

**Sheila Avrin McLean****LRC Oral History Project****14th April 2008**

Int This is an interview with Sheila Avrin McLean. Sheila, thank you very much for agreeing to do the LRC Oral History Project interview and we really appreciate the time you're taking for this. I wondered whether we could start the interview by you talking about your personal background and where you grew up, the trajectory that formulated ideas of social justice and the trajectory that took you into the legal profession...

SM That was a rather long trajectory. I'm now quite senior (laughs). I grew up in a very small town, in New Jersey, and went to public high school where I had a superb principal who enabled critical thinking. By my high school years Senator (Joseph) McCarthy's crusade against Communists was over but I had paid attention to the hearings when I was a very young child and knew in high school that First Amendment and civil rights issues were going to be incredibly important in my life. The Principal of my high school went to Amherst College and his wife to Smith College. He enabled critical thinking in high school and encouraged me to go to Smith, where he thought a young girl, in those days, could get a better education than at a co-ed university. I did go to Smith College, where I was something of a campus rebel--very much concerned with civil rights issues in the United States and a participant in demonstrations and sit-ins. I went from that background to Yale Law School. If I hadn't gotten into Yale I don't know if I would have gone to law school. Because that was a place that had a strong focus on jurisprudence, which interested me a great deal and also a robust emphasis on constitutional law and terrific expertise in that area. And I was very, very fortunate to study with some of the greatest legal minds concerned with civil rights and international justice--we didn't call it human rights in those days--but the world of thinking about equity was opened to us in a way that I think would not have been possible at most law schools in those days. When I finished Yale Law School, I went to a big deal law firm in Wall Street and became a corporate lawyer. And learned a lot (it was a great training) but I didn't really love the substance of what I was doing, although I did find it quite intriguing. My husband was at another big deal law firm and we decided, after about three years of legal practice that one of us could "do well" while the other one of us could "do good". I was lucky enough to...pick the option of doing good, and also lucky enough to have a connection into the Ford Foundation, where I was hired on a short-term leave of absence from my law firm not for the kinds of issues: civil rights, human rights, but as a lawyer working on issues relating to the regulation of foundations. And that was tangentially related to the kinds of issues we're talking about today but really were very interesting puzzles about law. I arrived at the Ford Foundation in February of 1970 when a new law had been enacted that had the effect of regulating foundations. And I was asked to review the most troublesome grants the Ford Foundation had made that were some of the reasons behind why this law regulating foundations was enacted. And those were grants that were made to promote voter registration, particularly in southern states, and to advance civil rights grants. These types of grants were very political and were, therefore, among the grants that were questionable under this new law. Aided in part by my review of the grants, the Ford Foundation was able to modify some grants as well as its grant making procedures, to ensure compliance with the new law. For me, reviewing the substance of these grants was an incredible orientation into very exciting thinking about advancing human

rights. I got to interview civil rights activists and leaders about why these grants had been made. For me personally, this led to an awakening about the importance in the United States of civil rights as a means of redressing imbalances in society. Shortly, I was asked to evaluate some of those grants and review some of these grants to put them in a context of what the Ford Foundation was trying to accomplish in promoting civil rights. After a couple of years, my leave of absence was over and the law firm asked whether I was returning or staying at the Ford Foundation. And I decided to stay at the Foundation. By then I was the primary lawyer doing international legal work. And I was asked by David Bell, executive vice president of the Ford Foundation, and formerly head of the United States Agency for International Development, to go to Africa, and particularly to go to South Africa, to evaluate the Ford Foundation's legal grant program in South Africa. This was 1976, and my first instinct was to refuse because...I knew enough about apartheid to view it as a heinous regime totally immoral and subject to international sanctions, which might not have been enforced but were widely supported. I certainly didn't want to be part of violating those sanctions. But in the old Ford Foundation style they enticed me by saying that I could accompany the head of the Middle-East and Africa Program, Robert (Bob) Edwards, whom I respected a great deal. We would travel through eastern and southern Africa. When we arrived in South Africa my real work would begin, but the rest of the journey would be an orientation into the grant work of the Foundation in Africa. Well, Bob Edwards was very well known and beloved in southern Africa. One place we went to was Botswana, followed by Lesotho and then South Africa. In October, 1976, there had been in Johannesburg, South Africa what the press referred to as the Soweto Uprising. Many of the youngsters who had participated in this uprising had fled over the border to Botswana. And Bob (Edwards) knew very well Sereste Khama, the head of state of Botswana, who had recently had surgery and Bob (Edwards) would be one of the first people to meet with him as he was recovering from this operation. While he did this kind of high level meeting, I went to refugee camps and met with kids who had come over the border from South Africa. And what an orientation into the thinking of thirteen, fourteen year old kids, about what was wrong inside their country, how they viewed the world and how they thought they could make change happen in South Africa. I then went with Bob (Edwards), after the Botswana portion of this trip, to Lesotho, to attend an African-American Institute meeting. The organizers of this meeting invited some of these kids from Soweto to meet with the delegates from the United States and from other African nations. So, South Africa was a pressing concern for all of us at the conference. One other delegate was Francis Deng, who was in law school with me, who was at that point, I think, a very high official in the Government of Sudan. (He had not yet left the Sudan to come to the World Bank.) For all of us, what was happening in South Africa was a great intellectual puzzle-- why the regime, which so horrifically violated the human rights of a vast majority of its people-- lasted...it certainly shouldn't have ...and how we all, as outsiders, might be able to help the oppressed inside South Africa. And I remember talking with Francis (Deng), who as a Black African, wasn't allowed into South Africa, saying that he wished he could go there so he could confront the regime—or at least try to understand what was going on. I, by contrast, remember saying to him how wary I was about going there. I didn't want to be an accomplice of the regime or encourage it by going there. But he urged me to go and said that if I would report back to him after I visited the country, it would be almost like he had his own eyes there. So, I went to South Africa with a great deal of repugnance and apprehension of what this police state was going to be

