

**Gerald Bloem****LRC Oral History Project****3<sup>rd</sup> September 2008**

Int This is an interview with Gerald Bloem and it's Wednesday the 3<sup>rd</sup> of September (2008). Gerald, on behalf of SALS Foundation we really want to thank you for taking the time and agreeing to participate in the LRC Oral History Project.

GB You're more than welcome.

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

GB Well, I'm from the Free State, Kroonstad in the Free State where I was born. It's in the middle of the Free State and it's Afrikaner town and Afrikaner territory, so, I grew up in that environment. It's a very hostile environment, you knew...but also very honest; honest in the sense that the Afrikaner told you exactly what he thought of you, and, ja, you...there was no ifs and buts, you knew exactly where you stood with him. I then...at the time, the local school only went to standard six, which is the present grade eight, and that was...that was a school for, so-called, coloured people at that time. And we all then had to troop off to the high school which was situated in Bloemfontein approximately two hours drive from...well, if you thought Kroonstad was bad, I did not like Bloemfontein at all. The result is that I then left Bloemfontein after I finished standard eight, grade ten, and I went to the Eastern Cape in Uitenhage, where I matriculated. That was in 1976. I landed at...I landed at a university by default, I was...I thought all along I wanted to become a teacher and a woodwork teacher at that. So, whilst doing Matric, I knew that I was going to go to a teacher's training college and become a woodwork teacher. But, my class teacher had other ideas for me, and she filled in my university forms, and the next thing I was accepted at university, and that's how I became a graduate.

Int That's fantastic.

GB I graduated as a...my Honours were...well, not Honours, my main subjects were History and Philosophy, so I...after my BA degree, I also did a teachers' diploma and I went into teaching for one year. So, part of my early goals...my early goal was...came to fruition and...yes. It was the year whilst I was teaching in Kroonstad that...well, many things happened and...that made me ultimately become a lawyer. I think the turning point was whilst I was teaching in Kroonstad, my brother had a shop, he was at the same time a political activist, he...and the result was that there were quite a number of other political activists milling around his shop. And I remember this one guy, he was a very jovial character, and there was a march in one section of Kroonstad and he attended that march, and he came back after the march and he was particularly quiet, and after some time, we asked him what was happening and he would not talk to us. And he ultimately told us what had happened. He attended the march...he attended the march and the police got hold of him and they

sjambokked him, and that was the first time that I saw what a sjambok could do to the human flesh.

Int This was 1980?

GB This was 1982. Pieces of flesh was...were just ripped out by the sjambok. And there I was, I was now the only graduate in my community, this guy looked up to me, I could not send him to the hospital because the cops were waiting at the hospital, I couldn't send him to private medical practitioners, some of them were in cahoots with the police. And I simply just did not know what to do, I felt so helpless. And it was at that stage that I decided to go back to university to qualify as a lawyer, and I decided then, with my Afrikaans background, to go to an English-speaking university. And I decided against Wits because Wits was two hours drive from Kroonstad and I would have been home every weekend, and I decided to come back to the Eastern Cape and I studied at Rhodes. And after my studies I did my Articles, to become an attorney at one firm; my master is presently a judge in this division. And after that, I was actually unemployed for two months, when I got up and I went to the Legal Resources Centre and I spoke to the then director, Jeremy Pickering, who is now also a judge of this division, and I indicated to him where I was from, what I wanted to do, and there simply was not a vacancy. But, and I will always be indebted to him for this, Jeremy (Pickering) saw my need and he created a vacancy for me. And I started working at the Legal Resources Centre in 1989; I suspect that it was towards the end of March of that year. If you ask me of what I have done in my life to now, and when I was most happiest, I would say, those years. Because there was just a lot of activism in the Eastern Cape, there was a lot of repression, and I could live myself out, my dream became a reality. I believed that I could...not only I believed, I did make a difference. I worked in the rural areas of the Eastern Cape, and ninety percent of the work I did, was police assaults. And with the resources we had at the Legal Resources Centre, the time we could spend preparing on cases, not only mine, but the general office had a good track record, and it was just very nice. There's one particular case I can remember, it was in Aberdeen. Now, Aberdeen is approximately five hours drive from Grahamstown, it's in the middle of nowhere and...*(can I carry on?)*

Int Of course.

GB And I...this mother, two sons and her daughter-in-law were arrested on a Friday afternoon by the police, and they were assaulted, and, as was the norm those days, the police would then lay a charge against...against these people who had been assaulted and...So, I went out and I did the criminal case which the police had made against the mother and her two sons and her daughter-in-law. We managed to get them acquitted. We then also instituted action for malicious arrest and detention and the prosecution and the assault. I speak under correction, but, I don't think there was assault, I'm...I speak under correction, but I'm positive about the arrest, detention and the prosecution. And we had...this is a case where I can remember all of us in the office contributed towards the preparation of that case. I remember Lex Mpati, who is now the President of the Supreme Court of Appeal, was in the office, Clive Plasket, who's now also a judge in this division, was there, and we all worked on the...we all prepared that case. Ultimately it was my case, but, we prepared. And you can

remember...you can imagine how, when the judgment ultimately came and the judgment was against us, how everyone was just disappointed. In any event, we took the matter on appeal, and we were not called upon to argue, the judge asked counsel acting for the police to...or the judges, asked a few questions which he found difficult to explain, so in the end we were...we were successful. Or they were successful. I cannot describe to you the day when I went to Aberdeen to take the...I can still remember it was thirteen thousand five hundred Rand, each, to those very, very, very poor people. When I handed those cheques to them, you should have seen...they did not have to say thank you to me, it was written all over their faces. That, to me, was...was the highlight of my career at the Legal Resources Centre. You asked for one sentence, I gave you a whole book.

Int (Laughs). For someone who says he doesn't talk a lot, this is wonderful, (laughs). Gerald, I actually want to take you right back. Growing up where you did, and from my understanding, the Orange Free State was a particularly difficult place for people of colour to live in?

