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Interviewee: Geoffrey Budlender

Session #1 (video)

Interviewer: Len Morris

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Q: Arthur Chaskalson this morning said that The Carnegie Corporation and I believe it was The Ford Foundation provided the risk capital -- his words -- to get the LRC [Legal Resources Centre] started. How do you feel about that, applying that phrase to this enterprise in 1979 when it began?

Budlender: Well, it was, I think, quite a risky venture. We had been through a period of very fierce repression, and there'd been no attempt to use law systematically to challenge apartheid. No one knew what would happen if you tried. Remember this is a system in which Parliament is supreme. Whatever the courts do, Parliament can promptly reverse. Lawyers can be banned. Organizations can be closed up. The money can be taken away. So I think it was quite a high-risk venture, and I remember at the time that we went into it, I was a very young lawyer, thinking, "I wonder whether this thing will last, whether it's going to survive."

I think really the important thing that Ford and Carnegie did was to take that risk and say, "Well, this looks like a good shot." They must have had their own doubts at the time. Certainly I don't think any of us asked, in 19 -- what was it? -- '79, where we would be twenty years on, would have said with any confidence the organization will be there, it will be a large organization, and it will have an established history and a record which makes it

pretty well a permanent institution in the country. I don't think any of us would have dared guess that.

Q: Alan Pifer, in some of the comments he prepared to the Carnegie board, said that he felt that it was a choice, that it was a moral choice to move forward with this program, because for the previous eight or nine years, Carnegie had not been making grants in South Africa due to the political -- Could you comment on that?

Budlender: I can't really comment on that. I think all of the foreign funders, overseas donors had questions about doing business in South Africa, after all, and I think that was, for them, quite a difficult moral question. For me it was a different question. I had graduated at law school. I had spent three years involved in a private practice which did mainly political trial work, political criminal trial work, and after three years I was saying to myself, "Well, this is all very good. We're keeping some people out of jail. We're keeping some people from being executed. These are not insignificant achievements. These are things worth spending your life on. But is it changing anything about South Africa?" And you had to say to yourself, "Well, it's not really changing anything. It's keeping some very important people out of jail and keeping them alive, and maybe enabling them to change things."

But what I think we were all interested in, in the mid seventies, partly as a result of the American history of the use of lawyers as agents of change, was whether law and lawyers could actually be part of making changes happen, rather than reactive institutions, reactive

people, protecting other people who were trying to make change happen. To me, that was what the LRC was about. That's why I was really keen to get into it.

Q: Whose brainchild, actual brainchild, was the LRC?

Budlender: I think the first person to put the idea on the table was Felicia Kentridge, who had again been influenced by the American experience. She had been on a trip to the States and come back and proposed what she called the Public Law Foundation for South Africa. That idea knocked around for a few years. A group of younger people, including me, had started talking about whether we could do something on a more sustained way.

But two things had to happen to make it really take off. One was money. And Carnegie and Ford, in particular, and also the Rockefeller Brothers [Fund] came on the scene more or less simultaneously, showing interest in this sort of work. Then the other critical piece of the picture was Arthur Chaskalson, because it needed someone who had a really impeccable reputation in the legal profession, so he would give it some status and give it some protection against any government action. And it needed someone of his legal skills. He was the piece of the puzzle that was missing. When he arrived on the scene, suddenly what had seemed a very interesting hope happened very quickly, happened extraordinarily quickly. Almost overnight, suddenly we were busy setting up this institution.

Q: I'd like to take a look at three of the areas that were outlined in the original proposal for the LRC and ask you to comment on how you actually addressed them in practice. The first was the provision of free legal services for poor blacks.

Budlender: I remember that first proposal. What we were about indeed was free legal services for black people, but what we recognized from the outset was that we could not be a government legal aid system. We were too small. A volunteer organization couldn't do what was necessary on the scale it was necessary.

And so what we tried to do is two things. We tried to support other institutions which were providing general legal aid, particularly student law clinics. A lot of our work in the early years was devoted to supporting student law clinics, training students, clinical education, and taking on cases which they referred to us. It was support to a more generalized legal aid effort. And then the second thing, of course, was to take on cases which had a broad impact, because that was the way of making a real impact with limited resources.

