

The Association for Diplomatic Studies and Training
Foreign Affairs Oral History Project

JUSTICE WILLEM HEATH

*Interviewed by: Daniel F. Whitman
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[Note: This interview was not edited by Justice Heath.]

Q: This is Dan Whitman. It is February 12, 2010, and we are interviewing Justice Willem Heath who at times has been the leader of one of the world's most known and respected investigatory commissions. Justice Heath, may we start by asking you, we are going to talk about your experience with the United States in the struggle period and beyond. May we first get a notion of the overall span of your education, your training and your current activity?

HEATH: After I completed school I attended the University of Pretoria where I acquired two degrees. One was a BA in Law and the other one was the LLB degree which then equipped me to become a practicing advocate in South Africa.

Q: Can you tell me when approximately?

HEATH: Yes, I acquired the first degree in 1966.

Q: That would make us contemporaries.

HEATH: The second one was in 1968.

Q: The famous 1968.

HEATH: Yes, but of course I didn't start with private practice immediately. I started off as a prosecutor for six months. Then I was promoted to the Supreme Court as a state advocate, still involved in criminal prosecutions.

Q: I am sorry, for the listener and the reader, could you explain the distinction in South Africa between the high court, the Supreme Court and the court of Bloemfontein.

HEATH: Yes. Well as far as let me start right at the bottom. There are the Magistrates courts with limited jurisdiction as far as crime is concerned and also as far as vary of claims is concerned. Then there is the regional court which basically does more advanced criminal cases. Then on top of that or above that we have got the high court. Each province has got its own high court, presided over by what we call a judge president and a number of judges. Then there is the supreme court of appeal which is the highest court

as far as ordinary appeals are concerned, and then the last court is the constitutional Court which got the regional jurisdiction so a man can be tried from the outset. It is not simply an appeal court, but it is also an appeals court from the supreme court of appeals and even from the high court.

Q: Let me just get geographically. I think that the supreme court of appeal has several venues whereas the constitutional court is only in Johannesburg.

HEATH: No the Supreme Court of Appeals has only got one venue and that is Bloemfontein. The Constitutional court is in Johannesburg, only one venue.

Q: So your initial appointment after being a prosecutor was with the Supreme Court in the Transvaal?

HEATH: No, the regional one was a magistrate's court in Pretoria and then with the Supreme Court, the attorney general's staff also in Pretoria.

Q: Well as a non legal specialist we will master this. Thank you. Now you have gone over this very schematically, but in 1966 BA, and in 1968 advanced law degree prosecutor Supreme Court Pretoria.

HEATH: After that I resigned and started out my own private practice as an advocate, as we call it in South Africa. That was also in Pretoria. I specialized in a number of areas. The most important one was civil cases, claims against the government and of course claims between different parties. And I gradually also developed some constitutional practice, not very wide because at that time it wasn't a high priority in South Africa. Then occasionally very important complex criminal cases. So I continued building up experience even as far as that is concerned. I was given SEC status the status of senior counsel in 1986. Then I continued practicing, but in that case as a senior advocate or senior counsel. I continued the type of practice that I had before that time. I was actually rather young when I acquired that status and in 1988 I was approached by the minister of justice to accept an appointment as a judge of the high court. I was probably the youngest judge ever appointed in South Africa. Up to that stage initially, advocates would be appointed as a judge when they are 50-55 years of age. I was 42 years of age at that stage. So I joined my senior colleagues, elder colleagues in the Eastern Cape where I was appointed as a judge. Actually I was appointed to the Transvaal but seconded to the Eastern Cape. In fact, that was the days of the homelands and I was then judge of the High Court, therefore as Supreme Court as it was called in those days in Bisho in the old system.

Q: That is the Eastern Cape.

HEATH: That is right.

Q: The enclave recognized by the government of South Africa but not by other governments if I remember correctly.

HEATH: That is right yes. Even from the South African government point of view, although they pretended those were independent states they were very prescriptive as far as those homelands were concerned. Therefore apart from non recognition by any other state in practice, they really didn't recognize the independence. But on the face of it independent states, their own infrastructure, their own government, own president and of course its own judges. What I had to decide before I accepted the appointment was whether it would be conducive to my career if I accepted an appointment in the homelands. But eventually what persuaded me was the desire and the occasion to go protect all the citizens in that area, and therefore I decided that I would have to play or I would be playing quite an incisive role, important role as far as that was concerned.

Q: I don't know if this is an important distinction or not, you say you had to decide if it would be conducive to your career. And you decided the citizens require your protection. At any point did you have an ethical or moral issue about being part of a system which was not recognized by other countries?

HEATH: Yes, I was not happy with that. But I had to weigh up the two interests that I had there and that is the reason I decided to go in. And on what I am going to tell you just now, I actually played that role. That had really changed the general atmosphere in that homeland.

Q: We do want to get that story but isn't this a culture shock to go from Pretoria to the Eastern Cape?

HEATH: It was a culture shock, especially living in a small town not too far from East London which is a bigger town. But yes it was quite a change, but I liked the Eastern Cape. My grandparents used to live there so I knew the area very well in those days.

Q: Is this one reason you were chosen for that particular post, because of a family familiarity with it?

HEATH: No, that was no concern. I don't think anybody actually knew that I had sort of a background coming from there.

Q: I am sorry, I don't want to tell the story.

HEATH: No, that is fine.

Q: Some of your activities in this Ciskei?

HEATH: Well initially it was the typical run of the mill cases that I was dealing with, but because of the infrastructure and the commercial activities in the Ciskei which was actually quite extensive. I became involved in important civil cases. When I say extensive, the government of the Ciskei levied no tax on companies. That made it very attractive to foreign investment. Therefore from all over the world factories started

operating in that area and they were very happy with that. Even the tax for individuals was very nominal tax, right?. That made it attractive to also to professional people. The strange scenario is that just next to Bisho is a town called King William's Town. When the homeland was considered by the national party government the King William's Town people signed a petition that they didn't want to be included in that homeland. But after this so-called independence, they realized there were serious tax benefits. So from the offices of attorneys to right across the border where business people are concerned, they opened offices in Bisho. Very often just a post box, but say on that basis they tried to share in the profits and the low tax.

Q: OK, so there were some paradoxes here. You had no taxes on companies, this attracted investments. Of course historically ten years after this time there was great question about investment in South Africa from the outside, and I guess the appeal for investors was so intense that in some cases they could not resist or did not want to resist being part of the Eastern Cape.

HEATH: Yes, but of course after a number of years I think it was about three years later a coup was promoted by a soldier and three other soldiers. I will tell you something about that just now. So they committed this coup, and that led to the international investments being withdrawn from that area, which impoverished that area to the detriment of the citizens in that area.

Q: Did you have mixed feelings about this? Did you feel this is only to the detriment of the people in that area?

HEATH: That a coup had occurred?

Q: No, coups are never appreciated by civilians. But the loss of investments. Did you feel that this was a serious blow to the area?

HEATH: Oh yes, it was such a serious blow that it was just the opposite. All the factories in that area were empty, vacant. Employment was lost, so that was a serious blow to that community. It basically returned to the sort of impoverished state of affairs that used to prevail in that area. As you might know now, the Eastern Cape is the area that is not much admired by businesspeople and others.

Q: Well it is a poor area with a high degree of unemployment.

HEATH: High degrees of unemployment, a lot of crime, a lot of corruption as far as the government is concerned, so to the extent that money would have been available it is lost through corruption and fraud and all kinds of other activities.

Q: You use the word corruption. I think of some things that happened later in your career, but I don't want to get us off track in what happened in your career.

HEATH: Ok I am going to give you some brief detail as far as my activities as a judge are concerned. Because of my exposure as an advocate, I was given the more complex particularly the constitutional cases. Now the strange feature of the coup was that it converted the country into a dictatorship. There are lovely stories I can tell you about that either now or later on.

Q: Please.

HEATH: The coup was committed one Saturday night. I wasn't aware of it but the next morning I discovered that. At that stage the president was out of the country. President Sebe as he was called. The so-called minister of justice contacted me and asked me if I couldn't take action to get the dictator or to persuade him to allow the president to return to the country. Which of course he wasn't willing to do. The next morning I was busy with these phone calls and negotiations. And then another soldier walked into my study at home. He was the fourth member of the coup, and his CB was the leader of the band, so that of course didn't equip him at all for what was lying ahead of him.

Q: May I ask what instrument? Brass no doubt.

HEATH: The leader himself was military attaché in Pretoria so you can imagine what his claim to fame was as far as military activities were concerned.

Q: Why did he enter your study?

HEATH: The guy who entered my study had the following request. He tells me now they have committed the coup. They have completed the coup, but now they don't know what to do.

Q: And he wants your advice.

HEATH: So you approach a judge.

Q: That is an amazing story.

HEATH: So I then said to him there is no way I can assist him but I can recommend he approach an attorney, and I gave him a number of names of attorneys. About an hour later the advocate who was appointed by the attorney called me and said he has got the brief now but he doesn't know what to do. So we were back to square one. But then I advised him if they want to suspend all government activities in the Ciskei, the one thing they mustn't do is suspend the activities of the court. They agreed to that, and they never even touched the court. So notwithstanding that, the court continued to operate.

Q: So we can say that single handedly you rescued the judicial system of a country.

HEATH: Yeah, that is right. But now this advocate then persuaded him to accept a constitution based on human rights. So it was a dictatorship but with human rights. That

led of course, to a lot of litigation because the government of the day would issue decrees which would be in conflict with the constitution, and then of course the parties would rush to court. I was entertaining most of those cases.

Q: Wow, so in the sense you became the adversary of the regime.

HEATH: That's right.

Q: Very official.

HEATH: Eventually what is called the Bisho Massacre occurred, I don't recall the date now; it was probably a year later.

Q: In what year?

HEATH: That would have been late 1991 or 1992 I would imagine. 1992. Now those were the difficult days in South Africa with political problems. A lot of dispute, a lot of race tension.

Q: Were the elections of '94 foreseen at that point. I know there were great expectations of violence leading up to that election.

HEATH: Behind the scenes a lot of negotiations had already taken place by that time between the ANC on the one hand and certain members of the National party government. So that was on its way, but of course 1994 was not yet envisaged as the day when democracy would find its place in South Africa. But this was actually a march by the ANC, and what they intended doing was actually take over the governing in the Ciskei area so there were a huge number of people, thousands of them. The dictator's name was Gqozo.