like. How could one find the possibility in the future of this country the social justice that these kids had been talking about? My job was to evaluate one grant-- a grant that the Ford Foundation had made to help fund defence in political trials in South Africa. And so my meetings were with some of the top and most liberal lawyers in the country who were part of teams...both the attorneys and the advocates...part of teams to help provide defence to opponents of the apartheid regime, charged with political crimes. Because we arrived in South Africa from Lesotho, as I remember it, Bob (Edwards) and I first visited Durban and, mainly, the Law School of the University of Natal. One of the first people we met was Tony Mathews, the Dean of the Law School—a young, upstart, very activist, political rights...civil rights, human rights advocate. It was a really incredibly important introduction to South Africa. At that time, the University of Natal had the only medical school in the country for training black doctors. Early in this visit, I was introduced to some of the nuances in the apartheid system. Here was a great university reserved primarily for whites but it had a totally superb medical school for black medical students. Suddenly, things were not so clearly right and wrong. The people one met-- the kids in Botswana, the kids in Lesotho, and then the younger students at the University and the Dean of the Law School--, talked about human rights, social justice issues and where they fit in a future South Africa was an incredibly emotional awakening for me personally. All of this in spite of a repressive regime. I don't know if any of what I'm trying to say is clear...I haven't thought it through for a long time (laughs)...

Int It's a wonderful outline, thank you so much. I'm wondering whether I can take you right back though and really ask you...you mentioned early on that growing up in New Jersey you'd been aware from an early stage of the political environment you were growing up in, and I wondered where that came from, the kind of understandings that you had and knowledge, really, about the political?

SM I think it was quite odd because what happened was, I was very ill when I was about nine or ten years old...in those days there were a lot of polio scares...they thought I had polio but I don't think I did. But I couldn't move, I had high fevers and was sick. We had a television, and I, for days on end, watched the Army-McCarthy hearings when I was nine or ten years old, and I really think that that raised in me a consciousness that was extraordinarily unusual for somebody of my generation. I mean, there are other reasons why people get politically aware, but I just knew this was wrong, and I watched Roy Cohn and knew what was going on at this hearing was wrong. I watched (Joseph) McCarthy and knew he was wrong. And so it awakened in me something that in my home and in most of my school life wasn't discussed. But, I was lucky because by junior high school my school had a librarian who I talked to about these issues. And not teachers but the librarian, gave me books to read, and encouraged thinking more broadly about social issues. Now I don't want to sound as though this dominated my life by any means but by the time I got to high school I was really quite aware that the Congressional attack on Communists in the United States was very dangerous under the Constitution and that there were large political issues involved. As for race relations and other serious civil rights issues, there were episodes in my life where I witnessed injustice. For example, we would go on vacation to Florida. On our drive there we would see poverty in a way that in the normal course of my life I wouldn't have seen it. Once we visited a reservation of the Seminole Indians in Florida; then I saw people living in abject poverty, and I couldn't

understand it. And, mainly I could not understand why we were there staring at them, why they were staring at us. What this was all about? I was troubled by this when I was quite young. And I had a mother who was quite empathetic and sympathetic with my questioning, and so there was some support in the household for just questioning why certain people lived better than others, and why equal rights were not prevalent in the United States. But it wasn't...I mean, this was not our daily conversation by any means, but it was my first awareness of political issues and consciousness of inequalities that shouldn't be there.

Int I'm also wondering, apart from the librarian you mentioned that there was a principal that had...was quite influential, I wondered whether you could talk a bit more about that?

SM Well, the principal was later, he was my high school principal. My high school class had 650/700 kids, and of that group maybe fifty of us went to college and maybe ten of us went to elite colleges and universities. The principal, as I said, had graduated from Amherst, which is certainly an excellent undergraduate college, and his wife went to Smith, which in those days was one of the very best undergraduate colleges for girls, women, to go to (in those days, many of the very fine Ivy League universities like Princeton and Yale did not admit women). The principal encouraged maybe ten of us who were the top ten of our class all the way through to undertake extra activities, extra reading, and was quite a remarkable force in encouraging us to think beyond the normal; he was probably under-recognised by the community but certainly appreciated by families of the kids who were encouraged to go to the better universities. In my case, my parents wanted me to go to the University of Pennsylvania, a fine university, because it was close to home. But, again, in those days, women undergraduates in larger, co-ed universities, were not ordinarily given the same care and attention or treated as seriously as students as I did at Smith, a small liberal arts college focused on educating women. But, anyway, that's a different issue.

Int You mentioned also that had you not been accepted into Yale you probably wouldn't have entered the legal profession, and I wondered whether you could tell me about that because it seems...was there something else that you were interested in?

SM Well...I majored in Government at Smith and took courses in constitutional law from the head of the Department, Prof. Leo Weinstein who was a...really an incredibly good teacher. And he influenced me a great deal on the Yale choice. I mean, he thought that it had the very best professors and the most interesting approach to teaching law. And so when I talked to him about going to law school after college, he said, I think you can get in to Yale Law School and that's where I think you should go. It's the best. I did apply to and was admitted to Harvard and Penn. and got into both of those and probably would have gone to one of those but, happily for me, I was admitted to Yale. Yale Law, after the first semester of required courses that were important for any lawyer to know about: contracts, civil procedure, and torts, you could focus on the things you wanted to learn about. So, instead of a narrow approach to learning the law, I was able to take several courses in constitutional law and jurisprudence and consider larger issues of public policy and the theory of law.



Int I'm also wondering, it's curious because you mentioned earlier that in terms of law school you really got a good grounding in human rights, constitution law, civil rights, and then you went on to a profession that was largely corporate, and I wondered what happened?

SM Well...in those days, there really weren't a lot of role models for a woman lawyer. So, I wasn't sure what I wanted to do with my legal education. The known pattern was to either clerk for a judge, which for some reason, I didn't want to do or take a job with a very good law firm and actually learn, from practical experience, what one does as a lawyer. But I was not optimistic about finding a job at a great law firm. So, I...(interruption).

Int So Sheila you were talking about how the leap into corporate world was actually quite easy.

