

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

JUSTICE SIRAJ DESAI

Interviewed by: Daniel F. Whitman

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[Note: This interview was not edited by Justice Desai.]

Q: This is Dan Whitman interviewing Justice Siraj Desai, and he is Justice of the High Court of the Western Cape. Justice Desai, it's great to meet you, and we're going to talk for an hour or as much time as you have. I'd like to start asking, first of all, about you and your background, if you're willing to go into your family background, your education, and your early professional development.

DESAI: That would be a chapter in itself. I was born in a place called Salt River, which is a part of the urban slum area of Cape Town. I was born in 1951. That's now exactly almost 60 years ago. I went to school in that area. School is directly run by the Methodist Church, and I was one of the few people in the school that actually spoke English. Because the school was located near the then Salt River market, most of the pupils were children of the peasants working in the market and spoke Afrikaans. Four or five of us spoke English. Basically, I think only three of us (out of 61) matriculated and completed high school. In those days, to matriculate was a high achievement. People normally lived in seven, eight places of living depending on income. My father was not an official, but he was very literate. His father came from India, the outskirts of Mumbai, and place called Religious Outskirts Mumbai My father, for some reason, was sent to India to study. He studied languages, unfortunately, he could not use in this country. My father was very educated but not educated in the job market in this country. In any event, the emphasis, not simply for him but for our extended family, which included cousins, was on education. I would just mention that we were eight grandchildren. My grandfather came here on the 8th of February, 1898. We know the exact date because he kept a diary, and he was sufficiently foresighted to keep the diary in English, so he records the date when he landed in Cape Town. He landed a few weeks earlier here in South Africa and then landed here in Cape Town. Incidentally, of his eight grandchildren here in South Africa, six of us are officials. One is an oncologist, one is the dean of the faculty of education at UWC, I'm the judge, one is a senior principal nurse for this province, one is a school principal, the other is a nurse, one is a teacher, and one didn't really... Remarkable, if I may say so myself. And those were the family achievements. What was important was this: we went to the Trafalgar High School, which was located in District Six, then the famous District Six. I'm sure you saw the movie "Missing."

Q: No, I've heard about it.

DESAI: Now, in our classes, a different version of missing at Trafalgar High School. When I got there in 1964, the area was being slowly eaten away, and in March 1966 the decay of the area, the white-group area under the Slums Act. But the impact on my life and the impact on the lives of all my contemporaries was significant. We saw our classes shrinking because the children who were from that area that attended school there were being moved out onto the Cape Flats. The children would be missing; every next morning somebody disappeared. The family had moved out to the Cape Flats. We had dwindling classes. It was a moment of great despair. It was a bad moment in history to be attending school because apartheid was being intensified at that stage. Mid-1960s, Mandela was in jail.

Q: Now were you moved in 1966?

DESAI: No, we were not moved because our area, Salt River, was never declared.

Q: It was the high school that was declared.

DESAI: Yes, but what happened was this: we never painted the house for decades because we didn't know when the declaration was going to come. Fortunately, that particular area was not declared. I'll tell you a story about that later. Let me interpose by telling in case I forget: Salt River itself was eventually declared a colored area – may I use that term?

Q: Well, it was term used by the regime.

DESAI: Because of my ethnic origins, I couldn't buy a house there when I could buy a house when I was a young attorney. And all I did was I went to the bank, and I got an overdraft facility, and I bought the house on somebody else's name, and he stood security for my overdraft. The house was in his name. That's how I bought my first house, back in the 1970s. We defeated the Group Areas Act. I mention my schooling and the incidents like that shaped my political thinking, which was really heightened in that stage. The school was an old, politically conscious school. I mean, the teachers were highly politicized. Although they were being slowly decimated, the school was being decimated, it still had some vestiges of its past, and it shaped my thinking. We commuted but not long. Its three kilometers away from my house.

Q: So your teachers, you felt, were enlightened even though the school was beleaguered with the future from one day to the next?