GB Yes.

Int I wondered whether you could talk a bit about your experiences growing up there, how much contact you might have had with white people...?

GB Not at all, in fact we lived separate lives. Let me say this to you, my father was a contractor, very small scale contractor, painting contractor, so the only time I had...I had contact with white people was vacation time when I would go with him, and that's when I realised we live in completely different worlds, you know? Where I come from, and look, these people, they just have whatever they wanted and more. And so, on one of those holidays, I can remember, my father went...and it was a job he was meant to start, and he went to give a quote for the job, and these people were very impressed with the price, and they said: well, let's go and we'll buy the paint now. And I tell you, I felt so humiliated because my father went with, I think, one or two of the other labourers plus me, and we were sitting in his car, and my father then went with the...this lady, her husband didn't go along, my father went with her to go and buy the paint. And my father was required to sit at the back of her car. I felt so humiliated. That was the one incident which I will never, never forget. The other was (laughs), we were meant to go for...on holiday and I know we were meant to go to Cape Town in December time. So, it's last minute shopping in Kroonstad. And now, the local OK, it was OK, it wasn't Checkers at the time, was very, very busy. My father was standing outside and I went to go call my mother, or do something with my mother, who was inside the shop. And I walked in, and the next thing here, this big Dutchman comes, and for no reason whatsoever, he just punched me in my tummy, and my father saw that. I thought: no...my father was so angry and I really thought...I was more concerned about our trip to Cape Town, you know, and I thought he was going to land in custody, he was...he was so angry. Once again, I felt very helpless. There was no-one to turn to, you know, if you go to the police you know the charge will disappear. Well, that brings me to another one. Sorry, I'm jumping around...

Int Not at all, not at all.

GB I am a...the year when I did my Teachers Diploma at the University of the Western Cape, now, after the final...final year exams, I drove up with a friend of mine who lived in Bloemfontein. Now, from Cape Town, you'll first get Bloemfontein and then North of Bloemfontein, will be Kroonstad. So, I dropped him off, and I then proceeded on my way to Kroonstad, now I'm alone, and no company, and I pulled off in a place called Theunissen, and I went into the café near the garage to buy myself a cool drink, or...I can't remember what it was. And when I entered, there were two or three white people in the shop, he assisted them, and he just carried on doing his other work. And I then stood there and...I immediately real...at first I did not realise it. And then another white person came in, and he came...this shopkeeper then came and assisted this guy. Then I said...and he...and the customer left. Then I said to the guy: why don't you help me? And he told me...you're not...he wasn't there to help black people. Then I asked him what was the difference between their money and me. I shouldn't have asked that question. He came from behind the counter, and he grabbed me, and I was still talking, and he grabbed me in from my clothes. And I was still talking and the next thing, I bit my tongue, because I was talking and he, you know, he almost lifted me up like that, and I bit my tongue. I was angry. I then went to the local police station, and for one reason or the other, I was helped by white people who were extremely, extremely grateful that I came to them to lay a charge against...it looked like they had their knives out for this shopkeeper. I then went...laid the charge. I waited very long for the doctor to examine me and examine my tongue, and all that. The doctor didn't come, these guys, very helpful police officers, gave me a medical form and told me to go to Kroonstad, get a doctor to examine me, and...and that is what happened. I then sent the form off to them. Not long thereafter, about two or three weeks thereafter, I get a letter: sorry, the state refuses to prosecute. Now, I then went to the local attorney and...not very helpful, not very helpful, but, he suggested that I write a letter, I thought: you know, you're the lawyer, you should do it on my behalf, and he suggested I write a letter...

Int ...How old were you then?

GB ...I was twenty-two.

Int So you'd been teacher training...?

GB That was the year when I finished my training. Then, I went...I wrote a letter to the Attorney General of the Free State, and there was...there was...he came back to me...well, he did not come back to me, I was...Now, this is now January or February the following year, this incident happened in about end of November, beginning of December. And I'm at school now, and I'm at home one afternoon, after school, then the 'phone goes, it's the prosecutor at Theunissen, and he says: look, you laid a charge against this person, the Attorney General has decided that you...that we must prosecute, and I'm just telling you that I expect you at court tomorrow morning, like the following day. Now, there was obviously delight, but, at the same time, you know, I'm a teacher, I'm meant to be teaching the following day, I wasn't prepared to accept



no for an answer. So, the following day, my father, my brother and I then went through. You know, I was the complainant in that court, now we're sitting in a court where the magistrate is white, the prosecutor is white, the accused is white, the accused's lawyer is white, and here you sit, in the courtroom, you know, South Africa, it's divided into half. The gallery...half is white and half is black, and the black half is full of people, and there are one or two, maybe this guy's, the accused's wife and family, those were the only whites in the courtroom. I tell you, although I was the complainant, I felt like the accused. Not...not at the hands of this guy's attorney, he did...in fact, he did very little. The prosecutor treated me like I was the accused, the magistrate, in his judgment, he attacked me, left, right and centre, and...but, in the end, he found the guy guilty of common assault. But, just that experience of...and that was simply because I was black, and because I wrote a letter to the Attorney General. Anything else?

Int ...What makes me very curious, listening to your actually quite horrendous experiences, is...you said that there were several factors that led you to become a lawyer, and I can see those sort of influences, but, did you think that the law in South Africa, under apartheid, could be used as an instrument of social change?

GB No. I tell you, especially when I was...before, I didn't think of these philosophical things when I decided to go to...to go and study law, I just wanted to make a difference. Like I told you the experience of the guy who was sjambokked, I just refused to be in that situation where, here the guy's looking up to me...I'm the only one with some kind of education, and he's looking up to me for assistance, and I could not, I felt helpless. And, I thought: let me go to university, qualify as a lawyer, and then come do criminal work. I just wanted to be in the Criminal Court and help people, because, at the time, I'm talking about '82, '83, South Africa was very vibrant, it was the time...'83, I remember, the establishment of the UDF, and UDF was established because there was activism happening. So, very vibrant, ja. So, I decided to go do law, but then I studied law, and in the study of law I realised judges were not prepared to make a difference in South Africa. There were cases where they were...basically the facts invited them to make a difference, it was very easy for them to say: we are not here to make law, we're here to interpret law, you know, that kind of thing, I just found it extremely difficult to accept. My biggest disappointment with the judiciary, as in the judges, came during the State of Emergency, and the very many judgments that came out where they could very easily have made a difference, and they decided not to do that. So, to answer your question, no, my entry into the law was an active one...not a philosophical one, it was more to make a difference. I...in fact, I did not think of all these philosophical things, no.