SM I asked my parents to send me to Europe for a year after law school because I told them...it was very hard for a woman to get a job in those days. For men, the normal process was to work in a law firm between second and third years of law school and that job led to your next...your more permanent job when you finished law school. Well, I had interviewed the big deal law firms in America my second year of law school in order to find a summer job and they were clearly not open to hiring women. And this got me quite upset. The hiring partners would say to me: it's not that we have anything against women, it's that our clients don't like women lawyers or...we're afraid that you'll get pregnant over the summer. And I would answer that one by saying, well, you know, even if I did, that wouldn't affect the summer job. But I don't intend to kind of thing. The way I got my summer job (for which law firms came to Yale to conduct interviews in the Fall of 1964), in fact was after many failed interviews with NYC firms, I had an interview with a Philadelphia law firm, which was a quite good firm. I was becoming desperate to get a summer job. The managing partner of this firm said the same kind of thing that other hiring partners said like, it's not that I don't like women or my partners don't like women, it's our clients don't like to work with women lawyers. This set of interviews took place in the Fall of 1964, and, out of desperation, I said to him, do you realise that you've just violated the Civil Rights Act of 1964? And he said: What! What's that? I did? And I said, well I'm not sure of the details but I think it prohibits discrimination based on race and sex. (And the language of the law is sex, not gender.) And he said: well, look, I didn't know about this law, but if you're right, you have a job. And fortunately he was a very honourable person and he called me the next day and he said, Miss Avrin, you were right, there is this law, and I must have violated it, and you knew about it, so you have a job.

Int That's remarkable.

SM It is. It's really quite ironic. I mean, it is really...and I don't even know how I knew about the law because it wasn't part of the regular curriculum or even part of the discourse. There must have been the beginnings of a women's rights movement but it

was not tangible or in the consciousness yet. Betty Friedan's book, *The Feminine Mystique*, was published a few years later, and the women's consciousness movement really didn't grab hold until four or five years later. But issues relating to the rights of women must have been fermenting in the years I was a law student. At Yale Law School, we had about 165 students in each class, and typically the law school admitted only three or four women to a class. My class had more women because there were five of us who came from Smith and then there were another four or five who came from other places, but around us there were only three women in each of the classes, so it was quite exceptional to be a woman and to be trying to get a job. The male hiring partners did not know how to react to us. But I did get a summer job and I did very well at it, in fact. I did something that was very clever and the firm liked it a lot, so they gave me a job offer for a permanent job. But, I didn't really want to go to Philadelphia, I wanted to do something else, but I wasn't sure what it was. So, given how difficult the process was for getting the summer job in the first place, I didn't apply for any job my third year in law school. My parents wanted to know why and I said, well, no law firm is going to hire me, it was hard enough getting that summer job and I just can't get a job, I'd like to go to New York and study, or just travel for a while. And they said, wisely, I think you should try to get a job. So, in February of 1966, out of sequence with the regular fall hiring process, I wrote letters to several of the top NYC law firms, applying for a job. The first one to respond with an invitation for me to come to New York City for an interview was Cravath, Swaine and Moore, which then was and is still one of the best law firms in the United States. And I went to the interview and they gave me a job offer. In those days, the very few women in law firms tended to work in wills, trusts and estates. I, being something of a renegade, said I wanted to be considered for either the corporate or the litigation department. The partners in the litigation department were quite clear they didn't want a woman associate. The cigar smoking men with their feet on the desk were just very clear they didn't think a woman could hack it. But the corporate partners, for some reason, decided they could take a chance and they gave me an offer to be a corporate associate, (Later, I speculated that because of the draft and the war in Viet Nam, some of the top men students weren't available to the top law firms and they "resorted" to hiring women.) So, it was not that I had a dream to be a corporate lawyer or enter the corporate world. It was, in part, a rebellion against the system that led me to a job offer from the cream of law firms in the United States. I knew that it would be grounding in the practice of law. I also knew that the clients would be really interesting and the work would be challenging and an introduction to a world I had never been exposed to. And all of that was true. It was great training in precision and careful lawyering. And a great introduction to the corporate world. But, it was also very difficult to be one of the very few women professionals in the firm or on Wall Street. I was often the only woman. In fact, in that law firm in those days the secretarial pool was totally male. And I learned how to spot the difference between the men lawyers, the men messengers and the men secretaries by what kind of socks they wore (laughter). Because it was very difficult to understand all this, and it was extremely difficult...and I was very visible as a woman lawyer in those days, I wasn't allowed to go to the luncheons following the closings of transactions because they were held in clubs that didn't allow women in the dining rooms. One day one of the senior lawyers said to me: why aren't you coming to the lunch? And I said: well women aren't allowed in this club. So the firm had enough clout to say this is ridiculous, and moved that lunch to a private dining room. And there were many instances like that in my young career where I was the first woman to be allowed to

walk through a place or go to a meeting in a private situation, private club...I'd forgotten about all that, ya...I mean...But anyway, I didn't take the job to become a corporate mogul, I went for the training and learn a lot, but I think because...and I really did like it, I liked it a lot more than I thought I would. But I really do think that being so incredibly visible under a microscope all the time, everybody watching everything, was a little off-putting too. And again, your issue, the question you raised before about awareness of social justice, obviously the slights against me were something I felt and that did propel me to do a lot of work later on for women's rights, for sure...but (laughs) I'd forgotten about all that.

Int It's interesting, do you think that that kind of visibility and discrimination actually may have enabled you to look elsewhere in terms of the leave of absence to go to Ford?

SM Oh yes, definitely. I mean, when I...I skipped over the fact that, after two years of being on leave at the Ford Foundation, the law firm wanted me to come back to work at the law firm and my husband encouraged me to go back. He thought that because they were trying to woo me to go back (offering me a chance to work for the top young partner), maybe I could become a partner in the firm. It was very unusual to be given a leave of absence from this law firm and because they only made partners by promoting from within, he thought that I had a good chance of becoming a partner, which would have given me a lot of prestige and a secure future. But, by that time I had been awakened to a wider world. I had done both legal and program work at the Ford Foundation that opened up the opportunity to try to effect social change. This was before being involved with South Africa. I had been asked to do trouble-shooting all over the world for the Ford Foundation and resolve messy situations. And comparing what I, as a young lawyer, was enabled to do at the Ford Foundation as contrasted with what a young lawyer does on Wall Street, from my point of view, I knew I could have the bigger impact on legal and social causes than I could working as one of many corporate lawyers around the world for some of the large international companies. It just seemed that my own personal experience was enriched and I could work on issues like women's rights, which certainly were important to me personally.

