point I wouldn't say there was discrimination. I

wouldn't say I was excluded. Because in any environment when you are junior, you know, people they always say, people at the top don't see the people at the bottom. It's always the people at the bottom who see the people at the top. So after...over

20 years now, I've got to be more reflective and say, it must have been hard for a long

time. It's one thing for Arthur (Chaskalson) to have said, or Geoff (Budlender) or whoever, Charles (Nupen) or Paul (Pretorius), I would like to help the black people. It was those people. They may not have seen themselves. They may have said we will, as Arthur (Chaskalson) went around...we will also bring other black people too. But they may not have thought it through how it's going to play itself out. Have this group

of white people who set this thing up and then...and that's what happens in most instances, even now. The idea comes and this...and it just happens to be white people

who have...and they set it up. And then they bring you as black people and they want

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you to be thankful for bringing them on board. So those things play themselves out in different ways.

I agree. I mean, Iâ\200\231'm wondering whether, you know, your sense during the eighties and the early nineties until you left, and perhaps now as a trustee, do you have a sense that racial issues have been dealt with, discussed, brought out into the open within the LRC?

At this time, not only racial things are not being dealt with, at this time the approach is not to deal with conflict of opinion. At this time is to manage it quietly, you know. And so people may have felt uncomfortable about bringing things, or felt itâ\200\231s not appropriate to do that, thatâ\200\231s the one thing, and also as...I mean, we all looked up to him, we all respected him, so I think it was always difficult to engage with Arthur in terms of those issues. So where from that perspective that may be one of the things, and as also the LRC grew, we were very busy, you know. And when you are busy, youâ\200\231re building something, you donâ\200\231t look at your own well being, your own issues, itâ\200\231s the big picture, itâ\200\231s the big issue. So even if people who have felt something, they may decide, look, this is petty. And itâ\200\231s only when things start settling down and, you know, people start saying to themselves, what about me? We were not thinking about me at the time.

At what point did you become director of the office?

I had become director in â\200\23194. So it was a short term for me.

Iâ\200\231'm wondering prior to becoming director, what was your sense of...the LRC had, in some ways during the 1980s, taken on cases that dovetailed very closely with the ANCâ\200\231s ideological as well as resistance strategy in terms of the types of issues that they were dealing with. By transition in the early nineties, the LRC, it seems to me, had to make a very crucial decision of the fact that they were going to take on cases against the new government even if it was the ANC. Were there discussions about that? Or was this a natural kind of adaptation?

There were discussions. I like to put it differently. When the LRC was set up it was set up to deal with apartheid and the atrocities of apartheid. And so as a political organisation and liberation organisation, ANC, PAC and any other organisations who were also doing anti apartheid work, they were trying to fight the system then. So it was a creature of what was the regime then. And we consciously as the LRC, debated these issues after...just before Madiba...as you know Arthur (Chaskalson), George (Bizos) were part of the team that acted on behalf of the ANC, Madiba and so on. And when Madiba and the others came out of prison they continued to consult Arthur (Chaskalson) and George (Bizos) and other people, and they would come to the LRC, though they were not LRC clients, but they came to the LRC to consult and the LRC was part of the core teams that advised on the Constitution and so on. But over and above that we had engagements in the early nineties around the role we were going to play, and we agreed that we would do policy support. Hence, people like Geoff (Budlender) went and became DG in the department of Land and Agriculture and so

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on. So...and I by that time I was very involved in Consumer Law and I was part of the team that drew the bill on consumer affairs. So we all did various things to develop the policies, the new policies. So all of us, it was a conscious decision to do that. But it was a conscious decision as well as we continued and as we engaged, that we are lawyers, we will continue to litigate, and that we believed, I think at the time naively, that we are helping to set up this Constitution and the way we would litigate is to uphold the constitution. So it was nothing personal to the ANC, you know. And clearly there have been people in the ANC who have felt affronted by this. I don't think they are right, but I also think that as the LRC...after we're busy doing the things and then the land claims and a whole host of things, we didn't consciously look at the tactics. It's not the principle, it's not the policies, it's been the approach and the tactics in some instances in the way that we've done things.

Can you talk a little bit more about that, what you mean by that.

I think...if you look at the HIV/Aids case, which I think...

