

TTT

Interviewee: Fikile C. Bam

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Interviewer: Len Morris

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Q: Judge Bam, thank you for joining us this afternoon. I'd like to begin with some of your personal background. I wonder if you could describe for us your early life and some of your family and religious, economic background.

Bam: Thank you, Len, and thank you for having me here and for inviting me to the interview. It's a bit of a tall order about my early life because my memory doesn't quite go back to when I was born. Suffice it to say I was born in 1937, in a small village in the Transkei called Tsolo. I was the fourth child, after three girls. I was the first boy. Hence, my name, Fikile means that "he has arrived," which means that the expectation was for a male figure to pitch up at some time or other, just taking a long time, and finally when it happened, they gave me this name.

My mother had been a schoolteacher and my father had also been a headmaster of a school, but when they got married, my mother had to resign as a schoolteacher. In those days you couldn't continue teaching after marriage. My father continued for a while to teach. He then took up a post as an advisor to a paramount chief of the Pondo in the Eastern Cape, and he was an advisor, and then he sort of joined politics of the time by being a member of what was called the Bunga in the Transkei. And finally he then joined the army at the breakout of the war, Second World War, in 1939, and I completely lost track of him until when he came back from the army, around about 1946.

So I spent a lot of my time with my mother during the war years and when I was growing up, and she was working at the mission hospital in Pondoland in the Eastern Cape. She was working for a doctor called Dr. Drew who made her interested in nursing, and she subsequently took up a course in nursing, public health, and moved off to Natal.

So I grew up with my mother and grew up at the mission school, first in Pondoland, and then at the end of the war we moved up to Johannesburg, which is now called Gauteng, and I resumed my early education at a mission school called St. Cyprian's in Sophiatown in Gauteng. And the person in charge there, who was superintendent, was the Reverend Trevor Huddleston, who was quite well known, died recently. And from there I went to a high school, again an Anglican mission high school, which was situated in the south of Johannesburg, in a place called Rosettenville, called St. Peter's. Again, the Reverend Trevor Huddleston was in charge of that.

The person whom I got to know very well as I was going through these missions schools was Oliver Tambo, because he taught first at a school in Pondoland and then afterwards at the high school I went to, at St. Peter's in the Rosettenville, and I met him at both schools and he taught me in both schools. And I became very close to him, as a result of which when he decided to become a lawyer after teaching, he was able to attract me to the same profession, and I followed in his footsteps, literally.

Q: At what point would you say you became aware of race as a divisive issue in the country or influence on the course of your life?

Bam: I really think it was only when I came up to Johannesburg in 1947, you know, when I was just under ten years old, when I lived in Sophiatown, that I became aware of this, and I think I became aware of it just from what was being taught at the school where I was. We were being taught by teachers who were very politically conscious, who taught us about Gandhi, for instance. White students hardly knew who [Mahatma] Gandhi was. We already knew what he stood for. And they talked about equality of man, equality of human beings, and pointed out that the system that we were living in-- which was not really apartheid at that time, it was just as a color bar-- that segregation and the color bar were not right either, in terms of Christian teaching or even in terms of ordinary democratic principles. And that where we were living in Sophiatown -- which was just a black township of very poor people, you had hardly any white people there -- and I became aware that in the town itself, in the center of Johannesburg and in the other northern suburbs, white people lived there only and they were rich. I think it was around about when I was ten years old, to cut a long story short, that I became aware of this distinction.

Q: Did you feel that your personal educational opportunities were also proscribed and limited by the system? It would seem that becoming an attorney would be quite a reach, and unusual.

Bam: No, to be quite honest, I didn't even aspire to become an attorney until quite late in my life, until I was about seventeen and finishing off at high school. When we started schooling, the idea, even from the point of view of our parents, was simply that they wanted us to be educated, I think, to be able to read and to write for its own sake, to be able,

hopefully, to get into professions like teaching, like the priesthood, but nothing more than that, you know.

At the time when I grew up, I hardly knew of the existence of any black attorney or black advocate, and I wasn't aspiring to become one. I just didn't think it was part of our lot to become those elevated things, and it was only, again, when I was about seventeen, as I say - this would have been around about in the fifties, in the mid-fifties -- when a number of things had been happening politically in the country, when people had returned from the war with political ideas of freedom, of democracy, and when there were people within the ANC [African National Congress] once again talking about nationalism, about democracy, and about freedom, that these aspirations started to develop.

It was also during those years that people like Tambo thought it was appropriate to move from teaching and to go into law, so it was just a new thing, really, that this was happening during this awakening of awareness of nationalism and so on, that all the things came together and the aspirations started to develop.

Before that, I think we were all sort of, as a nation, pretty content with what God had given us, with our parents and with our stations in life, but I think that ended completely in the fifties when the new chapter began. That's about when I was growing up, when I was looking out for a career, and only then did the aspirations become part of me and I followed Tambo's examples and I was going to go to law school, whereas before then I was probably going to go for the ministry or just go for teaching.

Q: What would Tambo have said to you to make the argument in favor of going into the law? Would he have made the case that you could help your people against this oppressive system? Or was it simply a case of a young man modeling himself after --

Bam: Well, Tambo himself said nothing at all of that sort. He just merely, I suppose, by his own actions became a role model. We were following his examples the same as with his partner, Nelson Mandela. I don't think they sort of went onstage and said, "Look, from now on let's become lawyers." But I think implicit in their own choices was the fact that you could possibly do more to promote the liberation struggle by becoming a lawyer. Somehow lawyers were identified with people who could do more, more than ministers, for instance, more than teachers, because they could actually stand up there and challenge laws and challenge to some extent the system, challenge the police, challenge the administration, and say things there about oppression which other civil servants such as teachers and probably ministers, for other reasons, couldn't say out openly.

I think that's all that happened, and because they were moving into this field and were also political fields, the idea sort of spread around that to become a lawyer was to become someone who could be quite important in promoting certain of the aspirations and ideals which were developed around that time.

Q: Where did you study law?

Bam: I studied law here at the University of Cape Town [UCT]. That's where I went after I finished my high school. I did a B.A. at UCT, which was a mixture of languages and of

anthropology and also of law subjects. And I graduated in 1960, and then continued with my legal studies at UCT and started an LLB, which is the basic law degree, or which was the basic law degree at the time -- still is. I didn't finish that because I got arrested in 1963, the year I would have completed, and was convicted of sabotage and went to Robben Island for the next ten years.

Q: Which leads to politics and the question of political affiliations. What was your relationship to the ANC, or were you associated with another group?

Bam: I was really raised within the ANC, in the sense that in Gauteng, where I grew up, in Sophiatown, in particular, the ANC was the only known political movement, and the leaders of the ANC were the only known political leaders -- Walter Sisulu, Nelson Mandela, Duma Nokwe. A whole range of other prominent people in Johannesburg in those years all belonged to the African National Congress, and this is the milieu in which I grew up. It was hardly necessary to be a card-carrying member of the ANC to be ANC in that era, so I never joined. The rest of my family, though, were ANC members, my parents and my elder sisters.

But I never joined until I came down to Cape Town, to university, and there what really excited me was the new kind of politics which I was learning on campus, which was all about socialism. That's what really attracted me, and so I joined the Unity Movement, which was an openly socialist movement -- Trotskyist movement, some people say. That's when I first sort of identified myself with a political party, and I joined the youth movement

of the Unity Movement, subsequently joined the students' organization, which was called the Cape Peninsula Students' Union and also affiliated with the Unity Movement.

I think by the time I went to jail, I went into jail as a Unity Movement person, not exactly because the Unity Movement itself, the larger body, hadn't sanctioned some of the things that sent me to prison, such as acceptance of the armed struggle, for instance, of guerrilla warfare. That had not been sanctioned by the Unity Movement. It had already been sanctioned by the ANC, and in a way that is where I sort of struck a common chord again once more with the ANC and developed an association with the ANC through being in prison with the ANC people whom I've mentioned, Govan Mbeki, Nelson Mandela, Walter Sisulu, and the whole range of other people, some of whom were my contemporaries in high school.

Q: What were the specific activities that led up to your being detained and then imprisoned?

Bam: Well, when we were students at Cape Town University, or I was a student at Cape Town University and we belonged to the Unity Movement, among the people there who were my contemporaries was Dr. Neville Alexander, who was an activist who traveled abroad and had come back here with ideas, socialist ideas, which were really amazing for us at the time, and who, among others, in about '60, advocated the idea of the armed struggle, and went further to actually get literature dealing with the armed struggle, dealing with unconventional warfare.

We started reading books from the Algerian war and from the Cuban revolution, books by [Ernesto] Che Guevara, and from the Chinese revolution, Mao Zedong, and basically we were students, academics, and we got involved in the reproduction of this kind of literature, whatever related to unconventional warfare, because we were convinced that this is the way which the South African struggle would have to take, that it would have to take up, unconventional warfare, because we couldn't possibly fight the South African defense forces -- it was too powerful -- by conventional means. So that we had to really focus on guerrilla warfare.

We did that, and we collected literature from all over, from South Africa, because South Africa had also fought a guerrilla war against the English, and so we collected their literature, too. And the mistake we made was to go further and not just collect, but to reproduce this literature and distribute it as widely as we could among our own congress. We started forming guerrilla warfare cells, and that's what we were caught doing, and the law had been against us. A law had been passed which was retroactive, and there were a lot of things that we were doing had not, at the time we were doing them, been illegal, but the law subsequently made them illegal retrospectively. And we were charged and convicted of sabotage. That was the short name. The longer name was in terms of a law which had a longer name than sabotage, but everybody accepted that, and we refer to it as the Sabotage Act, and we were convicted under that.

