

KWAZULU-NATAL ORAL HISTORY PROJECT

**INTERVIEW WITH JUSTICE HASSAN MALL AT HIS HOME AT 5 KEI CLOSE,
RESERVOIR HILLS, DURBAN, ON 27 OCTOBER 1999.**

**(INTERVIEWER : RUTH LUNDIE SHALL BE INDICATED BY WAY OF 'R' ,
INTERVIEWER JEWEL KOOPMAN BY 'J' AND JABULANI SITHOLE BY 'S'; THE
INTERVIEWEE SHALL BE INDICATED BY WAY OF 'M'.)**

R: This is a record of an interview with Mr Justice Mall, in his home at Reservoir Hills on the
27th of October 1999. You said when you were down

J: Judge Mall, can you tell us where, where you were born.

M: I was born in a little village in India in 1922. I came to this country as a four year old boy,
with my mother. My father was born in South Africa; my father was born in South Africa.
He had come to India to marry my mother and so since 1926, I have been a South African.

J: Right.

M: My early schooling was in Durban. My High School was SASTRI College, here in
Durban - my secondary education. I spent a year at Fort Hare, doing a pre-medical
course.

J: Oh.

M: And after that year, it was a scramble getting into medical schools for non-whites, so,
before the end of the year, somebody from Wits Medical School came and said that they
had room for six students in the medical school. I think we were a class of about 24, 25.

J: Mmm.

M: And 6 passed, and the rest of us failed. Well, failed the exam', not failed admission.

J: Mmm.

M: Failed the exam' - and so I went to the University of Cape Town.

J: I see.

M: There I was told that if I do a medical BSc I would then get admitted into medicine, so
I enrolled for a degree in medical BSc and then got credit for my first year. At the end of
that year, we were told - the non-white students were told - that ex-servicemen were

- 1 coming in and they would be given preference into medical school and we mustn't expect
2 to get in. I don't know the exact words.
- 3 J: Yes.
- 4 M: But they were - that was the effect of it.
- 5 J: Mmm.
- 6 M: So, at the end of the second year I abandoned the medical BSc course.
- 7 J: Mmm.
- 8 M: And decided to switch for a - to do law.
- 9 J: I see.
- 10 M: Up to then I had a bursary from the - the village people I had come from; namely a
11 handful of them were in Johannesburg as businessmen - so when I switched to law, there
12 was no bursary - for law in those days - because they didn't think you wouldn't do it - too
13 good a reputation in the community perhaps.. (?).
- 14 J: Mmm.
- 15 M: So I then worked my way through university and I finished the BA a year after I enrolled
16 because I got pre-medical, medical BSc - so I got credit for the first year of a five year
17 course.
- 18 J: Right.
- 19 M: I finished at the end of 1951, with an LLB, a BA (LLB).
- 20 J: University of Cape Town.
- 21 M: University of Cape Town. And I came home in 1952 and I got admitted as an Advocate.
- 22 J: Was your home in Durban?
- 23 M: Yes. That was the first time anybody had got a post as an Advocate - I'm talking about
24 any non-white.
- 25 J: So you were the first ...
- 26 M: I was the first.
- 27 J: Mmm.
- 28 M: To take a chance.
- 29 J: Mmm.
- 30 M: At that time it was offered as a legal attorney.
- 31 J: Mmm.

- 1 M: And, I managed to get a colleague of mine from the University of Cape Town, Alpheus
2 Ndlovu, he was the first Black person ever to get an LLB degree. In my opinion. And
3 he had already been admitted as an advocate in Cape Town. So I got him to appear for
4 my admission in the Supreme Court. And the papers gave us a phenomenal write-up.
- 5 J: Oh.
- 6 M: 'Zuma (?) Moves for Admission of Indians'.
- 7 J: MM.
- 8 R: That's a very nice headline, wasn't it?
- 9 J: Yes!
- 10 M: Now a lot of people have forgotten. Ndlovu left the country because they were hounding
11 him out of his office in the Cape Town - he was just in - he was Black and they told him
12 'you must go to London'. Now, an attorney may practise in London, but an advocate
13 can't. He has to be in town, in court and I made use of influence I had with a few trade
14 union friends to give this man a corner in one of their offices. And that's how he managed
15 to practise, but they caught up with him within a year and he decided that he was going
16 to pack up and leave South Africa. He left South Africa and never to come back.
- 17 J: Mmm, unfortunately.
- 18 M: Now, that was long before Duma Nokwe. You might have heard of ?
- 19 S: Yes.
- 20 J: Mmm.
- 21 M: Long before him, but the first Black man as an advocate in South Africa.
- 22 J: He was really forced to leave South Africa.
- 23 S: Was he in his fifties - he was forced in the fifties?
- 24 M: Yes, he was forced. Within two years or so of my being admitted, I was admitted, I think,
25 in 1952 and I think in 1953, Or '54, he packed up and left in the hope that if he got an
26 English qualification, he might be able to practice in the commonwealth and that was the
27 case (?). His background - he was what was called in those days, the son of a kitchen
28 boy, he went to England. The men who worked in kitchen, shops, ? One of the kitchen
29 'boys' ... you will excuse me for using that term ...?
- 30 J: Yes.
- 31 M: But you know what I mean.