And increasingly over the years we tried to shift towards the impact work, tried to focus the work we were doing, and always struggled, because there was some poor person coming in the front door who had a very compelling case and had nowhere else to go. The people who were working at the LRC were working because they believed in doing this sort of work, and they found it very hard to turn people away. So there was a continual tension all the time between what we called the impact work and the service work. Not a very clear distinction, actually, but we were always doing sort of a general legal aid work at the same time as we were trying to do the impact litigation.

Q: Can you help explain for me how you could hope to improve the circumstances of an individual who would bring you a problem with law, when, under South African law, the

judiciary can't change the law? That has to be done by Parliament. So what can you do for that person? Where's the room to move? When you move forward with the complaint, as it were, what are the grounds on which you could get the government to -- or the grounds on which you could seek redress, essentially?

Budlender: Sure. Well, the curious thing about South Africa was that it was a racial oligarchy, highly oppressive, run under very oppressive conditions. Racial discrimination was at the heart of the system, but it was all done under law. And everything that the government wanted to do had to have a legal basis and a legal foundation. Parliament could pass any law it liked and give it that foundation, but before government would do something, it would find the legal basis for doing so. And if there wasn't a legal basis for doing so, there was a prospect of stopping it.

I should say the seventies were different from the second half of the eighties in that respect.

In the mid-eighties we got into a state of emergency as resistance grew and government became more and more lawless, even in terms of its own laws. It became more and more difficult to hold it to its own laws. But in the seventies, government acted lawfully. So if somebody's complaint had a valid basis in law, you could go to court.

There were three sorts of situations. One was, somebody wanted a pension, an old-age pension, couldn't get their pension, was being screwed around by the bureaucrats. It was a fairly straightforward matter to sue, and if you got an order from the court, the government would pay the pension. It was something which didn't challenge the system, but it made a significant difference to the person that needed the pension, the old-age pension.

At the far end of the spectrum -- that's the sort of simple case. At the far end of the system, if there's no doubt that if we had gone to court and had obtained a judgment from a court saying that apartheid was illegal, within days Parliament would have reconvened and would have passed a law saying apartheid is legal, and it would have had no lasting legal impact. It would have had a dramatic political impact, of course. But it was always clear that there were certain things which government would not tolerate, and if the law didn't allow them to do what they wanted to do, they would make it possible.

Where the LRC was really trying to intervene was in that area in the middle, where it was going to make a significant difference to people's lives, where it would attack one of the elements of apartheid, but where government would be in a difficult position as to whether or not to legislate. The best example is the work we did on the pass laws, which dealt with freedom of movement and influx control, where by the time we were running the cases we did in the early and mid eighties, we were able to knock down legally quite substantial pillars of the pass law system which were the absolutely central elements which restricted where black people could live and work.

But that was a time when there was increasing international focus on South Africa. South Africa was trying to resist sanctions, was trying to show that it was democratizing, that it was moving forward, and government was put to a very difficult choice. Was it going to legislate to reverse the gains which had been made, which would have quite a high cost politically, both internally and externally, or would it tolerate what the courts had done and live with it?

And I remember very well after the first of those cases, the Komani case, which was in, I think, '81, we heard that the matter had been discussed three times by Cabinet, should they go this way or should they go that way, what should they do about this judgment which clearly had a significant impact on their ability to enforce the pass laws? But at the same time they didn't want to be seen to be going backwards. No doubt there were some reformers in government who were not unhappy about what had happened. I don't know. And that was, I always thought, one of the key targets areas. Those things that made a difference and made a very significant difference, but which would stick. That's really what it was about. One can multiply the examples.

Q: Couldn't the regime, though, always rely on the center of the bureaucracy, of the committed bureaucracy? I'm thinking of the administration boards. Could you explain how they operated in relation to the pass law when you first got involved?

Budlender: Well, there was a bureaucracy which was well established and very powerful. The way the pass law system worked was that no black person could be in -- no African black person could be in any city for longer than seventy-two hours without a permit, unless he or she had one or other form of qualification which were basically qualifications of having lived there since birth and various other qualifications.