Q: The Suppression of Communism Act?

Bam: No, it was actually the General Laws Amendment Act, and under the General Laws Amendment Act fell this particular category of people who performed acts which were intended to undermine the government of the day by violence.

Q: The regime had an act to fit any category of political expression that ran counter to their point of view, didn't they?

Bam: Oh, absolutely. Absolutely. Everything was covered, which partly explains why it was called the General Laws Amendment Act so that it could be a basket for anything which tended to be in opposition to the regime at the time, but the detail of it all was that if it was something that aimed however indirectly to overthrowing the government, it would fall within the sabotage camp. This was in the sixties.

Q: Were you able, while you were engaged politically, to practice law? Did you ever, as Mandela and -- was Tambo Mandela's partner for a time?

Bam: Yes.

Q: They actually had a practice.

Bam: They had a practice from the early fifties.

Q: But then they couldn't keep their premises because of -- they couldn't get the permit for their office. Did you practice law and did you experience some of those same difficulties

that again the government would set up to prevent obviously any legal challenge or legal assistance to someone who might be challenging there?

Bam: Yes. Well, I went into prison while I was a student and before I had qualified as a lawyer, so I never had to practice. So it wasn't a problem at that time. It did become a problem after my release from prison as to whether I could join the profession. And the first verdict, at any rate, on the part of the lawyers' organization where I first attempted to rejoin the profession was that I couldn't, that I was not a fit and proper person, as they said, to become a member.

But the problems which you are relating to about Mandela and Tambo, they did have obstacles in their practice. They were older people than I am, and they had already been admitted to practice the law at the time when they got into -- at the time when they were being very active. But they did have an office, as a matter of fact, in downtown Johannesburg, which they somehow were able to run. I suspect it was probably a lease arrangement with some sympathetic Indian people who may have owned and then occupied those premises rather than on permit in their own right.

But they did run a practice. The obstacles to their practice were, of course, that they got involved in the treason trial. They got involved in trial, so they couldn't have a smooth-running practice because of their political activities. But I didn't have the same set of problems, as I say, because I hadn't yet completed, and I had been a student when I went in. And the problems I had were only subsequent to my imprisonment.

Q: What were your feelings at the time that you were detained? What were your feelings about the use of force then? Had you concluded that armed struggle would be a necessary path?

Bam: Yes, I had, and that is precisely why we were convicted ultimately of sabotage. I think the turn came around about 1960; in 1960, in fact. Before then, my ideas on the use of violence or on the use of the armed struggle were not defined at all. And I, in fact, tended, in terms of my upbringing, my Christian upbringing, it should seem that it was not the way to go, and that the way to go was to be good and to -- to government, making protests and negotiating and so on.

But that all changed in 1960. That all changed largely as a result of the 1960 massacres in Sharpeville and also in Langa, where people who had been demonstrating peacefully were mowed down very viciously by the system in both areas, and after which I think any talk of achieving our aims by peaceful means was really thrown out the window, as far as we were concerned and a lot of my contemporaries were concerned. Plus, of course, the effect of what was happening elsewhere, as I said, in Nigeria and Cuba and in China. We felt that there was hope here also to address the issues of liberation through the barrel of a gun, as they say.

Q: I realize that in the context of an interview like this, that your answer to this question will be limited to a certain degree, but I wonder if you could comment on or describe the experience of ten years-plus at Robben Island with Mandela, and the others, and how that changed you, if, in fact, it did.

Bam: Well, it certainly did -- I'm not sure of the word change. It just taught me something new, something I hadn't known, let me put it that way. I learned a lot through the experience and certainly wouldn't be what I am without it. But when I first went to the island, I suppose none of us had any notion of what it would be like. It was really the first time it had happened in this country that people went to prison on a large scale, politicians went to prison on a large scale, and for long periods.

But what happened, in fact, is that though the initial experience was very traumatic and I felt sorry for myself for having landed in that, but gradually, as I was interacting with other political prisoners, interacting also, of course, with prison warders, gradually I began to actually feel that this was a worthwhile experience. I was learning things which I could never have learned from books or from being outside or mainly from theorizing. I was learning something about the nature of the struggle itself, about the nature of how we were being governed, how we were being ruled, and came to appreciate that at the end we were indeed being ruled through the force of arms, and that there was nothing we could do without addressing that issue, without addressing the issue of taking up arms. And I became more and more convinced about it, I think, the more I was in prison.

At the same time, I think prison had the effect of teaching me South African society more deeply than I would have ever got to know it from books, as I said. I would exchange with the warders and talk to the warders, and I would exactly know where these people came from. I learned that it was not really -- although it appeared on the face of it to be about race, that it wasn't so much about race, it was more about power that the whole struggle

would revolve around, and that also the other elements were matters like poverty, which were very important, and that people were not necessarily bad because they were white or Afrikaner. I suddenly came across prison warders who'd never been to university or anything, who had an inner sense of justice and fairness between them.

There was a warder, for instance, by the name of Pretorius, who looked after us, who just couldn't bear the fact that I was being treated different from the other prisoners who'd been with me, most of whom had been colored and were getting special treatment in terms of clothing. They were getting boots and socks and jerseys, and I was not entitled to any of these things because I was African. Pretorius always made a point of going out and getting these things for me, although it was against the regulations to do so, but he knew that I'd been involved in exactly the same sorts of things as the other colleagues, and he didn't see the reason why I should be dressed differently. But that was all a very useful learning.

As the years went on, you actually lost a lot of unnecessary bitterness against individual people or against individual white people or because people were white and the mistrust you had grown up with, and you suddenly knew it that was all about systems and not necessarily about people, that the struggle was about, and that what had to be changed was the system, and that to change people's hearts would be something that followed almost automatically. And we worked on that consistently.

The discussions we had also among ourselves were very useful, particularly with older politicians, of course, like Nelson and Walter Sisulu, who were really committed in a very real sense to the idea of liberation, the idea of democracy, and didn't attach it to any

particular groups or individuals. We were also talking about systems and were prepared, had the patience to wait until things took their course, as they ultimately did.

[END TAPE ONE, SIDE ONE; BEGIN TAPE ONE, SIDE TWO]

Q: In your prison discussions with the older ANC members and amongst the other inmates, did you view yourselves as political prisoners?

Bam: Yes, we did. We did. We viewed ourselves as political prisoners, but, of course, the government did not view us as political prisoners; we were ordinary prisoners. The government only recognized one person as a political prisoner, and that was Robert [M.] Sobukwe of the ANC -- of the PAC [Pan-Africanist Congress], because he, after serving his sentence and completing it, nonetheless, continued to be detained on the island, and then the exception was in making that case that he was the only one who was being detained for political reasons. The rest of us had actually breached one law or another, and therefore we were regarded as criminal prisoners, but we didn't buy that at all. I mean, I think we all looked upon ourselves and believed we had been in for political reasons and for no other.

Q: The discrimination that you experienced outside of prison was reflected also in the system that was in place at Robben Island. You alluded to it a moment ago. But coloreds were treated differently than black Africans.

Bam: Yes.

Q: Can you speak to that just a bit?

Bam: It was really a practice which had been followed, of course, in South African prisons long before political prisoners went into prison, that, first of all, people depending on the racial makeup were sent to different prisons. You never really had a situation where the prisoners were mixed. You always had separate prisons for white people, and that continued into the era of our time when we went in. There wasn't a single white political prisoner on Robben Island, for instance. All the white comrades were sent to Pretoria, mostly. And so that already had been part and parcel of the prison regime, that there was this different treatment.

The white prisoners had always had better privileges in prison than the rest of the other prisoners, who were mostly black. They got a different sort of diet, different clothing, different kinds of work to do, and generally better conditions within the prisons themselves. And then on Robben Island itself, that was a regular continuation of that system, that you differentiated as a matter of course between races. You must remember that there was an overall understanding among various governments, whether they were Nationalist or United Party, that it was important, you know, in order to rule the country effectively, to have divisions among the various racial groups on the principle of divide and rule, and so coloreds had always been treated differently from Africans. Colored and Indians had always been different. It was necessary to have that division lest they should make common cause, you see, against the white regime. And that continued, as I say, into prison. It was sort of expected. Nobody thought it was anything terribly -- what you call? -- out of keeping with the apartheid mentality and way of thinking.

But, of course, we were there to eliminate that if possible, and one of the things that happened on the island is that the colored and Indian comrades who were with us, as far as they could, tried to eliminate this distinction. For instance, they were entitled to receive bread, and Africans didn't -- were not entitled to bread, and they took a conscious decision that they were going to share the rations of bread with us. In other words, we evolved our own rotation as the rations came. They wouldn't go according to colored and Indian; they would just go according to a rotation list of our own, which we maintained. So they tried to share as much as possible.

Of course, you could only do that to a limited extent. You couldn't do it in terms of the fact that they had hats. You couldn't very well have a different person wearing a hat. They couldn't do it with the clothing aspect of it. But we didn't accept it. We just recognized that it was happening and that it was a reflection of the system which we rejected and we wanted to change.