- 1 B?: In history we do understand, we do.(?)
- 2 M: Yes.
- 3 R: It was just an acceptable thing.
- 4 M: Indeed.
- 5 J: Mmm.
- 6 M: Indeed.
- 7 J: Mmm.
- 8 M: So I was admitted; it was some years later - of course - I wasn't allowed to go into
9 chambers with the rest of the white advocates, because of the Group Areas Act.
- 10 J: Mmm.
- 11 M: So I had to have an office in Grey Street; fortunately, they'd pick a court that was early
12 enough, which belonged to the Communist party - which was run by a friend of mine who
13 was prepared to share - where the first chambers were, half an office for around here. And
14 that's where I started. Now the all white building is where all the White Advocates are.
15 Now, to be an advocate, you have to be as close to a library as possible, and my handicap
16 - so it just meant battling through; fighting against advocates who were all white, Judges
17 were all white, Prosecutors are white, magistrates are white, and those attorneys who are
18 briefing me, knew that we were labouring under that kind of racial handicaps. (?). Think
19 of it ...(?)
- 20 R: You told us about a doctor
- 21 M: I think it was 1978; I think it was '78. I became senior counsel. Two years before that
22 Ismail Mahomed of the Johannesburg bar had become Chief Justice. He had become
23 Senior Counsel. Shortly after that I was appointed as an acting judge for one month and
24 that broke down the wrath of some of my very, very, very good friends who felt how can
25 a Black accept an appointment on the bench when there are discriminatory roles against
26 them, and I was in agreement with what they said because I stood for everything that we
27 had all stood for. The fact that we had roles to fill. But I was asked to act as acting judge
28 by the Judge President, John Milne (Mylne?).
- 29 R: Yes.
- 30 J: Yes.
- 31 M: And the reason was purely personal, purely personal. In 1962 I was banned, like many

1 others in the restitution (?) Of the Communism Act. So I was confined to the magisterial
2 district of Durban. Advocates practised all over the country, wherever they are briefed,
3 of the period I heard in Pietermaritzburg, they used to do a fair bit of appeal work. And
4 I was refused permission to leave the magisterial district of Durban for five, six years, I
5 was confined to the magisterial district of Durban, and it destroyed the little practice that
6 I had developed. Because, being born a non-white at that time I was (?) In the country,
7 doing political work and (?) Twenty-five attacks on cattle; they were asked to cull their
8 cattle and whenever our people were being charged, I was the one, by command a few
9 times, who did all that kind of work. For no financial consideration because of the work -
10 we just all work.

11 J: Do you think that is why you were banned?

12 M: I was banned for a number of reasons among them was I'd been very active in the Natal
13 Indian Congress, almost from the time I got back from the University. I was on the
14 Executive of the Natal Indian Congress, and a year or two later I became the Joint
15 Honorary Secretary of the South African Indian Congress under Dr Naicker. And those
16 were the days when we questioned treatment of non-white people in South Africa was
17 being raised very strongly at United Nations. And I was also responsible for sending
18 memos to the delegates from India and other friendly countries. You know, pointing out
19 what was wrong. So I have an idea that all that caught up with me - it just happened to
20 come in after I had appeared for Roly Arendstein's defence, Laurey Arendstein was a
21 persona non grata (?), as you all know.

22 J: So when you were banned you were not allowed to work?.

23 M: I wasn't allowed to leave, I was allowed to work here in Durban. I could appear in court,
24 in Durban.

25 R: But it must have meant extreme financial stringency for you and your family.

26 M: Well, I am happy to say that we overcame that but others were less fortunate, some of
27 them had to leave the country, some of them were in prison, or were literally imprisoned.
28 An interesting little detail. When the first arrest of a hundred and forty people was made
29 in the so called Treason Trial, I organised it with the Chairman of the meeting at which
30 Alan Paton was (?)?, and Michael Hathorn and Florence Mkhize ? And Selby
31 Msimang. We organised a meeting within a day I think of the arrests , and we formed a

1 little association to raise funds for the widows and the wives and the dependants- it was
2 an ad hoc committee which we formed. I think that within twenty-four hours, or thirty
3 six hours, I was surprised that we hadn't been picked up by SALFA (?). Maybe some of
4 the disappointed ? Maybe they didn't think seriously about non-white politics? And so
5 as a result (somebody says something in the background which is inaudible)...of that
6 meeting in the Gandhi Library we were all charged and convicted for having held a
7 meeting without the permission of the Mayor, because there was a by-law which said ' no
8 meeting of natives may be held without the permission of the Mayor'.

9 J: Hmph!

10 M: And so this meeting had at least one third White, one third Indian, one third Black,
11 African, and so were convicted, Alan Paton and the lot of us. The newspapers were full
12 of them. I still have a lot of those cuttings..

13 J: Mmm.

14 M: .. and we went on appeal, and a young advocate, called John Didcott.

15 R: Oh yes.

16 M: A friend of mine, said 'I will go and argue the appeal'. And so we had no difficulty, we
17 won the appeal, because the court held that this couldn't be a meeting of natives. Alright,
18 that's a side issue.