Q: He wasn't from the Basque country by any chance?

HEATH: No. But he wasn't willing to allow the march into the Ciskei. So eventually after a protracted negotiations, it was agreed they would allow them to march into the Ciskei but only into the stadium which was just inside the border of the Ciskei. Now we were busy at court on that particular day, and from our point of view all of a sudden we heard shots being fired. What happened in there, there is no dispute about that, is that Ronnie Kasrils who was quite a strong personality as far as the ANC is concerned, and a number of his cronies not only moved into the stadium, but out on the other side. There were Ciskeian soldiers see, and because of their lack of training, they got a fright and they just started shooting, and then there was a general shooting. The reason why I am telling you this is the next day Gqozo issued a decree granting indemnity against any prosecution and civil claims to his soldiers and the police.

Q: That is a dictat. That is not a legal measure.

HEATH: That is right. There was an uproar and the day after that he granted indemnity to the ANC as far as civil claims are concerned and criminal prosecution. That of course, didn't satisfy the ANC, but more importantly the relatives of those who had been killed and those who had been injured during the course of the shooting brought application to our court. I was presiding then and the application was to declare those decrees invalid as being in conflict with the constitution. I obviously granted the relief and found that they were invalid and unconstitutional. Obviously, the government wasn't too happy with me but at the same time they could do nothing because they were bound by the constitution which they had promulgated themselves.

Q: And it was you after all to whom they came for advice in the first phases of their coup, so they saw you as a person of credibility. They couldn't exactly disregard your opinion.

HEATH: In fact there were follow up as far as their advisors were concerned but I don't want to bore you with that detail.

Q: Nothing is boring.

HEATH: When I arrived in Bisho I found that there was such a backlog of cases and we were only four judges. That, I decided, I had to take determined action to deal with that backlog. I think after a year I had done most of those cases and the court was up to date as far as I was concerned. In the meantime I was very often then involved in constitutional cases, but also civil claims. My judgments were reported not only in South Africa but also internationally in various jurisdictions.

Q: What interpretation was given in the international coverage? Were you considered a judicial hero or a defiant person? How was it characterized? Modesty need not enter into this.

HEATH: Well internationally those judgments were met with approval. They also saw that as a new face in the jurisdiction of South Africa jurisprudence as such, and therefore it was very well received. Probably better received in some respects in Europe and in the UK than in South Africa, but at the same time those judgments constituted precedents for the constitutional court which was eventually then introduced.

Q: Dutch Roman law, I won't become an expert in this hour but is the importance of precedent as important in Dutch Roman as it is in the British system?

HEATH: Oh yes. Our system is very much like the British system.

Q: When you say approval in South Africa I am not sure which South Africa you are referring to, the ANC or the establishment.

HEATH: No it was still the establishment because it was still before 1994. And I must say there was ignorance generally as far as legal practitioners were concerned.

Q: Am I right in thinking, I know this only from Hearsay, that the late Botha and de Klerk regimes while you could say things about the social and political options they took, they had a certain reverence for the law did they not? Or they paid obeisance I don't know how you...

HEATH: Yes, well at least openly they would support what judgments were brought out, but at the same time you mustn't forget it was basically an isolated court. Although the judge was reported in South Africa as such, it was all silliness in those days.

Q: What can you add to your relationship to the public when you rendered these decisions?

HEATH: In many cases the audience in the court if I could call it that consisted of the black people in that area, many of them uneducated. Therefore I was always at pains in my judgment to explain the rights, the obligations to make it understandable to them, and that was much appreciated. Even when I had to impose a sentence, exactly that. The result of that was I was given a nick name in that area, and that was "The People's Judge." That is still with me today. Very often that is the nickname that I have got.

Q: Who had access to the proceedings, anybody? Was anybody allowed to come and observe the proceedings?

HEATH: Yeah, anybody. It was an open court.

Q: Within the limits of space.

HEATH: Yes that was a limitation but that was a fairly modern court so it was a fair size as seating for the audience was concerned during trial.

Q: The people's judge. This will be the title of this chapter.

HEATH: Maybe one other highlight as far as that career is concerned. We need to move to other areas. At a certain stage the attorney general decided to charge Brigadier Gqozo, the dictator, with murder. The background to that was there was a guy called Charles Sebe who was the brother of the former president Sebe. Now he lived in the Transvaal area which was another black area, which was called in those days on another element in the same province. He allegedly intended overtaking the Ciskei government and he moved into the Ciskei area. He was killed and then Gqozo was then charged with murder on the basis that he had given instructions for Charles Sebe to be killed. The allegation was there was no foundation for the fear that he derived there to just dethrone Gqozo.

Q: Was this the first instance in which the Brigadier was charged with murder?

HEATH: Yes that was the first.

Q: Not after the Stadium massacre.

HEATH: No. He was never charged with murder. The probable reason for that was that nobody was supposed to shoot and therefore he never intended the consequences of the shooting. To get back to the trial, before we commence the trial a senior police officer from South Africa, a colonel, came to see me. I was to preside in that trial. They told me that they had information that the Gqozo trial as well as the ANC were both planning to kill me. The Gqozo trial on the basis that if I were to convict him I would be killed by them. If I were to find him innocent and discharge him, the ANC might want to do that. So I accepted that but there was no way that there was no way I was not going to proceed with the trial, so we commenced with the trial.

Q: The individual that told this to you I take it did this as a friendly gesture to give you the information that you needed. Was there any outside force or possibility, was there any way of protecting you?

HEATH: Or to confirm that what he told me was correct is that the question?

Q: No, did you proceed on at that point with any backup of any protection of your own well being?

HEATH: Nothing. I decided that the court case must be run as usual, must be accessible, and therefore no arrangements were made to protect me. But there were more police officers at the court, more of the local guys than anybody else. If the South African government had people there of course I didn't recognize them and didn't know they were there. After the first day, the next morning actually the court orderly came to see me, and he told me that they detached a large number of firearms in court, so a crowd had arrived there with firearms and they had taken them away and therefore from that day onwards they had an arrangement to body search everybody that arrived there.

Q: Maybe the local police.

HEATH: Yeah the local police.

Q: So the local police in that instance behaved properly.

HEATH: Yes, absolutely. Then the trial continued and about a week later the same court orderly came to see me and told me they had now discovered that brigadier Gqozo's bodyguards would arrive at court early morning, 6:00 already and they would hide their machine guns and then they would attend the court proceedings ready to act if they thought fit to do that.

Q: Did you learn this the day before.

HEATH: No they had already done that every morning.

Q: So when you entered the court you were told that there were weapons in the room.

HEATH: No, the court orderly came to see me in my chambers. He told me, so I said, OK, now you conduct a thorough search of the court. They had done that and they had removed a number of machine guns.

So the case continued, but if I could just go back. The first defense that was raised by senior counsel appearing for Gqozo ...that was an advocate Dubrain was that they were entitled to rely on the principle that the king can do no wrong.

Q: Sounds like the 14th century. Was there any basis in law for that?

HEATH: Obviously I found there was no basis, but it was a long, I mean very substantial, not substantial, that is the wrong word. But he made his admissions which were countered by the attorney general.

Q: Were there questions that a brigadier was not a king?

HEATH: Well he was obviously not a king, but they say his position was similar to that of a king.

Q: Was there any jurisprudence justification for this claim?

HEATH: Nothing in Sough Africa, but they completed the arguments on a Friday afternoon. That weekend I studied the law, particularly the English law, and on the Monday I walked into court and the advocates were astonished that I could collect so much legal argument and reasons to find that of course he wasn't a king, and he could do wrong. That case was also reported and also internationally reported. Let me just finish that first. The evidence obtained by the prosecution was very poor. Most of that was based on newspaper reports which you can imagine no jurisdiction's that actually evidence. So by the end of the trial I acquitted, I found him not guilty and I acquitted the brigadier.

Q: Because of the inadequacy of the prosecution's evidence.

HEATH: Yes. Absolutely just that.

Q: At the same time it sounds as if the advocates were not playing with a full deck.

HEATH: The Advocate appearing for Gqozo?

Q: Yes.

HEATH: He should have known that as far as his first point is concerned that there was no merit in that. At the same time the attorney general should have known that there was no way he could prove the case.

Q: So your acquittal, going back to the original threats. Now I guess the ANC must have been very angry.

HEATH: Well yes the ANC was, but I have given so many reasons for that, and because I think of the local support nothing occurred after that. There is maybe a lost matter that I should mention. A case was brought before me. The accused was charged with rape of his own wife. Now in South Africa up to that stage it was generally accepted under the law that a husband can not be charged with the rape of his wife. But I did the research and found that that was never really introduced into South African law. I then, on the legal issue, found that the husband could be charged with rape. And then legislation was introduced in line with that judgment to create a specific case in which the husband could be charged with the rape of his wife.

Q: So it was a tradition but not a precedent that a man could not be charged with the rape of his wife.

HEATH: It was actually stronger than that, because it had to go right back to the beginning of our jurisprudence. The courts had just continually accepted that it was principal so they then just piled up precedent on that, which I then found there was no foundation for that. The interesting thing is at that very same point in time after I had written my judgment and before I delivered it, I discovered that at that point in time in the House of Lords and in the high court in Scotland there were judgments pending on the same issue. So then I felt my research is correct and there is support so I quickly before I delivered the judgment introduced also the views of those courts.

Q: Did judgments in the UK and Scotland serve as precedents in South Africa?

HEATH: Very much so, yes. Obviously South African judgments enjoyed precedence, but to the extent that there are no guidelines in South Africa, that is accepted, but even in those cases where there are guidelines in South Africa it plays a strong role in our jurisprudence. Actually much stronger than you would imagine the European law would play. Notwithstanding the Roman Dutch leg of our legislation and law.

Q: Well most interesting. So were you able to reverse decades of precedents?

HEATH: Yes. That judgment was followed right through South Africa, and as I told our legislation was also introduced to confirm that.

Q: Now I know the prosecution in rape was very difficult in South Africa at that time, But the judicial principle was established in this case.

HEATH: Yes.

Q: Still in the Ciskei, are we still in the Ciskei?

HEATH: Yes. I am going to move to corruption and that area.