Q: Let's speak now, if we can, of the system in more detail as it relates to law. Could you describe how the apartheid government used the law to subordinate the black South African population during the apartheid era?

Bam: Well, let me start off by saying that, in fact, for the first time, when the Nationalists came into power in 1948, segregation, or, as we called it here, apartheid, became lawful. Before then, it was merely a color bar, segregation as happened, for instance, in what was

Rhodesia, which is now Zimbabwe. They had a color bar there. There had been a color bar in the United States. A color bar also which took place without being legally sanctioned.

What happened when the Nationalist government came into power and they devised apartheid, they actually made it into law, and they passed a law, or they passed a series of laws, which says that there will be separate developments and that people will live separately in every aspect of their lives, literally, as people say, from the cradle to the grave. There was legislation which they passed, in which that was sanctioned, that you couldn't go into any hospital to be born; you had to go to a black hospital if you were black, to a white hospital if you were white. And you grew up, your schooling had to be different and your work opportunities were different, and your religious and other associations would have to be different. Your recreation time would have to be different and take place in different places. And ultimately, if you got sick, you went to a different hospital. When you died, you went to a different cemetery. And that was apartheid at its highest. It is what marks out apartheid from mere discrimination and from mere color bar, is that it was a system legally sanctioned for differentiation between the people on the basis of race.

Q: But didn't that differentiation in reality translate also as inferior?

Bam: Oh, yes.

Q: Inferior in quality in education, inferior in quality in land, in housing, in job opportunities, in the ability to make a living?

Bam: Absolutely. Yes, it translated into exactly that. In fact, I would dare say that was the underlying philosophy of apartheid, and I don't think they ever made any apologies about it. The apartheid philosophers never ever said that you could have separate but equal facilities. That was an American notion, an American dream. It never really took root here.

Here the understanding was that you could not be the same, that you were not the same, you were not created the same, you were not created equal, and that there were innate differences between whites and blacks, and these innate differences also translated into that white people were innately superior to black people, and that really was the bottom line of apartheid philosophy.

And as I say, nobody ever made apologies about it. [Hendrik Frensch] Verwoerd said it in so many words, that, you know, you must not give expectations to black people which they could never realize. You must never make black people want to attain or get to these green pastures of the white people, which they would never graze. And then it went right through the job situation. There were just certain jobs which could never be done by black people because they didn't have the capacity, the mental capacity, to do those jobs. So underlying in that was always the idea of inferiority/superiority complex in apartheid law, and it was part and parcel of it. It was not just a question of discrimination or differentiation for the sake of it or for any other purpose.

Later on, when the idea of separate development took root, there were some rationalizations along the lines that it is proper for the sake of peace not to mix groups and

to have each one doing their own thing in their own place, but again I don't think we believed in that. We believed that it was mere rationalization of two things: rationalization first of all that you shouldn't have the same opportunities or share the same facilities, and, secondly, rationalization for this divide and rule policy.

It actually suited the government at a certain time to have Xhosas living separately from Zulus and living separately from Shangaans because of that principle, and not because it was thought it right that that should be. What was happening in South Africa, it was just a convenient mechanism for maintaining the status quo.

Q: Didn't the regime also take that idea of separation to the point of declaring homelands independent, independent so that, again, by design South African citizens, black South African citizens, would be deprived of their status as South Africans, essentially denationalized and made citizens, so-called citizens, of these internationally unrecognized nations, independent nations?

Bam: They took it to that point, yes. They did take it to that point. As I say, quite clearly because they wanted to, as far as possible, prevent a solidarity, you know, even among blacks, because, you see, having all these blacks and the numbers of blacks against numbers of whites were always about ten times more, and so it would not be a wise thing to allow a complete solidarity among black people. You had to keep the divisions.

The trouble about the cities, the industrial cities like Johannesburg, was that they were busy fermenting, as it were, unity among blacks, which was quite undesirable and

unacceptable to a regime, a ruling regime which was a minority in terms of numbers, that they had to see to it that these divisions persisted among blacks.

Q: So there's a great underlying fear here of being swamped, swamped by, overtaken by a black tide, if you will.

Bam: Absolutely. It's always been there and it's always been a political cliché, almost. They call it a *swart gevaar*, black danger. It's always been something which was there in the horizon, which was almost on a par with the fear of communist domination. *Swart gevaar* and communism were things that I think every white child of my age grew up being taught to fear, for no other reason, without going into the reasons for it, just to grow up knowing that there was always this potential that they could be taken over by this mass of black hordes who came with a philosophy of communism or communalism, whatever the word was. Yes, that was part and parcel, I think, of the doctrine, of the apartheid doctrine.

Q: If we could just take a few minutes to discuss some of the actual mechanisms that were used to control and prevent this by the apartheid system. You talked about the problem that the urban areas, in particular, posed to the regime. The Group Areas Act, which restricted, by race, areas and sections within urban areas, and as we were discussing earlier, the darker you were, the further away from the center of the city you would be allowed to -- the pass laws, the influx control mechanism. Could you discuss some of those?

Bam: Yes. They were all, as I say, part and parcel of the same thing, of once you had in place this apartheid and separate development philosophy, you then had to pass laws both

big and small to control the lives of people, especially because although the history of this country, even before apartheid, it had been a segregated country and people were living in different areas, but it was not spelled out, and, you know, there were no boundaries.

Sometimes we then came across a whole black community, for instance, right in the midst of an area which was otherwise predominantly white, and that was regarded as being undesirable, and the government decided to describe these areas such as that as being black spots to be removed and to be put somewhere else. That happened in the rural areas.

In the urban areas, the counterpart of that was also to be cleaning out groups and communities, particularly if they were black, because the counter hardly ever happened where you moved white communities away from it. It was always black communities who were in areas which were too close to the center of the city or possibly surrounded mostly by white communities, to move those away elsewhere and to reserve that particular area for white people. You have examples of that in Sophiatown, for instance, in Johannesburg as an example, of where there were people, black people, who had title to land, but that this land which they had title to was surrounded by and large by poor white communities, and that it was then felt that it was not proper to have this here. Hence, the removal of Sophiatown and the people of Sophiatown nearer to Soweto, Orlando, to Meadowlands because they were too close to town and surrounded by white communities, poor white communities, by and large.

Same happened in District Six in Cape Town. Again, District Six was predominantly a colored residential area which was within walking distance from the center of town from the city hall, but which, as you moved a little bit, was also surrounded by white suburbs

and by white communities. And again it was felt that that was not in keeping with what separate development had in mind, what apartheid regime had in mind, and that you had to move these people further into the Cape Flats, where the other colored communities were, and so you moved them to Bonteheuwel.

And this pattern was the pattern that was followed throughout the larger cities. Every large city you go to, whether it's Port Elizabeth, whether it is Durban, you will find exactly the same thing having happened, of the removal of these, all in terms of the Group Areas Act. But it also happened, as I say, in the rural areas, this removal, this trying to cleanse certain areas and to reserve certain areas only for white people.

It was always to the advantage of the white people, something which, of course, was liked to the fact that only white people could vote, and these black people, they could complain, they could do all sorts of things, but they could not never express their dissatisfaction through the vote, through the ballot box. And so they were vulnerable, and the government took advantage of that.

Q: So only whites could vote.

Bam: Only white could vote, yes.

Q: Because colored were also removed from the voting rolls, weren't they?

Bam: Yes, removed from the voting rolls. They did, under some later constitution, were sort of brought back together with Indians under separate houses in which they had a limited -- but, see, blacks were kept out even after that. The only time that you had a truly democratic voting system in this country was in 1994.

Q: So we have a system of laws that have been created without any representation for the people who are living under the system. No direct representation.

Bam: Precisely.

Q: No voice on the laws that are being used to control every aspect of their lives, whether it's detention, censorship, forced removals, pass books, registration, permits where to live, curfews, public amenities. I'm not even going to go into internal security, which was bannings, detention, imprisonment, and torture and the rest. What does that do, in your opinion, to the perspective that's brought to law among the general populace? How do people then view the law at this point in time? It doesn't seem to me to be a vehicle for justice, particularly.

Bam: No, it certainly wasn't regarded, perceived as being a vehicle for justice by the majority of the people. I dare say it was perceived as being a vehicle for injustice. You see, what happens is that, generally speaking, in society the aim of law is to regulate law and order, and you can do that in two ways. You can either do it by consensus, where people, you know, have agreed to the law or have participated in formulating the law, and then that particular law will have credibility in the larger community, because the making of it

has been participative and people have had a say in it, whether ultimately some of them had voted against it, but the point is that they would have participated in making the law. So to that extent, the law has credibility in a community. It's been consensual.

The other way of achieving law and order, and you still do achieve it, is through a coercive system where you tell people that this is what is going to happen on pain of, and you don't ask their opinion. Whether they like it or not, this is the law. And by and large, South African society had always been, until 1994, followed a system of law which was coercive on part of the -- on the larger part of the community, and also bearing in mind that the society had never been a homogeneous society. It had been a society which was heterogeneous in that they were different peoples of different cultures and so on. But in addition to that, the government in 1948 went out of its way to emphasize those divisions and to crystallize them instead of trying to make them, you know, irrelevant to governance. They actually brought them and made them center of relevance that they were going to discriminate.

This was not acceptable, and so the one way to do it was by coercive means. They didn't give the vote to the majority of the people, and so they had to impose the law on the majority of the people. And to that extent, the legal system was never one which was a credible and acceptable system to the majority of society.