Int I'm also wondering, at the time that you became a law student around '83, '84, the Legal Resources Centres had already started, and there'd been these key test cases, Rikhoto, Komani, Mthiya, did you, as a law student, read those law reports...?

GB ...yes, absolutely.

Int ...and what was your sense of the Legal Resources Centre?

GB That is what I wanted to do. You know, there's another dimension to it, and this is, I've always questioned why...For instance the Legal Resources Centre, whether you like it or not, it's part of my history, I mean, nine years of my life, I don't want to say I gave to the LRC, the LRC gave to me, rather. But the Legal Resources Centre is the brainchild of white people, they meant very well and I will respect...but, the question is, why did we not think about that? Why could people who were living in exile, not make money available for a setup like that? So, yes, those cases, the Rikhotso (Rikhoto), in fact, we studied those cases in...I'm not sure whether it was Constitutional Law, or, ja. And, you know, as a law student, you always look at, who argued this case and, ja, the question was, where were the...where were the black lawyers to argue those cases. So, that was another reason why I wanted to be there, I wanted to make a difference, as a black lawyer. But not to take anything away from people like Arthur Chaskalson, Geoff Budlender, Sydney Kentridge, and all...these are great, great lawyers, I will always respect them for that. I'm just wondering, and I have always wondered where the black lawyers were, to make that kind of difference. I'm not sure whether I have answered your question?

Int Sure, sure. And then I was wondering...you knew about the Legal Resources Centre from quite early on, and then, when you finished at Rhodes, you did a BA LLB?

GB Yes.

Int And then when you finished at Rhodes, your Articles, was that with a commercial law firm?

GB Yes, here in town. We were...Msandi & Co, it was called. My master, he is now a judge, he closed...well, he sold his practice and then he became a judge. I did not want to...well, I wanted to go out and...I wanted to be ready. Well, let me be honest and say, at the time, the Legal Resources Centre was not a...I did not want to serve my Articles at the Legal Resources Centre. I wanted to do criminal work, because I thought, that, was what...why I went to study law in the first place, and I wanted to do it at a...And also you prepare yourself better if you do it at an outside firm, whereas if you do it with the Legal Resources Centre, the type of work the LRC does is very narrow, you know, and you don't get exposed to, you know, criminal work, MVA, and all these things. So, I was scared to go to the Legal Resources Centre, for that reason. But, as I say, after my two years of Articles I was unemployed, but the LRC was opened here, and I went to Jeremy (Pickering) and he opened the door for me.

Int I'm also wondering, you said that you didn't want to...do Articles in the Legal Resources Centre because it was restrictive, but your decision to finally go to the Legal Resources Centre, did you really want to do the kind of work that the Legal Resources Centre was doing?

GB Absolutely, because at the time, there was a lot of activism, political activism, you know, people were in detention, people were...people were assaulted, and I come from...I did a lot of criminal work and I enjoyed myself in that, whilst I was doing my Articles. And here the Legal Resources Centre is, I can still do my criminal work for

people who were involved...who were charged with criminal activities, but then, I could also do what I always wanted to do, and that was to take on the police, and that was the platform, and I...the scope was there for me. So, I was happiest at the LRC, because now, I could do what I always wanted to do. And there was no...the question of money wasn't a...you know...my first...the first case when a client of mine was sentenced to prison, was a case where I thought we had actually won the case. And I went...this is whilst I was serving my Articles, and I went to my principal and I told him what I thought of the injustices in that case. Unfortunately, the family of the accused could not afford to bring forward the...and I just could not accept that, I...so, that guy, he was, I believe, he was given thirty days or three months, but, the figure three features in my mind, I can't remember if it's three months or thirty days. But, I know he went to prison and he should never have gone to prison. We did...that restriction was not there with the Legal Resources Centre. I told you about the case which...that we lost in the...in Aberdeen, when we came here we won it. Those people obviously did not have money, the Legal Resources Centre was prepared to put up the security and (Lex) Mpati and I...

Int Lex Mpati?

GB Lex (Mpati)...have, I think, a hundred percent record with appeals coming from Magistrates Courts. The field out there was hostile. You go into court with a black client, you are black, the magistrate is white, the opponent is white. You start with...what...fifteen love, you start with maybe fifteen-fifteen, you know, that kind of score, down already. So, but, all those cases which we lost and that we took on appeal, Lex (Mpati) and I have a hundred percent record of those cases, ja.

Int I'm also wondering, when you entered the Legal Resources Centre, it was ..was it just Jeremy (Pickering) and then you? How many people were in the office?

GB I...When I joined the office, there was one attorney, and Jeremy was the advocate, the attorney was David Pitman. David Pitman was there but he left about two months after I joined, he...he...I think he went to Jo'burg, and after Jo'burg he went to the States. I do not know where he is now, ja. And then, I was admitted...I joined the Legal Resources Centre...I think it was March or April 1989, but I was only admitted as an attorney...I'd already finished my Articles, but I was admitted only...only the year thereafter, in March of 1990. Now, we were effectively operating without an attorney, but, the attorneys next door were prepared to sign processes on our behalf...

Int Nettletons?

GB Nettletons, ya, ya.

Int Ok. And then, initially you mentioned that a lot of the cases were about police assaults, etc, at what point did the nature of cases start changing and the focus area change?