DESAI: Yes, the few teachers that remained were outstanding. I'm still in contact with one or two of them, those that still live. Eventually, academically, we had no hope because of the period of total despair. Then, although we lived here in the city of Cape Town, because of my grandfather's origins, I couldn't go to any university. Because of what Trafalgar was, I was probably more politically advanced than most of my peers elsewhere in the country and in the province, but we couldn't go to any university. The University of Cape Town was closed to us. The University of Southern Bosh never

admitted us. Then the University of Cape Town then closed its doors to us. The University of the Western Cape was also a problem because you'd be started. That started as an institution of people of colored origins, and they were implementing it very rigidly in the 1960s. That changed a few years later. So here I was, a 17-year-old boy, nothing to do with any university in the world, highly politicized but totally despairing, nowhere to go, and not particularly bothered with writing any exams.

Q: Sorry, I have to ask. I hate these categories, but there was white, colored, black, and Asian.

DESAI: Indian, yeah. We were called Indian.

Q: Was that a fifth one?

DESAI: It was the Asian one, but we weren't called Asian, we were called Indian.

Q: So not black, not white, not colored, and then a category that did not really fit into the system. Nothing really fit, actually.

DESAI: So then I went up. In vain, their [the government] wisdom told me to go to Durban, of all places. The government of the day made the biggest error of their lives in doing that. A massive mistake. It was totally to my advantage what then happened. When I got to Durban, particularly in the years that I was there, Durban was the most active center of resistance in this country. My peers in the university across the road were people like Steve Biko, whom I got to know socially, certainly, and the late Rick Turner was also there. He's a political activist. So we landed up in this situation where we became a part of a highly politicized generation, becoming politicized, I think. I was at an advantage also that I'd come from a situation where I'd received political schooling, able to articulate myself. In fact, Steve used to joke when we were in a difficult problem and referred to me: "This is our friend from Cape Town."

Q: I should have known, but Biko was in Durban?

DESAI: Those years. He rose to political dominance in Durban. He was a medical student. I don't remember. I wouldn't know that because he was such a charismatic guy. Every woman in the room used to be around him. He was the most charming and attractive man. He was a handsome man. But in any case, it was very exciting to be there; I played a role in my own campus and rose to prominence.

Q: What role? Any official role?

DESAI: We didn't have official roles. I was in opposition to an SRC. We couldn't have an SRC because the powers at the institution wanted to have an SRC on their terms to determine the Constitution of theirs, which we rejected. I led, for some years, that opposition to that. But I was certainly well-known by generations around the country who were my peers, which incidentally include some of the leading figures in the country.

One of my peers is Pravin Gordhan, now the Minister of Finance. It includes Roy Padayachie, who's the deputy minister of something or the other. One of the youngsters we included is now the Deputy Minister of Local Government in this country. We had a very exciting generation. We all know each other.

Q: These were classmates?

DESAI: They were not law students; they were contemporaries. Pravin Gordhan was ahead of me, and the others were at different things. We all knew each other; we were a very forceful generation. You see, but more than forceful – we were a generation in protest. None of us wanted to be there. You put a whole lot of people together; we have no choice but to come there. Those are probably your most articulate, your people most potentially capable of being educated, and it's a recipe for disaster, and look what happened.

Q: Well, apartheid was smart, but it was also stupid; in this case, stupid.

DESAI: Then, I left campus some years later. It was called University of Durban-Westville. When I started, it was called Salisbury College, and then it became University of Durban-Westville while I was there. The easiest way to get there from town was to go with a boat. It was an island, Salisbury Island, and we used to go across on a boat. From the time would I sit in the boat, it was my first time in my life I sat in a boat going across to campus. That was that. I came back here looking for articles. I was a lawyer, an LLB graduate. I didn't know very much law. I knew a lot of politics but very little law, I should say. Our college is reputedly the worst law school in the country. But it didn't really matter, did it? I learned law on the job. I first started with a chap who is also a colleague of mine now, in some ways. He was practicing law in a colored area, so he was practicing on another guy's name. His name was Douglas Roland Galland, and he was later jailed for stealing money. In any case, officially, Douglas Roland Garand was my principal, but Eso was my real principal. But that firm closed down after a few months. What then happened was, our family friend, the most prominent attorney in this town, Dullah Omar, probably for all time, was later became the Minister of Justice. The 7th of January, 1977, I became article to him. I suppose that determined the rest of my life.