Q: And in the structure of South African law, the judiciary cannot overturn a law the way in an American court our judiciary can declare a law unconstitutional, basically. Our Supreme Court can declare a law unconstitutional. Only Parliament writes the law. Only Parliament can change law, the same Parliament that has no black voice. Is that accurate?

Bam: Yes. Well, that is more or less the situation, that the judiciary in this country for a long time, until the new constitution, they could only interpret the law as passed on by the legislature, by Parliament, much, I think, as the English system is and like the American system. The judges generally -- they can review certain decisions of Parliament. They can, through interpretation, where Parliament has made a law which is ambiguous, then the judiciary can come in and say, "No, this cannot have been the intention of Parliament, because it is so absurd and it is so ridiculous." There are ways, and there were ways, in which the judiciary could intervene, but the South African judiciary didn't even utilize those other ways of shaping legislation in a certain way which the English courts were doing all the time. Especially under the apartheid government the appointments to the judiciary were literally of judges, by and large, were executive-minded and wanted to interpret the law the way that was expected of them by the executive, which had not always been the case, even in South Africa. There had earlier been judges who were independent in the true sense of the word, that they were prepared to draw a line and say, "This far and no further. We're there to interpret the laws, but you know we cannot go to the extent of actually sanctioning even unjust laws." They had limits. We lost that at a certain stage, and some of the judiciary lost that kind of independence. I dare say it was not entirely lost. There were always individual judges in individual courts who stood up to the principles, you know, of justice and of the rule of law, but it was a very rare manifestation.

But you're quite correct that at the end of the day the laws were bad and the judges could do very little about it. The laws were bad because the laws had not been laws that had

been democratically enacted in the first place; they had been laws by Parliament which represented only a minority of the population.

[END TAPE ONE, SIDE TWO; BEGIN TAPE TWO, SIDE ONE]

Q: Can we get caught up on your biography, then, following your release from Robben Island in 1974? What happened then?

Bam: I was ultimately released from prison in 1974, in May. And I had served my full term of ten years, and with only one day to spare. I did get a day off simply because the date for my release was going to be on a Sunday, and so the prisons department didn't release people on Sundays, and for that reason I was released on a Saturday. The same applies, of course, to all the other people who'd been sentenced with me. We got released on the Saturday, which was just the Saturday before Easter Sunday of that year. And so we got that one day off by way of parole, otherwise the practice was not to give any sort of parole or remission to political prisoners at the time. Subsequently, I believe, some of the later political prisoners were given some kind of parole or remission, but it didn't happen by the time I left prison.

Then the problem after that was to resume one's career. Where does one start? But before I get to that, let me just tell you one thing, and that is, it was not an entirely happy moment being released from Robben Island, because in a certain way one had become part and parcel of Robben Island, and Robben Island had become a home where you knew what your routine was, where you had your friends, and where you felt, at the end of the day,

physically safe. You'd adapted both mentally and physically to the conditions there. You knew what it was all about.

When the time came for release, you then went through this period of uncertainty, of insecurity, of not knowing what next, where were you going to. There were too many stories of people who had been released and had just disappeared after their release or had been assassinated. So the future was a very uncertain one. The moments of when the boat leaves Robben Island, it's not entirely a happy moment. You are looking back to the island. You're already missing the people whom you have known so well. But what is worse, you are going into an uncertain future and you don't know what the future was.

For me, ultimately it was that I was virtually taken back to the Transkei, where my mother was. Although I'd been a resident in Johannesburg, in Gauteng, and everything indicated - I had grown up there, gone to school there, but, nonetheless, it was felt it was undesirable for me to go back there. And I was virtually shipped back to the Transkei, and from there I had to start and pick up my career.

I had been doing a few courses, academic courses, while I was in prison. I'd been allowed to study things like commerce and accounting and languages. I studied German and so on. But I was not allowed to study law. Law was one of the subjects which were not allowed, and so were politics and things like that. But anyhow, I was able to resume my legal studies now with the University of South Africa, and I obtained both my law degrees, what's called a BProc degree, which is a basic legal degree, which the University of South

Africa was offering, and then what is called here the LLB, which is the basic law degree, which I completed with the University of South Africa.

I then had to become a candidate attorney, what they called in those days an article clerk, and to apply to a firm which would take me on as an apprentice lawyer, as it were, a candidate attorney. And I had a very difficult time finding such a firm. Most firms wouldn't touch me because I'd been opposed to the regime and the regime was very much in power, including in the Transkei, where I went to. People were just not prepared to take the risk of having in their firm a person like me. Ultimately I did find someone in Idutywa, a certain Mr. Kamka, who was prepared to take the risk, and he took me on as a candidate attorney. Even though he had not received clearance from the Law Society, he, nonetheless, went ahead and took me. I spent some time with him as a candidate attorney, not even knowing whether I'd ever be accepted ultimately at the end of that into the profession.

As it turned out, the profession rejected me when I finished my pupillage and said that I was not a fit and proper person to practice. That was the Law Society of the Cape of Good Hope, a representative of that organization in the area where I had been. They wouldn't give me a certificate of good conduct, as they say, and I ultimately had to come to Cape Town and challenge the Law Society for not wanting to admit me to the profession, whereas I had completed both the academic and the practical part of it. It was only when that challenge became a reality that the Law Society, through its official body and through its executive in Cape Town, relented and made the concession and decided that I was, after all, a fit and proper person, admitted me to the profession.

And I was admitted in 1976 as an attorney -- 1977, I think, as an attorney of the Supreme Court, and I started practice in the Transkei for a while. But that didn't last for very long because I was getting into a lot of problems with the Transkei government, the homeland government, the so-called independent Transkei government, being detained year after year, and then decided that perhaps I should practice at another level, at a level called the advocate's level, which is a practice from the bar. And I applied for this for a pupillage to the Johannesburg bar, and the chairman of that bar that particular year, I think, was a man called Sydney Kentridge, who was a very well-known and prominent lawyer in South Africa. And I was admitted to come in as a pupillage in the Johannesburg bar, and I went and I completed the pupillage, but I still had problems. I could not find accommodation or chambers there because of the Group Areas laws, legislation. But ultimately I was just deported by the government from Johannesburg, deported back into the Transkei, and so I started practice in the Transkei as an advocate for a number of years.

And it was while I was practicing in Transkei as an advocate that Francis Wilson approached me when the first -- second Carnegie study into poverty was about to be launched. He'd been invited to do this in South Africa, and he invited me into the study. That's how I really first got involved with the Carnegie study into poverty, together with other lawyers -- Geoff [Geoffrey] Budlender, Dullah Omar, who has up till now been the Minister of Justice. Geoff Budlender is still the Director General of the Department of Land Affairs and Agriculture. And then there was also a prominent attorney in Cape Town here by the name of Mike [Michael] Richmond, who was involved.

We all, together with Wallace Mgoqi, formed a subcommittee of this study into poverty, which it presented lawyers and how law could be involved in this study for poverty, and we did that part.

Q: What at that point did you know about The Carnegie Corporation and Carnegie's connection, or history, in South Africa?

Bam: Very little except what I had sort of picked up while a student, that Carnegie had, in fact, been involved earlier on in the thirties in the first Carnegie study into poverty in South Africa, but that dealt exclusively with the poverty of white Afrikaners and didn't extend to the study or examination of poverty among blacks. That's as much as I knew, and whether this particular study was going to be a follow-up on that or really a new beginning, I wasn't quite clear, but I was happy, you know, that Francis was involved in this, because I knew his ideas and that he was very much concerned and had been very much in the research on black poverty and how it could be alleviated. And I was happy to participate.

Q: How independent a study did Francis character -- did Francis characterize Carnegie as hands off?

Bam: Yes, he did, and Francis did characterize Carnegie as being an independent, hands-off organization which just really wanted to go into the issues and into the facts. There never was any talk that it was acting at the instance of either the government or really of any interest groups. It had the reputation of supporting similar causes elsewhere in the

world, and there was no question about it in any way having an ax to grind in the whole investigation.

But what was more, it was really the South Africans themselves who were doing the research, and as far as I could tell, Carnegie or Carnegie people had very little to do with the actual content of the research and very little to do with the results of it. And the product was an entirely South African product.

Q: Why did you agree to become involved? What was your hope in exchange for your effort? What were you hoping to accomplish?

Bam: Well, firstly, I must say that my own practice at the bar as an advocate had somehow taken me away from the sort of public interest law which I was hoping to be able to have as part of my career, and was confining me to really other aspects of the law, like crime and to defend criminal cases, divorce cases, accident claim cases, all which were things which kept me busy and I was making some money from them, but somehow left me unfulfilled in terms of being able to make a contribution. So it had become very difficult for me to be politically active, and it was not a wise thing at all in those years to be a political activist. Otherwise, you disappeared or you were assassinated or you went back into prison.

So I had decided that the law could be used as an instrument of bringing about some of the things, of alleviating poverty, for instance, and of promoting the cause of justice and the rule of law, and it is in that spirit that I readily accepted Francis' invitation to join this Carnegie investigation into poverty.

Q: Do you feel that the Carnegie name helped in some way to protect this enterprise politically and the Carnegie history of studying whites might have helped depoliticize the study of blacks to a certain degree in the second Inquiry?

