

Cathy Albertyn

LRC Oral History Project

4<sup>th</sup> August 2008

Int This is an interview with Professor Cathy Albertyn and its Monday the 4<sup>th</sup> of August (2008). Cathy, on behalf of SALS Foundation in Washington DC, we really want to thank you for taking the time to do this LRC Oral History interview. I wondered whether we could start the interview if you could talk about your early childhood memories, growing up in South Africa under apartheid, in terms of where you think your sense of social justice and injustice developed?

CA I grew up in the sixties and seventies in South Africa, in Cape Town. At those times, you grew up in a very white community, obviously, you really only engaged black people in relationships of hierarchy and inequality. The only time, you had relationships of equality with black people ... well, for me it was when I went to university, so I was already eighteen or nineteen -no, in fact not even my first year at university, probably my law studies - so I was about twenty. My earliest memory of apartheid would have been when I was about two or three. I remember my cousins coming to stay with us because they were worried about a march that was happening past their house, which I imagine must have been the march on Cape Town around the State of Emergency in 1960, the PAC led a march from Langa. The fact that I remember that, at the age of two or three, means that it must have been a time where people were quite anxious. That, I think, is my earliest memory, of something happening when I was very young. A sense of social justice, I think, began when I was at high school, largely due to influences of teachers, an English teacher particularly. I was at high school in the seventies, and at that time Black Consciousness was beginning to emerge in South Africa and NUSAS. When I was about fourteen or fifteen I used to go up to UCT to summer school classes. Part of the summer school classes, I think, were classes around politics and literature, because I can remember going up to campus in my school uniform and listening to Black Consciousness poets speak about and recite their poetry. Not so much political lectures, more literary lectures. Perhaps that was how it was articulated at the time, because I remember listening to people like Wally Serote. I remember an incident where some people broke into the lecture and pretended to arrest the person speaking, and pulled him out of the classroom to show how people failed to react in that kind of situation. I remember that as an example that made everyone angry. But I was about fourteen or fifteen and I was going to these lectures, so I must have had a sense of political consciousness, I guess.

Int Do you think that came from your family at all?

CA It came from family and teachers. My mother was an English immigrant, Welsh actually. My father's family had been in the country for as long as white people could be in the country, they came in the late 1600s. My parents brought us up to have our own opinions.. My parents were not particularly political at all; they were just decent people who thought that you should be able to express yourself. I guess my parents were United Party in those days, or whatever came after the United Party. My father was an accountant and a businessman, he chaired one of the big accountancy firms, so, in the seventies he began to come into contact with black businessmen and people

like Dr Nthato Motlana, as equals. I think my father had a strong sense of equality. And then the second influence would have been in high school.

Int Right. So at university...you went to UCT?

CA I went to UCT.

Int Right. What about student politics, NUSAS, etc, were you involved at all?

CA I wasn't particularly involved in student politics, or in student organisational politics. I was in the same class as Derek Fine and Vincent Saldanha in law school. I'm sure you've interviewed Vincent? I remember that the three of us, and maybe one or two other people, used to be the people who were very good on class boycotts, we all used to walk into class and then rise as a very small group and leave class. I clearly had a political consciousness when I was at university. I think also people like Dennis Davis who was our teacher, were very influential, as well as the fact that just doing law in the the late seventies and the early eighties, meant that you couldn't but have some kind of sense of social justice, because you were surrounded by apartheid. I did Legal Aid Clinic, so I went into Kensington, which was a coloured township in Cape Town at the time. So, I wasn't politically involved but I was politically conscious, I think. And I knew while studying law that I didn't want to be just any lawyer. , I think, at the time, people like Halton Cheadle came to speak at law school, Geoff Budlender as well. So, those people began to be role models at the time and certainly one was conscious of that generation of NUSAS leaders., I knew that that's the kind of law that I wanted to do, because it's the only kind of law that made any sense to me.

Int Right. In terms of formative influences and reasons you chose law, what were some of those?

CA I didn't choose law initially; I wanted to be a journalist.

Int Ok. There are several lawyers who do this...