Everyone had to keep their passes with them, these documents in which these rights were accorded. You could be stopped at any time of the day or night, searched at any time of the day or night, and if you didn't have the right stamp on your pass, you'd be arrested, be

taken to a court, which was a court in name only, really. It was what was called a commissioner's court, where people would be lined up in the dock and just shuttled through at the most incredible rate. Very often they put five or six people on the docket at a time so that they didn't have to wait for the next one to come in while one went out.

It was a court in name only, and if you were convicted of being in the area illegally, you could be jailed. You would be what was called "endorsed out of the area." There would be a stamp placed in your pass ordering you to leave the area. And sometimes people were sent to what were not much more than prison labor communities on private farms. So that was the way the system worked, and there was a huge bureaucracy around it.

When we got the original favorable court judgments from the Supreme Court, we had a lot of difficulty enforcing them, because the bureaucrats either didn't know or didn't care; didn't want to apply them. So a large part of the work was not just getting the test case to court and getting a favorable test judgment; a large part of it was enforcing those judgments once they'd been obtained. That was heavy lifting.

Q: Did this mean, then, that a court that never had an advocate or an attorney present suddenly would have --

Budlender: One of the things we did was we got together a group of lawyers not just from the LRC, but private lawyers as well, to go into those pass courts, the commissioner's courts, and represent people, because there were defenses you could raise. There were



issues you could raise. That started to slow down the process to some extent. Now they had attorneys and advocates appearing before them.

But, you know, it was always slightly ambiguous in its impact, because that didn't stop them arresting people, it just slowed down the court process. I was always concerned that what we might be doing is just keeping people longer in jail, awaiting trial, and so while it was nice to obstruct what the system was doing, the so-called judicial system was doing, I always felt that the work in the pass courts helped some individuals, got some individuals acquitted, but it had no systemic impact. In fact, you could even argue the systemic impact may have been negative in some parts.

I think that's different from what happened in the early eighties, where there was a similar attempt made under the Group Areas Act. The Group Areas Act was a law which provided for segregated residential areas, and it was an offense to live in an area which wasn't designated for you. Of course, all the best areas were for whites. The areas close to town were for whites and so on.

In the eighties there was an increasing pattern of people who were disqualified, so called, living in white areas, and the time came when the government started prosecuting them, and prosecuting them with some vigor. There we worked with other lawyers and with community organizations to get those people represented. In fact, the courts prosecuting the Group Areas Act cases became completely clogged up. They ground to a halt. That was an unreservedly positive effect, because the people weren't in jail, they were continuing

with their lives, and the fact that your case for living illegally in Hillbrow, Johannesburg was going to come to court in two years' time was a very satisfactory outcome.

Q: Was there a test case?

Budlender: There was a test case. There were several test cases. There was a test case which CALS [Centre for Applied Legal Studies] ran, under John Dugard's leadership, which --

Q: Is that the Werner case?

Budlender: The Werner case, Werner and Adams case, in which it was argued that if you couldn't find alternative accommodation, then you couldn't be convicted of contravening the Group Areas Act. The appellate division, the highest court, threw that out. But more or less simultaneously, a judge in one of the provincial Supreme Courts, Richard [J.] Goldstone, had one of these cases come before him on appeal, and he found that before an eviction order, even if the accused was convicted, he said before the court would order an eviction, it had to have regard to a number of factors, one of which was whether there was alternative accommodation available. Now, the truth was, there was hardly any alternative accommodation available except very far. And that actually brought an end to the prosecutions, and that was not the cleverness of the LRC or CALS or the lawyers taking the case; it was an alert judge trying to apply human rights standards to a repressive piece of legislation. And it was Goldstone's work; it wasn't our work that stopped the Group Areas prosecutions in the end.

Q: But you raise a good point. In your work it did matter within this system who was sitting at the bench, did it not?

