

CCAC interviews with Albie Sachs on 26/11/2021 and 14/01/2022 - edited transcript

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Project Name: SachsAlbie

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Interviewer name (and acronym): Francois Lion-Cachet (FRANCOIS)

Interviewee name (and acronym): Albie Sachs (ALBIE)

Interjections (and acronym): Catherine Kennedy (CATHERINE)

Name of translator, if applicable: N/A

Name of transcriber: Micayla Mohamadie

Interview notes: This transcript has been edited by the interviewee for clarity, and to add additional information. Additions by the interviewee are indicated by square brackets [...]. At request of the interviewee, his name and that of the interviewer are spelt out instead of initials being used.

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START OF AUDIO RECORDING: 01:15:09 (Recording A)

TIME ON AUDIO RECORDING: 01:15:09 (Recording A)

FRANCOIS: How do you see the collection where it is today compared to when you were at the court?

ALBIE: It's very thrilling for me, I'd say it had been dignified. The miracle was getting the collection with nothing, just with love and with passion, with energy, with intrigue, with guile. That was astonishing in itself. But now it's being treated with respect and care, people are in charge. When we started there was nothing. There's nothing in the statutes of the court that deals with artworks. It's not in any line function for the Department of Justice, they were uneasy about the artwork. And it

didn't kind of fit in with what they imagined a court building should look like. They were worried about insurance, and we were just very strong as part of the autonomy of the court to create its own kind of ambiance. It would be my secretary, Fatima Maal, who would keep something of a record of what was happening. And I was just being as, if you like, opportunistic, all over the world, in South Africa, opening exhibitions and asking for donations. And the work kind of arrived here. So what's lovely now is to see the care and attention being given to the different works. And to just walk down to the library and have the experience of not just going on a pathway with pictures and a bit of sculpture around, but getting the sense of a volume, with the experiential feel of a gallery. But with much more fun. Most galleries are very cube-like and contained. And here, you're actually walking down a little bit and I like the irregularity of it. And so it was very exciting for me to see this change. One of the questions we were asked fairly early on, was, would this be a collection of work at the time when the court was established, and that's it? The fear was that the collection would become very stagnant as if it was just for a certain moment. We didn't know who would be the judges who would take over, with the commitment and enthusiasm that I'd had with very strong support from Yvonne Mokgoro. So we left that question open. And I must say at one stage, when there was concern about the deterioration because of light, I felt, well, maybe it's not a disaster. There's nothing to say artwork must live forever, and if it emerges in a certain period and fades afterwards, well, that's its destiny. This is not a reason for not putting stuff out there. It could have quite a good life and then disappear. But now it looks as though we can have the best of both worlds. And new work is coming in, there are new energies. The volumes and spaces are strong. And you're returning to what I would call the eclectic character of the work. It was eclectic because we had to take and say thank you for whatever we could get. We didn't have a procurement committee, we didn't have a fund. I'm told that with most procurement committees, there's either one strong mind, and that person's taste is reflected in the collection, or they fight so much, you end up acquiring the boring works that nobody disagrees with too much, and the collection ends up with no real personality. In our case, the only exclusionary principle I applied was to artwork that could appear directly to impact on cases that we might be hearing. So when Diane Victor offered us some very beautiful feminist engravings, I think they were engravings, we said thank you but no thank you. Because we had a lot of litigation dealing with sexism and gender rights, and we didn't want people coming here and saying, "Oh, it's a waste of time in this court. Their minds are made up, just look at the artwork showing how brutal men can be". So that was the only work that was not accepted because of its content. The emphasis early on was very much on the human figure, not on abstract work. And that was a deliberate choice, that somehow we wanted the theme of humanity, of shared humanity to come out. Not pure rationality, not law simply being beautiful configurations of ideas, but law as something that enhances human dignity. Once we had a

fair amount of work of that kind, then we could take some abstract works. And later of course, the conceptual art of Willem Boshoff fitted in magnificently.

TIME ON AUDIO RECORDING: 01:21:06 (recording A)

FRANCOIS: Thank you. Why an art collection for the court and why incorporate arts into the fabric of the building? We wanted to ask if this relates to the role of arts in cultural activism against apartheid?

ALBIE: It sprang from the same source, the same energy. It wasn't intended to be didactic. It was to affirm our new emerging personality based on human dignity, equality and freedom. To have an ambience that captured that spirit would be very supportive of our work. Also we wanted to turn our backs on the imported symbols such as that stamp that declared 'this is a court, it looks like a court because it's got the blindfolded woman with the scales of justice' - to get away from that kind of iconography specifically. In my own case, I belonged to a youth movement in Cape Town in the 1950s called the Modern Youth Society, very anti-racist. And one day an artist named Lesley Cope came to tell us she'd discovered the Mexican muralists. I don't know if you're familiar with the Mexican muralists, are you?

CATHERINE: Diego Rivera and...

ALBIE: Okay. So, it was Diego Rivera. When in those days... what was her name, his wife?

CATHERINE: Diego Rivera's wife?

ALBIE: Yes.

CATHERINE: Frida Kahlo.