CA I wanted to be a journalist, but, I think I was quite young when I left school so I didn't really know what I wanted to do. I was clever, but I had no passion to do things. I knew I liked engaging with facts and analysis and context, and I knew I wanted to make some kind of impact on the world but it was a very unformed sense. So, I went to university and did a straight BA with an idea of being , a journalist. I did Politics 1, English and Social Anthropology, courses that I was told would be good for a journalist. But I also knew quite quickly that I didn't have a journalist's personality and I learnt at university that I was actually quite a good researcher. So, I shifted to law, partly, I think, because my father felt that I was wasting my time in a BA and I should do a profession, and partly because, I think, the idea of arguing attracted me. I don't think I initially went to law because I could make a difference in social justice, I think I went to law because it looked like an attractive career. I think

once I'd got into law, I worked out it was where I wanted to be and I learnt through being in law that it could be used in a particular way.

Int Right. Do you think it could have...did you at that point think it could be used as an instrument of social change?

CA We were taught that., Absolutely. You were taught law in those days at UCT by the few people who taught you that, that it could be both a form of repression and a possible instrument of social change. John Dugard wrote his book in 1977. So, the Dugard way of thinking and the Dugard/Wacks debate were what we engaged with. People like Andy Durbach were a year above me, so there was a lot of engagement in the law school, there were lots of seminars, there were student conferences, happening all around you. You couldn't help but be influenced by it, well, some people managed not to be influenced by it. (*Laughs*).

Int Right. In terms of the Legal Aid Clinic were you involved at all, in the UCT Legal Aid Clinic?

CA Yes, I did a clinic in Kensington.

Int Right. And did you work with the UWC students or...?

CA I don't think we did at that point in time, I think it ran autonomously.

Int Right.

CA Jenny Boraine used to run it, I think, when I was at UCT. So we just used to do a weekly clinic at Kensington.

Int Ok. So, subsequent to the LLB, what happened?

CA I then went overseas to study. I didn't want to do my Articles at the time because I found black letter law quite boring and I hadn't thought of options of going to work at a place like the LRC, I'm not even sure the LRC was taking Candidate Attorneys. And in Cape Town there weren't that many firms that you could go to, to do public interest work, except for Bernard, Wukas & Potter. But, I knew that I didn't want to go into black letter law, so I went and did a Masters in Cambridge University in Criminology, and I stayed on to do a Doctorate. I suppose for me, what was important then was what I studied in my Masters and my Doctorate, because I chose them to work on security legislation and political trials. That's, I felt, where my education really began, because my Doctorate education was fantastic. I really read the political history of South Africa, I read political theory, I read revisionist history. It wasn't just a legal Doctorate, it was a Doctorate that tried to understand why trials were happening and what they were doing ideologically. My supervisor always used to say

that your choice of Doctorate ultimately determines the kind of person that you were. So, that was my real political education, if you like, doing that Doctorate. And then I wasn't clear what I wanted to do after that. I came back half way through my Doctorate after I was offered a job to work with Raymond Suttner here at Wits, teaching Criminology and I needed to do field work back here. So I came back for eighteen months., I never worked with Raymond because the State of Emergency was declared the week before I came back and Raymond went underground. I used to work with Raymond by meeting him in odd places and then visiting him in prison (*laughs*). That was the eighties and the eighties were quite a difficult time here, There was lots of student conflict. I got quite involved in helping students and in protesting with them. A lot of stuff was happening then in the eighties.

Int I'm just curious...I agree with you that your choice of Doctorate determines, you know, what you go on to do, but really in terms of political conscientisation, it seems to me that it must have been brewing for a while, for you to actually take that on...?

CA I think my political conscientisation came from the kind of family I was in. When I was at high school they were very interesting times in the country, I was in Matric in 1976, the year of the Soweto uprisings. I was a very politically conscious high school child. We had a couple of teachers who were themselves politically conscious; our English teacher particularly would set comprehensions on editorials about political issues. While my parents were not overtly political, we had a lot of political arguments around the dinner table, all the time in our family. So, that sense of speaking out was absolutely there. The sense that apartheid was wrong certainly was with me as a high school student, and I used to argue with my family. I think going to university I was quite young and wasn't sure what I wanted to do, so getting into law was very good for me in that sense. But, I can't look back and say I wanted to change the world from the time I was twelve. But, I knew that apartheid was wrong from a very early age, and I think I was looking for a way to be comfortable in South Africa, and nothing made me comfortable except the kind of law I ended up in.