The TAC.

The TAC case, which I think, particularly Manto (Msimang) and some other people in government felt that the ANC was not doing the right thing or we're attacking them, is that once we were continuing to take the cases, we should have engaged in such a way that there is an appreciation of why we do the things we do and how we're doing them. Whether it would have worked, I don't know. You know, it's nice to sit on a couch and say, we should have done this, you know, and I was not part of the LRC at the time, as a staff member. But I know, because I'm in the fortunate position that clearly I know a lot of people in government, I know a lot of people, and so we engage around these issues around what people perceive to have been the right approach or not. So I don't think it's the fact that the LRC acted for the TAC, but it's the fact, it's the way they did it, and also, although the government hasn't said this, and it will not be said, is to have understood the resource challenges of government...capacity challenges of government in relation to HIV/Aids. And so those are some of the lessons I think we need to learn. I think some of our donors, and that's been my view from the beginning, is that whilst we continue with litigation, we've got to be...to do more around policy work and we've got to do more around advocacy work.

So Thandi, you left the LRC at a very crucial time in its history in a way because that was really when Mandela's government came into power and things were probably very exciting. And so you went to IMSSA. What happened to your trajectory thereafter? You stayed at IMSSA for how long? What happened thereafter?

I stayed at IMSSA for about 3 years. I felt, mean I had developed a huge portfolio of labour work as well as consumer work. And I could have made various choices in terms of what I could do...I could have stayed at the LRC, I was at some point the chairman of the National Consumer Forum. I was a part...as they were restructuring the National Consumer Union of Government, I was part of that team. So I was doing

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a lot of work around consumer law. And I also continued to do labour work and I also was a mediator. I was doing quite a lot of mediations. So...and at the time Charles Nupen was asked by the then minister, Tito Mboweni, to set up the CCMA, and also...so he had to do that full time. And we needed at IMSSA to...there was a lot of discussion whether IMSSA would be seen in competition of the CCMA, and so we needed to position it in such a way that we don't lose the skills. And I'm very strong around retaining the institutions. For instance that's why I came back as a trustee at the LRC because I think the fact that we are a democratic country doesn't mean that we should do away with civil society institutions. You'll never know what would happen in 50 years time. I mean, we don't know what's going to happen next week. (Laughter). So it's very important that we keep the structures. So for me that's what appealed; going to IMSSA, that I was asked to make sure that IMSSA is sustainable. And I found that I could still contribute to the development of the democratic country. So I did that, and it was quite an exciting time, there were huge challenges, we continued to support the CCMA and continued to do major disputes. And IMSSA did not only stay as a labour dispute settlement, it also did community...we did lots of political work, resolving disputes in the political arena...you remember what happened in the nineties with Inkatha and ANC? We did a lot of political work. We did voter education and community mediation. So I was now locked into that trajectory and we really went out into the system and the communities, and also developing...I felt that it is important to develop a mediation ethos and culture in the country. So I headed that, and then I was asked to head the CCMA. So in late 1997 I went to head the CCMA.

Did you take over from Charles Nupen?

Yes, I took over from Charles (Nupen). So I headed the CCMA and continued to develop it both as an institution in South Africa, but also strengthening through the relationship with ILO, the African mediation institutions, supported Namibia, Lesotho, Swaziland, and Botswana. In setting up their own systems in a similar vein and continued to do advocacy work throughout the continent and I did a lot of training in the continent, started working with people in Burundi, Rwanda, Sierra Leone...Somalia. So I did quite a lot of work around a broader conflict resolution and conflict management until 2002.

And then?

And after 2002 I decided that for our democracy to mean anything to people it's got to have a strong economic base. So I've gone into business. Set up a women's employment company, and there are four of us as women. And we set that up in 2005. Because I was asked to go to the Bench. My initial plan was to go to the Bench but I wanted to go back to practice, so that I deal with the deficit from the commercial side. So I did commercial work. I used my experience in labour law to get involved in commercial work. So with all these mergers and acquisitions I brought in the people issues. But then I had broadened my repertoire, not just being industrial relations or labour relations, but I did the whole people issues, employment law issues. From employment equity, skills development, and labour relations, and mergers and acquisitions around people. So I would do audits before the managers, then I moved

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into executive disputes. So I started working in that area. So having done that I felt that I don't want to be a judge. Being a judge means you catch things at the end. You are dealing with the symptoms rather than the root of the problem. And so my view was that let me get into business, and also having been involved, not only at the LRC but at IMSSA and at the CCMA with fundraising, realised people give to those people who have, so I can ask for my causes without people feeling that I may have a personal interest in this. So I've got causes that I champion and I'm developing the business with a development arm. We've got a section 21 company that is involved in education and enterprise development.