Q: He was a remarkable person and a historic minister.

DESAI: I joined him, really in the first taste of the 1976 Uprising, as a lawyer now, not as an activist. I'd been involved in, in some cases, in the second half of 1976, one very big one. But the cases really came to trial in early 1977, and I was thrown right into the pond. I mean, nobody told me how to defend somebody, but I had to defend somebody. The first chap I defended was a young chap from a Gugulethu related township who threw a stone at a police vehicle, and he was charged with public violence. Unfortunately, with the state, and fortunately for the accused and me, in our law, if you throw a single stone outside of a car, it is not public violence. I established in cross-examination that the public violence was about a thousand meters down the road, and this chap was acting on his own, so it couldn't be public violence, and he missed, so he couldn't be malicious

injury to property either. So the magistrate then found him guilty of attempted malicious injury to property and gave him a fine of 10 grand, which the good bishop stood up, immediately paid 10, and we walked out of court. In later years I discovered that there was no such crime as attempted malicious injury to property.

Q: Well, fortunately, it was a light sentence. Unfortunately, it was a sentence.

DESAI: It's not a serious thing, but in any case, the magistrate then complemented that I could make it as a lawyer. Then I spent the next few years doing the same sort of cases, repeatedly. I became really experienced on, not simply public violence, but all sorts that involved resistance.

Q: Had you moved back to the Cape at that point?

DESAI: Sorry, I moved immediately back to the Cape when I graduated. My family was there. Sorry I missed that. Then my articles I did in Cape Town. I moved immediately back to the Cape once I had got somebody great because some lonely arts were left behind. But I came back. Then I repeatedly did as much as I could, but I must say that it wasn't my only life, going to the courtrooms. I also then changed whole areas: Salt River, Walmer Estate. Now District Six was just vacant land. It was cleared out in 1966. It took about 10 years to complete. By 1976, when I was in practice, it was all cleared. Then I led the civic movement in that area for almost 10 years. It was called the Woodstock Walmer Estate Residents' Association. WOSAWA... I'll tell you what the importance of WOSAWA was: in 1979 onwards, we developed a campaign to prevent the development of District Six. Private developers wanted to use the land. I claimed a thought indicating any arrogance or personal conceit that the people that I was involved with – myself, friends, those in WOSAWA – were singularly responsible for preventing the redevelopment of District Six and the Apartheid era. The land stands as it is – vacant – because of us. We always took the focus that it's salted there, you can't touch it. Salt River, nothing will grow here. No one should have privilege to it. One attempt was made by the old Colored Representative Council to build those cabinet houses in the corner. A chap named Allen Hendricks, they built it. We took them to court, and we were right. But as the case was being heard, they changed the law. They had those houses being built. I remember the judge, Pat Tiburon, saying, "The rug has been pulled out from under your feet." But those houses, for nothing else, went up after that. I played a role in that, for all the history of that place, and I continued to do so.

Q: It seemed appropriate when I saw the area 10 years ago that it should be vacant.

DESAI: There are available houses there now.

Q: It should never have been removed.

DESAI: But now we have to return the people. The idea is to return the people. We're busy, but that's the problem; that's another story which I don't want to bore you with the enormous problems. Besides that, in 1980, I tired of practice as a solicitor. I was a

solicitor then or an attorney as you call it. Then in about 1980 or 1981, I left practice, and at a sidebar, I became an advocate. Then I had 15 glorious years practicing as an advocate at the trade bar, hated by many, loved by the majority of people of the streets. To this day some of them hate me.