- GB I think it was...I can't think inaudible. Let me tell you what happened to me. I joined the Bar...I took sabbatical leave, and I came here during my sabbat...my period of sabbatical leave, and I did my pupillage. At the time I think it was four months or so. And then I went back to the Legal Resources Centre, with...in fact, from one July in '96, and I practised there as an advocate. Now, at the time, I did not do...I did not do...you're asking about police cases...I'm not sure when...I think, I speak under correction, but, I think '93, '94, but, what I did thereafter...no, as an attorney, ninety percent of my work was against the police, you know, assaults and detention cases...no, not '93, it's '95 that I scaled down because I knew I was going to do pupillage and become an advocate, ja.
- Int Ok. I'm wondering at what point the social pensions became a focus area for the Grahamstown office?
- GB I was still there. It started, I think, '92, '93, maybe before that, maybe after...no, I don't think it's after that, I think it's about '92, '93. And Clive (Plasket) started that, he was very active in that...in that regard, ja. I did not do that kind of work.
- Int What was...from the National Office at the time, etc, would there have been resistance to that kind of work?
- GB No, I don't think there was, no.
- Int No. Ok.
- GB Speaking for myself, I had a problem with that work.
- Int Right. Ok.
- GB I had a problem with that kind of work because I thought...I thought that, instead of assisting our new democracy, we were exposing the new democracy and it came at a price, for the government. And I think it was deliberate, quite frankly, I think it was. And this is why the province is paying, till now, a high price, in legal costs. I was in the Bisho High Court last week and there were something like twenty-six matters on the roll, and about twenty-two of them were against Social Development. Now, if it was done, and the department admitted to the problem, of course, that was what the LRC was all about, but to embarrass the government, I did not, I did not, I did not go along with that thinking.
- Int I'm just curious, given that the LRC's mandate...and Arthur (Chaskalson) said this at his farewell address...was that it would...the LRC, as a Public Interest Law organisation had a mandate to take cases against any government, and even if it was an ANC government, it didn't matter, because it was for the people, and it needed to do that. So, Arthur (Chaskalson) warned against in any way being reluctant to take on

government, even if it was...because as you know, the LRC had a strong history of having the same kind of...

GB Yes...as the present government.

Int Yes, exactly.

GB I don't have a problem with that attitude, if the philosophy is a good one, the principle is a good one, don't have a problem, I do work against the Department of Social Development, I do work for them. When I do work against the Department, I don't do it to spite them, I do it because the client...I'm looking at the client, and I do not want to run them down, but, in the process, I think there's always a lesson to be learnt by me, and I believe I teach other people a lesson, if I can. But to do it solely to humiliate the government, and to make government pay these huge sums of money, I can never support that. So...

Int Why do you think, I'm just curious and I'm trying to understand this, when the LRC took these cases on in '92, '93, why were you reluctant...why did you think that it was against...why did you think it would be exposing government, when people came to the LRC...?

GB No, no, no, you must remember, I was there.

Int Yes.

GB I was there when the litigation was started. The idea was, if you don't listen and if you don't do...I'm talking to the government...don't do things the way we do, what we are going to do, we're going to do these cases and we're going to farm them out to firms of attorneys, so that they...at the time you must remember the Legal Resources Centre, we were not entitled to costs...we'll farm out these cases to firms in private practice, and you will then pay their costs. That's exactly what happened. So, you know, if the case was done, and the case was done because it's wrong for government to have taken away peoples' disability grants, etc, etc, I don't have a problem, it's wrong, government must be taught a lesson, if it ends there, I don't have a problem. But, if it's done for a particular purpose and the motive is not just the case, I do have a problem with it, I really do have a problem with it.

Int What was the reason behind farming it out to different firms?

GB I do not believe that I can say it was, in fact, farmed out...well, Sarah Sephton was at inaudible, and I think a case or two was farmed out to her. But I don't think it was...it was actively and intentionally farmed out to...but that threat was there. And you don't have to be a rocket scientist to see where money is. A firm of...I mean, an attorney in private practice sees the gap, he's bound to take it, and I think that is what happened.

I've always had a problem with this social development, not the cases themselves, but the motive behind them. Ja.

Int And do you think that the LRC, as a whole, had a motive to go against government, or do you think the LRC.....what was your sense of what was going on?

GB I think there were a few individuals who did not like the changing scenario on the political scene. I...well, certainly not the way it turned out. I do have problems with the way the government is behaving lately, I do have serious problems with it. But, I'm a lawyer, I'm not a politician, and I'm not going to use my work...and I do not think that it was right to use the LRC for that purpose. Um, I do not think this is...the purpose of our discussion, I just get angry when I think about this.

Int I think it's very important because it also speaks to the initial reluctance by certain people for this kind of work, but, subsequently with the class action, Mark Euijen took it over when Clive (Plasket) left, and it has been extremely successful and people whose pensions were...I've interviewed clients, they've had their pensions or grant that was stopped abruptly, and they've had back payment through the work the LRC has done. How do you feel about that?

GB I was involved in that case, I acted for the government in that case. You obviously do not want to know the politics behind...behind that case. It's a case which should never have gone to court in the first place. But, we had some politicians who did not under...think the way we did and we were told to go to court.

Int You mean within the government?

GB Ja, ja.

Int Right.

GB But I do not...it's not...it's not the MEC alone who took that decision, but, it's just a case that should never have gone to court. The law was against us, well, it was new law, it was new law. But, we looked at it and we knew what was coming, the facts, the LRC just did its homework, and they put facts before the court that we just could never refute. So, it's just a case we should never have opposed.

Int Was there any...given your strong background at the LRC and knowing how it works, was there room for you to then negotiate with the LRC rather than take the matter to court? Would you have preferred that? Would there have been room for you to do that?

GB In fact, the case was postponed on a number of occasions precisely for that. But, you must remember, it's also a question of having put in so much resources into the case,



and you're in a strong position, that's now the LRC, in a strong position, you're not going to allow the occasion to escape you, and they wanted a judgment and...ja.