Sounds fascinating.

It is fascinating.

And it seems to me that the impetus is also gender parity as well.

Yes.

So you continue to do that, Thandi. And then in terms of becoming a trustee how did that come about? Were you approached?

Yeah, I was approached, I think...yes, definitely I was approached. I don't know who approached me. But they approached me and asked if I could come back...as you know, or people will tell you who've been full time or were involved at the time, that the LRC was going through difficult times. I mean, I continued to be involved with the LRC. Bongani (Majola) used me as a sounding board because I knew the LRC and I was still interested, I was not a trustee, as an independent person to bounce off ideas, to talk to. And I helped them with a number of things, a number of difficult things they had to resolve so I kept in touch like that. And when Vincent (Saldanha) came on board as well I supported him.

He was Regional Director?

He was National Director. So I was...and then whilst I was...and then I became trustee and Harvey asked if...oh there was a move which was spearheaded by Harvey (Dale) that I should take over from Vincent (Saldanha), but I had moved on in different ways so I was happy to be a Trustee. And also I thought, having been here, you know, when you come back, I have fixed ideas. I mean, Janet (Love) has had to go through a tough time restructuring. I had done restructuring at IMSSA. I had retrenched people and I had learned how to do it. I thought the culture of LRC wouldn't handle the way I would do the retrenchment. So I thought it would have been hard for some people.

You know, one of the dilemmas...there are several actually for...and you're privy to

these as a Trustee...one of them is essentially the fact that the LRC feels that it

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hasnâ\200\231t...well people in the LRC feel they havenâ\200\231t been able to attract good quality lawyers, and in particular black lawyers, because South Africa is now going under so much of transformation that lawyers seek out very good salaries, as the case may be, and also they seek out opportunities that take them elsewhere. I mean, you gave me an example of going to IMSSA and then being excited and then going on to CCMA, and you know deciding to start your own business. Iâ\200\231m just wondering what your sense is this of the difficulty that the LRC experiences in retaining as well as attracting good lawyers?

Can we take a comfort break?

Sure, absolutely.

Break. Continuation of Interview

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Alright you were saying that this is one of your passions.

You know, when youâ\200\231ve got a mindset of being poor, you remain poor. It doesnâ\200\231t matter how much money you have. For me itâ\200\231s the mindset. When youâ\200\231ve got a mindset that you canâ\200\231t attract people, you wonâ\200\231t be able to attract people. And for me Iâ\200\231m saying this straight, unequivocally to you, I havenâ\200\231t yet said it to the LRC. Because why are those people who are here stay? Why did we have to engage with people to leave when we had to retrench people? Donâ\200\231t they want money? Donâ\200\231t they want to be rich? The bottom line is not everybody makes decisions based on money. The challenge is to find those people. And we have not done that. The second thing is that, this is not unique to the LRC. And so I get the same question in big companies. I sit on a number of boards. Management comes to us and says we canâ\200\231t retain people because they want more money. If Implats, Anglo Plats, Anglo American, De Beers, says that, you know, you say to yourself, is it really money? Are we missing something here? Because let me tell you, being your own boss and entrepreneur, like weâ\200\231ve decided to be at this time, thereâ\200\231s no money now. There may be money some time but there isnâ\200\231t, you know. And why would people leave jobs and millions of rands if it was money? And Iâ\200\231m not undermining, not underestimating that money is important. If you read the Sunday Times of yesterday, the Business supplement which dealt with the rich list, towards the end there is the being rich according to the stars...astrology. And I read that, tongue in cheek, and they were saying, on that list they said the most people are the Taurus, and then the people who are supposed to be rich is this and this and that. Pisces is the least. Maybe we should look for all the Pisces and employ them. (Laughter) But that is one way. But my view is that there are certain things that youâ\200\231ve got as leaders, as managers, to look at, and youâ\200\231ve then got to do it. The first thing that is...no, people like me, I was...I bought into this vision in 1979, I still believe in the vision, you know. And so...I believe first that loyalty is one of the things that keeps people in place, you know. And the other thing is there are things that youâ\200\231ve got to sell to people in a certain way. When I was at the CCMA we had to compete because as a government institution we didnâ\200\231t have a lot of money. We had to compete with the industry, we had to compete...I remember looking for an internal auditor. I had...itâ\200\231s not like people who have got skills in the