Q: That proves a depth of character. Let's explain to the American reader the difference between a solicitor and an advocate.

DESAI: It's the same as in England. A solicitor goes to court in a lower court. In those days, he did not have right of appeal in a higher court, and he took money from the public. An advocate of a barrister doesn't take money from the public, and he couldn't go to court. I was instructed to do so by an attorney who collects the fees and pays you. You're a court advocate; you're a trial advocate, but you do opinion work as well. I was, from day one, a trial advocate. I mean, I did trial advocacy most of the time. And then, I started off, while I didn't really work, I did matrimonials and the law reports appearing in the G4 Sunday Judgment Matter, which was a purely commercial form. Some stage of my life appeared in the Namibian government because it was new. But the rest of the time, I defended activists. I was experienced then already because I'd done all for six, seven years. You must remember that a further problem was that there were few petitioners of color here in Cape Town. I was one of the few with experience then, and willing and courageous enough to go in the court, I suppose. Not physical courage; specifically, the ability to stand up for some reason. I defended literally hundreds of activists. In some one township, I defended the entire township in the first four Victoria arrests. Every adult male was under arrest. I got everybody off. That was the 1980s, the middle 1980s? What happened was then, the UDF was formed. Dullah joined me six months later at the bar. I was theoretically his senior, but the bar... He'd been an attorney for 30 years before me. He also became an advocate. He was far my superior, just a skilled lawyer. We stood here very often together. We got to Robben Island and saw the lady that sells you the tickets. Otherwise, defended her and her colleagues for this, Phyllis Fante, the charge of murder. They were under arrest in Robertson, a place called Robertson, on the Western Cape. But I still go there, she sees me, she leaves the counter and starts ululating. Then, I defended the other chap who is now a general in the army. Mxolise Petane, I defended him on murder charges after his first. And then I rose to some prominence here where I appeared as legal counsel on several occasions for the Reverend Alan Boesak, both in his charges on subversion and to get his passport back, and then he had the related matters. I had the privilege of hosting in my chambers the entire World Alliance of Reformed Churches, of whom he was then the president. Then what happened was Dullah got detained because of the UDF story, and he was the coordinator of all the defenses in the Western Cape. When he got detained, somebody had to step in his shoes, which I did. I thought myself still too young. He was sporadically detained for a long time. He was actually able to practice for a while; then he was detained. Somebody had to do his work on a continuous basis, so that meant that I defended some leading ANC cadres, which included the famous case of Lizo Bright Ngqungwana. These were hardcore terrorist cases. That's not the cases of public unrest; those were trained guerillas. They practiced change at that stage, MK guerillas. So then I became, with Dullah's absence, I took over the defense in the Western Cape of several MK guerillas.

And then our practice also became national. I shifted very often to many cases in Port Elizabeth, Kimberley, and then finally in North West Province. I'll tell you about North West Province. North West, that's called North West now; in those days, it was called Bophuthatswana. That case lasted years; I mean, Lizo Bright's case lasted about a year. Bophuthatswana, I was there for six months. I never got paid in that case. It's the only time. I'll tell you what the case there was. It was my best defense; I led myself. These were generals in the army, and there was a coup attempted in Bophuthatswana, and they didn't suppress the coup. I think the law is the same in most countries: if you commit treason, it's a crime different from other offenses. Treason: you don't have to commit an overt act. If you're the head of infantry and you keep quiet when your task is to suppress the coup, you also commit treason by not suppressing them. That's an old Roman-Dutch concept, but I think it's an old Roman concept, and it's universal law as well. Treason by inaction. So I defended six of the generals in that army. Lasted for six, seven months, that case. I got them all off on the basis that they all denied that they were inactive. They said for the 24 hours that they were, they were doing a battle appreciation, deciding what to do, as they were trained in military school, and that they were spinning around all the time and finding out what to do. One should not judge one's clients. I think they were trying to see which way Magnus Malan was going to go, but in any case I got them acquitted on the basis of they were contemplating their next move. They were doing battle appreciation. In any case, that was a good defense sustained. They all got acquitted.