Q: Now we get to the issue for which you are so internationally known, your prosecution of corruption.

HEATH: Yes. In 1995 I was approached by the premier. It was obviously after 1994, and there was a democratic South Africa. I was approached by the premier of the Eastern Cape to investigate fraud and corruption and maladministration. He wanted me to serve on a commission of inquiry and my response was I was not interested to do that, because in South Africa commissions of inquiry have got no teeth. It is just simply collecting evidence and the commission plays no role in any prosecution or civil action. They introduced a proclamation and I was given specific powers not only to investigate that but also to take proactive action. For example, to recover money that the government has lost or to set aside contracts, so the whole spectrum of irregularities, which would govern certain transactions or expenditure or any other government activity.

Q: Well because this is a period of transition I have to ask. Which government, the previous or the present?

HEATH: That was now the new government.

Q: Like one year into it.

HEATH: Yeah. One year in, and of course that was now limited to the Eastern Cape. I started in July, 1995, and it was hugely successful. So much so that during 1996 President Mandela through his minister of Justice Della Omar approached me and persuaded me they wanted to introduce legislation on the national level for the whole of South Africa to conduct the same investigations they had done. And legislation was then passed towards the end of 1996. The question that the minister of justice was instructed to ask me was did I want to be one of the judges on the special tribunal that would entertain the cases, or would I like to conduct the investigations and therefore become the head of the new investigating unit. My choice was to conduct the investigations. So there were other judges who were running the special court if I can call it that. The successes just simply continued and by that time the reputation was so strong that we often found that when we commenced an investigation people would come to us and just confess, surrender.

Q: Were there many out-of-court settlements?

HEATH: Many. Most of them were out of court. In fact I quoted that there were actually thousands of those cases, and I reported to parliament every year, and there was just so much admiration in the activities but at the same time confidence in what we were doing.

Q: At that time to receive a letter from Justice Heath was a bad experience.

HEATH: It was always. And I had had the experience that I would have a meeting with a national minister and I would arrive at their offices and they were really scared because they didn't know whether I was maybe investigating them.

Q: Or just Informing.

HEATH: Yeah. So it was we started actually with the national one in 1997, and that is where then when the international feature was added to what I was doing. I started receiving invitations from many countries and would go there for conferences and make speeches. The concept of this investigation became well known. It was unique in the sense it was not just simply an investigation; it was not just simply a court hearing, but we had very special powers within the framework of the constitution. It was not in conflict with the constitution, but very wide powers.

Q: Powers given to you by the premier initially and later by the national government.

HEATH: Yeah.

Q: Powers that exceeded the normal powers of an investigative commission, a commission of inquiry.

HEATH: Well it was actually not called a commission in the new dispensation. It was called a special investigating unit. It had special powers that any person was questioned by us was obliged to answer all questions. But to the extent that they might have become involved in criminal cases which was not part of our jurisdiction, the information given to us was not admissible in a court of law. So we protected the rights of an accused person in a criminal case.

Q: For the purpose of finding the anatomy of fraud and corruption, of getting the most data possible you gave some protection to the person giving the data.

HEATH: Yes, well that was a most important protection. But we very seldom had to refer any individual question by us to that legislation because by that time the reputation was such that people just cooperated.

Q: What a wonderful position to be in.

HEATH: It was actually wonderful. But you know with the threat of fraud and corruption you actually need that because there is no way that you can get to the crux of that. Corruption is one of the more difficult crimes to investigate and find the facts because both partners to that crime are participants as far as the crime is concerned and there is no way that any one of them would volunteer it.

Q: So you need a certain protection or immunity given to the person providing the information.

HEATH: But the majority of cases we developed a technique to gather facts. What we found is that individuals would come to us and volunteer to be witnesses. So there was a huge influx of witnesses who may have had some knowledge of the crime.

Q: Do I understand that people came forward even without being subpoenaed?

HEATH: Yes. Just to give you an idea as far as the famous or infamous arms deal is concerned; the matter was reported to me by Patricia de Lille. She is the leader of one of the opposition parties, the Independent Democrats. But she in turn got the information from a number of former members of the ANC who were most unhappy. After that, after it became known that she referred the case to me I was just flooded with information. And of course eventually there was not, I had a lot of information about the arms office in London. But the government of the day believed that I knew much more than I actually know because of the uproar that goes off of the role that I played by entertaining evidence provided by the public.

Q: So there was some intentional bluffing.

HEATH: Yeah. Now the order general made a speech in parliament, I think it was during the year 2000. He made the statement in parliament. Now I worked very closely with the order general in those days. He made a statement in parliament that the successes of our investigation, that was the most important enemy because we were too successful and of course then the government of making sort of... they saw me as enemy number one. I picked up a lot of problems with Mbeki and his immediate ministers, like the minister of finance and the minister of trade and industry.

Q: Now some people in the ANC were upset at the level of fraud and corruption and brought information to you, and yet one person actually said in parliament that you were working against Mbeki

HEATH: I was, by that time, so popular even with the ANC that by far the majority of the members of the ANC supported the work generally that I was doing, but also eventually when the arms deal formed part of my everyday life, that the majority of ANC members actually appreciated what I had achieved, and what I was doing.

Q: Summarize, if you would, the arms deal.

HEATH: Yes. But of course typical of people, not all of them were prepared to state their support openly. And because of the nature of the governance by Mbeki and his cronies, they were scared to always publicly support what I was doing, but quietly and in secret they would come and see me and assist me.

Q: Does this imply something of a split back then in the ANC?

HEATH: Yes, there was a split. If I could call it that supporters and non supporters. Obviously it wasn't the huge dividing line.

Q: There was maybe, we could say, an ethical split, not a political one.

HEATH: Yes, and it is you know generally the man in the street appreciated us because the money was coming back to the government. Assets were recovered which made it available for the government to deal with it. So I actually moved the arms deal maybe too quickly, but it went well. There was one drawback. Once serious shortcoming in the legislation. The provision of that was that I had to acquire a proclamation from the president before I could investigate anything. I fought against that, but at the time when the legislation was drafted even I didn't see the impact that could have in the future.

Q: How did this differ from the normal practice?

HEATH: Well if you take a police officer, he doesn't have to have the permission of the president to investigate. If you have your commercial crimes unit, you don't have to have that.

Q: Why was it necessary in this case?

HEATH: I think it was part of the old commission of inquiry that got stuck into this legislation. As far as Mandela was concerned in the days when he was in power that was no problem. He would just issue those proclamations when I applied for a proclamation. But then when Mbeki took over as president, initially he was cooperating. But then I found the proclamations were not forthcoming, which means that the public became more and more unhappy. They would refer a matter to me for investigation or for that matter even government departments would refer a matter to me for investigation but the proclamation would not get issued. So it created the perception that there were long delays in the investigation.

Q: The public blamed you and not the president?

HEATH: Not just any in fact I repeatedly said in public or announced in public that there is a delay because the president doesn't issue it. I don't think the public really understood this sort of fine dividing line. But they most definitely didn't blame me that the proclamation wasn't forthcoming. But they were unhappy that investigations didn't commence or weren't continued with.

Q: Did you feel at that time that the level of corruption in the country was rising or steady?

HEATH: It was rising all the time. Simply because of the fact that as far as our criminal or police investigation was concerned, there was little, well very few investigations took place as anti corruption. Even today if you read our court reports, very few corruption cases which I still don't understand. So it was rising because the criminals became more and more confident. I of course then also found that because of the delays of the proclamation it just simply continued and very often what you then found was that evidence would disappear, you know the typical thing.

Q: So where you had had a very high level of success in the Mandela period, then it slowed down during the Mbeki period.

HEATH: Yes.

Q: I have to ask, you don't have to answer. Do you think that this is the way the president wanted it?

HEATH: Well I will get to certain points right now that will demonstrate that he was adamant to stop me from my investigations. Initially of course it was this sort of passive sabotage, not issuing proclamations.

Q: It is a surprise that he had his people may have been corrupt, or might there have been another reason for wanting to sabotage this?

HEATH: Yes. It does imply that, and that is an inference that one draws very easily from the omissions and the failure to cooperate. To get to the arms deal I have already told you that Patricia de Lille had given me the brief. But I immediately realized that it was going to be difficult to get the proclamation to investigate that. Now in terms of the legislation, if I received allegations, not evidence but allegations, of an incident of corruption, then I could apply for a proclamation and it was granted. That was not only law but the practice initially. I decided it wasn't good enough, and then I discovered the auditor general was appointed by the government to investigate the arms deal from an accounting point of view. Which they then did.

Q: Who sold what to whom in the arms deal?

HEATH: Well we acquired arms and ammunition from the UK, from Sweden, from Germany, from Spain, quite a number of countries. Now they brought out the report which indicated serious irregularities as he called it at that time, in the arms deal, and he recommended it should be investigated. On the basis of that, I then applied for a proclamation, because now it was the agent of the government that brought out that report. They didn't reject the report so I thought at the time that was a strong enough ground to apply for a proclamation. Well history just simply repeated itself, and it was just nothing. Nothing forthcoming. Not even the refusal to grant the proclamation.

Q: Very frustrating.

HEATH: Frustrating, of course. Because everybody was up in arms about the arms deal.

Q: Very good pun.

HEATH: Now even as an advocate judge I have always showed a lot of independence and integrity. That just continued during the course of those investigations. But it was that very independence that eventually became a problem for Mbeki because the public accepted my integrity, and he was trying to undermine my activities. So when the

proclamation wasn't forthcoming in the second half of 2000 SCOPA that is Standing Committee in Parliament started investigating the arms deal. They then recommended, now sorry to interrupt myself, but on that standing committee the NCA had the majority of members in that committee. Notwithstanding that, they brought out a report which advised the government or recommended to the government that the arms deal should be investigated. And they proposed that the arms deal had to be investigated by the auditor general, the national directorate for public prosecutions, the public protector and my unit. We then started having meetings in preparation for having this investigation. It was also welcome by the auditor general that I was to be involved and also the public protector. The national director of public prosecution was playing his own little revel. He had proved himself to be a serious enemy of mine.

Q: Sabotage.