Int The Ford Foundation was certainly one of the major foundations in New York and it has such a global outreach, I'm wondering before South Africa, what were some of the places that you worked in that actually really may have prepared you for South Africa, as such?

SM Well...The Foundation exposed me to many cultures and people through lots of varied experiences. For example, I have mentioned the Tax Reform Act of 1969. This new law essentially instituted Internal Revenue Service regulation of U.S. foundations. Prior to the 1969 Act, the law regulating foundations was very general. Under this older law, the IRS challenged the Ford Foundation's whole process of making grants overseas. I was the main lawyer coordinating the Foundation's response to this very serious challenge. Our response was to craft a new doctrine that we called the "equivalency doctrine". After extensive research, I believed that even if another country did not have charitable organizations identical to how such organizations were defined by US law, they would have similar concepts and similar

mechanisms to support charitable and educational activities. In my view, there would be systems to enable charitable giving that were the equivalent of US charitable organizations. The problem was that there was no literature on this esoteric subject. So, instead of “book” research, I did active interviewing in other jurisdictions—meeting with lawyers and law professors and constructing the legal basis of the equivalency doctrine. For example, I examined the concept of Islamic waqfs by going to Lebanon and to Tunisia, and discussed the nature of waqfs under Muslim practice. And, basically, we cobbled together the legal underpinnings of the equivalency doctrine, which to this day allows US foundations to make grants overseas. And these research trips carried another advantage for me. While I was there the Ford Foundation’s representative would introduce me to Foundation grantees and grant programs and I gained a broader exposure to other cultures and social problems. So wherever I was and whatever legal problems I was addressing, whether in India, or Syria or Nigeria or Mexico – working on international legal problems of international agricultural research, I was exposed to sets of issues and sets of concerns that were very different from what I grew up seeing. And it awakened an understanding of differences but also a sense for similarities and how you could do some cross cultural comparisons. I was not formally trained in any of this (laughs) but being able to observe a lot of cultures and deal with many different kinds of problems was a terrific preparation for my immersion in South Africa.

Int That’s fascinating. I’m wondering, you mentioned that you had a lot of reluctance to go to South Africa and you also said that you were knowledgeable about apartheid and I’m wondering where that came from?

SM That was actually in law school. A lawyer who worked at the UN, Betsy Landis, published an article on the apartheid legal system that what it did was laid it out, it wasn’t judgmental in its tone but it laid it out. And I used that...one of my courses was a course called Human Equality and the professor, Alexander D’Entreves, allowed me to write my course paper about Rousseau’s theory of general will in relation to apartheid in South Africa. Because I’d seen this article, I think it was in the Yale Law Journal, it could have been in the Harvard Law Review, and so I used that article as a means of understanding better Rousseau’s theories. And I remember that the end of the article was...Rousseau said that if the State does not express the general will of the populace the State would wither away. And that is of course how I ended my paper: apartheid did not express the general will of the South African populace and, therefore, and the apartheid state would wither away. So it was...I knew a lot about the law of South Africa just because I wrote that paper in law school.

Int So you got to South Africa at a very crucial time in history, it was post Soweto uprising, and I’m wondering, your introduction to University of Natal you mentioned the nuances, and I wondered whether you could talk a bit more about that, because it seems to me that in the United States maybe things were more black and white than they were in South Africa...

SM Well, in the United States, the perception of South Africa was of a police state that had laws that clearly favoured whites and discriminated against and tortured blacks. All of this was true, of course. But once I started having discussions inside South



Africa and began meeting the lawyers who were handling political defence work, I was struck that rule of law was an accepted axiom of the state. Trials with acceptable legal proceedings and allowing a defence of the charges, even under such heinous laws as the Terrorism Act—was a staggering revelation. And the lawyers I met with were world class lawyers, often handling the cases in political trials pro bono (the Ford Foundation would pay for the expenses entailed in doing transcripts and other procedural matters). But, this horrible system allows first class defence. On my first visit, I was quite shocked by the calibre of lawyer and their dedication to constructing a proper defence. I met Sydney Kentridge, Felicia Kentridge, Raymond Tucker, Geoff Budlender, Ismail Mahomed, Denis Kuny, (and on a later trip, Arthur Chaskalson)...they were as good as any lawyer I had worked with in the best U.S. law firms. The quality of insight, the quality of law that they practised were of the same standards that I was used to at the top U.S. law firms. And there were additional interstices in the apartheid regime that allowed outsiders to help those inside the country work against the regime. Journalism offered one example. Here's a society where radio and television were owned by the State and broadcast bland offerings or state sponsored messages. But print journalism was another story—newspapers and magazines were privately owned and carried news of oppression and opinion pieces opposing the regime—very much adhering to principles of freedom of the press. I believe it was on this trip that I also met with community organizations, one of which was the South African Council of Churches, headed by then Bishop Desmond (Mpilo) Tutu, and his wife, Leah Tutu, who was running the Domestic Worker's Education Project (a project to train domestic workers, cleaning people, to set proper tea service, with her theory being, you bring these women together and you allow them to talk and they will talk about other things as well). And so on that first visit I started getting a sense that there were other things that the Ford Foundation could be supporting in South Africa that would be very helpful to the internal opponents of apartheid—especially in support of advocacy or of work in human rights areas or bettering education for black South Africans. And so I'm skipping ahead now, my job on the first trip was to evaluate one grant—for defence in political trials. And the work conducted under that grant was superb in many ways: quality defence and enabling the trials to be a vehicle for the voices of the oppressed. But I learned that the lawyers who were involved in the political defence work had additional ideas for programs to advance social justice—like instituting legal aid and also creating a public interest law firm. So, when I returned from the trip, I wrote a paper outlining the possible grant program (these ideas were in addition to the evaluation of the grant). The paper I wrote was about children leading a revolution and how their parents were finding ways to fulfil their children's dreams. It was a very emotional paper, not totally analytic—that is, not typical of the kind of memoranda staff writes at the Ford Foundation. And the paper was critical of the Ford Foundation's relatively cautious approach to date in helping the victims of apartheid and in not engaging with the black community. The paper pointed to a new generation of leaders becoming active inside South Africa, and how the Ford Foundation might help support within its grant program some of their newer ideas. I suggested a new stream of activities in legal and human rights work as well as in black-led community organizations, labour unions and education for black South Africans. I addressed the paper to McGeorge Bundy, President of the Foundation, because Bob Edwards who had been my guide on my first trip to South Africa had announced that he was shortly leaving the Ford Foundation to become a college President. Bill Carmichael was soon appointed to take the position (Bob) Edwards had—head of the Middle East and Africa program.