Int How do you think that case has impacted on the province in particular?

GB Well, I was in this court, and (Johan) Froneman gave judgment against us, and then the parties asked for leave to appeal, and (Johan) Froneman said: it's an important case, I do not think that the judges on appeal will overturn me, but, because it's such an important case, I'll grant. And it was at that stage that I just could not go on with this, you know, I...I could...I had difficulties going to court in the first place, and to go on appeal...and they were given a good inaudible. You know, we spoke earlier about the question of politics, and all that, I do believe that judges must speak out when the politicians do not do what they're meant to be doing. But, when judges start talking about the Eastern Cape Government is at war with its own people, those are strong statements, you know?

Int And who's made those statements?

GB The Appeal Court, in that judgment, I'm not sure what the judgment is.

Int And does that include people Mahomed Navsa and Edwin Cameron?

GB No...It was (Edwin) Cameron, I think, who made that...who made that statement. I do have problems with those things, you know? I'm not...if government needs to be taught a lesson, please do teach government a lesson, but do it the proper way. Don't...don't...because the next time government is going to turn around and criticise you, you know, from a political angle, you're not going to like it. So, judges should do what they're trained to do, you know, consider the facts, apply the law to the facts, don't get into politics, you know? And I'm afraid this is what's happening, in the Eastern Cape I get that all the time. We don't look at the case, we look at things beyond the case, and I do have a problem with that, I really do have a problem. And what makes it, for me...Like this morning, I was in court, a judge who was...when he was practising, he was acting for the police all the time. And I appeared before him, I'm acting for the police, you know, he was so civil, he looked at the case, and this and this, and we got out...we were ordered to pay some money to the plaintiff, we ordered...we...I'm sure the police would pay that. End of the story. No...no criticism, unwarranted criticism, if the police must be criticised, please do, but not the unwarranted...We're here to talk about the LRC, not about my frustration.

Int No...I think it's important. I'm just wondering though, Gerald, in terms of the fact that, even with the social pensions cases, social welfare cases, there's...from my understanding from other people, is that the government hasn't really complied with a lot of those judgments that the LRC won quite early on, what's your sense of that, in terms of rule of law?

GB The problem is there's no stability within...within the office of the premier, the MEC or the head of department. What's happening is, the LRC would institute an action on behalf of a particular client. The MEC would be a respondent; the HOD would be the other respondent. Those two people do not...that case does not get to their attention. So lawyers who go out and take all sorts of funny points, and all that, on behalf of the ECP, the court would dismiss all those funny points and grant relief to the person whose disability grant was unlawfully taken away from him. Nothing could be done about that decision, or, the decision by the court. There's a breakdown between the office of the State Attorney and the department and within the department, everything is just kept away from the HOD and from the MEC. The next thing, the poor client is frustrated, the client goes to court for contempt. It's only then, that the matter is brought to the attention of the MEC. Now, last year, I appeared before (Johan) Froneman on a contempt of court thing, and I was brought in last minute, and I went to the MEC. Now, the case was...someone else did the case on behalf of the MEC, the MEC wasn't happy, for one reason or the other I was brought on board. So, I went to consult with the MEC and I said that: it's contempt of court, there's the order, why have you not complied? She said: Gerald, you know, that day when the matter served in court, when this advocate made representations on my behalf, the evening of that...that evening, she's 'phoned by a journalist who asked her: look, this is what the judge indicated, what do you say about it? She says: what...what are you talking about? She did not know about the case. So, we put all of that before (Johan) Froneman, we explained in the form of an affidavit, and Froneman was appreciative of her efforts, because she said in that affidavit she had...when this thing happened she told her legal advisor: bring me all the cases which had been taken against...orders which had been taken against me and my predecessors, and I want to know the status of each one and what...how far we have complied with each one. So, the political will is there. The...that's the inaudible, but, she was there for, I think, three, two or three years, she was taken out. Now, you must remember, she now knows or she has an idea of what's happening in the department. The next thing, someone else comes in, and he must start from fresh...from scratch again, so that is what is happening. But, the person who is there now, is, I believe, even better than the previous one. The one who called for all those orders, the one who is...she's subsequently been replaced by someone else, and this guy is, I believe, even better. I've consulted with him, he's impressed me a lot. So, to answer your question, I do not believe, and it's not a fault...it's not their fault, but I do not believe the judges know the problems there are within departments. There is political will to comply, and these guys know they can't play around with court orders, they take court orders seriously. The problem is, the orders are not brought to their attention. I have found that out with two or three MECs, I told you about the one we have consulted with, and she says: the first time I came to hear of this order was when a journalist 'phoned.

Int I'm wondering also, Gerald, I'm curious how you have made the transition from doing Public Interest Law at the LRC, to really then acting for the state against Public Interest Law issues?

GB As an advocate, I do both.

Int Yes and in doing both...?

GB I always use the story of, two or three years ago I appeared in the Motion Court; I had two briefs, amongst the others. Two particular ones. One, I was briefed to act on behalf of the MEC of education, and the brief was to keep him out of prison, because there was an application for contempt of court. Guess what the other brief was about? The other brief was to act against the MEC of Education, the very same person, and the brief was to get him in prison for...for...So, if you ask me now, I would say in...my practice is about...is about thirty, maybe twenty, eighty, seventy, seventy to eighty percent work for the state, and about twenty, thirty percent against the state. It was extremely, extremely difficult in the beginning to act for the police. Other departments, I could...there was no problem, it's a brief, you know, you look at the facts and you apply the law, if you think the law should be applied. But, just what brought me to law...

Int ...sure, that's why I asked...