HEATH: Sabotage. So all of a sudden one morning the auditor general announced that he was no longer supporting my involvement. The next day the public protector announced that he was no longer supporting it. In the meantime the ANC took action against their own members as far as this parliamentary committee was concerned. In the sense that they told them you must reconsider this. How can you recommend that Heath must investigate this? Now that led to the resignation of the deputy chairman of the committee and of Feinstein. He had published books on this very issue. He in fact left the country. He was most unhappy about this. Then the committee reconvened, and they withdraw their recommendation. And of course because they formed a majority so the recommendation was withdrawn that I should investigate this. Now this was towards the end of November, 2000. My attitude at that stage was to reapply for the proclamation on the basis of the original recommendations of the standing committee. Again there was no response. On the day after Christmas the minister of justice issued a statement that they were not going to appoint me to investigate the arms deal. Arising from these announcements on that particular day, I had about 55 calls from the media.

Q: Boxing Day.

HEATH: Boxing Day. And of course my attitude was it is necessary for me to investigate that. I explained that to you just now, and secondly it wasn't for the minister of justice to announce they wasn't going to investigate, it was for the president. Now from the very nature of what was required to be investigated my unit was the only one who had the appropriate jurisdiction. That was to investigate procurement, so that whole procedure of procurement and secondly the contracts that were signed with the other countries, the international companies and we had the power to set aside those contracts. Now I imagine that was a frightening though for the enemies. The national director of prosecutions, he could prosecute crime but that would have no effect on the arms deal. The Auditor general was just an accounting officer, and the public protector was basically there to investigate poor behavior by civil servants, bureaucrats. So that was a frightening feature, and I never stopped emphasizing those points in public.

Q: Yeah because at that time this was your only option, to talk with the press.

HEATH: It was not only my only option, but all the years I believed to play open court, to practice transparency, so whether it was the media or some official or a political party, I would just practice that.

Q: Now is it conventional for a prosecutor to communicate to the public through the media?

HEATH: Well first of all I wasn't a prosecutor. Because from the nature of our investigations it was more on the civil basis rather than criminal prosecutions. That was solely up to the prosecuting authority. So it was public body. I didn't disclose the secrets of the investigation but those matters of principal I had no hesitation to deal with. At the same time that made me a very strong personality in South African, and elsewhere. Therefore it wasn't that easy for the government to clamp down. So that sort of dispute continued, and then in the second week of January Mbeki decided to make what he called the state of the nation address, or speech, in parliament. Parliament was specifically convened just for that.

Q: Like the speech yesterday by President Zuma.

HEATH: Yeah. So he announced that he was not going to appoint me to investigate the arms deal because he said there was no evidence and there was nothing for me to investigate. Now nobody believed him, I don't think even his cronies believed him. But that was the reason. But now to give you an indication of how poor the relationship became. During the course of the speech he held up two organograms. And on those organograms he and Mandela were indicated as possible participants in the corruption in the arms deal. And he then stated that I had drafted those organograms and that I was accusing him and Mandela of corruption. Now that was the first time for me to see those Organograms so I hadn't drafted those organograms. A few days later a number of journalists issued a statement that they had drafted those organograms because they were speculating to find out who the culprits are.

Q: Is it possible that Mbeki innocently used that material...

HEATH: No. I will tell you now.

Q: I didn't think so.

HEATH: He then made another speech. He made the statement that I had bribed those journalists to confess that they had done that. Now all that time there was unconditional support from the media and the people in South Africa so you can imagine the friction, the sort of state of war almost. So that wasn't accepted by him, and he then said there was no way I was going to investigate it. The other three agencies conducted an investigation and the results of that were that there was not a single indication of corruption in the arms deal. But it was so superficial that very little value was attached to that report.

Q: So from there?

HEATH: Well by that time there was a complete breakdown in the relationship between me and Mbeki, which was very bad in the sense that a person in my position had to have a good relationship with him, not only because of the proclamations but you need to discuss matters. And to the extent that he might have been come proactive as far as the prosecution of corruption is concerned I would have to have that.

Q: Surely this must have been disturbing to former president Mandela.

HEATH: Oh yes.

Q: Was he unable to convince his successor to be more cooperative?

HEATH: He actually had a number of discussions with Mbeki which was one of the reasons which led to less...

Q: Less love between the two.

HEATH: Yes. There were many other reasons as well. I am not suggesting that this was the only reason. So then he just started keeping quiet about this, but then there was nothing he could do.

Q: This is your interview, not mine, but I have to say that internationally when we saw, we were told during that Mandela period that Mbeki was a technocrat who was really running the government at that time and everyone had the highest expectations of him these expectations were cruelly dashed in general internationally when Mbeki became president and we were, we observers with the highest expectations of Mbeki were at a loss to explain his failure to do anything about HIV Aids, the apparent corruption. Anyway it seemed quite dissonant with the expectations we had.

HEATH: Yeah he was a huge disappointment for the country, I know internationally as well. Just two basic points. When you deny HIV Aids, when you deny that you are not making friends to combat it.

Q: And none of us could ever understand why.

HEATH: The same with crime. He denies that crime is a problem in South Africa. If that is a denial you don't do anything about it. We see, I personally see the following picture as far as South Africa is concerned. A nice flow, building up during the time of Mandela. We moved backwards during the period of Mbeki, and therefore we have high expectations of Zuma.

Q: Have to.

HEATH: We have to, but he is also people's person. So he has many mistakes but it is completely different. He has got the ability to work with the opposition parties. He has got the ability to communicate with people. So and of course during the days when he was facing the corruption case which was actually bent by Mbeki, and the rape case which was planned by Mbeki.

Q: Because he is a rival to Mbeki.

HEATH: Yes.

Q: Until he then took over the party dramatically.

HEATH: But he would never say anything negative about Mbeki. So he sort of let his image, his reputation intact. Maybe sort of closed circles having discussions with us and some other people he may say something that is not that positive, but he was at pains not to do that.

Q: So there may be some proof currently History will tell.

HEATH: We have got a lot of hope. On the other hand to correct that which was done wrong during the governance of Mbeki, that is a huge instruction or huge effort you would have to do. But what is very pleasing for is...

Q: And his apparent support for Mugabe was just incomprehensible.

HEATH: Yeah, and he enjoyed no support for that. In fact that is the very reason why Mugabe is talking a position of the easing.

Q: Because of Mbeki's friendship. Apparently there is some family relationship. The wives are related or whatever.

HEATH: Maybe he is sick and tired of the grapevine on that.

Q: Well to our astonishment because he was a technocrat. I mean I was here in the 90's when he was deputy president, and he seemed a person of no passion, just simply was competent at management. Little did we know what this would turn into. But I am not supposed to get into that.

HEATH: No, but can I just add this: there are five factions in the ANC. I am not going to go into much detail there, but he had the support of one of the small factions.

Q: Ah, and might there be a split one day? Is that a fair question?

HEATH: Well that is obviously never impossible. But the ANC has gotten very interesting special features as a political party. They close ranks when it is necessary so that is a magnificent feature. Maybe bad sometimes, but it has kept us along.

Q: I think any democracy needs an opposition.

HEATH: Yeah. Ok shall we carry on?

Q: Justice Heath, can you tell us then I believe you have had some contacts with the U.S. government. Was it in 1999?

HEATH: Yes.

Q: Can you tell us the nature of that contact.

HEATH: I was invited by the United States government to be involved in a tour of the country to get to know your culture, to get to know something about your politics. To get to know the country better and more important for me, particularly from my point of view to get to know the people better. I was asked what I would like to do. I said, "Please fill my days and even my evenings with appointments, because I would like to speak with as many people as possible," which they had done. Not that they neglected the social events with families, American families, which I enjoyed thoroughly. It was a significant experience for me. There was such a wide range with people that I had interviews with that I really thought that I picked up a lot of experience and a lot of information.

Q: This sounds like the international visitors program.

HEATH: That is right, yes.

Q: Would it have been Robert Wood the cultural attaché...

HEATH: No.

Q: Gill Jacot Guillarmod? Never mind.

HEATH: The guy that we talked about earlier?

Q: Frank Sassman of course.

HEATH: He was involved with that.

Q: I have worked with Frank Sassman who brought you here today. So another triumph of Frank Sassman. You said you had many appointments I take it mainly in the judicial sector, but maybe not?

HEATH: Not at all.

Q: Not at all?

HEATH: Well I had a number of appointments with judges, but the majority were with other people. It ranged from a lobbyist in Washington to a member of the city council of New Orleans. He discussed the discrimination they experienced. With a long discussion about debts. When I came back to South Africa there was a letter in which the council gave me the freedom of the city, so I was very impressed with that.

Q: So I take it you are paying local taxes now.

HEATH: I don't earn anything so.... You know ordinary people, academics.

Q: What cities did you visit?

HEATH: I don't remember all of them.

Q: You were in Washington.

HEATH: Yes, San Francisco, Sacramento.

Q: Sometimes we think of San Francisco as the lesser Cape Town.

HEATH: Ok, and then I was back in New York as well. I think it was the next year when I was invited by Al Gore. There was a huge conference on corruption. I was invited to make the keynote address. I was very chuffed as you can imagine. A small country, South Africa, and you get this invitation.

Q: So that would have been in 2000.

HEATH: To get back to my first visit, the ordinary man in the street. I think one of the most important evenings that I spent was with two ladies in Sacramento; two African-Americans. Very pleasant, very hospitable but in a very pleasant way they described to me the extent to which there is discrimination towards them. In fact in one of the cities where I was outside a hotel, at the public toilets there were still signs, "Whites Only".

Q: In the United States?

HEATH: Yeah. Yes.

Q: Where? In the south?

HEATH: I'll think back to that one and I will tell you. But OK, in fact maybe because I was from South Africa people tended to share with me those experiences.

Q: This was going to be my question. Although this was in a moment of euphoria in South African history, how did you feel Americans perceived you as a white South African visitor to the U.S.?

HEATH: I had no negative experiences. Just positive experiences.

Q: How positive? Were they curious? Were they wanting to know things that you had done? Beyond hospitality, what went into their contact?

HEATH: There were serious amount of curiosity. Some of them didn't know my background, so not too many questions as far as corruption is concerned, but still as far as South Africa is concerned. So my impression that in a very lax fashion they would ask me many questions about apartheid and about life in South Africa so they showed a keen interest.