He'd never been to South Africa. He had headed the Ford Foundation's program Latin America. And we soon had serious conversations about my paper and my suggestions of expanding the emphasis of the Foundation's grant program to human and legal rights. In comparing the oppressive regimes he had witnessed in Latin America, I contrasted them with the unique aspect of the apartheid regime: enabling structured discrimination by a system of laws and, at the same time, respecting rule of law. My view was that it was important to find ways to both challenge the apartheid laws and, at the same time, help build institutions (like legal aid and public interest law firms) that engender respect for rule of law. And Bill (Carmichael) invited me to accompany him on his first visit to South Africa and introduce him to the lawyers I so respected. Meanwhile McGeorge Bundy, the President of the Foundation, offered me the budget for the program of grants I had outlined in the emotional paper I had written. And so I remained Associate General Counsel and took on another untitled role as program officer for South Africa. (McGeorge) Bundy asked the Board to appoint me an officer of the Board—and so I became the only woman Board appointed officer of the Foundation and by far the youngest Board appointed officer (the other officers were Vice Presidents and the President). This gave me direct access to the leadership of the Foundation.

Int That's amazing.

SM And (McGeorge) Bundy continued to incredibly, incredibly supportive. And I don't know whether historically he gets the credit he should have for having the insight into why it was important for rule of law issues in places other than the United States to be supported. David Bell and the group of men who were running the Foundation in those days really valued rule of law and the emerging field of international human rights. The only question mark in my mind was Robert McNamara, who was then President of the World Bank and a Board member of the Ford Foundation as well as chairman of the Board's International Committee. He seemed to me to doubt that democratic change was possible in South Africa. But the rest of them were ready to be convinced to support the kinds of organizations I suggested—for example, the International Committee of the Red Cross soon received a grant to open an office in South Africa to enable families to visit political prisoners—offering solace to political prisoner but also protecting political prisoners because their families could check on their welfare.

Int It sounds to me like being South African that your emotional paper was crucial because it really in a way preceded what was to follow, which was the 1980s and really horrendous treatment of young activists and particularly children, teenagers.

SM Yeah, yeah, I was extremely...yeah, I think that it...maybe if I had written an analytic paper it would have worked too. Who knows? But they were ready for ideas and Bill (Carmichael)'s first trip there...

Int Was that 1978?

SM '78. Bill (Carmichael)'s first...and I had been back, I think, once more before then and had met again with Arthur Chaskalson, Sydney (Kentridge) and Felicia Kentridge and others. There on the US side there were two other lawyers, one working for the Carnegie Corporation and another one working for the Rockefellers Brothers Fund, who were also developing a grants program for their foundation. And we conspired together and they were great...

Int Was that David Hood?

SM David Hood, and then at Rockefeller Brothers Fund it was Bill Moody and we conspired together. Our trips weren't necessarily at the same time. That was good because we could leverage each other's trips and discover what each other was thinking and how we could convince our organisations to make grants that would enable the beginnings of what then became the Legal Resources Centre. But it was quite clear by the time of Bill Carmichael's first trip to South Africa that there was a burgeoning interest inside South Africa in public interest law, which was really quite unusual outside the United States for that to be happening.

Int When I interviewed Felicia (Kentridge) your name comes up so much and it seems to me that that first trip, maybe in a way, Felicia (Kentridge) knew probably that was the beginning of a very strong friendship?

SM (laughs) Yes. We bonded early and often. I had very few role models as women lawyers, raising families, having successful husbands, and living life. How do you do this? How do you do all this? And Felicia (Kentridge) was about as close to a role model as I could have had. She is super intelligent, super wonderful, had four kids, I only had two, and, you know, how to do it all. And she was just very kind, wonderful to me. I used to stay with the Kentridges when I went to South Africa because there was a reality in their household, and I would come home very grubby from a day of work, wandering around doing, particularly in the, I guess it was, the late seventies, but even later on than that when I was building and running an education program in the black community in South Africa...not at the Ford Foundation but having Ford Foundation grants...and come back to their sane household, which was very empathetic and talk about what I had seen that day. And she was always just wonderful.

Int I'm also wondering, Sheila, the actual beginnings of the LRC, when did discussions really take off and who were the key players and who would you attribute that kind of thinking around public interest law in South Africa to?

SM Well, I probably think the group is bigger than most other people do. The Johannesburg group was critical and central to establishing the LRC. But the ideas behind it were supported by a larger group of lawyers that included remarkable professionals in Cape Town as well: I don't remember all their names, but Mike Richmond, a Mr. Omar and other lawyers who worked in the area of political defence must be credited with helping shape opinion at the Bar that enabled the LRC. In addition, to oversimplify, Felicia (Kentridge) and Sydney (Kentridge) were very

international in their exposure and were able to rally international support for their ideas to promote social justice and rule of law inside South Africa. I remember early on their going somewhere in Asia to a conference on legal aid and Felicia (Kentridge) particularly wanted to bring some of the ideas about legal aid to South Africa. And that all fed into this then novel concept of public interest law—the concept that you could conduct test case litigation by bring lawsuits on behalf of groups of people and allow the law firm to define the areas of it work around principles of social justice, etc. The very first meetings I recall where these ideas were germinating were in 1976 and 1977...I don't remember what year the Legal Resources Centre was incorporated, but I do remember a trip when Raymond Tucker an attorney who handled a lot of work in political defence, argued against establishing of a public interest law firm. My recollection is that Geoff Budlender was his clerk, and Geoff (Budlender) disagreed with Ray Tucker; Geoff (Budlender) was very excited about the concept of a public interest law firm. And he came over to the United States to visit and look at...