GB ... I must now go and defend...Today's matter...oh, it's still in my briefcase, I'm going to give you...I'll tell you, I am...I am briefed...I'll tell you now...I am briefed to represent the police in this matter, this is November 2006, right? This guy arrested this woman...the policeman arrested this woman without a warrant, and, I'll look at the case, without consulting with him, look at the case and I do the plea, just basically denying everything, and I write a letter with the plea and I write a letter to the State and I say: you must settle, you don't have a case. It was November 2006. Then, the police then asked me to do a proper...a proper opinion which I gave to them one March 2007, and I suggested...because this woman was arrested for seven hours, and I suggested, at the time, that they must pay the woman twenty thousand Rand, plus her costs. We did not get any instructions, till today. Now, that's the kind...I know that, because that's how I was treated, you know, in the past. I was...I told my attorney I wasn't prepared to cross-examine in this matter, because what...I was not going...I was not prepared to make a fool of myself. And we went and we just put certain things before the judge, and the judge ordered thirty thousand Rand. Now, there's a difference of ten thousand Rand. If they had taken my advice again...

Int ...early on?

GB ...then they would have 'whatsisnamed' today's costs, and the costs between the time that I told them to settle, and now, all those costs gone. So, it's very frustrating, absolutely, to work for the state is very, very frustrating. The...the positive is, payment is guaranteed, you might not get it as soon as you want it, but, you know it will come, and you have some leeway, ja, ja. I still find it difficult to represent the police, but, I'm not going to say no. In any event it's unethical to say no if you are...if you can make yourself available.

Int I'm also wondering, Gerald, when you were at the LRC, when Jeremy (Pickering) left, Clive (Plasket) came in, and then after Clive (Plasket), it was Mark Euijen, and after Mark Euijen it was Johan Roos,, ...you left around the time before...?

- GB Mark (Euijen) and I overlapped for about a month.
- Int So, you effectively worked with Jeremy (Pickering) and you worked with Clive Plasket?
- GB Ja.
- Int And in that time, with these two different Regional Directors, what were some of the organisational tensions in the office, because every office has had its own set of organisational tensions?
- GB I was hoping you would not ask me...I'm...I would rather not talk about that, because that's the ugly part of the Legal Resources Centre. I...and it's a small part of my stay at the Legal Resources Centre and it's...it's...I would rather not...it's...it became very ugly, and I don't want to talk about that, if you don't mind me not talking about it, it's...it's...it's...I get very emotional when I talk about that, I would not want to go through that again.
- Int Fair enough. I'm wondering, besides that, you were there at the time which was very crucial in the history of the organisation, because it was around 1994, the country was undergoing transition, and it seemed to me that the organisation itself was undergoing some kinds of transitions, transformations; do you think that...and I'm not talking about the office itself, I'm talking more generally, the LRC...do you think it handled transformation well, or not, what are some of your criticisms?
- GB I do not think so, you know. I do not believe...this is why people like me, for instance...at one...I left because I became redundant within the Legal Resources Centre, there was not work for me, quite frankly.
- Int In what way?
- GB Well, I was sitting there and...let's not get there...this is...we're touching on the ugly side of the work, and I would...You know Geoff (Budlender) came down and...this is...Bongani (Majola) was the Director...
- Int National Director.
- GB ...the National Director, and we had...you're aware of the problems, maybe not the exact detail of the problems we had in the Grahamstown office, but, Geoff (Budlender) came down. Before that, I think Mahomed Navsa also came down. And I can remember in his...when he shared his experiences with us...

- Int ...Mahomed Navsa you mean?
- GB ...Mohammed (Navsa). I then realised I was not the only one who was on the re...I want to open up to you, but...I know it's difficult to talk in riddles, I don't want to do that, but I also don't want to mention names, I don't want to become personal. We've had problems...I was happy to leave the LRC, from a time that...When it became...at the beginning...on Friday afternoons I was sad...I was sad, because it meant Saturdays and Sundays I would not be in that environment. And come Sunday afternoons, I'm happy because the following day was going to be...It was the opposite, towards the end of my stay, I hated every minute of it. And, thanks to Bongani (Majola), I went out with some dignity still in place and intact, and I just...I hope I will...I will be able to forget, one day, what happened at the Legal Resources Centre. I suppose I felt so strongly about it because this was a place where I could be myself, I could live out my dreams and the next thing, things just changed, and I...it's something I don't want to talk about. I think I've given you more than enough.
- Int Sure. Well, more generally about transformation, what was your experience, more generally, across...?
- GB ...I don't think the Legal Resources Centre was prepared for it. I...we were talking about these things, but, no-one really knew what was coming or prepared us for the 'new' South Africa. You know, it was...it was one thing to get out in...What happened here, in the office, did not affect my work out there. I was...I was happiest when I was in the rural areas, appearing in court, and making a difference to those people out in the...out in the rural area. And then the 'new' South Africa came...we were all...I remember most of us in the office were busy with, either voter education...I ran a polling station forty kilometres out of town. When all that excitement was over, and when we realised things have changed, we did not know what to do, quite frankly, it was...it was a completely, completely different LRC. Transformation, I don't think was well handled.
- Int I'm also wondering, you say that you left, you were sad when you left, but you left with dignity, you'd seemed to have had an intention of coming to the Bar, anyway, and I'm wondering whether that would have made a difference to your leaving the LRC?
- GB Let me tell you, it was always...as a black person, till today, you know, the economy's still in white hands in South Africa, and that translates right through to...well, we also deal with economy, you know...the...
- Int Sure.
- GB Um, so, the fact that you're an advocate does not mean you're going to get work, you must struggle, and it's ten times worse if you're a black person. I still don't get work from attorneys in Grahamstown. It does not matter, and it doesn't...it bothers me...it bothers me, not for myself, but, if I want to go to university...