Budlender: It did. It did. It mattered a great deal, and it was a matter of great debate in the eighties about whether decent people should accept appointments to the bench, because they were enforcing repressive laws. Richard Goldstone was convicting somebody of living in the wrong part of town because he was black, and no one wants to do that. Richard Goldstone would have argued that he could do something about it if he was a judge. He couldn't say, "I will not convict this person," but he could say, "I will not order the eviction of this person," which may have a dramatic impact.

But there were many people who said they would not accept appointments. There were people who said that they wouldn't accept appointments to the bench because they were opposed to capital punishment, and they wouldn't hang anybody. They would drop people who said they wouldn't accept appointment because they had to enforce repressive laws. Other people took a different view and said, "We may be able to do something." From the point of view of the practitioner trying to run human rights cases and public-interest cases, we prayed for a Goldstone or a [John] Didcott on the bench. That was our dream.

Q: Now, this work is not exactly designed to popularize you with the government. What kind of pressure did you feel? What was the government's reaction as you began to achieve successes undermining their system?

Budlender: Well, they were hostile and they didn't like it. Individuals in the LRC were harassed in various ways. Rocks were thrown through windows of your home at night. The tires of your car were slashed. You received threatening phone calls. There were various sorts of things of that kind.

But what had been done at the outset was to set up the Centre in a very careful way which made the Centre itself institutionally quite protected by putting together a board of trustees which was full of all sorts of eminent people, against whom the government didn't want to be seen to be acting -- a couple of sitting judges and retired judges and leaders of the profession. And so the government was in a bit of a quandary as to what to do, because it really needed to close down the institution. There was a time when the then Chief Justice sent a message to all of the judges who were our trustees, telling them that they should resign. I understand that that was intended as the first step to banning the organization or cutting off its flow of funds, but at least two of the judges said, "Then I'll never resign." One of them was a judge who had been intending to resign, saying he wasn't sure that a judge should be a trustee of this organization. He'd become a trustee when he was a practitioner. He then was appointed a judge and he said he wasn't sure that it was right. But when this threat came down, he said, well, in that case he would stay. Another judge said, well, now he's staying for life. The effort came to nothing.

So we had this -- you know, there were always these -- the phones were obviously tapped. We assumed that. All sorts of things happened which indicated that was the case. But lawyers were -- and white lawyers particularly -- were relatively protected people compared

with black activists on the streets, and one didn't have the same sense of personal danger as one would have had if one were a black community organizer.

Q: What about from the standpoint of your funders? Did you notice any rising anxiety as the stakes were increasing?

Budlender: The foreign funders were always very good about that. They weren't in the least bit fussed about that. In fact, I think some of them were quite pleased to see us looking a little more heroic than we were. The local funders were very nervous, always. They said we were too political. And we said, "No, no, no, no. We're just representing poor people who need a lawyer. What could be more innocent than that? And we're representing them on the issues that have most importance to their lives. The fact that those issues have a political content is just the way it happens to be. That's how life is." But a lot of local donors wouldn't come anywhere near us, and some of those who were with us fled for cover quite quickly when things became hot.

Q: A lot of apartheid can be defined in terms of land and relationship to land, which translates into ownership, which also devolves into where you can live and forced removals and lots of denationalization and lots of very clever things. What did the LRC do in that area, and specifically how were you involved in it?

Budlender: It's actually an interesting part of the story, because we tend to focus, looking back, on the court cases which we did, the great cases which won the great victories, which are celebrated. But a lot of the work was outside court and was in administrative processes

or administrative bodies where what we were really doing was supporting local resistance, popular resistance to apartheid, and giving them the tools to enable them to do it, and going to court very seldom.