Int Was this Geoff (Budlender)?

SM Geoff (Budlender). Came to look at public interest law firms and I don't remember whether it was the Ford Foundation or Carnegie or whoever, supported that trip, but I do have a vivid recollection of Geoff (Budlender) sitting in my office at the Ford Foundation saying that this (public interest law) is what he wanted to do with his life. Now this is probably different from what other people say. Most probably point to Arthur Chaskalson as the founder. But, I remember saying, to Geoff (Budlender): but there's no vehicle for you to do this and asking: how are you going to create this vehicle? People were talking about this but there's...how is it going to happen? And that's when Geoff (Budlender) said, well what if Arthur Chaskalson would give up his very lucrative practice and actually lead this? And so I came at the idea that Arthur (Chaskalson) would be willing to do this in a back door kind of way through Geoff (Budlender), and the idea that these two people would be the team that would create this organisation, was incredibly exciting. But it was also that Sydney (Kentridge) Kentridge and Ismail Mahomed, and a third person, and I don't remember who the third person was, were willing to be the trustees and lend their considerable reputations to the creation and institutionalization of this innovative legal vehicle. That they would put their name in as the trustees, was incredibly important, not only because of their reputations but because of their power of their intellects.

Int Was it Johann Kriegler by any chance?

SM I don't know. Was it?

Int Johann or Charl Cilliers, it could have been one of them.

SM Cilliers I think it was. And on one of Geoff (Budlender)'s trips I know that he worked with Arthur (Chaskalson) on some of the details and that was about 1978. And so...I think there was a confluence of human rights/political rights-oriented lawyers and other people in South Africa who believed in the rule of law, who provided the



intellectual framework for the creation of the LRC. In addition to practising lawyers, there were law professors like Tony Matthews and John Dugard at Wits who also helped create a community of people who understood how important this would be, and that was in the years, but before the horrible eighties, in the years 1977, 1978, 1979, when it was possible to form the Legal Resources Centre and get it launched.

Int What was Felicia (Kentridge)'s role in all of this, in the very early beginnings?

SM Well, I believe she was a very strong intellectual force behind it. But Felicia (Kentridge)...we used to talk about my being out there, going out and holding community meetings, while she was behind the scenes. She was not an activist. So she was an inspiration and catalyst behind some of the ideas, not necessarily behind them, I mean, she would express them very clearly in meetings. But she never took literally a position-- a job or never had a title. She was there with all the support she could offer—ideas and intellectual support. A lot of her professional energies were directed toward the legal clinic at the law school of the University of Witwatersrand—and training black attorneys—as well as to establishing true legal aid efforts in South Africa.

Int In terms of raising the funds, it seems to me that the LRC was particularly lucky, it started in late 1978, early 1979, and by that time had garnered crucial funding from Ford Foundation and Rockefeller Brothers and Carnegie. I'm wondering who you think...what was really the kind of reason for the success of getting these huge grants to get it started?

SM I don't know as well what happened at Rockefeller Brothers Fund and Carnegie. But I am certain that senior level support at all the foundations was critical to marshalling these resources. These were controversial grants and only could be approved at the most senior levels. As I believe I've said, at the Ford Foundation, for the President, McGeorge Bundy, to offer his support, it was critical that he understood and accepted the argument that rule of law was crucial to the success of a future, just South Africa without apartheid. He also accepted that the LRC was backed by leading lawyers at the Johannesburg Bar and there was a burgeoning group of respected human rights advocates inside the country who embraced the concept. Also, McGeorge Bundy had worked with the establishment US bar to create and for the Ford Foundation to fund first U.S public interest law firms and he embraced the principles of public interest law. We discussed the possibility that a South African public interest firm could follow a U.S. model and raise the same kinds of issues that were raised—concerns about issues of social and economic equity. That buy-in in principle was tied to a respect for the lawyers who we proposed would bring the issues forward and he trusted the experience and commitment we told him they had. The very fact that you have a distinguished board of trustees of the LRC, who backed these ideas, who were very credible people on the world human rights stage. I think it was a combination of understanding the...you wanted to move forward the principles of rule of law, but also that there was enough of a community...he understood that there was enough of a community in South Africa to support those issues. Now I don't know whether they talked about the trustees meeting in South Africa, did other people bring that up?

Int Sure.

SM In the United States, when the first public interest law firm was started, the Ford Foundation actually set up a committee of very senior members of the Bar who were the guardians of the concept; they were senior partners of establishment law firms who believed in a concept of public interest law and they vetted all the grants that were made to the first public interest law firms. By analogy, the senior staff of and on the Board of the Ford Foundation, found great comfort in knowing that the bar of South Africa accepted the concept and senior professionals with outstanding reputations stood behind the LRC. So it was a marriage of the correct principles and able people to undertake the vision, backed by experts.

Int Grant making is a risky undertaking, and a risky endeavour as such, but it seems to me that it paid off quite early on because you had the Rikhoto case and the Komani case, and those overturned key apartheid legislation quite early on, I'm wondering what your memories were of those times?

SM I don't know what you mean by memories of those times?

Int In terms of being on the other end, administering grants, etc, overlooking...? (*phone interruption*)

SM I left the Ford Foundation in 1979, to become General Counsel of the United States Government's Foreign Assistance Agency. And...just so that you know how the United States government works, it was a very small agency and I asked for policy responsibilities for South Africa, in addition to being a lawyer. And they gave me policy responsibilities theoretically for sub Saharan Africa. So I was able to travel to South Africa and visit people, but I wasn't really engaged professionally in administering the grants that I then had made, or helped make. And I wasn't able to spend significant time in South Africa again until 1986 though 1991, when I was building and running, a huge bursary program for black South Africans to study in the United States. So there's a gap of years in my experience there and a change of my focus from law to education.