19 S: It was very important as well, it's some of the side issues that is extremely important in
20 this matter.

21 M: Well now, as a result of my ban in 1967..

22 R: You were banned twice?

23 M: No, my ban expired...

24 R: Oh, I see...

25 M: At the end of 1967 ...

26 R: Mmm

27 M: The Indian Congress activity had literally died or gone underground because people were
28 banned, scattered all over the show. The ANC itself had been banned. The South African
29 Indian Congress and the Natal Indian Congress and the Transvaal Indian Congress had
30 never been banned. What they did was they took all the Officials and banned them and
31 that effectively silenced the activities of these organisations. So, the work had to carry

- 1 on so we got ourselves involved in ratepayers bodies. There were no ratepayers bodies,
2 where they had created ratepayers bodies.
- 3 S: Yes, ... (laughing)
- 4 M: So we all got actively involved in ratepayers, to keep the voice of protest alive. Even
5 though at local level, unfortunately, our meetings could not be multi-racial.
- 6 R: Because of the Improper Interference Act
- 7 M: That's it. So at the time when Chief Luthuli became president of the ANC in the 50's, we
8 were particularly thrilled in the Natal Indian Congress and there were offices where we
9 joined each other in Saville Street and the Natal Indian Congress went out of its way to
10 render as much financial assistance to the ANC. Selby Msimang was the Secretary of the
11 ANC in those days and Chief Luthuli was the President. I was at that time in the Natal
12 Indian Congress and came to learn like a million other ...and people came ?
- 13 R: They were very dead years, the 1960's. The Nationalist's influence, had solidified ... and
14 they were holding everyone absolutely tight.
- 15 M: That's when the Black Consciousness Movement gradually filtered into the country.
- 16 R: With Steve, in Durban.
- 17 M: Well, there were some chaps from America who had inspired it, but I think that were -
18 Steve Biko in Durban, medical students at the University and students all over the country
19 were involved heavily. And side by side, with the Black Consciousness Movement, that
20 it might have succeeded in enticing a section of the Indians to form local affairs
21 committees, and gradually that developed into the House of Delegates. So a lot of our
22 venom was spent on the local affairs committees. Exposing them as dummy
23 organisations, whilst the Africans were carrying on their struggle against homeland
24 removals, and so on. Our struggles were running parallel, though never together, of
25 course with the law?
- 26 R: Well, then there were people like Strini Moodley who were in Black Consciousness, and
27 very active and strong.
- 28 M: Very, very active...
- 29 R: And they created a strong influence there..?
- 30 M: Very. The Natal Indian Congress, I think existed in name thereafter, although they did
31 occasionally help - they'd have a meeting or two, and it had the temerity to hold a

- 1 conference to talk about a future constitution, for South Africa and for some of these
2 areas, there I was the guest speaker. (They speak at once and what is said is not audible).
- 3 M: 1980 ...1980...
- 4 R: Bloody petty.
- 5 M: (Inaudible)
- 6 R: Yes.
- 7 M: ... and by that time I was involved, I think, I had somewhere to boast ...
- 8 R: Boast away, we are proud to know you.
- 9 S: Yes, yes.
- 10 M: I was involved in any organisation which is non-racial. So we had, Durban had a film
11 society which was strictly racial, so we formed the International Film, Durban
12 International Film Society, with Blacks on it.
- 13 R: It was a lifeline that ...
- 14 M: Nadine Gordimer ?With people like that..
- 15 R: Yes.
- 16 M: Pius Benghu and people like that, I brought them in. Then there was the International
17 Club.
- 18 R: The International Club.
- 19 M: International Club. The Government banned the International Club because it was
20 multiracial so we set up rival organisations, to circumvent it to try and bring people
21 together you know. I was involved in that. I got involved in sports administration
22 because Curry's Farm, which is an Indian Sports Ground belonging to the Municipality
23 was confined to Indians and some of us almost felt it should be open to everybody. So
24 that it meant to get in all people sports administration, so I served on the executive of
25 Curry's Farm Forum ? Purely from my selfish point of view I took that up, and then I was
26 involved in the ratepayers of Reservoir Hills for something like seventeen odd years as
27 Chairman. And we didn't make much progress working with the African people that were
28 tucked away in Claremont, which is the nearest to us here, you know.
- 29 R: Where Archie Gumede was?
- 30 M: Yes.
- 31 R: And are you regretting that?