Q: The second question, you mentioned the Gore anti-corruption meeting; I am mindful of the time. Do you think that there was any discernable outcome of that conference/ were there techniques exchanged? Was there an increased ability to prosecute because of that conference/

HEATH: Yes. That was the main objective of the conference. Each one of us would have to go back to our countries and promote the fight against corruption. It was a very well organized conference. Apart from myself very distinguished speakers. Each one an expert in his own field. So I left the conference very pleased with what I had heard, and I came back with more energy to fight corruption in South Africa.

Q: Now I hope we will continue this discussion at another time. As a last question just for today let me give you an opportunity to say that while your contact with the United States came relatively late in your career, what was the meaning of that contact. Frank Sassman noticed that you were a key player in this country. He felt it was important and his American colleagues agreed and sent you to the U.S. How would you say this has affected you as a person and your activities professionally?

HEATH: First of all it widened my horizons, and I was brought into contact with a culture on different levels, different people, and that enriched me. So when I came back to South Africa I had actually abandoned my earlier views of the Americans as loud mouths and very confident, arrogant people.

Q: Well we have people like that.

HEATH: Yes, but the problem is that up to that time and that is a typical experience that we have is that you get exposed to those people. So it was a complete change in my approach after I had been there because the sincerity, the down-to-earth people, the friendship that I had built up there. So I came back and I said to myself now I am eager to go back to American again and again because of that. It is a completely new culture that I picked up there.

Q: We can do this at another time, but is there a summary comment you might have about how this affected your work when you came back?

HEATH: Well after I had listened to those speeches and the informal discussions we had, I came back with new plans, new direction. I picked up a lot of tips if I can call it that. How corruption is investigated in the United States, how it is investigated in other countries. The successes. Subsequent to that we actually had in Southern Africa two meetings which followed on that, and actually people that I met there, southern Africans in the United States which were actually very useful for us in Southern Africa.

Q: Who organized the Southern African conference?

HEATH: The first one was the Botswana group, and the second one was the Zambian group.

Q: Botswana often comes to mention as perhaps the least corrupt country in Africa.

HEATH: Yes.

Q: The second is Uganda.

HEATH: And you know the most important thing in Ghana and Botswana is their governments support the anti corruption movement in many respects. Not only funding them well but also in the sense that they actively participate in projects to fight corruption, not just prosecuting people. The children for example get rulers with anti-corruption slogans. If you go across the border, huge signs that they are fighting corruption. So there is a political will to fight corruption that you don't often find in countries.

Q: So actually your smaller neighbor to the north is somewhat of a leader.

HEATH: Oh yes.

Q: I hope we will have time to continue this discussion. Any last thoughts for this session.

HEATH: I don't think so, but I can say to you is we can make time even before the week end. Or the weekend, the weekend is fine.

Q: I am very grateful. I am yours. Thank you for this wonderful conversation.

HEATH: You are welcome.

Q: This is Dan Whitman on our second day with Justice Willem Heath. It is a great honor to see you again especially on a Saturday. It is now February 13, 2010. You were kind enough to return the following day to give us some more comments and observations first of all about your trip to the United States in 1999, and then you may have other comments.

HEATH: Well as far as my trip in 1999 is concerned, one of the things that really made an impression on me was how well organized the country was, also well organized the appointments were. Although the people did not necessarily know what my CB was that were organized for those meetings. Without exception they always invited somebody or there was a number of people to join us in discussion. I understand that and in fact some of them explained it to me that in a sense they said they don't know how wide a document might become on topics, and therefore they actually invited a number of other people which they thought would link up with topics we were going to discuss. I must say in the course of those discussions they treated me with so much respect that I almost became American as far as that is concerned. But yes, and while I think about it, one of the most interesting discussion I had was with a judge, I think that was still in Washington, or it could have been Sacramento. That is the level of your judges where they get elected during the course of the election.

Q: Yes, some of them.

HEATH: Yeah, but that was a certain level, I forgot which level it is, the majority of course are not.

Q: I think it is municipal.

HEATH: But what I found fascinating was from the outset, the points that the judge made was that it is completely unhealthy because they battled the objective and impartial and he described it further as follows.

Q: Excuse me, unhealthy to be elected?

HEATH: Yes.

Q: Because they had other, they were accountable to someone other than the law.

HEATH: Yes. Well there was always somebody who paid for the election because they couldn't afford it. In the judge's cases they were and are sponsored by lawyers. So let's assume there is company A and company B in a particular setting. I found it very hard in the year after the election to be actually objective and impartial as far as those firms of lawyers are concerned. Then in the year before the new election or the next election, they had to play their cards nicely to get sponsors for their election again. So basically 50% of their term was actually tainted by that. He said although they attempt they fight to retain their independence, it is so difficult with human reactions, you can hardly when a person has spent so many million dollars on your election or so many thousand, I don't know how much it is.

Q: Probably millions.

HEATH: How can you not have some goodwill towards that? That comes especially in a case that comes before you on the one side. So my response to him was that as far as I am

concerned that is not acceptable at all, and it is completely contrary to the concept that the judiciary should be independent and impartial. I must say he obviously agreed with me. When I came back to South Africa I said to myself that we also do have problems that judges aren't always that objective as they should be. But at least they are not compromised in that sense. I was determined that after I arrived back in South Africa that should I discover the slightest tendency to introduce that in South Africa that I would fight it tooth and nail because I wasn't prepared to allow that.

Q: Just an anecdote. I once had the honor of introducing policeman Michael Bratton to prosecutor Ian Delavera. It was a very funny meeting because Bratton asked Delavera about the juries the criminal trials, and Delavera said very often there are no juries. Bratton was completely in heaven. He said, "I have died and gone to heaven. This is paradise here for a prosecutor not to have to deal with a jury." So there are fundamental differences I think, in the judiciary sectors of our two countries.

HEATH: Yes. In fact juries were abolished in 1938 already. I don't know whether Delavera has made that clear. But what we do have is a dose of our legislation it is advisable to have two assessors. Usually they are lawyers, other practicing lawyers or academics.

Q: In lieu of a jury.

HEATH: Actually not in lieu of a jury but just to strengthen the hands of the court. So it is not in lieu of a jury, or to substitute for that. That was only introduced years after the jury system had been abolished in South Africa.

Q: What is your opinion about the abolition of the jury system in South Africa? Are we getting to arcane here?

HEATH: Well it is so long before my time but from what I have read and obviously what I have seen on TV as far as the jury system in concerned in other countries. I find it hard to accept that there is any form of security that they are independent, that they would understand the fact and that more importantly be able to evaluate the facts correctly. So I think the risk of getting a conviction or an acquittal is so much more pronounced in that system because those people, I may generalize, but I think the majority of them deal with the case on the basis of the emotions and not on the basis of sober independently impartial facts.

Q: I have no expertise in this area but I must say that as a resident of the District of Columbia every two years I am called for jury duty. I have never been selected. I am not saying I am able to evaluate facts, but when they can book 100 people to come up with a jury of 12, the process of elimination is a very opaque one. It is something I do not understand. It does seem as if there is a lot of profiling. People's gender, race, or age. In fact most people would rather not serve on a jury because they are losing time from work. If I were the Supreme Court I would say that retired people should be jury members. They have time and perhaps more ability to...

HEATH: More wisdom and more experience.

Q: The process is indeed extremely costly, and certainly very inefficient. I cannot judge on your comment about their ability to evaluate. I don't know since I have never been picked to be on a jury.

HEATH: Well just judging from my own experience and having observed judges in our own country, it takes time before you really develop the ability to properly evaluate evidence in a certain context and to apply those facts to legal principals.

Q: There is a certain pedagogic function of the judge in the U.S. system. The judge is constantly explaining to the jury the statues, the types, without interfering with their decision he has to explain to them how their decision must be arrived at. So there is a learning process form zero to whatever level, and it is quite debatable to whatever level they can rise. I don't mean to insert an opinion here but what you are saying sounds like an accurate description of the U.S. system.

HEATH: Well if I am confronted with something that is novel to me in that context and is explained to me in a few sentences I am afraid it still hangs in the air as far as the ability to deal with that is concerned.

Q: So in fact you are saying the South African system without juries seems reasonable to you.

HEATH: Yes. Obviously shortcomings but seems reasonable because in most instances there is an experienced judge. For years judges were appointed from practicing advocates and they would have had experience for so many years before they get, and very often they get acting appointments before they get permanent appointments. So there is a school to go to.

Q: I guess you have to say this all relies on the integrity of the judge. If the individual, it is possible to imagine an individual who lacks integrity or ability to analyze. In that case the defendant has no hope at all.

HEATH: That concession I will make very readily because people are different. There are those who remain incompetent even though they are 50 or 60 years old. They are simply not objective, they themselves allow, well they allow themselves to be governed by their emotions. So there are shortcomings in that system as well.

Q: Well interesting, so you discovered this in your trip getting back to that, and you were analyzing, as you went along you were noticing the differences and analyzing them and inserting your own judgments pro and con. So the big differences were the election of municipal judges which you said you found unacceptable, compromising the impartiality. And the juries which possibly insert individuals who lack expertise into important judgments. Were there any other differences that come to mind?

HEATH: Yes, the question or practice of class actions. We are busy moving in that direction now. But class actions are really popular in your country. As far as I am concerned that is a magnificent purpose, and that is where a number of people are wronged or have been affected by the same wrong perpetrated. It is so useful to have all of them together. Of course the evidence of the repetition of wrongs committed is so strong that both in civil and criminal matters arm agree that is so good. We are trying to do it in South Africa. Our constitution doesn't expressly allow that but it also doesn't disallow it. What is interesting in your country, there is a case which is popularly called the Khulumani case.

Q: Was this the Malian in New York City?

HEATH: No. That is torrid because companies in the United States but also other countries have supported the old apartheid government. The objective behind that is to claim compensation for those individuals who have been wronged because of that. So it is not an injury picked or a wrong perpetrated by our government. Those institutions that existed in the government.

Q: This is a case here? Not the U.S. Wouldn't this be a class of 35 million people?

HEATH: I don't think it is that many, but it is a large number.

Q: We are talking about reparations here. What do we make of reparations? Or for that matter, a very lively issue reparations to African Americans for the injustices inflicted on there great-great-great-grandparents. Is the South African judicial sector paying any attention to those questions?