Int Well, let me ask you this, and you alluded to this somewhat in terms of the nuance in South Africa. If under apartheid Parliament was supreme, you as a lawyer, did you have a sense that the LRC or public interest law would actually succeed, particularly in a situation where the apartheid regime could actually in fact overturn any legal victory at this point?

SM I didn't think...I thought that there was more...there were more arrows in the quiver in the bow than law, I thought law was a very important one, but what was clear, certainly in the late seventies, and then when I was visiting in the eighties and later on in the mid eighties when I was working in a focused way again inside South Africa, that there were lacunae in the apartheid system and that it was important was to grab

hold in a positive way of these gaps to help the opponents of the apartheid regime to move forward. I mentioned before, I think, the area of press freedom and that was responsible journalism in South Africa. So we encouraged the training of black journalists—that was important in getting information communicated widely about what was happening inside the country. Another example: it was important to have the legal cases reported on widely. And so a small grant was made to provide money for transcripts of magistrate hearings, particularly after the Biko inquest. It was very important to make sure that everything was recorded, and that those records, those transcripts were made available because their publication feeds public understanding and, therefore, the press reporting on trials and inquests were important. And writing serious, well-researched books was important, and the intellectual freedom at university was important. So if the law was by itself, the legal cases were *sui generis* as it were, it wouldn't have worked, it was that there was this society that was being transformed from within. It wasn't quite as clear as that, but we were very privileged at the Ford Foundation in those days to gain access to many intellectuals in the Afrikaans world, in the National Party... (*Interruption*)

Int You were talking about the fact that with hindsight you had...you felt positive but at the time in South Africa...

SM But I was also about to say, I think, that, for whatever reason we were...and we had as a consultant in my days of doing the grant work, we had an Afrikaans woman named Hazel Moolman, who helped us arrange meetings in the Afrikaans intellectual and fermenting (laughs) world of Stellenbosch and Rand Afrikaans University. It was important not to paint the Afrikaans world as one stereotype, but at the margins there were definitely people who were very troubled by what their State was doing, and there were many, many...not the largest percentage but a large group of Afrikaners' who were harbingers of change and we were very lucky to know and to meet with. And so, you knew going forward, although I was surprised that the turnover happened as quickly as it did and in as peaceful a manner as it did, but you knew going forward that there would be understanding and support throughout society. It wasn't huge, overwhelming, but there was enough of a sense that the law was part of the process, it was not the only instrument, but since there were other things happening, it was important to keep the progressive legal movement going on. I don't know if that's a clear enough explanation.

Int Sure. You mentioned just now that when change happened you were still involved in South Africa, not through the Ford Foundation but through this other program...

SM Yes.

Int I wondered whether you could talk about that, the bursary program, I think that you set up...?

SM The bursary program had its genesis at the Ford Foundation; in the late 1970s. David Smock, who was the Ford Foundation's Representative in Kenya, devised a program that was Master level training for black South African professors at the black

universities. And when McGeorge Bundy authorized me to shape the grants program inside South Africa, I was able to pick up and tweak this very interesting program. Most Americans who were active in the antiapartheid movement did not approve this kind of program because it seemed to violate sanctions; working with the so-called homeland universities was not seen as politically correct. But what was quite clear was that the department heads at these universities couldn't be black because they didn't have their Masters Degrees or PhD. If they could get Masters and PhDs, they could start advancing in these universities and in the white ones as well. But I thought that it would be equally important to enable these leading black academics to meet and get to know one another. What they talked about was up to them. And so we added, in my days, a meeting of the leading professors, black professors, at these black universities, to get together under their own auspices and to bring them in the night before so that they could have dinner together and then meet to select the masters and PhD candidates. That was the genesis of what became the bursary program that I built and ran years later at IIE. Archbishop Desmond (Mpilo) Tutu chaired the selection committee inside South Africa that chose the candidates for degrees in the United States, and Derek Bok, then President of Harvard University, chaired the committee in the United States that placed the degree candidates in universities throughout the United States. This program enabled over 1000 black South Africans, no matter what their political viewpoint, whether they were ANC, PAC, and Black Consciousness or even non-political, if that was possible; they would be chosen on merit. The success of the program was that almost 100 percent of the degree candidates received their degrees and they all went home. This group of students from South Africa was an incredibly interesting, exciting group of people to know and to work with, during the height of apartheid and I did that from 1986 to '91, or '92, I think, I can't remember the exact dates.

Int You've had a long history of involvement in South Africa. In terms of where you would position the LRC and the work you did leading up to the LRC, how would you rate that as, in terms of the work that you've done and things that you feel proud about?

SM I'm sorry...?

Int The work you've done in terms of public interest law, leading to the LRC...you've done a range of work in South Africa so I'm just wondering...

SM I am extraordinarily proud to be associated with the LRC. I think that the value added that I had was to convince Americans to pay attention to the issues of concern that were expressed by the South Africans, and to have been lucky enough to be associated with the most important vehicle that was created in the late seventies to promote the concept of rule of law. I think it's a great credit to the many South Africans who have been involved with the LRC, its great success, and Americans are very fickle in their funding and whether it will continue to receive external funding is a question as time goes on. But from my point of view to have been privileged to be in the position to be able to help them was something that I honour a great deal.