- 1 M: Yes, there were my own regrets in - ? We were in watertight compartments. It wasn't
2 easy, you know, to get African people to come, and it was impossible for us to virtually
3 go into townships.
- 4 S: So you were saying the 1960's and 70's seems to be the struggle to try and respond to
5 local issues, with people being committed to ...
- 6 M: To use. To use organisations such as ratepayers bodies and civic groups and so on
7 because the ANC was banned.
- 8 S: Would you think then that in the 1980's, as you were saying, you were participating in the
9 formation of the UDF. Did you have any impact, I mean were you not in it as an official?
- 10 M: No, no, no, I was in no way dealing with it In developing it. Political consciousness
11 had reached a very, very high level, mainly as a result of the student activities in the
12 Transvaal.
- 13 R: In the Transvaal, particularly?
- 14 M: Amongst the ANC, the Black students, you see. Tremendous impetus. With the result
15 that political consciousness reached, reached a level, around the 1980's that was inevitable
16 that there was going to be a UDF, you know, to talk on behalf of the ANC. Almost all
17 the people in the UDF were either from the ANC members or supporters, or converts.
- 18 R: And the Soweto '76 rebellion ...
- 19 M: Yes..
- 20 R: Had sent a lot of people out of the country and they had then come back.
- 21 M: And they had mixed at that time in the late seventies, young Indians from here also left to
22 join MK.
- 23 R: Yes, yes.
- 24 M: At the time, I had come to respect the law, so. (They laugh)
- 25 M: 1978 I was acting judge, then after that I was on the Commission of Inquiry. I was
26 appointed by the province, by the Administrator, to enquire into grievances at the
27 University. Durban-Westville - there was a question of discrimination in the appointment,
28 and salaries and promotion of academic staff. So I was appointed as Chairman of a
29 committee of three that took that investigation. Thereafter I was appointed as a Chairman
30 of a Committee of Enquiry by the House of Delegates, because of grievances in the
31 teaching profession. People were feeling that teachers were not pulling their weight,

1 teachers were appealing (?), teachers were believing that the government was
2 discriminating against them, so I found myself being involved in one committee of inquiry
3 after another, I even lost count of the ? ... So that has ben roughly the kind of thing that
4 I have been doing.

5 J: And now you're the Chancellor of Durban-Westville University.

6 M: Yes, I was a appointed to be - I became a member of the Council of the University
7 around 1988, and I had been asked to become a member of the Council long before then.
8 But that Council then was a - that University was under white control, the university
9 completely, and I did not want to serve on the Council of the University. So, when
10 Professor Jay Ram Reddy became the Rector of the University, the people in my
11 community then came and said that 'you must now go and serve on the Council'. That's
12 how I joined the Council of the University and I think four years later I was a appointees
13 a Chancellor at the University.

14 R: And you remain 'till now?

15 M: I'm now serving the second term - I was re-appointed last year. My immediate
16 predecessor was Judge John Didcott - as Chancellor and I think I was partly instrumental
17 in getting him to become Chancellor of the University.

18 J: He seems to have quite an influence in your, your life. I mean you've had quite a lot to
19 do with Judge Didcott?

20 M: Well, we were - he was a strong, he was a strong member (?) of Alan Paton, I was in the
21 Liberal Party in those days and we used to work fairly closely with the people, Peter
22 Brown and John Didcott. So my contact with John Didcott, he was at the bar and I was
23 at the bar, so we had an ongoing relationship.

24 J: Yes.

25 R: Anyway, it's very good value, very good value(?). And all that time arrangements were
26 being made that we ordinary mortals didn't know about, by the ANC, and with authority,
27 building up to the announcement, in 1990- that the ANC was going to be unbanned. And
28 things had been happening behind closed doors, but nevertheless, they happened.

29 M: Yes, unfortunately I was, I was not involved more than that.

30 R: It would have been interesting to have been, wouldn't it?

31 M: Well, you, I think - you had to be a man of sufficient influence to be asked. More than

- 1 that, I was ailing ?
- 2 R: Yes.
- 3 M: Personally... and
- 4 R: And...
- 5 M: And I didn't represent any organisation at that time ...
- 6 R: No...
- 7 M: In any case, there were a lot of younger people of greater ability, which was right.
- 8 R: Yes.
- 9 M: ? The younger people.
- 10 S: Would it be interesting to me if you say you were just a local person, because I was
11 saying in the 50's, that role that you were playing with the UM made you not such a, you
12 know, a lesson for the ? Passing years, as you say. Now the question that I want to ask
13 is, the younger people coming in the 80's, were they consulting you, people like
14 yourselves, you know, they seemed to have gone a long way forward?
- 15 M: ...Yea, they simply have, I was never out of it, we were never out of it. Pravin Gounden
16 and DKC and all the chaps who were in the IC were actively involved, only they were not
17 holding office, they were certainly involved in negotiations, working out policies, and
18 things like that.
- 19 R: The 80's were very good protesting at negotiation.
- 20 M: We reached a peak.
- 21 R: You reached a peak.
- 22 M: Yea, the decade of the eighties...
- 23 R: Yes.
- 24 M: It certainly reached a peak, because that led to what happened in '96.
- 25 R: Yes.
- 26 M: I may tell you on a little side issue. The Labour Party held a conference, an annual
27 conference, some years ago, I think it was in the early eighties, and they held a conference,
28 I think, in Bloemfontein or Kimberly - I forget.
- 29 J: Mmm
- 30 M: And I was invited as one of the guest speakers; the Labour Party was talking about a
31 constitution for the future of South Africa. Because I'm an advocate they thought I'll

1 come and talk to them about the constitutional law. Well, much to their disappointment
 2 I went there and said 'that there ought to be working on a campaign for the liberation of
 3 Mandala before we start talking about any constitution.' And the papers were vicious.
 4 And I quote : 'for the liberation of Mandela'. At the conference of the Labour Party, with
 5 whom I had nothing in common. I mean I had, I owed no allegiance to the Labour Party,
 6 but they invited me, and so I thought I could talk. (They all laugh). It was very unkind
 7 of me.