ALBIE: In those days Frida Kahlo was called Diego Rivera's wife, now it's changed. Rivera is Frida Kahlo's husband, she's become more famous than him! Lesley was very excited because the Mexican muralists had taken art out of private homes and out of cathedrals and created big murals in the public space. And the theme wasn't pictures of saints or landscapes. The theme was [Emiliano] Zapata who led the revolution in Mexico. It was the workers in the fields. It was very political, overtly political and it was public. So we actually painted a mural in a warehouse where we used to meet. Its theme

was the People's Cape Town. Lesley designed it and we all filled in the colours. And it wasn't beautiful Cape Town, just sip your gin and tonic overlooking the beach, the whites enjoying being in the Fairest Cape [with folkloric people of colour in attendance.] It was the dockworkers, it was the people laying the rail tracks, it was the newspaper sellers, the flower sellers. This experience imprinted the idea of public art in my head as part and parcel of popular expression. We were chucked out of there, and I'm sure the first thing the landlord did was wipe the mural out. We didn't even have a photograph of it, but it was in my head. This was now the middle 50s. In the late '70s, I would go to Mozambique. It was newly independent and there they just came out with their brushes. People painted on the walls, 'A luta continua', 'viva FRELIMO', drawings of a soldier with an AK-47. And then we got artists who came from Chile during the Pinochet dictatorship. They'd been part of the Unidade Popular art movement there, and they worked with Malangatana (Ngwenya), the great Mozambican artist, to do a big mural in front of the Ministry of Agriculture. This was because the deputy minister [of agriculture] was a refugee from Chile and his wife was a landscape architect. And in the way these things work, someone I called the world's leading Marxist expert on trees was visiting Maputo with his wife, to give advice on forestry in independent Mozambique. I'm invited in a British way, you know 'there's this good chap, Albie Sachs, you must meet him'. So I'm invited to dinner at the Polana Hotel and I chat to her and I meet the Deputy Minister of Agriculture from Chile, whose brother had been hanged by Pinochet. And I meet Moira [Toha], his wife and she says, "Tomorrow morning at six we're painting a mural in front of the Ministry of Agriculture, would you like to come?" Now I'm too scared to even dip a brush [in a pot of] paint and follow the lines [traced on the wall], but I said, "Okay". And they picked me up at six o'clock and there I was and this was a joint work by [Moira Toha, Malangatana and Albie Sachs]. [Moira] was very severe, she hardly smiled, but she painted a girl on a swing [with her hair flying out in front of a rainbow,] while Malangatana who is full of fun and laughter, painted miners coming out [of the earth] with sad, sad, sad eyes. Each painted the interior of themselves. I just followed the outline of some flowers, very nervously. I became involved with the arts movement in Mozambique, lots of public art, [wonderful]. Then it stopped [suddenly] because they ran out of paint. So that was the end of that. And now when Arthur Chaskalson says, "Albie, would you and Yvonne Mokgoro be responsible for the décor" in the temporary accommodation provided at the inception of the Constitutional Court in converted office space, the memories come back to me, not consciously, but [subliminally of] the role that public art can play, that art isn't just something for collectors to have in private spaces or for display in public galleries. That it can be part and parcel of the texture of a place and a space. So originally, [prompted by me, the architects were considering] murals all over the court building but Janina Masojada and Andrew Makin decided that this would be too oppressive, that they would detract attention from the fabric of the building. They also said, "we don't put up a

building and bring in decorators [to complete the interior].” I think they hated decorators more than anybody on earth. They felt that the artistic feel and sensibility should be integrated into the very texture of the building: carpets, chandeliers, security gates. I think these were the main elements, integrated artworks part of the fabric of the building. Even the furniture we had. There was one amazing day, taken away from our desks, working on our judgments, and we are asked to come one by one to test the chairs, to find ones you feel are the most comfortable. We had some choice over spacing of furniture in our chambers, colours, designs and which carpets to select. So there was something left to each judge to choose, but also a certain continuity running all the way through the Judges’ Chambers.

TIME ON AUDIO RECORDING: 01:29:46 (recording A)

FRANCOIS: For the amount of time we've got left, I've got two more questions for you. The first is, when the court was founded in 1994 up to the early 2000s, that period was marked by optimism, and the start of the collection grew out of that optimism of our new constitutional democracy. But that optimism has shifted in contemporary day South Africa. How do you see that reflected in the art collection?

ALBIE: I don't see it at all. I see there's something stronger than optimism. It's a kind of courage and spirit and energy, it's positive, hopeful and the very idea of hope connotes difficulties. You can't have hope without difficulties. So that was there from the beginning. This idea of [initial] optimism, it's very overrated. When we had the elections in '94, white families were stocking up on canned goods and I remember I deliberately didn't buy anything like that. There were public holidays, for a couple of days the shops were closed, so I actually ran short of food, because I didn't want to be part of the panic-buying. The feeling among whites was 'what's going to happen when Mandela takes over?' and that was reflected in the media. Also, there were many people of colour saying it's fantastic, we have the vote, but can we Black people run a country? So it was never euphoria like that. There were complaints about members of Parliament being on the gravy train, and about corruption in the arms deal from very early on. We just carried on with our work, the core of the work. It's taken a long time to get the change we wanted and we knew things would take a long time. In terms of the actual artwork, maybe if one did a colour test, a pigment test, the work I've been seeing lately is more sombre. There's far more work by Black African artists that's being displayed now. When we started it required a deliberate intervention on my part to balance out the sources of the artworks. But I also wanted strong evocative work. It's not to a gallery that people are coming with a sensibility and