Then, in 1990, I was elected, because I lived in the area, the chair of the first ANC branch in the Woodstock area – Salt River, Woodstock, Walmer Estate – the same area. That's called the Woodstock Branch. It's now called something else. I was its first elected chairman in 1990. I was chair until I became a judge. Then also, they called upon me. I was then becoming an insider by association rather than by deed. I was called on to defend the international inquiry of the camps. The Mutinalla Commission, where this American judge - Ballinger, and a Zimbabwean lawyer. I acted for the camp commanders, what they called the "mbokodo." This is a very appropriate name: stone-death crushers. You know the stone that they used to crush. I acted for mbokodo in that inquiry. Jacob Zuma was also (Dullah represented him, but Dullah disappeared all the time) one of the people who testified that year. That's why I know him. Little did I know I'd get to know the future president. Then 1995 came, 30th of June and I wanted to now be the chair of the Woodstock Branch and get elected to Parliament. So they said, "No, you stay in law. We need lawyers. Lawyers are far and few between." And a year later, I became a judge – my certificate, I'm proud to say, signed by Nelson Mandela. My appointment sort of because... The second hearings of the JSC, I was appointed the judge of the judicial service commission. Although the first appointment, Shlope was appointed, I was the first person of color on our bench. I was the second, but I was the first local guy. I see more problems because I was the first guy who practiced here who was not white to be appointed to the bench. He was an outside; I was an insider.

Q: Do you think that the ANC was well-coordinated and took the correct action in that case? You wanted to be an MP.

DESAI: No, no, no, I was just joking. Who would want to be an MP?

Q: To me, it's not a joke. Seriously?

DESAI: Although sometimes I think I would have been a more articulate-

Q: So it was a temptation. Do you think their leadership at that time was very coherent?

DESAI: I didn't think so, but it doesn't matter. I was taking my instructions from Dullah. He said to stay in law, and he was acting with the weight of Mandela behind him.

Q: At that point, of course, he was no longer in the tank and later became Minister of Justice.

DESAI: I had to settle one more case in between. Before my ANC activities and my top defense and my becoming a judge, there were a group of guys, a PAC, who walked into a church and shot up people there. Eleven people died. Some of them were Russians, sailors who just happened to come to the church. So they told me to come, and they would give me a special rate to defend. The state was going to pay, still the old government. They gave me a special rate, so I defended this guy.

Q: The perpetrator was PAC?

DESAI: Yes.

Q: So this was a terrorist act?

DESAI: A terrorist act, yes. It is known as the St. James Massacre.

Q: So it was the previous regime who asked you to defend?

DESAI: Regime is a blunt term. I think the establishment thought it better that I would defend it just prior to the new one, 1993.

Q: Were you uncomfortable defending a person who had killed...?

DESAI: I was very uncomfortable because both my father and my father-in-law are both very religious people. But both incidentally gave me the same answer: "It's your duty." They didn't hold it against me.

Q: Well, I know that solicitors and advocates are often in these strange situations when they're defending, and must defend to their best ability, people whom they may not like.

DESAI: Yes, that's quite correct, but in this instance, I gave him more than just a defense. In that case, the special branch broke him into confessing, the security police. The trial lasted for six months. Three months was actual evidence. You must go to the bank, containing maps, plans, directions, things. For some reason, known only to himself,

the prosecutor elected to read the confession in evidence and interrogated him in four hours plus, continuously changing teams every four hours.

Q: The prosecutors?

DESAI: No, the police. The confession excluded after three further months. But he was convicted on the other evidence.

Q: Excluded because of the conditions?

DESAI: It was torture. Extend the definition of torture.

Q: So the prosecutor was not clever in introducing that as evidence because of the flawed nature of that?