8 R: Peter Brown always said 'that it's only my death that will get us out of this hell'?

9 M: Let me tell you that as far as Mandela is concerned ? I knew Walter Sisulu, very, very
 10 much better..... (The tape is quiet for the rest of this side).

11 **SECOND SIDE OF TAPE**

12 (This is what I considered to be the second side of the tape, it starts halfway through a sentence)

13 S: Your experience at Fort Hare...

14 S: You have mentioned that you went to Fort Hare as one of the only Indian students among
 15 Black students there, and you had a particular experience of your stay in Fort Hare.
 16 Could you tell us a bit of that experience and what impact it had on your way of looking
 17 at the world after that?

18 M: Well, first of all, in all, there were between twenty-five and thirty students who were non-
 19 Africans. They were mainly Indian, a few Coloureds and two pale whites. We shared the
 20 same hostel, I had never slept in a room with a Black person before in my life. Here I am
 21 I sharing a hostel with Blacks and Whites, and you know, so. To me that was a
 22 phenomenal education. Where you have to share the same shower cubicle, bathroom, eat
 23 the same food, and so on. But there were only three or four Black academics at the time
 24 and the only people I had any contact with were Professor Matthews and Professor
 25 Jabavu, and so on. There were one or two others with whom I had to (deal with ?). They
 26 were in different faculties and not connected with my studies in any way. But all the
 27 White lecturers were there, left me with a very, very good impression that they were
 28 people who were absolutely dedicated in doing what they were doing. These were

1 missionaries, Fort Hare was a missionary institution, under church-driven people, who
2 were running that University. So I thought that Black students were having a - were
3 having the best possible education that they could have got in South Africa at that time,
4 from these white lecturers and professors.

5 S: Again you were saying then after you had been, you went to Cape Town, you went to
6 Fort Hare first and then you went to Cape Town. Again you were in this situation where
7 you were only the Black student in a sea of White students, what was your impression,
8 I mean what was your experience? Because I am so interested in these early experiences
9 in your life in the 50's.

10 M: Well now, I wasn't living amongst the Whites, at Fort Hare, I was living amongst the
11 Blacks. In Cape Town I was living amongst the Coloureds and we, the Non-White
12 students, had to travel a phenomenal - in those days we didn't have Group Areas - we
13 had little respect in residential areas, Coloured or African, and go to the University. We
14 couldn't take part in any of the activities, we walked past the tennis courts every day. We
15 saw the Whites playing, we weren't allowed to play. We weren't allowed to take part
16 in the University Rag to raise money for charity, because all that was ? So we were really
17 sojourners at the University, where we would go there, attend our lectures, have nothing
18 whatsoever to do with the University activities and go back home. But we had a Student
19 Socialist Party at the time and the Student Socialist Party had the temerity once to fight
20 elections for the SRC and I was asked to be one of the candidates. So the Student
21 Socialist party put up one White and myself as a candidate for the SRC of this White
22 University. Needless to say, we lost. But it was more a protest of registering, or
23 attempting to register our presence and to ...

24 S: It's a very important one. The one thing I like as well, it strikes me, you are saying you -
25 it was called a Socialist Party. Was there any reason why that Student Association was
26 named the Student Socialism Party?

27 M: I think it was inspired yes, it was inspired by a group of chaps who were Marxists, and I
28 think that there were some members of the Communist Party outside and so on and it was
29 called the Student Socialist Party simply because it wished to accommodate all the left
30 views, mainly Marxist views. That is why it was called the Students Socialist Party.

31 S: Then again I am interested in your life in the fifties, now. You had been to those

1 institutions, exposed to these wonderful ideas, now you come in - you mentioned earlier
2 on in the interview that you had played a leading role in trying to inform the international
3 community about what was happening in South Africa. Now what I would like to just
4 turn to is your experiences of working with the NIC and the ANC, non-racialism that was
5 developing in the 50's - particularly under the presidency of Luthuli. Could you give us
6 any sort of background in that?

7 M: The ANC had its meetings - held their annual general meetings there - their set of officials,
8 they had their office. The NIC was almost a vehicle without a home? We had our own
9 elections, our own office-bearers and so on. But almost every weekend there used to be
10 some protest meeting with the other on what was known as the red square. Ever heard
11 of the 'red square'? In Pine Street? No?