I remember vividly the first forced removal case I was asked to take on was of a community in a place called Driefontein, which was in the Eastern Transvaal, and people had bought that land in, I think, 1912. In the 1970s, government came along and said they must move. The people resisted. They said, "Why have we got to go?" And government said, "There's going to be a dam here. A very important dam is going to be built here and it's going to flood your land." And the arguments continued to and fro. We got involved in the early eighties. I looked at all the laws which the government had to enable them to move the people by force, and they were overwhelming. I went to Arthur Chaskalson and I said, "Look. I don't know how to fight this case, because I can't see what to do." And we looked at it together, and he said, "I don't either. I wonder whether you should be doing this case at all, whether there's anything you can do." And we said, "Well, we'd better just wait and see, and see with our bits and pieces," but it wasn't at all clear. I wasn't sure there was a case we could be taking on, but sooner than most, there were things we could do. There was a fairly well-organized community there. They were getting the local and foreign press involved in their story. One of the things was to destroy the myth that it was about a dam. We were able to get the information from government sources to show that the dam had nothing to do with it. It was a very small part of it. It was what they used to call a poorly situated area; in other words, black people living in a white area. We were able to help them to destroy that nonsense.

Then what the government said was, "We will stop paying pensions to people living in that area. If you want your old-age pension, you'd better go to the place that you're going to be removed to." So there was litigation to force government to pay the pensions for the people, successfully. Low-key litigation. Then government said it wouldn't pay unemployment insurance benefits to people there. Same story. Then government said it wouldn't allow the community to meet there. We litigated on the right to have meetings.

And there was a series of activities taking place, but all of it was actually community-driven. There was a community clinic, community organization, and they were saying to us, "Here's a problem. Will you help us solve these small, apparently small, apparently atomized problems?" but which were part of government's thrust to try to remove the community. So they stayed, and the legal work, the importance of the legal work was it enabled the community to remain cohesive and united and to resist. The legal work itself didn't challenge the removal; it was the people who were challenging the removal and resisting it. And what we did was we enabled them to resist it, made it easier for them to resist it.

Then a time came in, I think, 1983 when the community leader was killed by a policeman over the Easter weekend. It was murder. There was no doubt about it. We were able to press for a prosecution. Prosecution failed under ghastly circumstances. We brought a civil action for damages against the police on behalf of the family of the man who had been killed, which succeeded. But the -- [Interruption]

So there was the civil action for damages on behalf of the family, which succeeded.

Meanwhile, this whole thing was in the press. Again, local press and international press.

Driefontein became a focus for international attention. Protests were made at South African embassies in other parts of the world. And the community held together.

Ultimately there were negotiations with governments and an agreement was reached because government had realized that the political cost of the removal was too high.

Now, what had happened, if you look back, is that the community had raised the political stakes of removal, and government always had to measure cost against benefit. The cost of removing the Driefontein community would be enormous. That was the community's work, and what we had done was we had supported them in that.

And there was no great dramatic case in Driefontein, but Driefontein was one of the most dramatic victories of the LRC. Not victories of the LRC, one of the most dramatic and important things the LRC did, because it was one of the cases which -- there were two or three cases together, which taken together brought an end to forced removals. It just became impossible for government to carry out any more forced removals because the political cost was too high. One case was Driefontein, and the other was a case called Magopa, which was handled by CALS, where, in fact, the removal did take place, but at such high political cost that the government said, "That's it. Can't do this any longer."

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

Budlender: Are we rolling?



Q: We're rolling.

Budlender: I think what the Driefontein story demonstrates, and one can multiply the stories, other forced removal cases, the disputes over bus fares in the cities, a range of things, is the importance of having an organization which could hang in there for a long time and never require a fee, because actually the amount of time that went into Driefontein was very large and no one could have paid that fee. Certainly the Driefontein people couldn't have paid that fee. But one needed an organization which would allow somebody like me to spend days and weeks out there in the rural areas, working with people. And not just me; I was just a part of it. And not say, "But where's the fee for all of us?" And to allow what was really in a way quite experimental work to happen, because we didn't really know. I mean, now I can explain what happened to Driefontein.

There was the Black Sash, which I think also had some Carnegie support at some stage, had a rural organization called TRAC [Transvaal Rural Action Committee], which was doing some of this work. They had a field worker out there.

If you'd asked any of us in the early eighties, "What precisely are you doing and what precisely is your strategy?" we would have had to say, "Don't really know. All we know is that these people need our help. We've got a sense that this is going to make a difference. Haven't quite worked it out."