DESAI: He's an Afrikaner; he believes in the police. He's actually the senior prosecutor still to this day.

Q: But this actually worked to your advantage as the defender.

DESAI: What could I do? He wanted to introduce it, and I could not in good conscience permit that to happen.

Q: And the outcome of the trial?

DESAI: He got sentenced to 25 years. A very light sentence, but he was only 18 years old. A few years later, he received amnesty from the TRC. He was the least of those.

Q: How did you feel about amnesty in that case?

DESAI: I don't want to comment on that. I'd prefer not to comment on that.

Q: That's totally reasonable. That's totally fascinating. Before, the middle, and after...

DESAI: I've been a judge since 1995, but besides being the judge, I also fulfill many other functions. I serve on the Foundation for Human Rights, which gives out money that's provided by the European Union. I've been on that-

Q: Is this...? No, Barney Pitjana was the head of something.

DESAI: That's the Human Rights Commission. That deals out the money, but I do this part time. It's still operating now, and I'm still lead vice-chair. I'm currently the chair of the Cape Peninsula University of Technology, which is huge; 28,000 students.

Q: Yes, I've been there.

DESAI: But all five campus sites? You cannot have been to all five.

Q: I went to one.

DESAI: Which one did you go to?

Q: I don't remember. It was not in Cape Town. It was out...

DESAI: Wellington?

Q: Perhaps, perhaps. Do you know Shirley Levindall, by any chance?

DESAI: Yes.

Q: Where is she at?

DESAI: Bellville.

Q: Bellville, okay.

DESAI: Shirley Levindall is very much a part of our staff. I'm the boss, the chief counsel. The most important job that's given me great prominence in this country for very many reasons is that since 1996, and since I've been a member, so 1998, the chair of the National Council for Correctional Services (the NCCS), which deals with the release of lifers, correctional services policy, and, most newsworthy, I deal with parole reviews, the review of paroles, the shake matter. I've become a legend in this town because of that matter more than anything else. But at the end of this month, my term comes to an end, and I'm not going back. For fourteen years of it, it is far too much.

Q: It sounds as if you've had three or four full-time jobs simultaneously.

DESAI: This was a full-time job.

Q: Is that an official function?

DESAI: As a judge, it's an official state function. Statutory body, appointed by the Chief Justice, and it's accountable to the President and to the Minister.

Q: And the NCCS is the body that opines and organizes the conditions of detention. Is that correct?

DESAI: No. The release of lifers (people serving a life sentence), present policy, and parole review.

Q: This is enormously, vastly, vastly important.

DESAI: That is very difficult. I don't know whether my successor will be able to deal with that. So that's how I landed up, in 1998, going to America.

Q: That was my next question.

DESAI: In 1998, I don't know what it was called, but I was alone.

Q: Well, I was in Pretoria at that time. It would be either the International Visitor's Program...

DESAI: That's the one. But I was not with anybody else.

Q: That's normal.

DESAI: The idea was that I should see prisons there, which I did. It was a very useful exercise. I must confess: I didn't realize how vast America was until I got there, vast in geography. So thoroughly decorative places, I suppose.

Q: And Africa confesses, it's a serious matter.

DESAI: Yes!

Q: Just the geographic size, did you go to the West Coast?

DESAI: Which is the West Coast, where San Diego is?

Q: Yes.

DESAI: Oh, San Diego's a beautiful place. It's very much like Cape Town, with the same sort of atmosphere, weather-wise.

Q: Well... I'm not trying to flatter, but I think Cape Town is extremely extraordinary.

DESAI: Actually, I wouldn't mind living in San Diego if I had the choice.

Q: We'd love to have you

DESAI: San Diego is very nice. The atmosphere, the weather is moderate.

Q: The weather is very much like this.

DESAI: It's very nice. The people, they're not all too white. They look all different colors. You're comfortable there coming from Cape Town.

Q: It's my favorite town in California, it is.