12 S: No, I've never heard of that.

13 M: It wasn't called 'red square', it was given that name by older people because all our
14 protest meetings in the 50's, late 40's, were held in - it was a huge open parking space
15 belonging to the City Council. There is a huge carpark there now. It is - extends from
16 Grey Street, towards Field Street - between Pine Street and Commercial Road - there is
17 that huge carpark. (?) And we used to hire, or reserve a platform and that's where we
18 used to hold the meetings. So the meetings were very, very frequent. But the meetings
19 were never ANC, they were neither NIC meetings. They were always the ANC, even if
20 some of the members who organised and pushed, wherever I see chaps, it was to help the
21 ANC, you know. Because it was realised that we had a minority role to play (?)
22 Before Chief Luthuli became president, the man who was president was AWG Champion.
23 Now in our way of thinking, AWG Champion in those days to us was a reactionary. So,
24 when the ANC threw out Dr Xuma here in Natal, we all received a great thrill, because
25 now we had paved the progressive elements from the ... And Chief Luthuli became
26 president and I may say it was my privilege to know one of the finest people in the world
27 as a human being, purely as a human being - if he weren't a politician, if he wasn't a
28 politician, he would still be one of the finest human beings that I had the privilege of
29 meeting. It has been my privilege to work with Archbishop Tutu as well, in my - I have
30 been working very closely over the last few years, because he's Chairman of the TRC, and
31 I am on the Amnesty Committee.

- 1 S: I, I ...I'm somehow interested again, you mentioning Luthuli - to follow it up. He dies
2 in 1967, you were saying you were under banning orders. Is there something you can tell
3 us about hte impact that had. I understand that people like Alan Paton, and a range of
4 other people spoke at his funeral, but here is someone you had worked with, who was also
5 under certain banning orders all this time, but then mysteriously killed in '67. Can you
6 proof? - can you share us, with us ...
- 7 M: A very rural ? Puzzled man. He lived in Groutville, do you know his house in Groutville?
- 8 S: Yes, I I know, yes.
- 9 M: Yes, well from there - the railway station, I mean the railway line, is - how long - ten
10 minutes walk or fifteen minutes walk from his house, and he was walking along the
11 railway lines, so we are told, he was waiting to catch a train to go to Stanger, and he was
12 killed.
- 13 R: Which was very odd, wasn't it?
- 14 M: It was very odd, but we don't know, we've never known - we took it for granted that he
15 was not well, he was aging,.
- 16 R: Yes...
- 17 M: .. he wasn't walking as well as he ought to be walking and so on. But one of the thrills
18 was when he was invited to come to get the Nobel Prize, some of us, we, the Indian
19 counterpart of the ANC, went around collecting money to buy clothes, getting a couple
20 of suits, and suitcases
- 21 R: Oh, that's a very, nice thing.
- 22 M: ...a little to make things easier - he got real help - he flew. Because we were absolutely
23 thrilled.
- 24 R: Of course, of course. That was the time of the Congresses, wasn't it? Because there
25 would be the ANC, the Indian Congress, the Congress of Democrats.
- 26 M: Ja.
- 27 R: All that was the Communist.
- 28 M: That's right.
- 29 R: A largely White group,...
- 30 M: That's right.
- 31 R: Yes, but they joined in the protests.

- 1 M: They were, they played an important part ...
- 2 R: It was an important thing and people like Helen Joseph, of course, were well to the fore.
- 3 M: Well, there's just no doubt, Helen Joseph caught command the following year, if she
4 came from Transvaal to Durban.
- 5 R: Yes.
- 6 M: She commanded a following of say (?) Africans.
- 7 R: Yes.
- 8 M: Yea.
- 9 J: Thank you. Will you tell us about your experiences in the Truth and Amnesty
10 Commission?
- 11 M: That's something, that's a very, very big subject.
- 12 J: Mmm, Mmm.
- 13 R: Would you be willing to, at some time, talk about that, because it was an unusual
14 experience for everyone who was concerned with the procedure.
- 15 M: I can talk about the Amnesty Committee, but I am one of the judges on one of the
16 Amnesty Committee.
- 17 R: I see.
- 18 M: I am the Chairman of the Amnesty Committee.
- 19 R: Yes. I'm aware of that.
- 20 M: There are six other judges working with me.
- 21 R: Is it.
- 22 M: And I can't comment on the kind of cases that I've heard and the decisions we have made,
23 why we granted amnesty to so and so, why we refused amnesty to so and so - those are
24 matters on which I can't comment.
- 25 R: I wasn't thinking in that direction, but for South Africans, to be listening to the pitiful
26 stories that were unfolding and deciding they would forgive, or they would not forgive
27 each other - you know?
- 28 M: Yes.
- 29 R: One heard so much of that on the TV.
- 30 M: Well, I think that the selection of Tutu, Archbishop Tutu, as Chairman of the Amnesty
31 Committee was inspired. I'm expressing a personal opinion, I couldn't imagine

1 somebody more suited for that task than Archbishop Tutu and he worked very closely
2 with Alec Borain, who was another fine person.

3 R: Yes.

4 M: And Alec Boraine and Tutu set the moral tone of the TRC.

5 R: This was the important thing of Archbishop Tutu, wasn't it?

6 M: Yes. They set the moral tone and they set the emphasis on reconciliation. Now, I was not
7 connected with all that, I was merely asked by the Minister of Justice to chair the
8 Amnesty Committee, which has a semi-judicial function.