Afterwards, it became very clear what had been happening, and it was community-driven. I mean, there's a lot of nonsense spoken about lawyers who are community-driven and communities running the lawyers and communities dictating the terms and choosing the priorities. Very often that's a lot of nonsense, but in these sorts of cases it was absolutely true. We did what the local Driefontein community said. If they said a pension case was important, we did a pension case.

We guessed that they knew -- we said to them, "This is who we are. These are the resources that we have. You tell us what's most important to do," and we guessed that they knew better than we did what were their priorities. They knew. They had the sense of what would make things hang together for the community. You know, small cases. Workmen's compensation claim. Somebody injured in an accident on a farm. They said, "You've got to take that case. You've got to push it all the way." Cases which we would never take ordinarily. Motor accident cases, what we call third-party claims. Claims for compensation for injury in a motor accident. We would say, "We don't do that sort of thing." The community might say, "This is a very important case for a particular reason, and you must do it."

And I should say immediately it wasn't only the LRC doing that, there were also some private attorneys doing some of that work on a funded basis. But the lesson of resistance to apartheid was at a community level particularly, was that it didn't take a year, a month or a year, it took year after year of plodding, persistent, and very unromantic and undramatic work. The dramatic victories were really quite few and far between.

Q: The bus fares, the illegal discharge of domestic helpers, the exploitation of night watchmen, consumer fraud, would these be community --?

Budlender: All community issues of various kinds, sometimes very individualized. The domestic workers, we were supporting individual domestic workers who had been fired, and it was in support of the domestic workers union.

The bus fare cases, we were resisting applications to the licensing board for an increase in bus fares, and we were representing community organizations. We had very illustrious clients. Desmond Tutu was one of our clients in the PUTCO case in Johannesburg.

In the Cape Town case, City Tramways, it was called, the main community organizer was Trevor Manuel, who's now the Minister of Finance, who was, I think, the best community organizer I've ever worked with. That was the only case we actually won, the Cape Town case. In the other cases, we delayed the bus fare increases. We had them set aside by courts on various technical grounds, and we saved people quite a lot of money as a result. But the Cape Town City Tramways case was, I think, the only case ever in which the National Transportation Commission actually refused an application by a bus company for an increase. We knew very well that it was -- we had put up very convincing arguments. The bus company didn't need the money; it was doing very well. But no one was fooled to think that was the clever arguments that won the day. There were clever arguments, but there were a hundred community members crowding out the hall where the hearing was taking place, led by Trevor Manuel. There was a threat of a bus boycott. There was a threat of all sorts of trouble, and no one sensible would have thought that it was purely the

legal arguments that were raised. The legal arguments were there in support of political action, which was really what carried the day, I think.

Q: Let's cut for just a moment. A friend of yours has just walked in.

Budlender: I think I've met this fellow. A visiting Dutchman. [Interruption]

Q: I want to get back to a very large land issue, because I'm wondering if the LRC got involved in the human toll of the homelands denationalization policy.

Budlender: It's a story which no one -- which is difficult to believe and which could only take place in South Africa. The denationalization policy was, as you know, on the theory or the hope that all black South Africans would become citizens of another country, of one of these small homelands. Then there would be no black South Africans. Then we would have democracy. Problem solved.

We struggled to find a legal basis for attacking some of the denationalization statutes, to find a wedge to drive in, and we never quite pulled it off. We attacked the refusal to issue identity documents to citizens of these so-called homelands living in so-called South Africa, and we did that quite successfully. That caused a lot of trouble. I was told there were books of these applications. There were rooms full of these applications which the government was refusing to process.

Q: I think we have to go back for just a second so that people can actually understand how this worked. I do understand.

Budlender: How it worked was this: As each homeland attained so-called independence, Transkei, Venda, Ciskei, Bophuthatswana, by legislative acts anyone who had any ethnic connection to that place was denationalized and was declared no longer a citizen of South Africa, but now a citizen of this other country. They could continue to live in the remaining South Africa. You have to keep on saying "inverted commas, inverted commas." They could continue living and working in South Africa under certain circumstances, but they were now foreigners, even though they had been born in the country and they had lived there all their lives. They didn't know any other country.