artistic interest. This is a court they're coming to, and the work had to be bold, and had to be strong in this amazing building. When we started off, we weren't in this amazing building, but envisaged what it was going to be like. So maybe the work now is more refined, the work that you're getting, it's more sophisticated. It might have lost a little bit of exuberance. I can't see you guys getting a Norman Catherine (*Speaker of the House*) or a (John Baloyi) *Godzilla*, but that's me [my personal taste operating]. So I truly don't see a change but I do see a collection, it's much more sophisticated now. Before it was just a jumble of artworks, very evocative, very wonderful, [eclectic and serendipitous]. Now it's becoming a real collection that's being cared for appropriately. It's very exciting for me to see that.

TIME ON AUDIO RECORDING: 01:33:37 (recording A)

FRANCOIS: Thank you. How important do you think it is for the collection to include new artworks by younger artists speaking to contemporary issues, and the continued legacy of apartheid and colonialism? And how can such artworks be sourced? Specifically noting that many artists don't have the financial means to contribute by donation.

ALBIE: Yeah. The initial collection was totally based on contacts that I had and interventions and people I was meeting with. And by and large, artists and galleries were thrilled at the idea of this public building now welcoming art and appreciating art. So it wasn't hard, certainly in that sense. And artists were citizens, they've also seen the change and the hope that went with the Constitution. So from that point of view, it wasn't hard. The difficult part then was to have the representativity of artistic expression and the Black artists didn't have the same opportunities to exhibit. You just weren't seeing their art to the same extent, and they needed the money, which we didn't have. So, later I was able to contribute something myself to the funding [by donating a chunk of my Tang Prize for the Rule of Law, to the CCAC.] [This was followed by funding from Mellon and so on, enabling you to professionalise.] And now you've got something to go with for making choices. But I think it's basically a question of, more than anything else, spotting the young artists when their prices are not very high. Having the natural contacts with them, and then some of the older artists like Pitika Ntuli, for example, I think he feels very honoured to have his work here in a public place and space. One can balance out in that way.

FRANCOIS: So you don't think the donation-based nature of the collection is that crucial going ahead?

TIME ON AUDIO RECORDING: 01:36:52 (recording A)

ALBIE: I wouldn't know. I'm very happy to leave those conundrums to you guys. We had to do with what we could get, and I was never abashed, I was never apologetic or ashamed to ask for it. It wasn't for me, it was for the Court, for South Africa. So I could be quite bold.

END OF AUDIO RECORDING: 01:38:49 (recording A)

START OF AUDIO RECORDING: 00:01:43 (recording B)

FRANCOIS: I actually did work on one question which wasn't part of our original questions, and that's about the openness of the court compared to the security concerns. I think there's room in the interview to talk about this a bit more as well.

ALBIE: Okay.

FRANCOIS: Can I jump into the questions we have left?

ALBIE: Sure.

FRANCOIS: So the next question we have for you is: apart from yourself, which judges do you think have contributed most directly to the CCAC? How important is it for judges of the Constitutional Court to act as guardians of the art collection?

ALBIE: I would say my colleagues in general were supportive. Not unquestioningly so, but going along with the project and some may be more responsive than others, seeing it very much as Albie's thing. I got total support of course from Justice Yvonne Mokgoro, and Yvonne helped because she gets it, the feel of it, the importance of it. But she's also a person of considerable aesthetic sensibility, and a natural stylist, supportive of the emotion and the values involved. So it was unstinting support in her case, without being very actively engaged. We were all supremely busy judges, and this was like time off, and she gave a fair amount of time. And in my case, it was like a mission. It was like a combination of a passion, a conceit, an obsession, a bit of fervour, an opportunity. I think if you look at my book, *The Strange Alchemy of Life and Law*, you'll get a lot of the background to this emotion. I'm not sure that I