9 R: Yes, yes.

10 M: But my feelings, my impressions are, that nobody on the Truth and Reconciliation
11 Commission had any notions in their minds about achieving reconciliation. Any of them,
12 the thinking people, knew that what we are doing is that we are starting a process which
13 will take time, but is an important step in the right direction. Now, as a result of my work,
14 I became more conscious of the depth of the anger and the hate amongst people.

15 R: I am sure.

16 M: I became more conscious of the fear of the Whites who had lost political power, I became
17 more conscious of the uncertainty that dogged their daily life. But this is purely personal.
18 And there be no - factually it might be wrong. But that's how I felt. And I came to the
19 conclusion that if this Amnesty Committee succeeds merely in reducing the level of anger,
20 in reducing the level of misunderstanding, it will have done its job. It may not bring about
21 reconciliation in its time, but it will have assisted in that direction, so that job is to reduce
22 the level of anger amongst young Blacks. Understand? It is perfectly natural for them to
23 be angry for what has happened, and if one can assist in reducing the level of anger, bring
24 about an understanding in them, that the price you are paying for the political power that
25 you have gained, the price you have to pay for it is to forgive this chap for what he has
26 done. That is the political price - so we have to - if you want political power, you didn't
27 get it free of charge, you have to pay for that. Part of the payment was the suffering that
28 you've undergone already.

29 R: Yes.

30 M: But now to be magnanimous and say, 'now, alright, I understand all the terrible things that
31 you did, I'm prepared to forget it.'

- 1 R: Yes.
- 2 M: Those are the thinkings of an elderly man on the subject.
- 3 S: Would you say that this came at a very good time, because I'm just thinking, because I
4 met Justice, or is it Judge Ivy Sachs last year.
- 5 M: Yes.
- 6 S: And we had a lengthy discussion on this subject and what really interested me, which I
7 would like to raise again - would you say the Amnesty, I mean the Truth and
8 Reconciliation Commission came at a very right moment to capture, I mean the situation
9 and be able to lay the background, as you are saying...
- 10 M: Yes...
- 11 S: ...for the future of this country.
- 12 M: Yes, of course, I was not involved in all of that (?). The negotiations that were taking
13 place at a national level, but obviously it came at the right time because there was a
14 realisation on both sides that neither could win the way the way they were going at the
15 time - to negotiate and come to a common sense solution which meant sacrificing some
16 of your cherished wishes, perhaps, in order to achieve a greater good.
- 17 R: And also, to unwind - for many years we have been so suspicious of the actions of the
18 police and the part the police have played in say, the Goniwe Four killings and so on and
19 so forth - these were being exposed for what they were. Not in a vindictive way, but as
20 a fact of history.
- 21 M: There's just no doubt about that. There's just no doubt about that, I mean we, in the
22 Amnesty Committee, have to give amnesty to people who have committed terrible things.
- 23 R: Yes.
- 24 M: So, I'm getting old - and with the tension, my heart tells me that I mustn't grant amnesty
25 and my brain tells me that I have to do it.
- 26 R: Yes, quite.
- 27 M: Because my heart says so. So when your brain and your heart don't go together, there
28 is tension within you.
- 29 R: Of course, of course.
- 30 M: So, so - that's how it is.
- 31 S: But would you say that the idea of greater good, looking at the future, of saying 'here we

- 1 are, we are making a contribution, we are laying a foundation in something quite good -
2 in developing a future mass of persuasion' ...
- 3 M: In the direction we are going, because I can't see the good in final detail, but I can see
4 the direction in which we are going.
- 5 S: Right.
- 6 M: There was just no doubt in my mind.
- 7 R: And really and truly, when you consider that the Nats came in in '48, that there have been
8 forty years of Bantu Education at work and the destruction that that act has caused is one
9 of the worst destructions in our country; that we have young people who wake up in the
10 morning with not much to eat, but no purpose in life. We have been so bad because it's
11 what, how many years since liberation? '94 - the election - it's five years, we can't expect
12 miracles to happen.
- 13 S: Five years ago...
- 14 R: We can't expect miracles to happen ...
- 15 M: No, ...
- 16 R: No.
- 17 M: No. You know, we're asking Afrikaners to change their religion really.
- 18 R: Yes, we are.
- 19 M: We're asking them to change their religion, to forego all their cherished beliefs, ...
- 20 R: Yes.
- 21 M: ...what their churches and dominees have been telling them for the last sixty years. We're
22 telling them 'okay, you know...' (Ruth says, 'this poor chap is back'). You've got the
23 wrong road now, this is the road you've got to travel in, and just as we've got to do that
24 in the hope that they will change, and there seems - that there are indications that they are
25 at least making a conscious effort.
- 26 R: Of course.
- 27 M: You follow. Now, likewise, we, amongst the Blacks, must not go on harping about the
28 harm apartheid has done to us. What if we say 'where do we go from now?' What do we
29 do now, what are the right things to do and bring the Afrikaner in if we think that this is
30 the right thing to do - we've got to bring them in to go forward.
- 31 R: yes.