Bam: Oh, yes, absolutely. I believe that the name of Carnegie did have the effect of protecting this investigation and this research. It was obviously a well-known name, even among Afrikaners, because, as I've said, they had conducted a study earlier on poverty among white Afrikaners. So the fact that they were now conducting a second study into poverty is one which certainly had the effect of protecting the study itself and not making it suspect, in that it was not part and parcel of the activities, political activities of which some of the individual participants might have been suspected of if they didn't have this protection of Carnegie.

In the end, at the end of the day, the government, as far as I know, never interfered with either the research itself or with the individuals who were participating in the research. I was able to travel, for instance, to the United States in 1981, although I was a prohibited immigrant in South Africa. And I was able to use the Transkei ID and travel documents, without much interference. If Pretoria hadn't wanted me to go, I would not have been able to go, but I was not prevented from doing that.

Q: It sounds as if the government was treating you as a Transkei citizen, not a South African citizen.

Bam: Yes. Absolutely. They were treating me as a Transkei, but, mind you, the Transkei itself had not been recognized by the United States, and so had it not been again for the intervention of Carnegie, the Americans on their side wouldn't have been able to admit me to the United States. But I was able to get in and assist Francis, you know, with the interviews which we carried out and the instructions which we took from people at Carnegie way back in 1981.

Q: What was the process in that Inquiry? What specifically did Francis hope you would contribute, and what did you do?

Bam: As I say, we then formed a committee of lawyers who were going to be a subcommittee, of how law (A) could be used to alleviate poverty and, secondly, to examine to what extent law had itself been an instrument in causing poverty and working solutions around that area.

I had had a particular interest in land issues because I believed that a lot of not only the political history but that a lot of socioeconomic issues were around land, and that without a proper solution of the land question, how it was held and how distributed and what it was utilized for and how many people had access to it, that a number of the questions relating to poverty could not be answered. So there was this link between land, law, and poverty, which was almost a direct link, which I wanted to explore a bit further. I think the Carnegie study gave me an opportunity in my group of doing just that.

Q: You mentioned an interest in your own career towards public-interest law, an interest that wasn't satisfied by the normal practice of law. Carnegie, prior to the Second Inquiry into Poverty, had made a grant to establish the Centre for Applied Legal Studies [CALs], and also envisioned and granted a sum of money one year later to start the Legal Resources Centre [LRC]. Did you have any connection with either of those organizations, since they were actually several years before the Inquiry that we were just discussing?

Bam: Yes.

Q: They focused on public interest law, did they not?

Bam: Yes. It is quite correct that Carnegie did receive an application and supply funds to set up two organizations in this country, legal organizations. One was the Centre for Applied Legal Studies, which we call CALs, which was centered around the University of the Witwatersrand, Wits University in Johannesburg, and had a law faculty which at the time I think was led by John Dugard, who was a professor of law at the University of Witwatersrand.

They had also had a legal clinic within the university which they'd been running for a while, assisting people, poor people, indigent people, with free advice, and using their graduates and their undergraduates, training them how to assist people who were having all sorts of problems, administrative problems and bureaucratic problems with the system, and yet couldn't afford lawyers. It was quite a big issue in the seventies. It was just prior to the study into poverty, or about the same time, but this was a big issue. Subsequent to

that, there were also a number of practicing lawyers -- you understand CALS was more of an academic institution which was around the Wits University, and they were applying, I think, really to do research and to do training and advice work rather than actually going to court to fight cases. And that need came a little bit later -- well, almost simultaneously, but a little bit later in time, in terms of application, that a group of practicing lawyers started to address the concern that there had to be a body, an association, of lawyers, of practicing lawyers who could help people, conduct cases on their behalf, and actually go to court and fight their cases for free, provided, of course, that people were not able to afford to go to professional lawyers.

And a body was subsequently established and received a grant from Carnegie and others, and I think one from The Ford Foundation also, called the Legal Resources Centre, which was really started by a number of people who were practitioners. Foremost among them was Mrs. Felicia Kentridge, who was a practicing lawyer in Johannesburg, together with her husband, Sydney Kentridge. There was, of course, a person who subsequently became the director of the -- the first director of the Legal Resources Centre, and who is now the president of the Constitutional Court, Arthur Chaskalson. There was also Geoff Budlender, who was a young attorney at the time in Johannesburg, in a firm. And they just pushed aside -- at the time I was also in Johannesburg, and I'd just finished my pupillage. And I would have been in that first group, because when Arthur became the first director, he offered me a job way back in 1979 within the Legal Resources Centre, but then I was deported around that time to the Transkei, and I couldn't take up the offer at the time.

But, nonetheless, the Legal Resources Centre was set up around this group of people, and it

had the support of the Carnegie grant. And it was set up with the purpose of becoming an instrument through the law of seeing to it and making sure that the rule of law was established and of challenging unjust legislation, and of helping people have access to the law, and to fight the issues which they couldn't otherwise afford to pay for. I think that was the basic start of the Legal Resources Centre.

Q: How could an organization like the Legal Resources Centre reform law if only Parliament can make or change law? Where is the room to maneuver? Let's say you're the advocate and I have a problem with a pass law, and I'm going to be in court. The average time in front of the magistrate in pass law was probably about twenty seconds.

Bam: Yes.

Q: At that time, you know, I might not even be addressed by my name, and English would be the language, whether or not it was my language, the language I spoke. I might not even understand the proceeding.

Bam: Yes.

Q: How could the Legal Resources Centre, unable to change the pass law, help the individual in a case like that, for instance? Or, if you wish, another example. I guess what I'm asking is how did they work with such an appalling system of laws?

Bam: They did a number of things, and I think they did them very competently. They discovered that very often officials, government officials and government departments, which were administering this admittedly bad legislation, were not observing even their own rules and regulations, and that they were going beyond what they were permitted to do by the legislation. And so that a number of the things that were being done had just simply never been challenged in court, even in terms of the law as it stood.

In other words, I think what the Legal Resources Centre simply did was to go back to a tradition which had been there, and which was still there in England, of making sure that officials abide by the letter of the law, and that they don't do things which are way beyond what even the law sanctioned or permitted.

Let me just say that the idea of the Legal Resources Centre was not an original one to South Africa. They actually borrowed the idea partly from the United States and partly from England. In England you have I think what they call a public defender system. In the United States you have a system whereby people who otherwise can't afford lawyers nonetheless have access to the law through a legal aid system which provides people with free lawyers to conduct their cases. And that's where the idea was borrowed from.

And hence, the Carnegie Foundation and the Ford Foundation were able to buy into it, because simultaneously they were able to advise Arthur Chaskalson and Felicia Kentridge and all those people on the sort of ideas they could borrow from the States and from the United Kingdom as to how the situation operated. In fact, I do know that all these earlier lawyers in the Legal Resources Centre spent some time in the United States and in the

United Kingdom, because I did so myself after I joined them, studying the ways in which legal assistance to the poor was being conducted and around which issues in particular the poor had to be represented.

But while the space was always there, it had not been utilized. It had not been utilized because nobody had challenged people. You had to have money to do this. What Legal Resources Centre did was then to be looking into the legal system as it stood and to be looking into what the officials were doing administratively, whether it was in regard to the pass laws, whether it was in regard to housing, and whether it was in regard to people being overreached in contracts such as higher purchase contracts. This happened all the time with people who couldn't read or write, and they would enter into contracts in higher purchase systems, then would be dispossessed, and bogus people would come running payroll societies and other insurance companies. They would overreach illiterate people, and it was really in that sort of opening that the Legal Resources came in to assist people to see that they were not overreached because of their illiteracy and because of their poverty.

[END TAPE TWO, SIDE ONE; BEGIN TAPE TWO, SIDE TWO]

Q: If you could, would you give us an idea of the issues, of the areas of law that the LRC dealt with.

Bam: The LRC targeted issues of law which concerned poor people, particularly in the eighties, things like the influx control laws, you know, the so-called pass laws. Now the pass laws were really something that affected everybody who was black or poor, it affected

their movements, affected their ability to lead family lives, the ability to obtain jobs where they wanted to, and it was just important, but it was something that was sanctioned by legislation.

And again, I think the LRC took the attitude that it may be that some of the implications of these laws, the application of these laws by bureaucracy, has never been challenged, so they singled out the pass laws so very successfully, I think, the Legal Resources Centre was able to bring a trilogy of cases just around the pass laws. One was called the Rikhoto, another was called the Mthembu [phonetic] case, I think, and there was a third one which I just can't recall it quickly.

Q: Komani?

Bam: Komani. That's correct. The Komani case. And, for instance, established that the laws didn't go so far, what were called the urbanization laws didn't go so far. This restricted access and permission for people to reside in urban areas. So you very often found that a husband which himself had been given permission to reside in an urban area, the officials were always assuming that the fact that the husband had been given this right to reside excluded the wife from joining him, and they'd been applying the law in that regard. And the Legal Resources challenged that, that this particular application of extending this exclusion of the wife had not necessarily been sanctioned, and they won the case and similar cases like that.

They also targeted issues around transport, the raising of pass fees, exorbitant fees which

people couldn't afford, and they went on also to target exploitation of poor consumers by firms of all kinds. As I said earlier, you'd have bogus burial societies, you know, cheating people entering into contracts, and LRC would come in and challenge those contracts. You would have higher purchase agreements whereby people were persuaded to purchase things they couldn't really afford, almost deliberately so, so that manufacturers could come later on, reclaim the goods, without having to return what they got for them initially.