One of the things that was done was to refuse to issue them with identity documents, South African identity documents, which was a way of refusing to pay pensions to them while they were living in South Africa. It was a way of, again, forcing people out into the homelands when they were no longer economically productive. That's what it comes down to. And we were able to attack that through litigation. As I was saying, officials told me that there were literally rooms full of stacks of applications for these identity documents, South African identity documents, to which people were entitled, but which were being refused. We started litigation on that, and that started to release that.

But that didn't really attack the heart of the denationalization issue. CALS made some attacks on the denationalization as well, also with limited success. But the big breakthrough for us--there were two big breakthroughs. One was a case in a place called

Moutse, which John Dugard can talk about, where CALS went to court. An area had been incorporated into a homeland, and the homeland was going to become independent. CALS went to court and said, "You can't incorporate that area into that homeland, because that area is not ethnically consistent with the area into which you are incorporating it." In other words, saying, "Okay, you want to play these games, then you've got to play them consistently. You can't put people of this ethnic group into the same homeland as people of that ethnic group." And amazingly, the appellate division said, "Yes, that's true," and stopped the incorporation.

Then we went to court on an even more bizarre case in respect to an area called KwaNdebele, which was to be the fifth independent homeland. There had been an election of some sort, and the ruling part in KwaNdebele supported independence for KwaNdebele on a tiny poll. I think it was somewhere between ten and fifteen percent. But women hadn't been allowed to vote, and women hadn't been allowed to be candidates for election, in terms of a proclamation issued by the then President of South Africa, and the pretext being that this was the custom of the Ndebele. We went to court on that. It was the only time, just about the only time we actually actively went off and looked for clients, and I was led to six very brave women from that area who said they would like to challenge this.

Meanwhile, this so-called KwaNdebele Parliament had passed a law saying, "We want to become independent," and so the critical moment had arrived. They said they wanted to challenge it. They were quite interesting on the subject, because they actually said, when I met them the first time, they said, "You know, it's funny you say this thing about women not being allowed to vote. We were very surprised." One woman said, "I actually went to

along to vote and when I asked they said I can't vote." I said, "What are you talking about? We run the villages. We're actually the people who are running the show -- the schools, the villages, the water schemes."

Another one said, "Actually, I wanted to be a candidate, and I went along, and I was amazed when I was told I couldn't be." So my legal point had some resonance in what they were saying.

But we went to court to challenge the election of the KwaNdebele legislative assembly on the basis that the law which set up the election, which was not an act of Parliament, it was a subordinate law, it was a proclamation, that it unfairly discriminated against women by excluding them. And we said that the common law of South Africa doesn't allow officials to discriminate against anyone unless there's explicit statutory authority for it. Now, there's few things more bizarre than that argument, actually. This was an election whose premise was discrimination. It was an election for black people only, for a homeland for black people only, which was a core element of apartheid, and here we were bleating that, "By the way, you discriminated against women while you were doing this thing." But the argument was actually legally correct, that there was a law passed by Parliament that said you can have an election for KwaNdebele in which black people will only vote, in which you will create a black homeland, but there was nothing in that law which said you can exclude women from the process.

We went to the Supreme Court in Pretoria, and we drew one of the more conservative judges on the bench, and he said we were right. Amazing things happened suddenly. The

entire KwaNdebele legislative assembly, the Parliament of the so-called country, was invalid because they'd never had a proper election. The decision that they should become independent was invalid. Everything they had done over the past number of years was invalid, because there had never been a properly constituted legislative assembly.

There was chaos. Eventually Parliament passed a law validating all the things which the old Parliament legislative assembly had done, but they didn't have the guts, they didn't have the political -- it was politically too hot to say, "Now in addition we're going to now force independence." What they were forced to do was to say, "There's going to be a new election." A new election was held, and there was an overwhelming turnout.

Overwhelmingly the old legislative assembly was thrown out and the new legislative assembly said, "To hell with independence. You must be mad. It's the last thing we want."

That was the end of KwaNdebele independence. And that was, in a way, the end of the independent homeland policy, because after that it became clear it couldn't be forced any longer.