CCMA, they can sell their skills anywhere. I brought in a guy, a black guy, who was...who had young children, who still had a future, and I said to him, please can you give me 3 years of your life? He cashed up his shares â\200\224 he was in a private company â\200\224 and agreed to come to the CCMA for 3 years. But that enabled me to set up the system and the structures were there. So youâ\200\231ve got to say, what do you want from who and how do you want it? Prior to 2000 there was that hype around the IT system. IT guys were minting it. [managed to get good IT guys at the CCMA at a low rate. I said this is one of the forward looking IT systems in the world, and it was. And if you can make this work after 2000 you can go. So I had deals with people and I paid my IT guy more than I paid my COO. So you have to really manage things. That is my view. And you know, in such a way that you get things, you get people, you do that. And also one of the things...I mean, Mahomed (Navsa) may say this to you as well...that the leadership at LRC didnâ\200\231t do. Both Bongani (Majola) and Vincent (Saldanha) at the time, because I think those two leaders should have seen the change...where during the changes should have acted. For whatever reason they didnâ\200\231t and it was left to Janet (Love) to turn it around. But this should have been turned much earlier. When the LRC started, Arthur (Chaskalson) was the National Director and continued as you know until he became a Chief Justice. And you had senior attorneys who were here, Geoff (Budlender), Charles (Nupen), Paul (Pretorius), Karel Tip, a whole host of other people. Then there were others after I just joined, there was a time, in the late eighties I think, just when we had to reduce the number of attorneys because now it was getting big. And Arthur (Chaskalson) called those senior guys and said, guys, we need to bring in other people, we need to bring black people, but some of you have got to give way. And that happened. Now the leadership should have looked at the structure about 4/5 years ago and said, look, this is where we are, the funding environment is getting difficult. Thereâ\200\231s no way we can continue with t his bloating budget. Weâ\200\231ve got to say what is the realistic budget we should retain as a not-for-profit organisation in a transforming South Africa. That wasnâ\200\231t done. Even when they...they got consultants to come and do things. And they had information. But I donâ\200\231t think...I mean Iâ\200\231m not criticising them, Iâ\200\231m just givi ng my view that at that time if these things could have happened then we would have had space. We most probably would have come down in terms of the type of cases, maybe in terms of the experience, but we would have in the last five years built another experience, you know, in terms of this. And one of the things I said to my commissioners at the CCMA around 2000, I said to them...and when at one point there was a threatening pay strike...I said, guys, take the CCMA as a learning organisation, you are here on a stage, you adjudicate cases, you mediate cases, but you have the opportunity where HR directors, CEOs, managers are seeing you. If your trajectory is to go to the corporate sector, you will impress somebody, or you will do whatever. So take this period, decide how long...we had three year contracts at the time...decide what you are going to do with this three years. You may want to renew it, some of you. Others may want to go. But be the best commissioner you are now. Donâ\200\231t expect to have lots of money, but then know that after the CCMA you will shine wherever you go. And some of the guys have come back to me and said, â\200\230Thandi, thanks for that.â\200\235 So there are ways in which to manage. I donâ\200\231t believe that there are no people. I think ther e are people, but it depends what you want from them, for how long you want it from them, and you will have...as I say, particularly the black guys, there are a whole host of black people at universities who donâ\200\231t know...Iâ\200\231ve addressed students, LLB students, who donâ\200\231t know what they have to do, what they want to do, you know. And I think we need to do a little bit more of that but what it means is that you are going to get

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young people without experience. We've got to be able to continue. So, for instance when I came to the LRC, who were my mentors, Morris Zimmerman. I mean, most of the things I know, I learned from Morris. And so you need to have that balance between the mature. And Morris didn't need money. He was a retired attorney, so we paid him less, expenses. And then you get the young ones. So you need to look and say what is the balance? So I really don't believe that you can't attract young people.