1 S: And really I'm just thinking of the issue of high moral ground here, people have spoken
2 about that. From what you are saying I wonder if you will agree with this. So what you
3 are saying is that in the 50's when you were involved in the struggles, trying to explain to
4 the United Nations and to the sympathetic nations around the world, you were saying
5 'there is something wrong with apartheid, yes, I am being wronged by apartheid..' and
6 what you stand for, and what you represent is something quite good, something that is
7 all inclusive, non-racialism, would you say this move, as well, to say the African must
8 come on board, we have a vision for the future, we know that we are building something
9 wonderful that will benefit the future generation. The reason that would be one of the
10 areas that you could constitute as high moral ground.

11 M: That's a continuation of our beliefs from the word go. It's nothing new. The ANC has
12 stood for these things - not now, as a result of these changes, the ANC has stood for that
13 all the time. When we held the Congress of the People and the Freedom Charter was
14 proclaimed, the world must have known then. The Freedom Charter proclaimed what we
15 had believed in for South Africa, not for Africans.

16 S: Yes.

17 M: So the moral tone of the ANC struggle is history, is well known in history, that's my view.

18 S: And the TRC was encapping that (??).

19 M: That's right, the TRC, it was a temporary measure in - a mechanism - to help in the right
20 direction.

21 R: One of the things that heartens me a great deal, it's the ordinary people, and the ordinary
22 unperceived changes, children don't have racialism any more, they mix in schools, they
23 don't criticise. Do your children - are your children racist in any way?

24 J: No, not really, they go to a very multi-racial school.

25 R: A very multi-racial school, do you see, there are changes in that way.

26 M: In fact that's the only way. Children are not born racists in themselves. They are not -
27 born - children are children - it's the background from which they come - there is the
28 beliefs of their elders that influences them into having racist ideas. We haven't reached
29 that stage where all schools are what I would like them to be. If they are moving in the
30 right direction - it will take a long time, so we will have clashes between white students
31 and black students simply because - not because one is bad and the other is good, it's

1 because their values differ ...

2 R: And we have so much we can offer when you consider in Black circles, the feeling as a
3 group rather than the individualistic ideas of the west. But these are sort of
4 unacknowledged stumbling blocks at the moment. I live in an old age place where
5 everyone will say, 'oh look, the maids are bringing in six friends?' Well, why shouldn't
6 they do you see - they live in a group? There's all this sort of thing that hasn't ever been
7 looked at but has to be assimilated, and appreciated and shared.

8 M: Ja, it'll take time.

9 R: Mmm.

10 M: It'll take time. But we are moving in the right direction. There will be people who will
11 exploit these difference for their own personal, of course, gain - and reasons, but
12 generally speaking, South Africans are after the right goal, and nothing is going to deflect
13 it?

14 R: Well, it was a miracle wasn't it?

15 M: Oh, man. Look at - who the devil dreamt that what they said was going to materialise -
16 that the ANC was unbanned, not independence, the fact that the ANC was unbanned
17 ... (inaudible)

18 R: Yes, I mean ...

19 M: The fact that the ANC was unbanned, I tell you we had a fantastic party here..

20 R: I bet you did.

21 M: It's because the ANC won.

22 R: Yes, yes. Jabulani, we're near the end of the tape and I think we should near the end of
23 our discussion, are there any things you would like to ..., or you?

24 J: I was looking at your trophy in there - was it for the appreciation for the role played by
25 you in the National Association of democratic Lawyers.

26 M: I've got one of from the National Association of Democratic Lawyers, I've got one from
27 the Black Lawyers Association.

28 J: mm

29 M: I beg your pardon, I've got one from the Democratic Lawyers Association, which was a
30 precursor of the, of Mandela, I was one of the foundation members of the Democratic
31 Lawyers Association in Durban.

- 1 R: Yes.
- 2 J: I see, okay.
- 3 M: And that led to the formation of Mandela.
- 4 S: Mmm.
- 5 M: It ran parallel - the parallel organisation was a Black Lawyers Association - with its
6 spiritual force coming mainly from Johannesburg. But I had the good fortune of being
7 given awards by both groups.
- 8 J: Congratulations.
- 9 M: yes, it was just, just for being, living long enough in the legal profession, that's all. (They
10 laugh)
- 11 R: Staying sane, so you say. (They laugh)
- 12 M: Yes.
- 13 R: Well, I think we must thank you very much indeed for allowing us to come to this
14 interview, which we have appreciated beyond words and we will try to send you a copy
15 of the tape if you would like that?
- 16 M: I'd be pleased to have it.
- 17 R: We can't at the moment, afford a transcript, can we Jabulani?
- 18 S: Not at the moment, but it's still on the tapes.
- 19 R: But we must get one you know, if funds crop up. And we'd be happy to do that.
- 20 M: If you can, I'll be pleased.
- 21 S: I must say we really appreciated this, it's an eye-opener talking to you today.
- 22 M: Yes, really.
- 23 S: You have touched on a number of things that we took for granted and you were saying
24 whilst we are sitting here - there you are, there is someone who must have lived through
25 this and confirming some of these theories we have about what might have happened ...
- 26 M: There are others in our community who are more clued up, who probably have a more
27 knowledge, in depth than I have, I'm sure there are others too.
- 28 R: Well, thank you very much indeed.
- 29 M: It's a pleasure.
- 30 (End of this side - rest of this side of the tape is blank).