Now, what did we do? Took a nice clever legal victory, but took six very brave women. You asked whether I was threatened. I mean, they went through a very rough time after they brought this case, and we couldn't get the police to intervene to protect them. It took those six very brave women. It took a mass movement on the ground. There had been violence and resistance in KwaNdebele for a period of two years. It took a mass movement and it took a decision -- it took an election at the end, in which everyone voted, to put an end to independence for KwaNdebele and the independent homeland policy.



What we had contributed was something which fitted in at the right place at the right time and made it all work better. So one has to be very clear about that. I mean, the LRC didn't stop homeland independence, but the LRC's carefully chosen piece of strategic test litigation was a key element of the resistance by local people.

Q: This may be a completely unfair question, but how would you measure the impact?

Where would you look to take a measure of the impact of the LRC? It started as risk capital. Twenty years later, it's huge by its original standards. Is the impact in people? Is it in law? Is it in the attitude towards law? I'd like you to comment.

Budlender: I think there are a number of things. I think there were a number of things which the LRC did, cases it ran which made a significant contribution to the end of apartheid. That's one. I think there were a number of cases which it ran which made a significant difference to the daily lives of ordinary people, regardless of the impact on apartheid. That's two. I think the LRC's -- LRC became a training ground for people who went into all sorts of positions. The work taught us about the society in which we lived, black and white. The black lawyers didn't know very much more about Driefontein than the white lawyers, and it educated and informed and trained people who worked at the LRC and who are now in positions on the judiciary and in government and in all sorts of places.

But probably the most important thing the LRC did was it promoted a belief that law could be an instrument for justice, and that doing things through law was of positive value, that this was something worth doing. I think the LRC and like organizations actually played a significant role indirectly in the fact that South Africa became a democracy under law, with

a bill of rights and with a belief that the legal system is the method people should use to enforce and vindicate their rights. That was always the ambiguity in what the LRC did. At a time of high repression and racial discrimination, here we were saying, "Oh, well, let's go to court," with courts which weren't very friendly.

There was always a nervousness on the part of some of the lawyers, certainly my part, that we shouldn't be legitimizing what was, in fact, fundamentally an illegitimate system. I think we managed to avoid doing that, and I think the lasting result is a contribution which can't be measured, but which I think is part of the story of South Africa becoming a democracy under law.

So I think it was quite a good capital investment. I think the returns -- really I say this without being, I think, overconfident about what was achieved, but I think none of us then in 1979 would ever have guessed that the impact would have been on the scale that it was. By saying that, I don't want to overstate. Apartheid was not conquered by the LRC or by lawyers. The new constitution was written by lawyers, but there were people behind them who told them what to write. Democracy was not won by lawyers. But I think if one looks back objectively, one has to say that the role that lawyers in these funded organizations were able to play was significant, and more significant, I think, than we would have guessed at the time.

Q: Just for the record, before we conclude: your new position?

Budlender: I'm now what's called Director General of the Department of Land Affairs. I'm the senior -- I'm the head of the Department of Land Affairs, which is dealing with land reform, restoring land to people who lost it through forced removals, redistribution of land, tenure reform, those sorts of things.

Q: Could you take your own example and extrapolate on the irony implicit in the South African struggle? I mean, the prisoner becoming the government.

Budlender: Crazy.

Q: The courtroom advocate becoming the judiciary. Is that a fair --?

Budlender: Yes, it is. It's a craziness. I work in a building which I used to visit in the old days, representing clients who were resisting forced removal. The building in which I work was with the Office of the Department of Bantu Administration, later called Cooperation and Development, which was the department that ran the pass laws and carried out the forced removals. I used to go to that building with my clients to try to negotiate, to prevent them from being removed. Some of the officials in the department date back to that era. Some of the claimants who come to us and say, "We want you, the government, to give back the land that was taken from us by the old government," are former clients of mine. It's a very odd situation. It's a very, very odd situation.

Q: Thank you very much for your time today. I wish we had more time, but Professor Dugard is here, and I do want to get a chance to talk to him about CALS.

[END OF INTERVIEW]