HEATH: Not actively, no. I think first of all because the case is rather remote, as far as we're concerned. We know or we thought for a number of reasons, but generally the lawyers wouldn't be aware of it.

Q: So this is a case I am not familiar with in the U.S.

HEATH: In New York, yeah.

Q: Taken as a civil case against companies that supported apartheid. Who would be the plaintiffs here?

HEATH: Those would now be the individuals, and your jurisdiction is so wide that individuals from other countries can be joined in that case. But for example an oil company, but there are a number of defendants or respondents in that case. I will get the detail for you if you are interested.

Q: Sure. Now we are in the area of civil cases which we haven't talked about before and I don't know if we have been involved in civil cases. What we have talked about before are criminal prosecutions I think.

HEATH: No, actually not. That is actually actions of a civil nature that I have been dealing with investigating corruption.

Q: OK, so what you are saying you saw is very relevant to the work you are doing.

HEATH: Yes.

Q: You mentioned a moment ago that class action suits are becoming popular in South Africa. Can you explain how that is happening and how you have been involved.

HEATH: OK, I actually said that we are moving towards that. There hasn't been a class action yet, but all over the country there are lawyers who are looking into those legal principles and applications and the effects on their cases. So I suspect that we would have one of those cases shortly, maybe even in the course of this year, and that would send a very serious precedent in our country. So often because of our more limited jurisdiction people who cannot afford to take a matter to court and cannot join such a group of people, they are just actually without access to the court. So class action should have a lot of benefits that the individual actions do not have.

Q: Do you have plea bargaining in South Africa?

HEATH: In criminal matters, yes.

Q: Do you find this helpful in prosecuting cases?

HEATH: Yes I am very much in favor of the principle, but my view is the prosecuting authorities maybe the practicing lawyers they are not that experienced as far as plea bargaining is concerned, so what you often find is the prosecutor is inexperienced and they need to basically be coerced into accepting a plea bargain or to agree to that or the other way around.

Q: Meaning the person guilty of the lesser crime might have too light a sentence.

HEATH: Yeah. So it affects both the nature of the conviction as well as the sentence, but it is a very sound principle and it is now recognized as a formal process, but for years we actually practiced it in criminal law, because prosecutor and defense counsel would get together and defense counsel will say, "I offer you a plea of, for example comparable homicide as opposed to murder." The prosecutor will consider these facts and will say, "Now I accept these facts." There is basically still a plea bargain.

Q: When you first hear about it, it sounds kind of frivolous but then, when you think it through, it does assist the prosecuting up to a certain level. It almost sounds like a poker game, but it seems to work.

HEATH: Of course that means that long criminal trials are avoided and the same justice is arranged.

Q: So it is arbitral in a sense. There is some element of compromise that facilitates the system, allows it to be less bogged down perhaps. Which reminds me of a case management, case flow management which I know has been a major issue in South Africa. You mentioned in one of your jurisdictions the backlog was enormous. I think it was in the Ciskei. You had to catch up. Has there been now with computers has there been improvement in this area generally?

HEATH: No, not really. There are various reasons for that. One is I don't think there is a single member of the bench or of the senior guys who actually knows how to deal with a computer. They have got computers on the bench and they can't even deal with it.

Q: Oh dear.

HEATH: And in the younger ones would be able to deal with that, so it hasn't made the contribution it should have made.

Q: Well how is it you have succeeded back at a time when computers were not commonplace I think, and yet you managed to overcome an enormous backlog. Is this just because you worked 24 hours a day?

HEATH: Yeah, I did not have the assistance of computers because in those days no computers were available to the court. I bought my own computer and I taught myself. But of course not on a particular high level. But that was a great assistance to me that I could either type it or my secretary would be able to type a document which I would dictate, so that really facilitated the response time in bringing out the judgment.

Q: Well how is it that we can improve case flow management in South Africa? By making the older judges more computer literate, would that, if you were the manager, the person resolving this issue, how would you go about it?

HEATH: Yes I would establish a determined effort or make a determined effort to teach them that. But I think because of the time lapse between moving out of the age of those old judges, and because I attend the meetings of what we call our judicial services commission where judges are interviewed and recommended for appointment to the president, most of them have actually practiced law in the new computer age.

Q: What about clips dealing with, is there a lack of manpower?

HEATH: There is a serious lack of manpower. We have clerks, but they are usually not well trained. Very often they are students from the university. So what we do have in the constitutional court and we are trying to introduce it into all the courts are researchers so that they can do the research for the judges. That is of great importance to the judges of the constitutional court. So the constitutional court has got no backlog and is running very smoothly. Each judge has got about two researches plus a clerk so it is running very smoothly. But there is not money and it is a concept that we want to establish, but there is no money to do that. Not sufficient money to do that.

Q: You mean in the other courts.

HEATH: Yeah.

Q: But the constitutional court seems to be in good shape.

HEATH: Yeah, very good shape.

Q: What direction shall we go in now? Can you tell us, ok we were in 1999. Bring us up to the present.

HEATH: Ok as I said yesterday after my return from the United States, I brought with myself the memory of people well organized, very clever, much more advanced than we are. They have much more generally speaking modern facilities at their disposal, and therefore things are just running much more smoothly. I very seldom saw areas where all these buildings were not properly maintained. Maybe I wasn't taken there. I got the impression this is a modern first world country which is run very well. So coming back to South Africa I was obviously very pleased to be back in South Africa. I was immediately touched by the fact that there are so many poor people, so many buildings are not maintained, that schools don't have the properly trained teachers whereas you don't have that problem at all as far as I know.

Q: They say there are too many. There is such a thing in the U.S. as an unemployed advocate. I guess that may not exist here. Lots of them I am afraid.

HEATH: Well that means that you have got so many professionals that you can't offer each one of them a job. We would love to be in that position.

Q: So you returned from the U.S. having seen examples of things you thought worked efficiently, well-maintained, but you were happy to be back. How did this affect your approach to your work after you returned?

HEATH: Well first of all, although I taped it before the time to run the unit on a multi disciplinary basis, I saw the successes in the United States as far as such an approach was concerned. I became more determined to do it, and I was also lucky to get a slightly bigger budget the next year so I could appoint more professional people to the

investigations. So a normal team for the unit would consist of lawyers, investigators, auditors, IT and whatever else was required.

Q: Was Della Omar the administrator at that point?

HEATH: Yes.

Q: Was he forthcoming on giving you the researchers that you needed?

HEATH: Yes, although he was also limited as far as purchases but he was extremely cooperative. I had such a good relationship with him, and if he had continued up through the time that I resigned it would have made a huge difference to our activities and to the successes.

Q: Until when was he minister?

HEATH: He passed away in the end of 1999. He had cancer.

Q: Terrible. So this was just in time. You came back in 1999; you asked for resources, and you got them in the last months of his life.

HEATH: I think I was in the United States sort of during July or August. I have forgotten now, in the summer, and he passed away I think in the beginning of December of 1999. But up until that state he was very supportive. And he would regularly report to the president the successes but also the problems. So it was actually a very nice working team with top structure in the sense that I would also have regular meetings with President Mandela and if I had any problems, he would just make the time to see me. So I had so many meetings with him. Obviously that was a huge privileged honor. Therefore he was regularly informed of the successes. Whenever I prepared a report for parliament, he would get that as well. And also it would find its way to the president through Della Omar's office.

Q: Since you met frequently with Nelson Mandela I have you ask your impressions. I take it you found him accessible, eager to assist you in cleaning up the problems in South Africa they ways you were able to do. We all saw vivid images of him on television two days ago during the President's state of the union address. There is much talk about the retrospective of Nelson Mandela. Since you met him many times, can we get your impressions or your memories on what was he like? I met him very briefly a couple of times. I never knew him.

HEATH: OK, to get back to the days when I had regular contact with him, I learned from him the importance to really pay personal attention to people you come across. I will explain that to you just now. So I learned from my experience with him that he would make the time to communicate with people. So almost my first experience after his election, it was in Bisho after his election. He was running. It was a huge function, event, all the top brass was there and VIP's and he was three hours late. But they had arranged

too many appointments for him. When he arrived there, the delegates were all really tired about it. He didn't rush to the podium to make the speech. He started shaking everybody's hand and had a little discussion with them. In fact there was a bar man, a white guy in the corner he went there and had a few words with him. I said to myself if I become involved in public life this is how I would like to. I did practice that, and I still do it. So that was my first contact.

Q: He did this to me in New York City. I was in the back of a crowded room. Everybody was rushing to meet him and I was giving the others a chance. He looked across to me as if to say do you not wish to shake my hand. He was immensely charming and gracious, noticing everyone in the room.

HEATH: That is my experience as well. I would be at a big function. He would see me.

Q: But he knows you. He didn't know me.

HEATH: No, of course. But I mean he could ignore me, but he would pay attention to the people. But when he phoned me, this function was after I was appointed by the premier of the Eastern Cape.

Q: Did he have a good excuse for being three hours late?

HEATH: Well he did apologize, but that time everybody was so charmed that they had forgotten. When I was appointed by the premier I was sitting in my chambers. That is before I commenced the work of the commission. My secretary told me that President Mandela was on the phone and would like to speak to me. I said to her, "You are joking. It could never be." No, it is sincere. So he came through, congratulated me on the appointment. He said that he was happy I had accepted that appointment? Then he asked me about my children and my wife. I have got three children. Every time after that for years, he would still remember their names. They were at school at their stage. One had left school. He would know all of that. On one occasion after his first book had come out I had a meeting with him in Johannesburg. I had taken a copy of the book because I wanted him to autograph it. But on my way to the airport, the children said they would like him to write each one of them a message. The only thing I had was a little notebook, so I took that and I put it next me. He said to me, "What is that for?" I said, "This is a request by the children." He started writing. But we would have media conferences and occasionally I was under attack and he would discuss that with the media and he said that he would like them to support me as opposed to attacking me and opposing what I am doing because I am carrying out his instructions. And he fully supported what I did.

Q: Did he stand by your side in these media conferences?

HEATH: Absolutely.

Q: That is tremendous executive support. Most unusual in the midst of judicial proceedings.

HEATH: Well on one occasion that was now Minister Maduna who is now minister of justice after Della Omar, he made a number of negative comments about me to the media. I had a meeting with Mandela after that and what I didn't know was he had organized another press conference. After we had finished the meetings he invited me to come out. He publicly said, "I know that my minister of justice has made the comments. I repudiate it and support him." So he is actually astonishing.