Fair enough. You know, I'm wondering Thandi, in terms of funding, as you've brought up just now, the issue of funding and it being a crunch issue for the LRC, there's also argument that LRC has probably not done enough in terms of fundraising and attracting local funding as opposed to relying on overseas funding. So, attracting corporate and business sector, as well as the law fraternity. What's your sense about that?

I think...look...I agree to a certain extent. There is no culture of giving in South Africa. So that culture has got to be developed, it has got to be nurtured, and I think the LRC is an organisation that can do that. The problem, I mean people will say, if you look at the UK, there's a lot of giving from individuals. But that requires a lot of management because it's small amounts. But it does build to something, you know. And so we need to do that. There's a recognition. As trustees we've always accepted that and we've wanted that but we haven't put enough resources. I think it's important to put resources into this. And I also believe that as you get...there are a lot of corporates, that...South African corporates, that would be willing to fund. How much, I don't know. But we need to put resources to tap that market. As I said, South Africa is not a country with a culture of that type of giving, so the LRC has to go out there.

The other thing that has come up as an issue is the fact that one of the reasons there's been a difficulty in terms of area focus in the LRC. It's not clear now...you know, during apartheid it was very clear what the LRC was doing as a public interest law organisation. But it's not clear now given that there are... small public interest law organisations, doing specific things, Centre for Childhood, Family Law, that kind of thing. So it's not really clear what the LRC's core mandates are and there's also the argument that the LRC is not building on its successes. What is your sense as a trustee about these issues?

You know, when I was here as a full time person, it's not as if we didn't have these questions. We always debated these issues. Any organisation is evolving with...in terms of its environment. So those are the issues. We always had, I remember as an advice centre attorney and then I headed a section, and always the question was around what was the relevance? How much of that...because when you go to advice centres you tend to get the individual cases and how much energy should you give to those? So these debates are not new. Even then we always had the question, the debate, around the focus. And my view is that you can have the strategy, you can have the policy, but it always depends on the individuals who are practising. Because at the end of the day they are attorneys. So if the attorneys take...are attracted or take certain cases, or their predisposition is to feel sorry for people and they can't say no. So they're going to take more of the small cases and they won't then go for

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environmental law case that is going to take years and may not come to fruition. So

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itâ\200\231s those kind of things. That is the one thing. The second thing which has all happened even before the change-over, has been the issue of funding, because certain funders want you to take certain things. So because you want to attract the funding, so you will say of course I do that. You know, if you say for instance, HIV/Aids, or childrenâ\200\231s issues, or violence against women, if the funder says I do that, and I f und for that, then LRC says ok, put a proposal for that. Now youâ\200\231ve got to go and look for that case. Is it within your strategic direction? Is it within your focus? You know, itâ \200\231s within the broader focus, but how long are you going to take to get a case? Do they find a case? Do they find policy? Itâ\200\231s all those kind of things that as a funded organisation weâ\200\231ve got to work through. And itâ\200\231s not just the LRC. Most fun ded institutions have got to wrestle between the tension of doing what the funder is funding you for, and also spending the time to find...because the other thing is, I know, we always had this problem even in private practice and even now...when do you have time to think? Do you get paid for thinking? You know, and if you say to the funder, look part of this, if you give me a million rand, I spent two hundred and fifty thousand rand thinking, will they buy into that? Itâ\200\231s all those challenges. S o my view is that I really feel for the full-time people weâ\200\231ve got, whilst we as Trustee s can help them and work on the strategy, the challenges are on the ground. We need strong people who really have got to be focused on what weâ\200\231ve said are the strategic issue s.

Ok. Now that youâ\200\231re a Trustee, when you look at the LRC, do you notice changes? Do you think there are things that could be done differently? Whatâ\200\231s your sense?