even mentioned the art collection as such in the book, but the whole theme of the interaction between reason and passion, of intellect and emotion. The theme of storytelling, that's in the very last chapter, the judges as the storytellers of our age, all these indicate the place and the space that the art collection came to signify. The only time my colleagues put their collective foot down was when I proposed using the Marlene Dumas tapestries in the court chamber itself. They were designed for a court chamber in the Netherlands and they would have been phenomenal and given a very powerful ambience. My colleagues said, "Albie, you can have the rest of the building, that's okay, but not in the court chamber, where the argument takes place." So I sort of joked, I said, "You want to make sure that the audience all look at us, the judges and not at the big beautiful pictures." But I conceded to their position. They felt that I was carrying the artwork too far, literally into the area of rational debate and presentation. It could be intrusive, it could be a distraction, it could be unduly ornamental, where you wanted a very free, open space. But my colleagues were quite content to have in the Court Chamber the cowhide skins, to have the dappled carpets, and then to have the other elements such as the bricks of the Awaiting Trial Block, the ribbon of glass - seeing the people from outside. Those more abstract elements were acceptable. In the case of Arthur Chaskalson, I might have mentioned this, he appointed Yvonne and myself to be responsible for décor. He had to find something for us, everybody had some task and I was going to say, we seized it with both hands. I always use images of hands, I don't know why, or maybe I'm aware of images with hands in a way that I wasn't before, to deal with environment, ambience, feel. All of those elements simply don't belong to rules and rationality and thought, but belong to a judicial imagination, a judicial gaze, a judicial connection with the world in which the reasoning takes place. So there were things that we didn't do. We didn't make the courtroom look like a courtroom, in the sense of wood panels, heaviness, coldness, aridity. We went for softness quite deliberately. We went for some colour, not just government colour, official colour. And then there was the question of the images we didn't have. We didn't have portraits of dead white male judges. I've often commented on this, that one day I'm going to be a dead white male judge, there's nothing wrong with that, but if that's all that you have, it's actually telling a terrible story, that only white men mattered, and only important figures mattered. It's actually unconstitutional. We didn't have the Magna Carta as a kind of origin of our thinking, drawing from the British colonial masters as the source of the origins of our freedom. We didn't have the woman with the scales of justice, that kind of tired, very ambiguous sort of symbol, and in a way an inappropriate symbol because we didn't want justice to be blindfolded. We wanted it to be seeing, and even Justice Zak Yacoob [who is blind] would accept that approach. And we didn't want the judges to be neutral in terms of racism and oppression and torture and violence, when the Constitution required the judges to be engaged, to take a stand against cruelty and inhumanity and irrationality. So it's also a question

of the materials we didn't take. When the Law Society offered us photographs of game parks, zebras grazing and so on, we said 'thank you, but no thank you'. We didn't want these country club type, beautiful South African landscapes that enabled viewers to escape from so much misery and injustice and passion into a bucolic world of animals and grass, to get away from a real world of conflict and injustice. So, I'd ask for money instead, that we used to buy the John Baloyi sculpture, *Saluting Ghost*. So what the logo wasn't was as important as what the logo was. And in that sense, the Court logo became quite a defining element of how we imagined the Court, the Court space, the aesthetic of the enterprise to be, and what it wasn't was as important as what it was. We didn't draw on European heraldry, which we could have done. And part of it was positive pride, that we'd fought hard for our justice, and gone on to write our own Constitution at the Constitutional Assembly. We had established our own judiciary, our own style, our own content, created our own institutions. And so we needed our own visual elements, the building we inhabited, the ornamentation, the ambience, the feel, to reflect the South African-ness of it all. We didn't use the term decolonise then. It wasn't formerly around. But it was certainly in my head and in Yvonne's head, and certainly the architects were very eager not to put up some kind of floating international style modernist building on a site that had such resonance, that was so rooted in our history. And so in that sense, those themes come together in the building, and we have the space to develop it with confidence. [We are creating a new institution, we are inventing ourselves.] Ismail Mahomed prepares new Rules of Court, he's not going to worry about [alien, imported] aspects. And Kate O'Regan is [telling us about a new thing called personal] computers, and Laurie Ackermann's building up the Library [from scratch], we all have our tasks. And Albie and Yvonne get on with their own thing, and we report to the collective afterwards. So those were all elements going through our minds. And I'm going to anticipate a little bit, one of the questions you ask about justice under a tree. Did I speak about the logo in my earlier interview? I think I did.

TIME OF AUDIO RECORDING: 00:14:37 (recording B)

FRANCOIS: Yeah. So the question I had on the logo, because I do think we have you on record speaking about how the logo originated, but I did add the one question about the tree specifically.

ALBIE: Right.

FRANCOIS: And the figure of a tree and if it's an archetypal tree or a specific kind of tree, and the significance of the tree iconography.

TIME OF AUDIO RECORDING: 00:15:23 (recording B)

ALBIE: Yes. So, thinking then we're not going for the blindfolded woman. You'll find that the prosecuting authority uses that figure, but they Africanise the woman and it's okay. You find *Daily Maverick* reports on justice, they use a picture of the gavel. We actually don't use gavels in South African courts. They take it from American films, but people recognise it and that's okay. But we didn't want these symbols imported from other visual cultures. And I remember myself feeling torn, the first question is: Do we want the idea of a tree or of human beings? A tree is a tribute to the institutions of the Constitution, the structure of the Constitution. It's planted in our history and our struggles, and it's the idea of something organic, and it's rooted and it shelters, and it survives and it lives [and it grows]. So it produces something new all the time. And we were very wedded to the idea of a tree. On the other hand, it's depersonalised [non-human]. So the alternative was the human figure, denoting fundamental rights, that the law is about people, it's for people. You don't fit people into the law, the law is there to shield and protect and help the people to achieve what they have the capacity for and what they may wish to achieve. And so I asked Carolyn Parton [a graphic designer] [to give us both], to do drawings based on the tree, a whole series, and drawings based on the people, a whole series of each. And I didn't say an oak tree or a *doringboom* or an acacia, any kind, I just said a tree.