Int Ok. So, after your PhD and you come back...well, you were back to do field work and then after that...did you do your Articles?

CA I went back to finish my Doctorate, which would have been in the late eighties, and by then I knew I wanted to come back. I'd never thought I'd stay in England, but, it took going to England to know that South Africa was home. I think one of the things that plagued me as a teenager and a student, was a real sense of not knowing what my identity was as a white South African. I used to envy Jewish people because I felt (*laughs*) they had an identity. I really felt quite adrift as...I felt I didn't belong to anything and didn't belong in the country. England was very familiar to me, because my mother and grandmother had emigrated out of Wales, a lot of it was very familiar to me because I'd grown up with lots of that culture. But it wasn't home, so I knew I wanted to come back. So, I came back to teach and then when I came back from my Doctorate, I decided I wanted to go into Public Interest practice; I wanted to do my Articles. I then went to Bell Dewar & Hall and secured Articles there. When I came back in '89 I went into Articles at Bell Dewar & Hall, working with David Dison. I suppose...that's when I first encountered the LRC professionally. I worked in the

Public Interest department most of my time there, so I did a lot of work with detainees and then people under Restriction Order and then quite a lot of work on political trials. One of the big trials I worked on was the Queenstown Trial. There were about five on trial, and they had been convicted of a necklacing, and we used the Common Purpose Doctrine to get them off the death sentence. I worked with Martin Luitingh and David Soggot. I was the attorney, well, I was an Article Clerk, but I was the attorney on that trial, so, I spent a lot of time in Queenstown. I also spent a lot of time in Soweto and Thokosa. In Soweto we worked on a lot of complaints against the police, particularly when the IFP used to march down from Nansfield Hostel into Soweto and used to steal everyone's TVs and the police just used to watch. I used to take a lot of statements around those kinds of things. I worked on the Thokosa Violence Commission and on the death of Sam Ntuli, so I spent a lot of time in Thokosa. Also in Phola Park because there was a lot of problems around Phola Park between what was the ANC defence unit there, and the IFP hostels. Thokosa is a very small township but it's got lots of hostels so there was a lot of conflict there. That would have been the early nineties.

Int And the LRC also did a lot of work in Phola Park, so I'm wondering whether that was...?

CA You know, I'm trying to remember if I ever worked...I don't think we ever worked directly with the LRC in terms of both working on the same cases, I think there was more than enough work to go around. I think my encounter would have just been with people in the LRC on a social basis, at seminars that they would have held, but I don't think we worked collaboratively on the same case; they were just part of a community of human rights lawyers.

Int Ok. Because from what I can understand, having interviewed Moray Hathorn and others, they did work at Phola Park...and then at what point after your Articles did you go on...did you go immediately to CALS or...?

CA I spent three years at the law firm, so I did a year as a Professional Assistant. The ANC was unbanned in 1990, I remember that very clearly because we all sat in the boardroom at Bell Dewar & Hall, and, in fact, we knew that it was going to happen because we worked for the media. We did a lot of interesting media work as well, lots of urgent applications. I did a lot of Public Interest work when I was at Bell Dewar, and got to know a lot of people..

Int It would be nice if you could remember some of that...in terms of your memories, because I'm sure by that time you'd known Arthur Chaskalson and Geoff Budlender?

CA Yes, after 1990 there was less money around for Public Interest work...and I had been placed in the Commercial Litigation Unit which I absolutely hated because law...the use of law to chase people's money made absolutely no sense to me. So, this job came up at CALS, running the Gender Unit. The first time it was advertised I didn't apply but the second time it was advertised, I think Dennis Davis came and asked me to apply. I applied for that and I got it and I very happily moved from Bell Dewar & Hall

to CALS in February 1992. I worked with Mavivi Manzini, who I met for the first time, who had been in exile, and we got the Gender Project going. And within a month I was thrown into Women's Rights work, working with the ANC, working with the Women's Empowerment Unit, I was part of a gender strategising group for the ANC Women's League, I was part of a small group that wrote the gender comment on CODESA, so I really was launched - literally catapulted - into Women's Rights activism around the writing of the Constitution, working very closely with ANC and SACP feminists.