I mean, Iâ\200\231'm openly known to be an advocate of policy and advocacy. You know, I think that we donâ\200\231t do enough of that. I believe that, as Iâ\200\231ve said, in som e of the...we need to look at litigation in relation to policy and advocacy. We also need to spend more time around research that would enable us to deal with this. We donâ\200\231t have a strong research component towards an integrated approach. So those are the things that I believe we need to do much better. And also around litigation, some not all...I mean youâ\200\231ve seen...some of the lawyers are still using it in a traditional way. I t hink because Iâ\200\231ve moved into a more broader conflict management philosophy, Iâ\200\231'm always looking at various alternatives to litigation.

Iâ\200\231'm wondering, you know, youâ\200\231ve had a long standing interest in LRC and involvement, so ten years of your life and then now subsequently as a trustee. I'm wondering whether your sense is that you know, from people Iâ\200\231ve interviewed in the United States, thereâ\200\231s a sense that the LRC is one of the greatest public interest law firms in the world, if not the greatest.

[think it is the greatest.

Do you think in South Africa that itâ\200\231s been given that kind of recognition, whether itâ\200\231s from government or corporate or legal fraternity?

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Why do you think that is?

Uh...you know, uh...the thing is, we...and this has started from when we started...something...I may not have said this, and I think that is one of the strongest...it was one of the strengths of the LRC. Whether it is still a strength weâ\200\231ve got to examine that. The approach that was adopted, low profile...you know Arthur (Chaskalson) is a low profile person. No courting of the media. You know it was just the style and approach. Whether in this new environment that is the right style and right approach is one of the things weâ\200\231ve got to examine. So, clearly within the...people overseas, in the UK, US, Europe, that weâ\200\231ve interacted with, they have had, I think, more exposure to us and our work and therefore have appreciated what we are doing, and also the eminence of people like Arthur (Chaskalson), people like Sydney (Kentrige), George (Bizos)...you know...so they are linked squarely with LRC. Whereas locally, whilst I think people know and people have been happy and people acknowledge the work, I donâ\200\231t think that itâ\200\231s sunk in to a lot of people how important the LRC is. Iâ\200\231ve done this...travelled the world, on behalf of the LRC and Iâ\200\231m amazed and all, talk to people who come here and Iâ\200\231ve been amazed, we havenâ\200\231t done these round tables with local people. Weâ\200\231ve done the round tables with international people, but not with local people, you know, and so itâ\200\231s one of the things that I didnâ\200\231t do either when I was here. I havenâ\200\231t suggested it as a Trustee. But I think itâ\200\231s something that we should do more, the round tables with people locally. The other thing is locally we...whilst weâ\200\231ve said our cases will speak for themselves, so itâ\200\231s only when weâ\200\231ve won a case it will be in the media. We havenâ\200\231t profiled the LRC in the media. You know itâ\200\231s good and bad as you know. The media is a double edged sword, you know, when you court it. And so where we...we have...weâ\200\231ve decided that, you know, our actions must speak for themselves. Is that right for now? I donâ\200\231t know. Itâ\200\231s something that the LRC needs to engage in. So I think those are some of the things that have...why the LRC is not as acknowledged and recognised in South Africa. And itâ\200\231s not just the LRC. I think sometimes in your own backyard you are not as acknowledged as you are internationally...by your people. I remember when I was at IMSSA and at the CCMA, Iâ\200\231ve addressed international bodies, I remember addressing the Arbitration Association of America. They came from all the States and I was the main speaker at lunch time. And I thought, wow, this is me! You know, and people acknowledging the things that weâ\200\231re doing. And from Australia to China people have come and talked to us about our dispute resolution IT system. But at home people havenâ\200\231t realised that the CCMA is the biggest and the premier dispute resolution agency in the world. As much as the LRC. So I think itâ\200\231s...I donâ\200\231t know, something to do with view and also the people not seeing something, so they take it for granted.

Iâ\200\231m wondering, Thandi, are there issues...Iâ\200\231ve asked you a range of questions, I'm wondering whether there are issues that you feel are very important and pertinent and that Iâ\200\231ve neglected to ask, and youâ\200\231d like to include it in the Oral History interview?