*(Give me half a second: interruption and then interview resumes).*

I'm just...it concerns me that I cannot go to Rhodes University, or Fort Hare University, and sell the Grahamstown Bar. Because if black...if I manage to sell the Bar to a black student and he or she were to come here and pass the exams, and the year thereafter there's no work coming in, what am I going to say to that person? Because it's my experience that...I've been through that. You know, this Bar has a history of...Lex (Mpati) was here, before he went to the LRC he was here, and he came to the LRC because he did not get support. There's a colleague of mine, who's now practising in Jo'burg, he was here, he did not make it. Before that there was another person inaudible, he didn't make it. So, there was always...not from day one, but, when the desire came to join the Bar, the question was, where? And I thought: man, 'new' South Africa, people will be compelled to brief black people. And I decided against that. And let me tell you why I said...why I will always be indebted to Bongani (Majola). I went to him and I said to him: I don't get work at the Legal Resources Centre, I'm now...I'm redundant. And he actually listened to what I said, and he organised a severance package for me, and that saw me through the first month or two of my practice, and for that, I will always be indebted to Bongani (Majola). You know, then...racism also came in. I said that to Bongani (Majola), and I said to him, you know...Bongani (Majola) was busy in a case, one of these big Constitutional Court cases, and it was said of him that his contribution towards the heads of argument was to sign them. It hurt me, I felt very angry. The very same people who were meant to be working with him, could afford to say that.

Int Within the LRC?

GB Within the LRC. And I went to him and I said: look, I can't vouch for what I've heard but this is...But he says: Gerald, I wasn't aware, but I will investigate. He came back to me and he found out that it was true. Now, you know, that was the kind of environment that was beginning to take place in the Legal Resources Centre, and it was simply not the same Legal Resources Centre that I joined.

Int When you joined under Jeremy (Pickering), what were the conditions then?

GB 'Here', man. First of all, he is just a lovable person, Jeremy (Pickering) he's a...secondly, he's a very good lawyer, and he's a person's person, he's actually very shy, but those around him...once he opens up he is a very lovable person. And he was a good director...I... Clive (Plasket) was also a good director and Clive (Plasket), obviously, is a good lawyer, you can't take that away from him. Those are the two directors I worked under. Ja. I just enjoyed every minute of the time that I spent with Jeremy (Pickering), I...he taught me so much, because he's just a living library, you know, a moving library. I remember David Pitman and I prepared a housing case, it was out in Stutterheim. And we were looking at this particular point, the whole afternoon, and around about seven o'clock, David (Pitman) and I decided, no, let's pick up the 'phone. And we 'phone Jeremy and we said: this is the problem in this aspect of this case. Jeremy said: man, look at a case, I think it is reported on this law report, on such and such a page. And we went to that law report and there the answer was, you know? What more do you want, you know, that kind of person he was...



Int ...

GB ...and he hasn't changed, he's still the same. The other day I was in court, he was with another judge and they gave judgment against me and he "klapped" me, my client with punitive cost order. But, I know it wasn't done with any malice, it was done because my client deserved to be "klapped", or Jeremy (Pickering) thought so, I don't agree with him, but I know that he did not...there was no ill intent.

Int Right. I'm wondering, Gerald, besides the Regional Directors, you also...there was also staff that had worked there for a long time, Nomfundo Somandi, there's Rufus Poswa, admin staff, etc, I'm wondering what your relationship was with working with them, especially as within the Legal Resources Centre, there's a lot of reliance on paralegals, people screening people who'd come into the office?

GB Nomfundo (Somandi) and I hailed from the same office, she was at the firm where I did my Articles, so she was...and she went to the LRC before me. Well, obviously there was a good working relationship between the two of us. Sadly, man...and also with Rufus (Poswa)...sadly, when things were not going well, they came into it. And they were used, and I just did not like that, I did not like that. I do have a good working relationship with both of them still, I don't have a problem with any two of them. And there was another colleague of mine, Jannie Coltman, you heard of him?

Int I think he worked at the office, I haven't interviewed him.

GB Ja, he was...he's now working for the DPP.

Int He's in Pretoria?

GB Ja. Things started going wrongly with him. And Jannie (Coltman) and I were close and it then rubbed off on me, ja, so...

Int What do you mean 'it then rubbed off' on you?

GB Well, I was...I then...I don't want to talk about victimise and victim, but, I also then became involved in this whole fighting, and...You ask me today what was the start or the cause of this thing, I would not be able to tell you, it was just...things just deteriorated, and so quickly. And, you know, I...from the one day, being this great office, to, like, overnight, the office becoming a place where I don't want to be, you know? It was that kind of...kind of situation.

Int I'm also wondering it's curious because it seems to me the tensions you've experienced and the crises, really happened in the office at a time when there was also a lot of tensions in the outside society about what South Africa was going to be like?

- GB I did not want to say that to you, but I think it came...it came in, let's be very frank, I'm sure you would have picked up...My friend, I do not believe, is a member of the ANC, I'm not a card paying member of the ANC, but if you ask me who I will vote tomorrow, with all the problems in the ANC, I will vote ANC. Then, there was a DP sentiment coming into it. My friend, Jannie (Coltman), I think he's more to the left, I think he's Black Consciousness, I think. And I think the tensions outside, met in the office and they clashed. I...that's one theory, because I just said to you now, I don't know, if you ask me now, I don't know. But, it was very apparent that...well, that's my view. The office became a DP, well, almost a mouthpiece for the DP. Some of these social development cases were done, I think, some Black Sash members were very involved in these cases, and I'm sure there might have been applicants also, so, there was that tension, I think I must concede that that tension was there.
- Int I'm also wondering, Gerald, in terms of you being at the Bar for so long, have you been briefed by the LRC at all?
- GB My first brief was from the LRC. It was a case that Lex (Mpati) did against the police, Lex left...I left the LRC and Pushpa Naidu who was here, 'phoned me up, and the acting national director at the time, I think, was Odette Geldenhuys...now, Odette and I could not see eye to eye. And she 'phoned me and she said: I understand you've been given this, let's talk about fees. And my fees came to just about next to nothing. But, I was grateful that I, at least, had something, that...ja. Except for that, nothing.
- Int Really!
- GB Nothing.
- Int What do you think is the reason for that?
- GB No, I don't think...I don't think there's malice, I don't think...I don't think it's a...I think it is...quite frankly, I don't think the LRC has a lot of work.
- Int You mean the Grahamstown office?
- GB The Grahamstown office. I don't think it has...it has...I've done work against them, where they have brought in counsel from outside, you know, guys from the National Office. Geoff (Budlender)...they brought in Geoff (Budlender)...ja.
- Int I'm also wondering, currently, there's a lot of attacks on the judiciary, Arthur Chaskalson and George Bizos have come out and emphasized the independence of the judiciary and also spoken about the use of intemperate language by certain people. And then Constitutional Court judges are called counter revolutionaries, what's your sense, being a member of the Bar, what are your concerns about Public Interest Law

organisations, in particular the LRC, and how does it function within a situation where there are these sort of crises?