Q: Why did he do this?

HEATH: He was not prepared to accept any injustice. He was not prepared to allow anybody to sabotage the good work of someone or of successes.

Q: In some countries that would require the minister to resign.

HEATH: Well yeah, but our country hasn't reached that stage.

Q: Nor has ours. Our officials never resign. Maybe they should sometimes. So that is remarkable.

HEATH: So apart from statesmanship is an actual people's person. He shows a keen interest in everybody.

Q: When did you first meet him?

HEATH: It was on the phone. Then at social functions issue. Then shortly I was appointed at a national level, I think it was towards the end of 1996 or the end of 1997.

Q: Was your entrée to him through Della Omar? What got you other than your position and your known expertise, was there any avenue of access to him? How did he know about you after so many years in prison?

HEATH: I never asked him, but I would imagine that my appointment by the premier was discussed by the premier with him. That was a sort of a communication that he maintained. Then secondly the successes in the Eastern Cape were discussed with me by Della Omar quite often.

Q: He was quite good friends with Omar I think.

HEATH: Yes. And I mentioned, he would have purveyed that to, so that is why as I got to yesterday, eventually when the institution was established on a national level that he through Omar asked me if I wanted to be one of the judges or an investigator. That was the close. After that I would set up an appointment with him. I would just get it. He would ask to see me and I would go there, so direct interaction all the time.

Q: We talked about this yesterday, and you answered this to an extent, but again if he was so eager to see justice and so confident in you, he ceased doing this in public when he ceased being president. Was this out of deference to the democratic transition process? Can you guess why he disappeared from this issue when his successor worked against you?

HEATH: Well I think it is a combination of those things. The first one is obviously it was taking pains not to tread on the toes of Mbeki but he did from time to time come to my rescue and to the side of Mbeki, but those were in the first few years of Mbeki's governance. Of course he grew older and he was no longer healthy. So they were trying to save him and trying not to get him involved in political matters. So I think this was sort of the national consequences. That is also true. He asked several times to see Mbeki and he refused to see him.

Q: No, I didn't need it, but thanks for them anyway. This is, we got way far away from your career and the purpose of this interview anyway, but why does the ANC put up with this? Isn't there a streak of honor and integrity that cannot accept this behavior? There must be.

HEATH: Yes I think in the inner circles there was an uproar about this, because I cannot imagine that with the massive support Mandela had that the inner circles of the executive council they wouldn't have taken up with Mbeki. But he was so arrogant that I don't think it made any impression on him and he was so confident in his power that he would not even consider apologizing or changing his way.

Q: So the party drew ranks and had its discussions in private and not in public.

HEATH: That is one of the, I think I told you yesterday, one of the important features they would close ranks. Especially with the issues affecting Zuma. The lack of support for Mbeki became much more prominent and pronounced and much more open.

Q: Right. Zuma humiliated Mbeki when he became head of the party before becoming president.

HEATH: Yes.

Q: At that moment, that was the end of the relationship I guess.

HEATH: Well that was the final straw. Mbeki, up to the time they announced the outcome of the election, he thought he had won, he was confident that he was beating Zuma, whereas the rest of the country knew he was going to lose that one. Because long before that, the actual support for Zuma as opposed to Mbeki was obvious to everybody. He was having dinner that evening in Polokwane and he told people close to him that he was going to beat Zuma.

Q: So he was in denial or he was delusional, one of the other.

HEATH: Well maybe because he is delusional he was denying as well.

Q: It is not proper for me to make light of any South African leader, but because I have lived here and care about the country I am disappointed to see any compromise made with the principles established by Nelson Mandela. It is what made this country viable. Again it is not for me to have an opinion, but there it is.

HEATH: Well you know, it affects so many areas and so many institutions. Eventually it affected our educational system. He gave instructions to prosecuting authorities as far as the prosecution of Zuma was concerned. So I think he even attempted to influence the constitutional court because he gave a special award to two of those judges while they were entertaining Zuma's case. That was so inappropriate. That is a bad part of our history as far as the law enforcement is concerned.

Q: Well no history is purely good, unfortunately. That is why there is history. We are going in many directions here, many of them fascinating. Shall we get back to the linear aspect of your own trajectory after the death of Della Omar. How did your own career proceed.

HEATH: Well Maduna who became the next minister of justice, initially showed a lot of good will towards me. But he was also a close friend of the national director of public prosecutions, a guy by the name of Bulelani Ncquka.

Q: And he was head of the prosecution unit of the ministry?

HEATH: Of the country. But he was also a person whose reputation was seriously tainted. I can give you much more detail about it but let's just for the moment get to the other topic. But then shortly I would say after three or four months Ncquka's attitude changed and he would query proclamations that I would apply for because they would go through his office. That is the procedure. The process in South Africa they would go through the office of the minister of justice. Ncquka saw no reason why I should apply for a proclamation. Now obviously if he doesn't see any reason and you have got to take it through to Mbeki, there is no possibility to get him to grant one. So that really interfered in the flow of proclamations. And of course I just didn't keep quiet. I was very vocal about it. I had my fights with him, my arguments with him. The media was asking me and I said, Well he is not promoting the proclamations because my attitude was it was in the interest of the people to know what is the reason and what interference there was in the smooth running of the unit. Of course that really created animosity as far as Maduna was concerned so he became more and more unfriendly. And Mbeki adopted the same attitude, and my last appointment with Mbeki was I think at the beginning of 2000. By that time I had a lot of information about the arms deal. There wasn't yet investigating it. It had come to my attention that Mbeki was instrumental in getting an old apartheid spy or negotiator as far as arms and ammunition is concerned, that he got him an award or commission of 10 million rand. So the meeting with Mbeki I said what is this about. He was shocked that I was aware of that. Then he said, "Well this guy actually put in a lot of

trouble.” I said, “But our government has got direct access, like the old national party government, our government has direct access to other countries dealing with arms and ammunition.” So I didn’t fight the thing. I made it clear that I wasn’t impressed with that. After that, there was no reproach.

Q: He claimed that this individual was the reason for his success in acquiring the purchase. Whereas you are saying the purchase could have been made above board.

HEATH: In fact I can hardly think that after 1994 that any big company selling it would go through an old Apartheid guy.

Q: I am having trouble imagining why he would do such a thing.

HEATH: So I was speculating why it occurred to me, maybe there are other reasons why this guy got the money. So I didn’t simply accept his explanation.

Q: So Mbeki was taken aback that you had this information. Not in a causal way necessarily but he was also obstructing the prosecution or the use of the information you had.

HEATH: Now by the beginning of 2001 I realized that there is no future in my position with the special investigating unit, and also as a judge. I decided I was going to apply for early retirement for which I qualified. The main thing is I finally discovered long afterwards, but Mbeki dismissed my application for early retirement, and that left me with no option but to resign. I can give you much more detail about it, but at this time we can get back to that.

Q: So you resigned without a pension.

HEATH: No, no pension, no perks, nothing. Now in our country up to that state, a judge wasn’t allowed to have any other interests. I had three children, so I left as a poor man. Just between the two of us I wouldn’t like you to report that. I am rather confident, but never a guarantee. So afterwards and only recently I was told by the minister of justice that on a number of occasions in 2001 the cabinet would have a meeting with Mbeki and he would spend two hours just criticizing me and fighting about what I am doing. Eventually he said that Heath is ungovernable. I have got no control over him. That wasn’t the way it was supposed to be.

Q: That is the way the judicial should be. There should be no governing of the judicial.

HEATH: That is what influenced him initially not only to refuse to give us the arms deal to investigate, but also to refuse other things. There was just no way I could stay on as head of the unit. In fact there was a slight complication of that. Our constitutional court found that a judge shouldn’t head a unit that was in 2000. So when I had a meeting with Maduna I said, “I am prepared to resign as a judge.” He said, “No, we want to appoint somebody else. So when I stood down as head of the unit I was asked who they would

appoint, my response was a politician who would tow the line which is exactly what they wanted. So that was just the actual breakdown in the communication. It interfered in the business of the unit. It affected the successes of the unit. I must say the last four or five years of Mbeki's term there was never an increase in the budget. You will be shocked about telling what the final total amount I got per year was, 16 million rand. I had 120 employees. I had to pay them all; I had to pay transport; I had to pay airfare. I had to pay a lot of these rentals for the building.

Q: The president did not want this process to go forward. This is not a tribunal today. We won't say why or what this implies about his own involvement in extra curricular deals, but whatever the motives the actions were clear. He opposed prosecuting corruption cases.

HEATH: Of course that played into the hands of those who were eager to become involved in corruption.

Q: It encouraged corruption. It was a signal that it is now fair game. Do you think the current president is aware of that and want to correct it?

HEATH: Yes, he is very determined to fight the corruption. He has just now announced all sorts of special cabinet committee to deal with that. Ok it is moving slowly and developing slowly because he is involved in so many other things, but he is determined to do that. In fact after the case was returned against him, the corruption case, he said it is one of his objectives to fight corruption.

Q: Even though he was accused of corruption himself. There was never a decision rendered is that correct?

HEATH: No. But I knew most of the fact and I was convinced that he wasn't guilty. There was never a basis for his prosecution.

Q: Really? So this was an Mbeki political trap against his rival.

HEATH: Exactly that. In fact, when he decided to dismiss Zuma as his deputy, he made a statement and he was relying on the judgment of Judge Squires in the Shake matter. You may have heard about that.

Q: Yes.

HEATH: That was about a guy who was allegedly bribed Zuma. He said, "This judge found that Zuma is guilty and I have got no option but to dismiss him as my deputy." That was in 2005. That case never got off the ground because they never had a case against him.

Q: We are getting very close to the present in this country never has a dull moment. There is always some enormous challenge or scandal or potential doom, and yet you have always escaped doom here.

HEATH: I think it is because there are so many good things that happen in South Africa. There is a lot of growth. Our financial position has improved substantially since 1994. Notwithstanding the fact there are certain parties who attempt to deny that. Business people are in a much better position than they were even before 1994. Professional people are in a much better position. Trevor Emanuel; because he was surrounded by good advisors had done a marvelous job. Our new minister of finance, who was commissioner for Inland Revenue before he was appointed as minister of finances, is extremely experienced. So it is going well. Our reserve bank, central bank is doing very well, so we are making progress. We are lagging behind in many respects as well. There is as you have mentioned already political issues are still there, and opposition parties will do anything to support whites as far as that is concerned. So as you say every now and again there is a crisis but we apparently we just sort of succeeded in getting beyond that.