- Int You mention the issue of funding, post apartheid, so say by 1994, the terrain of funding really changed, and I'm wondering what you attribute that to, in terms of the LRC and the funding problems it experiences now basically?
- SM I think there are two things. Americans really did abhor apartheid generally, I mean, they really did think that this was a terrible...whereas when they think that it's over, they think the problems are solved, and therefore the funding isn't necessary. And that's an over simplification. I did a lot of fund-raising for the bursary program in '86 to '92, and easily raised money from corporations and universities in the United States, and foundations. Because it was part of...the justification for doing business in South Africa, that they could score points doing good things in...for education of black South Africans, we guess it was somewhat similar for the LRC to get funding from overseas. But Americans, if you're talking about the funding from the United States, I think the connections are harder to make now. People were very interested in the meeting with...certainly with Arthur (Chaskalson), when Felicia (Kentridge) would come here, when Geoff (Budlender) was here, and that has changed to a degree because South Africa is not the human rights problem, from the point of view of most Americans, and therefore the funding issues here. But I think it's also that the funding community in the United States is much broader than it once was, and the recognition that corporations and individuals are very important, as donors. To cultivate those donors takes a lot more time and effort than cultivating the Ford Foundation or large pots of money. And I think it's going to continue to be difficult as time goes on. I don't know if that's a clear answer though.
- Int Since 1993 maybe, to early 2000, did you have other interest in South Africa; did you continue to work on South African issues?
- SM Not too much. In 2001, I was asked to consult to the Vice-Chancellor of the University of Natal on some strategy issues. In connection with that assignment I spent about 10 days in Durban and Cape Town and was updated first-hand. But during intermittent years that I wasn't travelling to South Africa, a lot of friends would come by and talk. I also kept fairly current through reading but that's not the same as being there.
- Int And your association with members of the LRC, like Felicia (Kentridge), etc, did that continue right through?
- SM Absolutely. Well Felicia (Kentridge) of course moved to London and a lot of my continuing work took me frequently to London. I would always see Felicia (Kentridge) and Sydney (Kentridge). When Sydney (Kentridge) was Acting Justice on the Constitutional Court, I would talk to him about developments on the Court and keep track, to a degree, of the LRC.
- Int So how did it come about that you became part of the SALS Board? I'm wondering what events led to that?

SM I don't know. I know that Felicia (Kentridge) wanted me to join the SALS Board, but for some reason it didn't happen. It wasn't something that was critical to either (laughs) of us, but I know that at one point, I was responsible for a rather large grant (\$100,000 per year for several years) from the Government of Luxembourg being given to the LRC through SALS. (In connection with work I was doing with the International Commission of Jurists), I got to know a high official in Luxembourg who was responsible for funding human rights groups. He didn't know Africa well and asked me to identify a good South African organization that the Government could fund. I recommended the LRC and a grant was made. That grant may have been an impetus behind my being invited to join the Board. But I really don't know. It may have been Judy Thomson's recommending me. Don't know.

Int You've been on the Board for three or four years and I'm wondering what are some of the crucial issues that come up as a board member about the LRC in South Africa?

SM I think SALS sees its role as very much a support group and needs to have leadership from within South Africa tell us what it is that they need. And I think Janet (Love) has been a great addition as the new National Director, and what many of us have been most involved with is preparing her trips to the United States, which is a lot of mechanical things like setting up meetings with possible funders, and introducing her to people/groups that might be interested in funding the LRC but also broadening her exposure to public interest law and civil rights law as practised in the United States. And that's just begun. It's at very nascent stages of this. The hardest thing, I think, is to find other board members who are knowledgeable about, interested in, South Africa, and I think that...we've just had a board meeting that I was unable to attend because I was sick, but I think we've elected a couple of new board members who are exceptional in that one of them is not a lawyer, which is very good, but who is involved directly all the time with work on AIDS as a professor and as a researcher in South Africa. And I think that we're going to have to try to help find for the LRC, groups in the United States who would be interested in helping to support it. But it's very early days with Janet's (Love) tenure and we'll have to see how that goes.

Int Sure. Looking back on your life you've had such an amazing trajectory and particularly you mentioned the discrimination experience as a woman, I'm just wondering, had you ever felt that South Africa would be part of your life story as such (laughs)?

SM You mean, back then?

Int Yes, exactly.

SM Absolutely not.

Int It is quite marvellous actually that you've become involved so...and vested so much in one country...

SM Well my husband and I recently took a trip there, February, and it was extraordinary. I can't tell you how wonderful...friends whom I've known for a very long time...my counterpart as the executive head of the selection process in South Africa for the bursary program, is now the Catholic Archbishop in Johannesburg, and so when I got in touch with him and told him I was coming over, and he invited us to supper. When we arrived, much to my amazement, he had included staff of the organisation (his former organisation, which has since dissolved) and several graduates of our program. I knew these graduates when they were toyi-toying youths and now met them again as successful professionals. It was thrilling! Very exciting. And that happened many times. John Samuel, who was one of the trustees of the South African selection committee with whom I worked regularly, is now head of Oprah Winfrey's new girls' school. I visited John (Samuel) and Oprah Winfrey's school for the day, and also visiting that day was Jonathan Jansen, who was one of the first students of our program and received his PhD in education from Stanford University. Jonathan (Jansen) had just retired as the Dean of Education of Pretoria University. And John (Samuel) running this school doing wonderfully interesting, important stuff. So it's a very important part of my life and very exciting to see how well the country is doing generally and how well the people I knew are doing.

Int Sheila, I've asked you a range of questions, and I'm wondering whether there's anything I've neglected to ask you that you think ought to be included as part of the LRC Oral History?

SM I don't know if I talked enough...about Arthur Chaskalson and the importance of his leadership in the early days. The intellectual rigour but also his own personal morality and ethics, the combination of the two was unbeatable. And I learned early on in South Africa that if one leader wasn't there, another one would appear. I think the LRC was extremely fortunate, that probably was true, but the fact that Arthur (Chaskalson) and Geoff (Budlender) and others were there in the beginning...and having recently been there and visited with the LRC in Johannesburg and in Cape Town. In Cape Town, I was particularly impressed with the collegiality, the warmth, the difference of opinion among the attorneys or advocates, but the respect that the group still seems to have as a group one for the other. And that's going to be very important as they move forward. And the difficulties are not going to be finding cases for them; the difficulty will be as you alluded to, finding the funding and being creative. And I think that in leadership Janet (Love) is very capable of figuring all that out. And the other person who is extraordinary is Harvey Dale and his role in both the Trust, the LRT, and also with SALS, and that's very serendipitously important.

Int Absolutely. Sheila, thank you so much for a most interesting interview.

SM Thank you.

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