I think youâ\200\231ve covered most of the things, I would just reinforce, as I say, these are

my views and I feel strongly about them. The first thing is that I want to reinforce is the necessity for an institution like the LRC to be here to continue to do the work. Itâ\200\231s got to examine its own focus, as weâ\200\231ve said. Itâ\200\231s got to examine its own mandate. Itâ\200\231s

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got to always do that. Like we all do. Companies go on strategy planning sessions. You can't have the same mandate and the same focus whether you're selling peanuts or whether you're selling a service. And within that context there are always competitors. And competitors are competing needs, competing services, competing approaches to things. One is competing needs for resources, funding in particular. So it's nothing new. It will always be there. But it's how...whether the people who have to fund you see the value in you. And you are the only one who can tell them that. And in so far as the funding, I always say that people don't give to causes, they give to people. But if they gave to causes they would...if you had five institutions providing the same service, they will divide whatever they want to contribute into five and give all of them. So why would they not give to this organisation and give to that. Because there's something that resonates with the people there with that particular person. So people give to people. That I think I would like to kind of emphasise. The second thing is that we...this is a new democracy. We're very young. I mean, democracies evolve over centuries. So, it's important for us to leave a culture that is going to endure...for me to just say, that's why I'm here. If I believe that LRC is going to endure for a long time, then I've got to make sure that within this little time that I have on earth, I make sure that the legacy continues. So I think that is then very important. The third thing is the relationship with government. I think we have...I mean, there's always a relationship, whether it's an antagonistic relationship, it's a love hate relationship, it's a relationship of necessity or of dependence, we've got to define that relationship. We don't...we shouldn't just leave it to government to define the relationship. We should be active participants in defining that relationship and I think we have not done that. The third (fourth) thing is around, again, legacy issues. If we believe that LRC has to continue, there will be people who will ensure its continuity...we must make sure that we make people believe that, including people to sit on the trust, including people to donate internally and externally, including people to work within the organisation. So we've got to find a formula that is going to attract people.

I'm wondering, you know you've had a long time with the LRC and you've met people from the SALSLEP board, and of course there are people who come through the Hoek Street Clinic, the Advice Centre, what are the stories that remain to be told?

I think people have got lots of stories.

What are some of your funny stories, Thandi? Some wonderful memories that you sometimes might access?

Yeah...that is one question I haven't applied my mind to. I mean, one of the...for me...some of the best stories, and one of them is one of the posters. Uh...when we were acting, Morris Zimmerman and I were the attorneys acting against these car sales...second-hand car dealers. And we had this one man, a German guy, who came to South Africa and had a citizenship and a tenacious look like a bull really. And Zim and I thought we were not going to let this man get away, you know. And one time we went to his premises with the sheriff and he tried to chase us away. (Laughter) So that was one of...of the great memories. And the other one what was very...I mean, I was quite angry, but it just showed the advantage that even the business and corporate

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sector took and hid behind the apartheid system. When we were doing the housing cases we were acting for communities against, not just the councils but unscrupulous builders as well. And we had this case where this man came to us after there was a warrant for his arrest. And when we went to the file, I went to the file, court files, I found that there had been summons issued. There had been service of...warrant of execution and all those things. And as I was taking the statement from this man, he said, thereâ\200\231s not even a house, it was never built. And I said, the warrant of execution

says, served on the door! And the bank that had been involved was at that time the Perm. And Zim and I went to the Perm and we wanted Chris Ball himself because he was still the MD. And that was the nice thing about working with Zim. Because he...had no holy cows. Thatâ\200\231s what he taught me. Is that, everybody is a person. So we went to the Perm, from Pritchard, it was on Commissioner Street and we stopped in there and it was very embarrassing for them to realise that their inspectors had approved the release of funds, when there was no house built. So you found that the banks hid behind the system. And there were a lot of those examples where big business hid behind the system and they didnâ\200\231t...and they exploited as they still do

exploit unsuspecting consumers. And so those are some of my fond memories about working at the LRC. We had to learn to use the system as effectively as we could. Zim and I were a wonderful partnership. We were both attorneys, but I was the person who was doing the spade work and he was the elderly statesman...not that he didnâ\200\231t any work...he did a lot of work! And when I wrote letters and things with the...to the other attorneys, and we used to do this, both Zim and George Bizos...you know that when thereâ\200\231s a meeting people go to the most senior. So the attorneys would try to get

me to their offices then Iâ\200\231d say no, my consulting attorney is Morris Zimmerman so youâ\200\231d have to come to us. So they would have to come to our...shoddy offices in Pritchard Street! And we also did that with George (Bizos) as well. So those were some of the fascinating stories. And the other one was with George. Working with George...lovely. And when I was working with George I was the Johannesburg Director. So we would meet with people or we would go to do a fundraising thing, and George (Bizos) would say, oh, me and my boss. And you can imagine at that time that it would make big business or corporates looking at George (Bizos) and this young girl whoâ\200\231s his boss. (Laughter). That was also quite a nice thing.