Labor victimization in the labor place was also a big issue which the Legal Resources Centre lawyer targeted. There had been legislation such as was called the Master and Servants Act, where virtually an employer could terminate a contract or pay whatever they wanted to pay, regardless of whether there were limits or not, and they went into issues like that and took them to court.

And so a whole range of issues which were -- particularly housing, I've mentioned to you, as an area which the Legal Resources Centre would be very much involved in what was happening in that era, and I think obvious issues just by being taken to court, a number of things were discovered that officials were overreaching themselves and were going beyond that what the law applied. So that was a scope of law which the LRC actually went to court and litigated on.

But they also did other things. They went around assisting and setting up advice offices throughout the country and training people to operate these advice centers, training people as paralegals, a concept, again, which I think was probably borrowed from the United States, where not everybody has to be a qualified lawyer in order to be able to assist people.

The advice centers were set up. Some of them had been in existence. Some of them had been advice centers set up by the Black Sash, for instance, organization.

But what the Legal Resources did was then to train paralegals and also to train as fellows some of their own qualified lawyers to be able to operate these advice centers and to give them advice. In this way they were then able to spread access to the law and to the law courts to a much wider area than government had been able to through the scheme of legal aid, which was very poorly resourced. I think this had been the main thrust of Legal Resources' activity initially.

Q: So the LRC dealt with distance, it dealt with financial resources. Did it deal also with language, with linguistic barriers to aid?

Bam: It dealt with all barriers which affected poor people, and linguistic was one of those barriers. And the fact that people couldn't read or write in English was a factor which the LRC addressed. The fact is that sometimes misconceptions and misunderstandings would creep up because people were using a language which they didn't understand or a language was being used which they didn't understand, would obviously be an element in that to the part of this lack of access to justice, because people dealt with institutions which used either English or Afrikaans, whereas they themselves were not able to either understand to read or write English or Afrikaans. That was a matter that could be very well addressed then, in the advice centers where you had interpreters and people could assist poor people who had somehow fallen afoul of the law, whether on the administrative side or whether on private contracts.

Q: What was the impact of the LRC and the advice centers and the availability of the paralegals? What was the impact of this operation on poor people and access to law, do you think?

Bam: I think that the impact of the activities of the LRC on the communities which were being served by it was tremendous indeed. First of all, there was a welcome of the services wherever they were available, and the Legal Resources Centre, when I worked for them, which was from about 1985 in the eastern province, in the Cape, was always inundated with people coming from a wide cross-section of the population, and coming to the LRC even on matters which really were not expected to be part and parcel of the scope.

In Port Elizabeth where I worked once the LRC had been set up, people used to refer to the LRC as being the lawyers for the struggle, lawyers for the people. Words like that, you know. And people walked in there, and they just brought all their matters, sometimes even matters which the LRC didn't want to handle, such as matters relating to family problems and to family disputes, to divorce and to children and so on. And then what we would do in cases like that is obviously to try and refer them to institutions or to areas where they could be handled properly.

But the impact on the communities was tremendous. It was one of welcome, of people suddenly having this feeling that "There is somewhere that we can go to with our problems, and whatever they were, that we would get some advice and wouldn't be charged for it. To some extent we have access to the legal system."

But there were also, of course, detractors of the Legal Resources Centre, obviously those people whom the Legal Resources Centre or the activities of the Legal Resources Centre tended to tread on their toes. The people who -- manufacturers who themselves were overreaching people obviously didn't like the Legal Resources Centre activity, and they started labeling Legal Resources Centres and gave them all sorts of labels that were not real lawyers; they were just wolves in sheep's skin. They were people who were out there to make political propaganda and to cause problems and to promote the aims of political organizations or the liberators' struggle. So they were a mixed bag, but overwhelmingly the people whom the Legal Resources Centre had set out to serve, they welcomed the presence of the Legal Resources Centre.

Q: Didn't the government technically and legally retain the power to shut down the center? What prevented them from doing that?

Bam: Yes, certainly the government did have that power, and I dare say they almost used it. But at the end of the day, because of the, I think, protective steps that particularly the first director, Arthur Chaskalson, had taken to safeguard the LRC, the government, at the end of the day, was not able to move against the Legal Resources Centre. And he had made quite certain that, first of all, it had been set up in a perfectly legitimate and legal manner, and that it had within it as people who were trustees, people who were not only accepted, but respected in the legal fraternity, and people who had no political ax to grind, and were known as such, were they prominent legal Afrikaner lawyers, the staffing of it was never staffed on a basis of political ideology. And anybody who wanted to serve in the LRC, no

matter where they came from, were welcome once they had this particular commitment to work and were legally qualified to do so, they were employed in the LRC.

And so he also made quite certain that the law societies and the bar council, which represents the advocates, were involved in the LRC work, knew about the LRC work, and were prepared to give the LRC activities their blessing. In other words, from the very word go, he practiced what we now know as a transparency which was open to anyone to go into it and find out what we were doing. And this was done all the time by the system.

I remember in my office in Port Elizabeth, around about 1986, when the state of emergency had been declared and the Legal Resources Centre was not, had not been, fully accepted, we were representing a lot of the young comrades who were getting arrested and getting tortured or getting shot, and we were representing a lot of them. And there was a sort of belief that because we were representing them, we were also encouraging them in agitating, and I was interviewed by a whole set of detectives from the intelligence service for a very long time as to what the Legal Resources Centre mandate was and what they were doing and who we were and where we came from, and about my own political convictions and whether I'd been politically active and so on. But at the end of all that, nothing happened and we were allowed to continue with our work.

Q: Carnegie again an element in this, do you think?

Bam: In the sense, yes, because support came from there, and I think an investigation was made as to where the funding of the Legal Resources Centre came from, and I think that at

least the answer that it came from, among others, the Carnegie Foundation, and came from the Ford Foundation, and came from English organizations, that none of these were in any way connected with subversive or revolutionary elements either abroad or locally. And yes, I do think the Carnegie factor and the Carnegie connection had something to do with the immunity, one might say, which the Legal Resources Centre obtained during the dark days of apartheid.

Q: Was there a moment in your work at the LRC when you felt, when you looked up and felt like you were fulfilled in using your professional training to help your people and help with the struggle for equality in South Africa? I mean, was there a real feeling to that work that you recognized? It sounds like it was difficult work, but it's not commercial law.

Bam: Yes. You ask if there was any moment in my life when I felt fulfilled in doing the difficult work of the LRC, and my answer to that is that just every day that I worked for the LRC and every week and every month was absolutely fulfilling, and I woke up every day just wanting to go back into the fray. I worked very hard and was very happy in what I was doing. I worked long hours. I think I started using glasses for the first time when I was working for the LRC, because I spent so much time reading and under the light, which was very fulfilling work.

It was hard work, of course, because sometimes you didn't get things right for the people. You were not always successful. Sometimes the system beat you, and then you felt, you know, a bit frustrated. But every time you won, it made up for all those moments of frustration. But what was more important was also the knowledge that you had a team

around you of people who didn't have an ax to grind, political or otherwise, of people who didn't have to make money, who could make money out of it. It was not a lucrative practice at all, but, nonetheless, of people who were very supportive of each other, where if you had a problem, you could pick up a telephone and phone the office in Johannesburg, phone the office in Durban. There was this whole sort of mighty army around you so you knew that even when things went wrong, that, you know, you are not the only one in the boat, that there was someone there you could rely on. And that was very rewarding and very fulfilling.

But then we were also having real successes, you know, throughout the country, and we used to meet at conferences, share ideas, which was a very important thing, because sometimes we were able to anticipate cases and problems that could come your way even before they had come your way, because other people had already experienced them. And so you didn't have to reinvent the wheel all the time, you could piggyback on what the entire organization already had and utilize that, or even call someone, as happened in my case in the Eastern Cape, where we were briefed to investigate the circumstances in which the Cradock Four had been disappeared and been assassinated. That case had come to us at the LRC. Because it was such a large thing which I couldn't handle myself, I had in my turn to brief Arthur Chaskalson, who was our director, to come and assist. And he came and he spent a whole week in Port Elizabeth on that case. And to this day, that office is remembered for having been the first firm of lawyers which tried to investigate the circumstances under which the Cradock Four had disappeared and been assassinated. It's since come out what we suspected and what we knew and what I think Arthur Chaskalson

established has since proved to be so by the investigations that are being conducted in the Truth and Reconciliation Commission in respect to that particular incident in Cradock.

Q: The press covered the activities of the LRC very thoroughly. Wouldn't there have been an educational function, a national educational function to the fact that, (A), you were doing this work, and, (B), you weren't doing it in the shadows? It was being publicized. It was being written about and discussed. Doesn't that somehow impact the tone, the national tone, really, of dialogue, that this for the first time has become possible: to mount these challenges, to question the fairness, at a minimum, the fairness of how the law is being applied or the propriety of how it's administered? Did the press play a role here?

Bam: Yes, the media, I think, played a role, a positive role, certainly where I was in the Eastern Cape. I had been asked by various editors to bring to their attention any particular cases which we felt ought to receive some publicity. Yes, we had cooperation from the press. And I can't remember that any of our offices, in fact, did not enjoy the support and the cooperation of the media. A lot of our cases, I think, were publicized. But the LRC itself went out of its way to do its own publicity campaigns. They had annual reports and even quarterly reports which reported on cases that were taking place right through the country.