DESAI: At first, I didn't really have much time to go, but in any case, it's not your fault. I always wanted to go to New York. I got to New York only for a night, and I didn't realize how vast it is. I mean, I got to see, the place where everybody gathers on New Year's Eve.

Q: Times Square.

DESAI: Times Square, but I didn't see much more, but I wanted to walk around New York.

Q: When are you coming back?

DESAI: To walk around! All I want to do is walk around the streets of New York. That's what I haven't done.

Q: That's the whole point of being here!

DESAI: As much as I didn't tell you this in my life story, I read a lot. I read extensively and because of that, I'm familiar with the norms and nuances of the Americans.

Q: So New York and San Diego...

DESAI: No, Charlotte, North Carolina; Columbus, Ohio; and this beautiful place of Denver, Colorado. Two people I met stand out, and regrettably I have lost both of their addresses. One was a chap called Joe de Amici in... I met him in Charlotte. I had dinner with him one night. What a gentleman. And the other was a man called Breckenridge. I forget his first name. He took me to Breckenridge, this fellow. It's not his. It's not named after him. But he's Breckenridge. I think he had some master plot there or something. That's in Denver, Colorado. He's an attorney. [Tape turned off momentarily]

Q: You met these individuals that you've named.

DESAI: There's other people as well. Those people I had conversations with. You could talk. We spent some time together. Actually, Breckenridge, I was at his house. We could have conversations, long conversations.

Q: What did you want to get out of those conversations, and what did you?

DESAI: I was sent to America, I think, to get some idea of the correctional system there, but that was too tall an order, you know? I saw the modern business system there, and I wish I didn't see the modern-generation correctional centers. I've had some idea of that.

Q: Plus, it's quite varied: municipal, state, federal, high security, low security.

DESAI: That's right. Your modern generation correctional centers, I could make some input here on what I've seen there.

Q: Let me just go to the next section.

DESAI: I think more than the correctional centers, I think that beating the people is important. What they told me would happen didn't happen. They said in future, they would refer people to me coming from America, and I would be quite happy to reciprocate.

Q: Shame on them.

DESAI: But taking Americans for lunch, lawyers, whatever, that didn't quite happen. I don't know what happened after that. I think the program fell into disuse.

Q: We will correct that, pardon the pun.

DESAI: Please, my door is always open, but I left five more minutes.

Q: Oh, there's the noon cannon.

DESAI: The noon gun, yes.

Q: Well, Judge Desai, what was the meaning, or the benefit, or the advantage, or the disappointments, possibly, of your trip to the US? How do you feel that you were able to utilize...?

DESAI: I think the advantages were clear. One reads in newspapers about America, what's happening in America. It was nice to meet American people, talk to them. You know, that's an enormously life-enriching experience, to talk to people from other countries rather than reading about them, and I think that itself was... Actually, the two people who made the most profound impression upon me, but there were others also I met. I went to university where I was asked to speak. It was a small, private university somewhere in San Diego, I think, but I didn't really get the chance to speak as a lawyer. There I did, but in other places I was able to exchange ideas most when I met people.

Q: Was there anything about the penal or judicial system in the US that you found surprising?

DESAI: Well, I told you the new generation correction. I know of the other, and the rest of the business system in the US. The ones I saw were good, perfectly suited to be emulated here. I must emphasize, I only saw the new generation ones. I saw select few that I was shown. But prisons, prisons all over the world, whatever you called them.

Q: As this building was once where we now sit.

DESAI: This, where they flogged people here.

Q: Flogged them, the famous track.

DESAI: They used to torture people here.

Q: Now a hotel. I wish we had another several hours. Do you have any comments concluding your thoughts (door slam)? The title of this project is "Outsmarting Apartheid," and it has to do with US and South African exchange programs of the 1970s, 1980s, and 1990s. This is history. We're recording history here. What do you think the incredible span of your own career, from being a student in a district that was being demolished, to being, within a very short trajectory, being at the very top of the judicial system in South Africa? Looking back at the vast changes that took place in 1980s and 1990s, what was it that seized your attention, and what do you find at this point-

DESAI: Seized your attention where?