Q: The elections in '99, some election officials were talking with some of us at the embassy, and we said, 'how are you going to arrange this? You don't have the logistics anywhere near on schedule.' They said, "Well we had a miracle in 1994 so it is part of our plan for 1999." To have a miracle. Justice Heath, where does South Africa fit into the world in terms of corruption? You see these indices sometimes Botswana being very non corrupt, China, well you think of examples of countries, Nigeria is often cited, Equatorial Guinea. Where does South Africa fit and has it changed to the detriment since the disappearance of your commission?

HEATH: Well corruption is still extremely rife. As far as the research of Transparency International is concerned we are not even at the 50% mark. So we are more corrupted than the 50% which is very sad. You would know the research they do is on the basis of the perception.

Q: It is anecdotal.

HEATH: Yeah. I firmly believe that in that respect perception is actually a rather good guideline.

Q: And yet the work that you did when you did it was thought in the world at large to be one of the most successful if not the most successful effort in the world to combat corruption. Did you lack the means, did you not have enough time. Was the problem just larger than the resources that you had?

HEATH: The problem was larger than the resources I had, but if I had the political will behind me, this is subsequent to Mandela, if the resources were made available that was easy. There wasn't so much money that was required. But if that was behind me we would have made serious progress in effectively combating corruption.

Q: Did you feel at the time you did have political support and resources, that your effort may have been the most successful in the world?

HEATH: I personally thought so, still think so, but I have been told so often by other experts all over the world that as far as they are concerned not only was the concept unique but also the results which we obviously in giving our report to parliament were demonstrated actually these successes.

Q: I think you are in demand these days for your expertise in countries more receptive for your methodology than your own country.

HEATH: Yes, there is more appreciation. And in fact the last two years, 2000, 2001, I often said that I appear to be more recognized in other countries. He was very sad. I must say that didn't take the emotion, it didn't destroy me but I mean nobody if I were to say I wasn't touched or affected by that I would be a fool. After the speech I made in 2001, I was invited to go to Oxford. I made many speeches at Oxford and at Cambridge. That was actually the conference on arms deals and the experts of all the world there. Apart from the fact that they sympathize with me they just told me that in terms of their experience and expertise it was no need for us to acquire the arms solution that we were acquiring or attempted to acquire. Because even before the arms deal we had more arms in nation than all the southern countries together. So there was no threat.

Q: And in fact I am not aware of any plans to invade South Africa.

HEATH: So my response to that was that it must have been another reason. I think those selling it made it so attractive to the government that they were prepared to sacrifice South Africa for that. If you take into account the amount that they eventually spent so many houses for poor people could have been built. It could have been spent on education, on social grants. The arms deal started with 32 billion rand, and when Scopa investigated in parliament, Mr. Feinstein put it to the guys in control of the procurement process in the defense forces. He said, "You and the minister of finance have not taken into account the finance costs, the interest because we were lending money from your country. They said to my calculation is that it is now 46 billion." It wasn't 32. Then he said, "By the time we acquire all the arms it will probably be beyond 60 billion rand." Now in those days the government was building houses at the rate of, well the cost per house was 15,000 rand. So if you divide that.

Q: That is many houses.

HEATH: There is a legal principle in South Africa that the government can only complete contracts which are beneficial for the country. That was one of my points of attack and I was going to use that. Contracts have been signed are against our law, are unconstitutional and are invalid for those reasons. That is apart from corruption.

Q: That is going for the jugular. I can see why an executive could be very uncomfortable with that. With the lack of recognition and acceptance in the previous South Africa, do you feel that the methodologies that you developed and your world renown could be useful beyond South Africa if these methodologies were applied in other countries?

HEATH: Yes, most certainly. I must say that is the one thing that disappointed me. I was in regular contact with colleagues in other countries dealing with corruption. So often I would research their systems, their administration and the legislation was so inadequate. It didn't make provisions for special powers. It was no motivation to really achieve great results, especially in African countries apart now from Botswana. But I was very impressed with the system legislation in Hong Kong you would know that Hong Kong has the best system. My suggestion is not a lot of corruption but they have got a magnificent system.

Q: Really, have you been there?

HEATH: Yeah.

Q: What is it about their system?

HEATH: Well it has got more special powers than we had. They are determined. They have got the support of the government and the determined concerted effort of the whole team is hugely successful.

Q: What about your own influence on systems outside of South Africa. You have been to Oxford. You have lectured outside of South Africa and in Washington as a key noter for Al Gore. Do your achievements transcend South Africa in the sense that your techniques are noticed and used outside of this country?

HEATH: Not now, and I must say I have not been in close contact with colleagues in other countries since I resigned. One of the important reasons is I do no longer have the status to be invited. The second one is I don't have the money to pay my own air fare, so I don't think I am playing the role I should. I am not suggesting that they are not implementing the good features, but I am not aware of that.

Q: We will have to correct that, put you back in touch starting with Raymond baker. Much can be done by E-Mail. Well this is completely fascinating. Again this project has a title which is called outsmarting apartheid. So looking retrospectively I guess there is so many elements there. What you saw in the 70's 80's and early 90's in terms of the changes in this country the role of Mandela whose 20th anniversary of freedom we now celebrate, your own professional development, and the role of outside the country like the United States. Any comments? Any generalizations on how this intractable system was so successfully changed?

HEATH: I think when the apartheid government came to an end there were a number of forces, but they didn't see that. Not only was apartheid so unconscionable, but it was just

bad for the whole population. There were a number of wealthy people, and they were benefiting from that, but even the majority of white people weren't too happy about it. I am not suggesting they did much, but they were not too happy. So the time was right by the beginning of the 90's for things to change. Apart from the huge pressure exercised by the ANC and the world, by that time even the more conservative were ready to change. I think that was one of the secrets why the change was introduced so smoothly, why it ran so smoothly. Why the first election ran so smoothly. I still vividly remember as a youngster I had been hearing the vote. When that election took place I didn't know what the action would be of all the cultured groups queuing in the same queue. There was so much friendship. There was so much good will that there was actually no incident whatsoever. So I think from the point of view of the culture of the people, from the point of view of the world to affect those changes those two things made a huge contribution to that. But I must add to that also the other countries. Not only the pressure but examples. And not only the financial assistance we were getting but the expertise made available to us. So it was I think not only the right moment but internationally the other countries played a huge role. Of course there was the approval and the support for the changes. On the inside here with Mandela but as always so much good will it just worked. It still is not perfect. There is still a lot of friction. There is lots of unhappiness among the whites because they don't get jobs. The blacks get the jobs. That is part of the experience. They just have to accept that.

Q: That would be a great final comment, but I have yet another question. You mentioned that even conservatives were ready by the late 1990's. Was this because do you think of a different consciousness or do you think the awareness of their time was up.

HEATH: I would think there was more that their time was up. If you take the ministers of justice in those years, Kobie Coetsee he was a conservative guy, a white conservative Afrikaans speaking guy. So I cannot imagine that he was driven by goodwill only. But he was in the cabinet and he must have realized that with all the boycotts and everything they were in trouble. And of course the ANC was making so much progress in the country itself. So he was a conservative guy...

Q: Who was recognized in a positive way in the state of the union address two days ago, not only de Klerk but his predecessor Botha.

HEATH: In fact Zuma was more complimentary about PW.

Q: Yes, he made a special point. He said he began the discussions. He was very gracious to Declare but more so to Botha.

HEATH: Maybe if I could be a bit cynical.

Q: Please.

HEATH: Maybe more gracious than he should have been or that was justified. But that is again typical of Zuma, building relationships as opposed to breaking them down.

Q: Maybe he sees the example of Mandela and how this leads to success. Maybe the pragmatic side of him recognizes that.

HEATH: Yeah, and he has got a very good relationship with Mandela. I also think there is a new dispensation from Mandela from that point of view to be in a position again where the president of the country recognizes you and actually in fact respects him. If you watch the respect that Zuma exhibits when he is the company of Mandela it is just magnificent. At the inauguration when Mandela was carried up to the stage and Zuma arrived there, he actually went to Mandela and bent down on his knees and took his hand and thanked him that he was there. So that exhibition of goodwill was not to be killed off making factions.

Q: So we have been in a low point here and we may be climbing at this point. Does this offer any possible opportunities for you to get back into the game?

HEATH: It does offer opportunities for me and some opportunities have been offered. Not necessarily getting back into corruption, but at the moment the special advisor to the minister of justice, so I do have influence there, influence in the courts and promoting jurisprudence in the country. I am consulted by other ministers. When there is something confidential, when they really need advice I am very often brought in to the inner circles. In fact about two years ago, March two years ago, Maurits and I got an invitation from Massasulu. You know who that is, and we didn't know what that was about because that was just preceded by the Mbeki era. There was so much goodwill and her first request was that I should explain to her the arms deal. Because she was delegated by the new ANC to establish what really occurred in the arms deal. Then she arranged for a much bigger meeting of that smaller group that was entrusted with research on the arms deal and I made a speech there. I also got other things and eventually a lot of legal advice. It was Maurits and myself who advised them how to get rid of Mbeki. It was us who said you must request him to resign or give him instructions to stand down in terms of our constitution. That is exactly what happened. So for the past two years we have played a major role in the constitutional development for the changes in the country. And it was done with the changes in the law and they would closely follow my advice.

Q: Does the South African constitution permit the prosecution of a former president?

HEATH: There is a whole debate about that. My view is it actually does do that, but I mustn't be very conceited. The lawyers are rather divided as far as that is concerned.

Q: We have gone into many areas. This is astonishing and rich, the exchange that we have had. Is there anything else coming to mind while we still have this machine on?

HEATH: No you have given me not only so much opportunity but you have elicited so many responses on issues that are actually so very dear to me and are obviously important to you, so I thank you so much.

Q: Justice Heath, as I said at the beginning at the outset, it is an enormous honor to meet you and to talk to you and to have Maurits here as well. Thank you both very much.

HEATH: Thank you to you as well.

End of interview