And as for the transparency of the operations, that, of course, was right up top. As I said, the national director in the form of Arthur and then later on through Geoff Budlender, who replaced Arthur, were people who earned a tremendous respect wherever they worked, and they had a reputation throughout the country from the legal fraternity, first and foremost.

Q: What was the impact on black attorneys, a generation of black attorneys working with the LRC? Could they obtain more training? Could they essentially apprentice there with the oversight of more practiced lawyers? Was there an impact on --

Bam: The LRC did have an impact on the training of black lawyers and also of female lawyers. It went out of its way, in fact, to address that problem, because at the time the black attorneys who qualified could not get into the large firms for the pupillage, if you like, what was called those days to obtain articles of clerkship and to do their candidate attorneys in the large firms.

And so the Legal Resources Centre, realizing this, actually established a fellowship program whereby a person coming out of university with qualifications would for two years be able to practice and be exposed to practice, as it were, in one of the Legal Resources offices, and each office had money allocated to it in order to be able to employ so many fellows. It was called a scholar fellowship program, and that was particularly to meet this training on the part of black attorneys, which they couldn't receive from the white attorneys' firms, and also, of course, of female.

And a number of people who were fellows to the LRC are now in very prominent positions both in government and both in private practice and also the national -- in non-governmental organizations [NGOs], who have never practiced from a regular law firm, but whose initial experience was through the LRC. One can mention a whole series of them, of people who are now -- some of them have become judges. Of those fellows, some have

become advisors in government. Some occupy positions in the Labor Courts and in the labor institutions. There's a whole spread of people throughout the country and in the offices who are really graduates of the LRC and who did their fellowships and cut their teeth in practice within the LRC structures which were devised specifically for that purpose.

Q: Would you get help from the Centre for Applied Legal Studies in the work you were doing at the LRC? Were there occasions where there was give and take between the two?

Bam: Yes. The Centre for Applied Legal Studies always worked and coordinated their work with the Legal Resources Centre, and particularly, I think, in the Johannesburg area, where they were both situated. As far as I understood, the Centre for Applied Legal Studies was first and foremost a body which did research, and that research was obviously made available to the practitioners within the Legal Resources Centre, and that's how I think to this day this situation operates. I do know that people who were working -- and most of them were academic at CALS, which is what you call the Centre for Applied Legal Studies -- also had occasion to actually go to court and present cases. I think in the most number of cases they merely did research and passed on the research to the lawyers who were litigating within the Legal Resources Centre.

Q: With the constitution -- with the new constitution of '94, does the LRC have a place? Does its role change now that there's a bill of rights and there's representation and equality before the law?

Bam: Well, now that there is a new constitution which was first implemented in 1994, a number of people assumed that the Legal Resources Centre would not have a role to play anymore, but I think that they were wrong in that assumption. As a matter of fact, the Legal Resources Centre has now reorganized itself in order to be able to make the new constitution not just something that exists on paper, but to make the bill of rights and some of the things that are to be found in the new constitution a reality to people.

And so its task now has changed slightly. Its task, I think, is more that of bringing the fruits, as it were, of the new constitution, delivering them up to the people for them to enjoy, and they do that, propose to do that, by taking a whole range of issues to the Constitutional Court. They have, in the first place, established what they call a constitutional litigation unit, whereby all the matters and the rights that have been given to people in terms of the constitution can actually be realized and court orders can be obtained in order to realize them. That unit and the one of the prominent lawyers, Advocate Wim Trengrove, has done about forty-two cases, possibly more now as I speak, has taken about forty-two cases to the Constitutional Court. And the range of issues goes right through from access to justice, as such, and administrative justice, to what extent can administrative officials do this or not do the other thing. It does involve civil rights. To what extent are certain legislations still in existence not in accord with the constitutional principles that have now been enunciated.

Children's rights, which are also guaranteed within the constitution, the rights of women, gender issues, they have taken those to the court, to the Constitutional Court for testing. And customary law rights, as to whether, for instance, the customary law of succession is in

accordance with the constitutional principles which do not want discrimination against women. So there's been a whole range of things, of matters that are guaranteed in terms of the bill of rights.

[END TAPE TWO, SIDE TWO; BEGIN TAPE THREE, SIDE ONE]

Q: Can you tell me the names of some of your colleagues at the LRC who then went on, who've moved on to contribute significantly to the practice of law in South Africa?

Bam: Well Len, the number of former colleagues who are now in various positions either in government or in non-governmental organizations or even in private institutions, it is really a very vast number, and I'm not sure if I'll be able to recall everybody. And I might just, you know, have to make a quick list, write out a quick list for you to make sure that people I don't leave out.

But I can tell you in terms of percentage that of all the people -- well, first of all let us take people who were fellows and joined the Legal Resources as fellows, forty-two percent, forty-two to forty-five percent of those fellows are either judges or they are in government as legal advisors in one of the departments or others, or involved in NGOs which are also busy with promotion of the new constitution.

And maybe I can remember the names of the judges. There is a Judge [Mahomed] Navsa, for instance. He worked and became director of the Legal Resources Centre in the Johannesburg office, and he's now a judge, and he's also a judge of the Labor Court. Judge

[Raymond] Zondo, whom I also know was a candidate attorney or, rather, a fellow within the LRC, and he's a judge in the Labor Court and he's also, I believe, acted as a judge in the High Court. There is also a judge in the Labor Court, [Sandile] Ngcobo. He may not have been a fellow, but he certainly worked for the Legal Resources Centre in Durban.

Which brings me to another thing. Let me just mention other judges, who, though not fellows, but who worked for the LRC in Durban itself, there is now a judge, [Christopher] Nicholson, and he had been the director of the Durban office for many years. In fact, he's the one who founded the Durban office. There was someone who studied shortly after me and came to join me in Port Elizabeth, he was Jeremy Pickering then, and I'd worked with him as an advocate in Umtata in the Transkei, and we went to open the office in Port Elizabeth together way back in 1986. He's also now a judge, a senior judge in the High Court in the Eastern Cape division.

Then Arthur himself, of course, became, as you know, the judge president of the Constitutional Court. I became the judge president of the Land Claims Court. There is another judge, who, although he didn't, was not on the staff of the LRC, was, nonetheless, a trustee of the LRC for its entire existence since it was started in 1979, and is still a trustee and, I believe, chairperson of the trustees of the LRC, Justice Basil Wunsh, who is a judge in the High Court of the Transvaal provincial division.

Then there are a number of people. Geoff Budlender you have heard of, who also was in the Legal Resources from the beginning, became director of the Johannesburg office and then

ultimately became the national director, and he is now the director general, as I indicated to you, of the Land Claims Court.

There may be other people, you know. If you just gave me a moment, perhaps I should just see if there aren't other people I ought to tell you about. I have to put on my glasses for this, for a while. There is a director of the Pretoria office, [Bennie] Monama. He's become the director general of the Northern Province. Then there was someone whom we called Nick De Villiers. I believe he may still be with the Legal Resources Centre. There was a person who worked in the Johannesburg office called Thandi Orleyn, and she's done very well. She became the director of the Legal Resources Centre in Johannesburg office, subsequently became the national director of IMSSA, which is the Independent Mediation Services [of South Africa]. She had taken over from another LRC person, Charles Nupen, from that position, and she subsequently is now the director, the national director of what is called the CCMA [Commission for Conciliation, Mediation, and Arbitration], which has been set up under the new labor relations to conduct conciliation in labor matters.

Yes, that is about it. I may, I'm sure, have left out a few other names of very prominent people, but, as I say, it's quite a large number of people who were involved with the LRC in one capacity or another, who are now serving in various positions in government and outside of government.

But by the same token, Len, the LRC hasn't become an appendage to government. It's still very much an independent organization, even from the present government, and they have taken up matters against this government. I can remember recently that there was a case

which was much publicized, of where the Legal Resources Centre in the Grahamstown area took the MEC -- the MEC is the member of the Eastern Cape, member of Parliament, an executive position, a ministerial position, you might like to say, of a department, because they had failed for a long time to give pensions to people who were entitled to them. There was one old woman, eighty-five years old, who for two or three years hadn't been getting her pension grants because the computers in the system said she was dead. And the LRC took that matter to court and similar matters in regard to pensions, took the government to court. It's not the only case. I do know that another case which was litigated by Wim Trengrove involved a case being taken to court against the speaker of Parliament for a ruling she had given suspending another member of Parliament, of another party.

So to come back to the point which you answered, that whether the LRC still has a role to play now that there's a new constitution and a new bill of rights, and my answer to that was yes, indeed there is, and that the Legal Resources Centre has, in fact, organized itself now into projects, and these various projects that it has make sure that each of the constitutional rights that are entrenched in the constitution can actually be realized by the people. For instance, they have a very strong project around land and housing issues, and a number of the cases that come to my court, the Land Claims Court, they come and are litigated and are brought to the court by the Legal Resources, by lawyers who come from the Legal Resources Centre on matters relating to land, land restitution, eviction from land, and so on. And they also, as I said, handle matters concerning gender and matters concerning civil rights and women, and a whole range of other issues which are to be found within the constitution.

Q: I'd like to return to land momentarily, to the connection to land and to the second Inquiry. You chose in your working paper for the conference to take up the matter of law, land, and poverty, the relationship to poverty. Why was that your choice?