Q: Your personal attention in observing and being part of the changes in South Africa in the 1970s, 1980s, and 1990s. Why was this a success? How did this happen?

DESAI: Success is inevitable. It's inevitable because they became increasingly crude in the implementation of separate development and apartheid. They could not sustain it anymore, on one hand. On the other, the growing international pressure was crippling this country. The pressure both of the protest marches of the world, but also more importantly, the economic boycotts that were taking place that were impacting the government of the day, and on the other, the intensification of the resistance in this country. I don't think it was so much more. I don't want to underrate the role of the controversies and the activities they did, that they undertook. But it's more your grassroots resistance that was growing at all levels of society. Ordinary people, all of us, were involved. We were not carrying guns, but there was resistance and disobedience of authority. They were not able to rule by consent anymore. Consent was being taken away.

Q: In some oppressive regimes, take Iran at this moment, resistance is met with greater oppression. Why did that not happen here? Well, it did, there was oppression, but why did this effort succeed?

DESAI: It's a long period of time. I mean, we are talking here, Iran has undergone two years of their current regime, and just remember they also had their highlight with the fall of the Shah. So the country is undulated in its resistance, its acquiescence, other undercurrents, underpinning of that society. In this country, there was sustained resistance, and resistance was growing at all levels of society. Dullah Omar was a great lawyer, but he used to look to me to do the dirty work because I was a product of 1976. We were less afraid. And you tell me, I thought to myself, it would be very nice for the prosecutor in the courtroom, but he whispered to me, "Do your normal thing." I was the unpleasant person. But it wasn't that; it was that we were more defiant, those of us who were the post-1976 generation. We would stand up and tell the person, "Fuck you." You wouldn't do a thing and be nice or civil about it. You would out-do them scientifically.

Q: That's a slightly different generation, yeah.

DESAI: It's a generation that was growing in number. We were defined at all levels. That showed, not so much the maturation of the struggle, but the widening of the struggle at all levels of society. That was the real issue. I mean, I could call a meeting and be sure there would be people there, whatever the banning was, you know?

Q: You mentioned international pressure and economic boycotts. To what degree did that affect...?

DESAI: South Africa's economic viability was important. They were getting fat, but they weren't fattening the followers anymore, besides us. They had also become greedy, you know? The people on the top, and they couldn't support to maintain their own accolades. All of South Africa was becoming more decent, white South Africans increasingly opposing the crudeness of the apartheid. I suppose that spread, and I think that spread of resistance made the implementation of apartheid almost impossible. The Group Areas Act went first, the Mixed Marriages Act went first, then the Group Areas Act went. The Mixed Marriages Act made us the laughingstock of the world. The Group Areas was preserving the white group area, which was the property ownerships in this country, and when that went, the edifice of apartheid fell. It had to go, by its own logic it had to go because it was indefensible. The problem with apartheid was logically and rationally, it was indefensible. It could not keep a people divided and then subjugate them to physical and economic exploitation. The problem though, is that (I wouldn't say so lightly) it also meant that the inequity of this country has not simply stayed but has been intensified over the years. That generates the seeds of its own destruction. I'm lucky I'm not in politics anymore. I would have had a view on it then, but I don't have a view now as a judge.

Q: I'd love to go on, but I know that your timing...

DESAI: I know, I know. My court will now start! I'll give you one last question.

Q: In turn, I'll just give you a chance to add anything that you would like to add.

DESAI: I'd like to thank you very much. I would say that I'm glad I went to the US.

Q: I'm so glad. I'm so grateful for these comments.

DESAI: I'm glad that I would be really happy to see people come visit me now.

Q: Well, this is a terrible lacuna, and we will correct it in our correctional system. Thank you, Judge Desai.

End of interview