GB Ja. I was very disappointed that the LRC did not, at the time when everyone else published a statement denouncing all these attacks on the judiciary. I...I believe that, I've told you the difficulties I have with the judiciary, some members of the judiciary, but, I believe in an independent judiciary, that's the only way we, as a country, as a democracy, can survive. Judges should be allowed scope to do their work, and to do their work free of any interference by anyone. And if people want to criticise judges, let them criticise judges, but on true facts. But, don't attack the judiciary as an establishment, and that establishment, the judiciary, is hell-bent on destroying the other two, well, more particularly, the legislature or the political side of it...ja. I...I supported most of the statements that denounced all these unwarranted attacks on the judiciary, I really believe they were unwarranted, ya. Don't ask me about the John Hlophe thing, I still don't know what the true facts are, and until I know, then will I be able to make a statement on that.

Int In terms of Public Interest Law organisations and the LRC, do you think that this would affect the LRC in the long term...say, short to long term?

GB Let me be honest with you, I have...my last few years within the LRC, made me...made the LRC not very attractive to me. I adopt the attitude lately, I was there, I've done my work, and I don't care what happens at the LRC now. Harsh, but that's me, and I'm just being very, very honest. I was very happy at the LRC in one time of my...well, most of the time, it was about the last year or two that...But, unfortunately that year or two, make them two years, overshadowed all the good that was at the LRC, and I adopt the attitude that I don't care what happens at the LRC.

Int What about the people though, the...poor people who come to the LRC, what about them? Because it seems to me that that's what Public Interest Law is about, really?

GB Let me ask you, well, is there...is work being done by the LRC?

Int I'm asking...?

GB You know, I have done work against the LRC, earlier this year.

Int What case was that, Gerald?

GB Against Social Development.

Int Oh right, ok.

GB Both of them settled, we did not go to court. But, it appears to me that's the only thing they do, you know, and there are many other challenges. I don't want to be critical about the LRC, but, I come from...I have a certain background, and I look things through...I'm influenced by my background...it's the recent background. I'm influenced by that, so...

Int When you say you have a certain background?

GB My...my background...the background of...well, the last two years of my stay at the LRC.

Int So, it influences...?

GB Influences me.

Int Right, ok, fair enough.

GB Ja, and...to the extent that I do not know what is happening at the LRC, but, I get the impression that not a lot of work goes on. I get the impression that what is happening at the LRC now, is about twenty, maybe thirty percent of the work that we put out when I was at the LRC. And there's a lot of work, we know that, I can see that, I do work for government and I can see there's a lot of work to do...to be done. Why that work is not done, I don't know. Ja.

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

GB No, I think...I think I have told you...I wish I could feel...I don't want to feel the way...you know, I don't talk about the LRC all the time and I appreciate occasions like these, where I'm bound to talk about the LRC. I've had great years, and you must believe me when I say great years, I've met good lawyers when I was with the LRC. The last two years of my stay at the LRC were not good years, and unfortunately, those two years influenced, retrospectively, my...my...how I see the LRC. It should not be like that, but, I'm just very honest and say how I feel. I would never want to go through those two years again. No.

Int I'm wondering whether you could end the interview if you could share a particular memory, whether it's of Bongani (Majola), or a client or whether it was working with Jeremy (Pickering), something that you feel embodies the positive aspects of working for the LRC?

GB Let me share this with you. My highlight with the LRC was the case that I lost in Aberdeen, that we won on appeal, that, to me, was a highlight. So, on a lighter note,

Jeremy's (Pickering) about to leave and we must go to the judiciary, and I, during all of, you know, the bad times, I still had people...I had a friend, well, not a friend, but, I knew him, he was in the Police Force. So, I called him up and I say: Andrew, please help me, let's pull this one on Jeremy (Pickering). So, Jeremy (Pickering), because of the nature of the work, we travelled a lot, so, I gave Andrew, Jeremy's (Pickering) car registration number, and all that and all, and he came with a warrant of arrest, obviously fake, a warrant of arrest, because Jeremy (Pickering) had a traffic violation in one of these places, and he just said: look, unfortunately, I have to arrest you on a warrant. I'll tell you what, when we ultimately said to Jeremy (Pickering) it was a joke, you should have seen the delight on his face. (*Laughter*).

Int Poor thing...

GB And then he turned it around and he said: you know, because he was actually walking with this guy, and he said: as I'm walking, I'm thinking about the quantum of damages, how much I'm going to sue the police. (*Laughter*). But, you know, that was the environment in which we could operate. Now, imagine, I could do that to my boss, you know? I just loved every minute working with Jeremy (Pickering), those were good, good, good years. Ja, can't think of anyone else.

Int Gerald, I want to particularly thank you for taking the time, in light of your absolutely hectic schedule, and realising that you came back to Grahamstown for this interview, thank you so much.

GB You're more than welcome, and thank you...and thank you for allowing me to open up, I usually don't do this, this is not...the last two years of my stay at the LRC, it's not something I'm very proud of, it's something...but, it's something I cannot forget. And just talking about it make me...it makes me angry but also good that I can talk about it, and thank you for allowing me that opportunity.

Int Thank you.

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## Legal Resources Centre Oral History Project

### **PUBLISHER:**

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

*Location:-* Johannesburg

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### **DOCUMENT DETAILS:**

*Document ID:-* AG3298-1-014

*Document Title:-* Gerald Bloem Interview

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

*Document Date:-* 2008