FRANCOIS: I was hoping it might be a baobab {laughs}.

ALBIE: No, no, maybe it's because I'm from the Cape {laughs} that I'm not baobab conscious. In fact it was only when I went to Mozambique that I really saw baobabs in numbers. Yeah, so for me, the baobab isn't the automatic tree that I think of when I think of trees. And I used to do a lot of walking and climbing, so it would be fynbos, and then of course, we've got lots of pine trees planted in the Cape. So it certainly wasn't based on any particular tree. It was the ideal type of a tree. And then what followed was a chance meeting of a graphic designer who had become a psychotherapist in London visiting the Chaskalsons, and saying: "Why don't you put the two together?" So instead of our being torn by the choice between a tree and human figures, we ended up using the tension created by the choice to create what's now become the very well-known Court logo design. And it fitted in very well with the architects' thinking, quite independently using the... What is his name?

FRANCOIS: Sandile Goje's *Making Democracy Work*?

TIME OF AUDIO RECORDING: 00:19:20 (recording B)

ALBIE: Yeah. Is it Sandile? Yeah. They used the theme of justice under a tree [on the cover of their competition entry.] Now maybe they were influenced by our logo, I don't know. Maybe they arrived there by a similar kind of reasoning. And one reason we love that graphic work, was that it wasn't quaint, it wasn't [idyllic]. It wasn't rural, pastoral, 'isn't the world [wonderful'-ish?] It connotes the idea of everybody settling their disputes under the tree. It had a cameraperson there, something of modernity, but under that tree and out in the open. And they made that the foundation of their philosophy of the building, which was modern in terms of technology, free movement, non-rigidity of form, but also in the use of light, of openness, of a multiplicity of different materials being visible and notable. And has openness, using the courtyard kind of principle of openness in nature, of being a collection of buildings rather than one big [monolithic] structure. These were elements that were absolutely central to their concept and design. It wasn't anti-modernist. It was very modernist in terms of spaces, flow and energy, in having no superfluous ornamentation, no, in that sense, physical show-off and applied bravado. It was very democratic in underlying concepts, to be visible, legible, to see inside from out, outside from in, to be connected with nature, and evoke the idea of the collection of buildings around a courtyard, evocative of a traditional African homestead, but not using the forms and shapes that made sense for beehive huts [in earlier times.] Not copying, not having an [originalist and] ornamentalist view, but the friendliness, the sense of community that's involved. And they followed through in terms of the galleries and the walkways, the idea of internal and external walkways being very important, constructing their whole design around a series of walkways. The inside/outside dimension, the functional legibility of spaces, all those elements came into the architecture. And then the emphasis on integrated artwork rather than... They were hostile to the idea of the architect designing the building, and then decorators coming in and decorating it. They resisted that from the beginning. They saw the fabric as being fabric, not ornamentation, not prettifying the building. I remember even at one stage I bumped into somebody on Clifton Beach, down from Johannesburg, who turned out to have made his money from illuminating public buildings. Well not public, illuminating public and private buildings, lighting them up at night. And I was very excited by this idea, and I told the architects, it could be marvellous if we have these bright silhouettes or illuminated structures at night. And they were horrified. And they said, "The building must be illuminated from within, it must glow." On another occasion when I asked them for features that we needed for fundraising, to become iconic elements of the building that people would identify it with, they said, "No, once you do that, you impose that particular aesthetic on the building through the photograph. The whole building, all the parts, everything must resonate with the feeling you want to

create.” And in a sense, that's been achieved. The loss is, it would be much easier to have a single iconic feature that you could use on all the documents, and everything, and we don't have that. We just have this place and space that can be looked at from any angle, in many different ways. And that's part of its beauty and part of its strength. So these were all themes that were emerging, not through consciously worked-out ideological positions written up and made into prescripts, but just underlining the decisions that were being taken and the way we were taking decisions. That was how the theme of justice under a tree, which they made central to their architectural philosophy, imparted itself to the building as a very friendly, inviting open building. I might have mentioned the debate we had over security. Did I?

TIME OF AUDIO RECORDING: 00:25:55 (recording B)

FRANCOIS: I don't think during our tour, but I do think I've read that somewhere or seen a video of you speaking about it.

ALBIE: Right. So, if I have done so, I'll repeat it a bit. The security people were very shocked when they saw the drawings and they said, “Where's the protection for the court?” They pointed out the areas going to be completely open and people can pass through 24/7, go to work, pass the Court, the school kids coming, walking by. And the architects said, “Fantastic.” And they quoted Jane Jacobs, the American critical journalist who resisted the form of modernism that was cold, grandiose, inhuman and sterile and said the eyes of the people provide the protection. And so we made the building very secure in terms of the steel, the thick glass, the walls, the doors. One point of entrance and exit, other places that could be specially opened so that you could control entry, that would provide important protection. And then the structure of the walls, of the glass, the thickness, were all designed in a way that enabled people to see inside out, outside in. But it was very strong and couldn't be easily destroyed. So when this guy came recently with his hammer, it was mean what he did but he didn't bring the building down or even create a space big enough to crawl through for that matter. So those were the themes guiding us and it was a great educational experience for me hearing the architects speak about comparing our building to the monumental civic building nearby in Braamfontein. Now part of me grew up with modernism. I was inspired by modernism. Ludwig Mies van der Rohe was one of my heroes in terms of visual understanding, and I was excited by it. And in that sense I was impressed by that building, impressed by the Rand Afrikaans University and other buildings of that kind. And they said, “No Albie, we challenge that philosophy. People feel small in them, they diminish. They don't know how to get around, the building's not legible. You have to be guided by somebody, be