What was it like working with Mahomed Navsa? You worked quite closely with him.

We worked very closely with Mahomed (Navsa). Some of the...I mean, poignant moments for Mahomed and I...because again, as working as an attorney and advocate team, was one of the cases, and Iâ\200\231m sure heâ\200\231ll tell you if he remembers about it, we

acted during the State of Emergency for this woman who was a tea lady at Telkom. She was detained, from Tembisa. And we went to see her in prison. When the husband, an elderly gentleman, retired, and the sons came to see us, we just couldnâ\200\231t

believe this. The tea lady...we thought maybe sheâ\200\231s younger...we went to see this lady in prison. A tannie, an auntie, a gogo, with grandchildren. So it was really heart rending and we drafted our papers, and they said...when we started talking to the cops, they said, she is the ringleader of this cell! And we went to court, and we were so sure of our case. Weâ\200\231d got statements from the minister at church, the community and everybody. And the minister of police had just...I donâ\200\231t even know what it was called then...safety or police or whatever it was...just had to put an affidavit to say, in my view sheâ\200\231s a threat to society. And that was it. We came out, Mahomed (Navsa)

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and I cried. We just held each other and cried when we lost that case. So there were some of those things that made it hard, but at the same time made it worth it. One case that made it worth it, Mahomed (Navsa) and I were doing this case of this guy who was shot by the soldiers in Soweto. He was sitting in this old skoro-skoro (jalopy), and got shot and lost his arm and it was amputated here. And during...we had to look for our own witnesses, really look for our own cases, and we got a witness. This guy we interviewed him and I thought this is amazing, he was found by the father of this guy who was shot. Came to see...I went firstly to interview him at home. Asked him to come here, he came. And he said, oh no, this guy was shot on the road! And this guy was sitting in the skoro-skoro (jalopy). And he says, I was sitting and I watched everything. And what were you doing? I was smoking ganja (marijuana). And for a guy to agree to come to court and to say to the judge...and that's how we won the court...the case. The judge said, I mean this guy is incriminating himself, he's got no interest in this case because he just can't see...and that's what saved the day. For me it was those kind of stories that...you know you still had people you could believe in. And so Mahomed (Navsa) and I, Mahomed has got a 'moerse' (Afrikaans for a heavy) temper. And he's made a lot of people, candidate attorneys, cry over the years. But he's a brilliant person. So we had a great time. We would prepare a case, we both stayed in the East Rand. And we would work till around 3, 4 in the morning. 5, we would go home, just wash, come back, prepare...serve papers, go to court at 2 in the afternoon. So, you know, you could...you can go on adrenalin for 3, 4, 5 days.

Certainly sounds like it.

(Laughs) You know, so it's...for me, those days made it worthwhile. You know, we would just work, stop over at a...on the side of the road, buy something, eat in the car...because as you know, during those days you couldn't even go to a hotel. So we got used to looking at different ways to survive, to work, to...and one of the things...oh no! You've got to put this in! Johannesburg office, what kept us all sane is the table tennis. I don't know if anybody's told you?

No, no-one's mentioned this to me.

We collected money and bought a table tennis set. Lunch time, after hours, we played table tennis. And I learned table tennis here. There was no quarter given. Even when you were like...Geoff (Budlender)...we had epics, it was like a Bjorn Borg and McEnroe match between Mahomed (Navsa) and Geoff Budlender. (Laughter) Friday afternoons they would be playing after work and then I had to go and catch a taxi, because I didn't have a car. Mahomed (Navsa) didn't have a car and he had to go and catch the train at Park Station. So we would be running to the station. (Laughs) So we had real fun! So there was real fun, there was real camaraderie, and people we had a common pact, and we enjoyed what we did.

That's wonderful. Thank you very, very much Thandi for sharing your memories and for a most enjoyable interview.

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