Int And members of the LRC at this point were really involved in...helping with the Constitution, the Bill of Rights, etc, did you have any inputs at this point?

CA I was working in the Women's Rights area and I don't think anyone in the LRC was working in the Women's Rights area. Kate Savage at that stage, I think, was still on the Constitutional Assembly, or still...

Int ...at the CLU?

CA ...or she might even have been...but I think she only joined the Constitutional Litigation Unit after 1994. Wim, I know, went to the Constitutional Litigation Unit, but I think that was also after 1994, so I don't remember that there was anyone at the LRC doing Women's Rights work. I know, Geoff (Budlender) and Arthur (Chaskalson) were working with the Constitution as a whole, but that's not where my energies were. I was part of setting up the Women's National Coalition ..., I really haven't worked that closely with LRC people, up until maybe a couple of cases that we worked together on, later. We worked with Kameshni (Pillay) and I worked with Kate (Savage) and I worked with Wim (Tregove) later. But certainly we were doing different things in the constitutional talks.

Int When you were at CALS, when you started at CALS, was John still there or had he left?

CA When I came and taught here at Wits in '85 and '86, John (Dugard) was there and that's when I first encountered CALS, and John very kindly took me out to lunch on my first day here. And that's where I met Halton and Lydia Levin and Laura Mangan, in fact my office was right opposite Laura's office. John left in 1990 and then Dennis Davis took over and then Dennis Davis brought me into CALS. But I know John (Dugard) reasonably well.

Int Ok. And in terms of post '94 where...you mentioned working with Kate Savage and Wim Tregove, and I wondered whether you could talk about the cases that you worked on?

CA I think that we worked quite closely with the LRC on the issue of abortion. Basically I was part of setting up the Reproductive Rights Alliance, which was a network of

organisations working to put in place a progressive abortion law for women in South Africa. This policy also came directly out of the ANC health policy unit, people like Nkosazana Zuma, and Barbara Klugman, and Manto Tshabalala-Msimang. One of the things we, the RRA, were trying to do at the time was to prevent the then law being taken to court. We felt that Parliament was the best route for law reform for termination of pregnancy because there were lots of feminists in Parliament, and we could rely on the African National Congress to promote a progressive law at that stage. And there were several lawyers who wanted to bring the old Act to Court as some kind of big constitutional case, to challenge it as violating women's right to privacy. We spent a lot of time trying to keep that out of court and I think the first time we worked with Wim (Tregrove), was going to Wim to ask him to come with us to a meeting of the Attorney General to persuade the Attorney General not to prosecute under the old Act. So, that was the first time I remember using the LRC and having a series of meetings with them. The Act was then passed in Parliament and the Christian Lawyers Association then challenged it almost immediately. We then went back to Wim at the LRC and he acted as advocate for the state. The Reproductive Rights Alliance actually joined the case as a party to support the law. So, I worked with Wim on that. That was the first time I'd worked directly with the LRC on an issue...on a case. That would be the first one. Subsequently we, as CALS, worked with Kameshni (Pillay) on a whole series of violence against women cases. My colleague, Shereen Mills, at CALS was involved in almost every amicus that was shaping the law around women and violence, for example the law of self defence for women who kill the men who abused them. Kameshni (Pillay) was our advocate of choice, and I think for most of that time she was at the LRC. So we worked with her very closely then. The other area where I worked closely with Kameshni, more indirectly, was in the Jordan case, the Sex Worker case. We were using Gilbert Marcus as CALS, but Kameshni (Pillay) was acting for the Commission for Gender Equality. So we worked quite closely with her in that case. The other case where I encountered Geoff (Budlender), was the TAC case because the Aids Law Project were initially the attorneys in that case and that was Mark's case and they were at CALS. So I was part of a whole series of seminars and meetings around shaping that case.