told where to go. People are in their offices, all identical. That is seen as a great virtue, the uniformity all the way through. We're gonna have gates for each judge, each with a personality that you can see through, we're gonna have walkways, we're gonna have galleries, so that somebody on the top floor can wave to somebody lower down." All these elements were built in. And I said to Andrew Makin, the architect, afterwards, "Andy, you're never going to do another building like this in your life." And he agreed. They are doing excellent, outstanding architecture. But there was something special about that moment, and the meaning and the character of the building and the opportunity that they were able to articulate with enthusiastic support from the judges. I remember how excited Laurie Ackermann was, and he loved speaking to the architects and discussing where counsel should stand, and to get the arc exactly right, from a functional point of view. But he picked up some of the bravura, the excitement, the intellectual energy of the architects. So anyway, these were the themes that played a very big role. Maybe I should move on to the next question.

TIME OF AUDIO RECORDING: 00:30:44 (recording B)

FRANCOIS: Thank you. I had the question about the court's openness and the security and how the two can be reconciled, but I think you've already answered that. I want to jump back to the second part of my first question which is: how important do you think it is for judges of the Constitutional Court to act as guardians of the collection? And it feeds into my next question, which is your role as an emeritus member of the Artworks Committee. But then also looking at the new judges coming in and looking to the next 20, 30 or 40 years, having judges that are outspoken and that act as guardians for the collection.

TIME OF AUDIO RECORDING: 00:31:27 (recording B)

ALBIE: I think what I'm looking for is not so much hoping for a sense of duty, that we've got to guard this important collection. It's an identification, a connection with, a love for the collection, as an organic, lively thing that adds value to the whole enterprise of judging. Something in which they take pride and identify with. I've been very impressed with... let's see... Johann van der Westhuizen took over when I left, and Johann has a very developed aesthetic sensibility, and an appreciation that reflected a certain section of the Afrikaner intelligentsia that was responsive to a measure of refinement, curiosity, challenge, and change. They were in a way part of the rebellion against the orthodoxies of apartheid and domination and control. And in that sense, the artist represented an element of rebellion, of human affirmation. But I was told that meetings changed completely when I

left and Johann took over as Chair of the (Artworks Committee). There's a picture of Johann, I think that's in our art book, and you see he's got cufflinks. Now I've only worn cufflinks once in my life, and that was when I had to wear a tuxedo for the Sunday Times Alan Paton Award ceremony and I was staying with Arthur and Lorraine Chaskalson, and Arthur happened to have a shirt with the wing collar and cufflinks that had been given to him by the South African Police or the military when he'd done a seminar with them. So there was I, wearing the military cufflinks, receiving the award for the *Soft Vengeance of a Freedom Fighter*. What made it amusing is when I got home, Arthur and Lorraine were asleep and I couldn't undo the cufflinks. I tried to bite them free but I couldn't do it, so I actually had to sleep in the shirt, wearing cufflinks of the military who had tried to kill me. But I just mentioned that to say for me, having cufflinks was something extraordinary, for Johann it was something that made him feel nicely turned out. In my case, I would tell the artists who were members of the committee, "When can you come in?" And they'd pop in and out, we all sat around eating sandwiches, chatting away, and it was very free and easy, full of spontaneity. I'm told the meetings became much more organised, proper minutes were kept, I don't know if they were kept, but it was completely different. In any event, we certainly owe a debt to Johann for taking over with belief in the collection. Then I know that Edwin Cameron was very, very committed to it. And I don't think— I might be wrong. I might be completely wrong - but I don't see Edwin as being particularly devoted to visual imagery, or even to music for that matter. He's a very lyrical person in his thinking, but it's very much in terms of concepts, of ideas, articulation. I might be completely wrong, but I don't remember seeing him at the opening of art exhibitions and seeing him as part of that crowd. And yet he could very well have been, and certainly would have had connections through the gay community, a number of artists, well-known artists were openly gay, and the themes of alternative lifestyles and so on, would be represented in the artworks. But there's no doubt that Edwin was enormously devoted to the collection with passion and commitment and feeling and continues to be. I saw him on a television insert, shown in the USA, speaking magnificently about the CCAC. Then I was thrilled to bits to discover that Sisi Khampepe was chairing the CCAC committee, with great feeling. It could be that she hadn't started with a highly developed aesthetic sense based on study and experience and so on on the history of art and artwork, but on having a strongly intuitive connection with what it was all about, its significance and importance. And then I found a very similar responsiveness from Nonkosi Mhlantla, I call her Nonks, because I got to know her as Nonks. So for me it's been very encouraging to see it as part of the personality of the judicial project, the fabric, the artwork, the ambience, the feel, the character and the diversity that's involved, the lack of formalism, the energies, the importance of textures, of different spaces and of different materials. I think these are all rich and valuable as providing a vibrant physical/aesthetic context for the judicial function. But I wouldn't say