Bam: Well, I may have partly, partially answered that earlier on by saying that in a sense I was feeling that my practice as it was at the time was a bit too constrictive and I was feeling that I am somehow drifting away from public-interest issues, and that it was by looking at the land question that I felt that as a lawyer I could once again sort of come back on to the stream and have some contribution to make, because I found that there was a direct link between poverty, law, and land.

And that they were so intertwined and it was important to understand how it is that, for instance, the distribution of land had something to do with poverty, with the fact that people didn't have access to land was directly related to poverty. And the fact that people didn't have access to land was directly related to the land tenure systems that had been followed in law through the years, the fact that in terms of the prevailing law, this access was denied to people. So that was really, I think, what propelled me into that direction and I started having this interest in land issues.

I had earlier, of course, as a student, studied particularly under Professor Monica [H.] Wilson, who was very much interested in that line, and another professor who was called Professor [Charles] Simkins, and they were always harping on land and congestion in the areas and so on. A number of people where I came from, whether they were academics or whether they were my teachers, had this interest in land, and I think all that put together

did make me interested in the topic, and I kept on wanting to come back to it. And I think the Carnegie study gave me the impetus to once more come back and do research on land issues.

Q: Do you remember any of the recommendations that you made in that paper?

Bam: Well, I haven't really looked at the paper for a long time, and I do not remember -- I do remember setting out -- setting out how it had come about that the role that the law was playing in perpetuating this spirit of landlessness and in perpetuating poverty as such, how that could be addressed in terms of the law, in other words, by taking up these issues of land and passing appropriate legislation which would entitle people to claim back pieces of land which they had lost in manners that were unfair or discriminatory, and that there was still scope to do this within a new government, a new democratic government, but that also within the law as it stood, there maybe were still spaces where litigation could be initiated in order to give people more access to land.

Q: Are you in some way, in your present role as judge president of the Land Claims Court, are you in some way working through and engaged in a process that that second Inquiry provided some of the groundwork to, even if it was just from the standpoint of thinking through these issues, studying them, sharing points of view with your colleagues? In your practice, in your practice today as judge president of the Land Claims Court, aren't you in fact dealing with cases where land -- where the argument is whether or not to restore the land to a previous dispossessed owner?

Bam: In my present work in the Land Claims Court, that court was set up in the first place with a very narrow and focused purpose, namely, of restoring land to people from whom it had been taken away forcibly or otherwise people expropriated, and for the purposes of promoting an unjust and discriminatory law. So that was rather narrower than I had conceived when I was doing work for the Carnegie Corporation. I think when I was involved with the Carnegie Corporation investigation into poverty, the big picture there was access and availability of land in a wider area. You know there had in South Africa always been this huge discrepancy where you had thirteen percent of the entire land belonging to seven percent of the population. Rather, I should put it this way: that thirteen percent of the land only was available to seventy percent of the population, and vice versa, that the remainder, a small percent of the population, they owned the rest of the land. So that had to be put correct, but that was more than -- it was an issue which was bigger than could be handled by a court of law. It was an issue or matter of policy that had to be handled at the governmental level, and one understood that.

But having said that the work that we were going to be doing in the Land Claims Court was focused, it's been expanded somewhat now, and it is connected with the larger picture up to a point, in the sense that it is not an end in itself that land will have to be restored to people only who had been dispossessed. I think the thinking behind the legislation is also that that land, upon restoration, should have the potential of improving the lives of the people to whom it is given back, of improving their socioeconomic lives. That, in other words, they should be able to prosper. The land is not being returned to them for the sake of returning it to them; they should be able to farm it, they should be able to expand it and to make a living out of it, and so generally to develop the country, the economic welfare, and

that it could even serve as a model for other people who didn't have land at all, you know, once land was returned to them, as to how to operate it.

Some of that restoration process, of course, goes in terms of compensation, the monetary compensation. I think it is -- the guiding line is really to promote development of rural communities in particular and to promote the growth of a prosperous farming community, being a peasant community, as being a central issue and a crucial one in realizing the fruits of the new democracy.

Q: Is it possible from where you, from your experience, to assess the impact of that second Inquiry? Do you feel it had a real impact?

Bam: Well, I feel that it has had a real impact, but it probably is still to have a real impact. It's only now that the government is really sort of under pressure to be looking into research that was done, because it's only now that I feel that government is getting into grips with the issues that affect people on the ground, this second government of the ANC, more than the first government, which was really addressing maybe macro issues of reconciliation and of settling down politically. This government has got, is under greater pressure to be looking into the socioeconomic issues, and to that extent it will have to look into what was said and what was recommended in this second study, Carnegie study into poverty.

Q: A couple of brief personal questions and then I just have a closing question or two.

When you traveled to the United States in 1981 with Francis Wilson, what was the purpose of that trip? What do you recall about it that was unusual?

Bam: Yes. When I traveled to the United States in 1981 with Francis Wilson, at his invitation, it was in order to address the board of Carnegie Corporation and to persuade them to part with their money and to fund this study and to persuade them as to the need for such a study and why it was necessary to go for it. That was really it. And I think we succeeded in doing that, because ultimately the Carnegie Corporation did release the funds for the study to be conducted.

Q: Alan [J.] Pifer, the former president of Carnegie Corporation, said that during that period American businesses and philanthropies were being tested, in a way. There were critics who suggested that they should withdraw from activity in South Africa on the business side because of the sanctions on the philanthropic side, because the money might be wasted, might be lost.

Bam: Yes.

Q: And that he decided against that choice because he, in the end, felt that staying with the commitment to South Africa was the moral thing to do. Do you think that he took the right position in that?

Bam: Yes, I'm absolutely sure that -- well, first of all, let me agree with you that there were people who were critical of the involvement of the Carnegie Corporation in making funds available to South Africa both from a business point of view and as well as from a philanthropical point of view. There was -- it was a time when a number of institutes in the United States in particular had been operating sanctions against South Africa, very successfully so, and a number of American businesses had been under pressure to withdraw from South Africa altogether.

And so there was some substance to the concern that the money shouldn't be released, but Alan Pifer, I think, did take the correct decision in allowing this money to be released and for the work to be done, because it was obviously something which was not going to be of short-term benefit to anyone; it was really looking at the long term. And at the end of the day, whatever we might be saying about slogans about liberation, slogans about freedom and democracy, at the end of the day I think what we are talking about is what can be done and what can governments do to alleviate poverty of people throughout the world and throughout South Africa.

And that sort of investment is an investment which I think is worthwhile, irrespective of what government is in power in a given country at a given time, because you are giving money to people who are not ideologically motivated one way or the other to a government or against a government, but whose concerns are really for the poorest of the poor in any given community, and how, what steps can be taken by any government at any time to alleviate their plight.

Q: Did you feel clear in your own mind then, in your dealings with Carnegie, that these were, in fact, their motives, that this is what they were about in their work, in their philanthropy?

Bam: Well, yes, I did. We then went and we spoke to the board, and they conveyed to us what their own feelings were. I was quite -- absolutely satisfied and happy that their motives for allowing the money to come through were the correct ones. Also I just felt that it was important for them to correct a misconception which may have been created by the first study, which concentrated merely on white Afrikaner poor, that it was necessary for them to correct that misconception that whereas they were able and prepared to allow money to be utilized for that first Inquiry, that they were not now prepared to allow money when the Inquiry was going to be focused on blacks.

Q: Fifty years later, but not too late.

Bam: Right. Absolutely. Fifty years later, but not too late, because the problem is still with us now.

Q: Last two questions. In 1960, you were involved in a march in Langa. It was called the Langa March. Can you recall that and recall something of what that was about? That was just before you were detained, I believe.

Bam: Yes. In 1960 I was detained. Well, first of all, in 1960 there was a march which was organized by the Pan-Africanist Congress, the PAC. It was both organized very

successfully in a place called Sharpeville and in Cape Town here, in a place called Langa, and the people were to march in protest against the pass laws, and that was the idea of it. Ultimately, of course, it culminated in the massacre both in Sharpeville and in Langa which took place.

But before that happened, we had marched as students all the way from Langa into town and into the center of the city in Cape Town, where we wanted to present a petition to Parliament and we wanted to make protests. Unfortunately, it didn't quite work out that way because we were confronted by police with firearms and armed to the tooth as we entered the center of the city, and we had to scatter, and some of us were arrested. I escaped arrest, but someone called Philip Kosani, who was a close friend of mine, was arrested, and a couple of us students then were also subsequently detained.

A state of emergency was declared in 1960, and we were one of the first to be detained under the state of emergency, and that's the first time I spent a considerable time in detention, at a place called Motabe, in a prison in Gauteng.

Q: Did you ever dream, from that first detention or from that place of political consciousness, that march, that you would some day see a free South Africa?

Bam: Yes, I did dream that I would see. I had a vision, but having a vision is something else than believing that it's actually going to happen, you know. People have talked for a long time about the ideal situation that one day the lion will lie with the lamb, that sort of thing, but it hasn't happened yet. And I would be very careful if I were a lamb whenever I

met a lion, and not believe in the ideal that one day we were to be lying together and that the lion would be eating straw, not eating meat.

It was so that we ideally believed that it might happen, but we were very cautious, you know, not to think that it really was going to happen in the near future. And I must tell you, absolute truth, that it still surprises me every time I wake up, that it has happened so soon. Although the slogan was that, you know, it was going to happen in our lifetime, but it still surprises me that it actually has happened in our lifetime.

Q: Good.

[END OF INTERVIEW]