that the judgments of the court themselves should be embellished with visual attributes. It's lovely to see the preamble with the Constitutional Court font (*The Face of a Nation* designed by Garth Walker), that's very beautiful. It's lovely to see the Bill of Rights document, but those are parchment type materials. I don't know if the actual judgments should be hallowed in that respect. I think a nice plain simple type for the words, unembellished would be better. In terms of the gown, the court gown has been quite interesting. We were in a hurry to have our own gown and its most important attribute to begin with was that it wasn't like the gowns being worn still from the colonial and apartheid era. It wasn't black and it wasn't red. This was the new court with a new constitution, with a new style, a new personality and a new modality. So the critics of the Court spoke about those judges in their green gowns, that was used as a term of abuse. I must admit, the first outfit wasn't very stylish. Tholakele "Tholie" Madala was given the task of gowns. And we debated whether to have gowns at all. The judges in the House of Lords in England, because technically they were a committee of the House of Lords, didn't wear gowns, just gentlemen's suits. And I think to this day, even though they've been separated from the House of Lords building, and now it's the Supreme Court, I think they just wear suits [and now that women are included, dresses.] And we finally decided we should have gowns, that it would somehow dignify the office, show the equality that's involved, and it fitted in with something of the traditional idea of the elders with the skins, the toga that you wear, indicating that you are now fulfilling a public function. And we chose the colour green, we felt it was a South African colour, and we retained the white bibs. And then every now and then we would discuss changing the gowns. So Tholie went to people in Grahamstown (now Makhanda) where they had been designing gowns for bishops and judges since the 1850s. And I don't think their style had changed very much since the 1850s. So we had some discussions, during my last years on the Court, and we looked at gowns from all over the world. And it was only when four of us left at the same time, and they'd run out of material to replace the gowns that we've been wearing, that the Court actually made the change. And I think the gowns today are more stylish than they had been for us. I used to joke that airline stewards were better garbed than the judges of the top court in the land, and now I think they're roughly the same. So for me, the value of the collection does not directly influence the reasoning and the decision-making. It's part of the humanity and the richness of human beings that it emphasises. It's the rejection of strict formalism, for its own sake, of a sterile, arid mode of classificatory reasoning that doesn't start with the people, the human beings, with human existence, but that sadly starts with the rules. And so for me it's part and parcel of that richness of imagination, thought, expressivity, openness and curiosity, that is sustained. Now, I heard a story that when Chief Justice Mogoeng Mogoeng went to open a new court building in Bloemfontein, the Supreme Court of Appeal, he commented, "Oh, well at least it looks like a court." So I sensed that he wouldn't have been all that

enamored of the style of the Constitutional Court as it is. It's not something, I mean, that should be taken for granted, but I know that people like Pius Langa were very responsive and positive. Pius was very proud of a Kentridge graphic work that he had in his chambers. A rich, thoughtful piece. Dikgang Moseneke certainly was also very positive about the whole ambience without being strongly engaged himself in the artwork. So my sense is that the artwork has become part and parcel of the personality of the Court, that people go to a place they've become used to, because of a familiar aspect they see on TV or in the press, with its unmistakable presence, they're used to sitting in that particular space, in that particular auditorium with its own very strong character. And I like to feel that the Court community feels pride when they welcome people to the visitors sections, its vitality, ambience and feel.

TIME OF AUDIO RECORDING: 00:46:06 (recording B)

FRANCOIS: Thank you. I'm looking through my questions, I think you've already addressed many of them. Maybe a follow up question on the legal aesthetics. You've spoken quite a lot on the significance of the architecture of the Court and the art collection. And you've touched on various judges appreciating the aesthetic, or others that might appreciate a more traditional looking court, but I'm interested in that visual literacy. Judges who know art, judges who are naturally more inclined to be drawn to aesthetics, versus those who are more inclined to focus on the written letter of the law, but also, the importance of the aesthetics of our constitutional democracy. Do you think that's something that should perhaps be taught at law school? Do aesthetics carry enough importance that it should form a key part of our understanding of the law, to the extent where lawyers should be taught about aesthetics?

ALBIE: I think it could be a valuable, interesting dimension if it [could] somehow be connected with the reason and passion of the judicial function that I mentioned, especially if it's done in a way that's not forced. And I think it's also valuable in debunking the accusation of a colonised judiciary. The building is a very good example of a decolonised building. In all sorts of ways, it gives meaning to the term decolonisation, drawing on an African aesthetic. Nomalanga Mkhize made a very interesting point when we were working on the animations on the making of the Constitution. She said, "We mustn't take a North American Black aesthetic, like the Black Panther, and impose it on our own visual imagery. We must develop a South African Black aesthetic." And I think we've achieved a South African aesthetic certainly with the building, the content of the building. At one stage, the artwork tended to be overwhelmingly the product of white artists, because they'd have the opportunities and

they could spare the artwork for donations and so on, and many of them had international reputations. I think a lot has been done to have a much more balanced representation now. It required some very conscious interventions on my part. To begin with, I donated Dumile Feni materials, borrowed work from the South African National Gallery by Gerard Sekoto, and with money from my own pocket, acquired striking panels by Sipho Ndlovu. We also commissioned tapestries by Joseph Ndlovu and Pat Mautloa. The then rudimentary artworks committee also received significant guidance from Bongzi Dhlomo-Mautloa. But now in a much more spontaneous way, you look at the material that's been acquired and you get a sense of diverse imaginations, origins, aesthetics being involved. You had a question about donations. In a sense, it wasn't a choice when we started, it was that or nothing. We had R10 000, that went toward just the one work (*Humanity* by Joseph Ndlovu). And how do I feel attending the meetings now? I'm thrilled to bits, that they're organised, that proper records are being kept, there is follow up, there are structures, and people focusing on it. We were all completely part-time, burdened with other work and activities, doing a huge amount, getting through a lot, acquiring work, imparting a quality and a texture to the whole collection. But it's awkward that we don't have the records. I think maybe there were some problems with records that we kept that weren't properly stored afterwards. I don't know what happened to the artwork documents that I handed over. But it's lovely for me to see now that things are organised, people are given responsibilities, and that there are full-time or part-time professionals focusing on the work of the CCAC.

TIME OF AUDIO RECORDING: 00:51:51 (recording B)

FRANCOIS: Got one more question here. What developments would you like to see regarding the CCAC in the future?

ALBIE: I think there's an inner vitality that has to be retained. A sense of excitement, a sense of it being a little bit daring and then to maximize what is a wonderful collection and a wonderful building, to find ways of using it, communicating it, keeping it alive. At the early stage, we wondered, specifically should this be the collection made at the time of transformation from apartheid to democracy? The first years of the court, like a period thing? And the walls and spaces filled up quickly. But we decided not to make a decision on the matter, that those who later found themselves in charge of the collection, should decide. I think, happily, the decision has been to continue adding, rearranging, recirculating and preserving. I think one can see the collection as being founded at a

particular time, in a particular era, and that will always be there. But it's founded as a foundation and not as the final collection.

TIME OF AUDIO RECORDING: 00:53:45 (recording B)

FRANCOIS: Thank you. I have one more question although I think you have already touched on it. To what extent do you see art as having the power to effect justice or human rights?

ALBIE: I don't think our decisions as judges became more significant as the art collection became bigger. I don't see any direct connection between the two. So I think its value is in reinforcing the humanity of the work that we're doing, and the imaginative quality of what we're doing. Imagination doesn't mean you can invent anything you like, but it means you're not hidebound, you're not dominated by rules of inexorable precedent. You're dominated instead by certain principles and themes and your starting point is a text called the Constitution, and that is the framework within which you function. And we've developed a lot of indigenous precedent of our own in the Court now. When we started we had to explore what judges in India, Canada, the United States, Germany, Zimbabwe and Namibia were saying. Now we've got a very rich store of our own decisions, so we don't need the international materials to assist us to the same extent. And I must say, I'm impressed by the creativity of the current generation of judges. Maybe I'm particularly pleased because in some instances they have picked up things that I was saying 20 years ago as a minority voice! Maybe the minority becomes the majority view now. I get the impression of lively thinking minds at work, and the idea of the physical ambience, and the place, and the space, encouraging lively thinking and imaginative treatment to achieve the values of the Constitution. All those elements I think are reinforced by the court environment. But it's not a direct literal connection and I wouldn't be surprised if there are some judges who are almost illiterate aesthetically, completely and yet produce wonderfully rich and imaginative judgments. Their imagination works with words, with language. Sandile Ngcobo once brought me a picture and he said, "How much do you think it is worth?" And I looked at it and I said "You know, it's got some very interesting little design features, but it's not very well accomplished. Maybe R50. He said okay, it was created by his nine-year old daughter. Now Sandile's office was like a big safe, completely enclosed, no visual distractions at all. And he had a beautiful mind, and he used language in a very, very rich way. And it wasn't dependent upon if you like these externals. It was almost like he was cutting out the externals and just living inside his imagination. So I wouldn't overstate the function of the role of art as being a source of original, creative, judicial thinking. I see it as part and parcel of the project of what I would see as the

decolonised, free thinking, judicial mind in function. Not confined by the subliminal implications of an imposed visual scene that could be, in that sense heavily imperial, colonial and having a negative grandeur that stands in the way of the judicial beauty we seek that's responsive to our people, our situations and our needs.

FRANCOIS: Thank you. The very last question is an open one. Is there anything else you would like to add?

ALBIE: Just generally, my total, utter delight that you guys are functioning in this area, taking it seriously, asking new questions, having debates and discussions, enthusiastic about the project, and that it's now being respected and looked after in a very meaningful way. It's a source of total delight for me.

FRANCOIS: Thank you, Albie, it's nice to hear.

ALBIE: Yeah. Okay, then.

FRANCOIS: Thank you.

END OF AUDIO RECORDING:01:02:14 (recording B)

END OF INTERVIEW