Int And who was Mark?

CA Mark Heywood. I think the closest collaboration of the LRC and CALS would have been around that.

Int The TAC case?

CA TAC case, ja. Initially Geoff (Budlender) was going to be the advocate and then I think they took over as attorneys. Mark as ALP and CALS was critical to that case as were Geoff and Gilbert (Marcus). So, to me, that case is the best example of a collaboration, I mean, a true collaboration, in the sense that both parties were reliant on the other to make that case a success.

Int In light of the time available, Cathy, I was wondering whether I could just move onto...in 1994, Arthur Chaskalson left the LRC and he said that the LRC is a Public Interest Law organisation, its job is really to defend the rights of the public, even if it is an ANC government, it didn't matter, and it seems to me, with cases like the TAC case, the LRC has done that. But in terms of the current situation where there are attacks on the judiciary and Constitutional Court, etc, in relation to rule of law, what are some of your concerns about Public Interest Law organisations and how they can function effectively? If they're going to take on government?

CA Going forward?

Int Yes...

CA Um, ...my sense is that Public Interest Law firms and human rights lawyers are only built out of adversity. I think, part of the problem, post 1994, is that it's more difficult to bring good cases when you support a government. TAC is obviously an exception to that, only because that was an adversarial sector. One of the reasons why HIV/AIDS litigation has been so successful is because they've worked in a hostile sector, so of course, litigation is going to be what you're going to do, and if you've got good people, it's going to be successful. In other sectors, it's been much more worthwhile to work with government in terms of law reform and different forms of engagement. If you look at Zimbabwe, out of that terrible situation they're creating fantastic human rights lawyers that they wouldn't have had otherwise. Why has South Africa got such great human rights lawyers? Because of apartheid. So, my sense is that, ironically, I think that a situation like this rebuilds Public Interest Law firms...

Int Interesting.

CA ...and Human Rights defenders. So that would be my first point. I've thought that for a long time because I've often grappled with thinking through litigation strategies, and how difficult it is under better conditions of democracy and how much easier it is ...

Int Sure, sure.

CA ...in a more hostile situation. I know that TAC case was very difficult, and Gilbert (Marcus) and Geoff (Budlender) were saying this felt like the terrorism cases of the eighties, I know that, but I think that's almost where, or how human rights defenders are built. So, and I also think, interestingly, that one of the first times that all the organisations came together, in the last two years, was over the arrest and alleged assault by police on the refugees staying in the Methodist Church. All of the public interest law firms drew together, the LRC, CALS, the AIDS Law Project, Lawyers for Human Rights, the people scattered amongst the laws firms, everyone came together to try and get those people off. So, in my sense, this is almost a 'new opportunity'. It seems to be a terrible thing to say that it is when the rule of law is under threat, as it seems to be now, that it's almost a new moment for human rights defenders and



Public Interest lawyers. And can they rise to the challenge? I think they can. I think that, certainly, Lawyers for Human Rights, for example, is doing some really interesting work around refugees. CALS is also doing really good work. Legal Resources Centre work, I'm less familiar with at the moment, but I've no doubt that they're doing good work. I think George (Bizos) is speaking out against the Judicial Bills, and he was incredibly important because of the power of his voice. You know, so many of us can speak out and it won't be that influential. So, it's a significantly important moment for people to speak out, for people to take cases, and a significant moment to build the Public Interest Law movement.

Int I'm just wondering...as a Law Professor, thinking about this much more theoretically, areas around socio-economic rights, land restitution, land redistribution, housing, etc; for an organisation like the LRC, do you think it has a role or do you think that it can be probably outsourced to much more...specialised units; I'm just wondering what your take is on this?

CA Yes, of course, it has a role. Socio-Economic Rights cases require quite a lot of research, and I've always thought that's why a place like CALS is actually better placed, in many ways, to run Public Interest cases on Socio-Economic Rights. Precisely because it has the capacity to do the research. For example, a lot of the housing work that comes out of CALS emerges from its research. But in many of those cases, CALS has also partnered with the LRC. So, if you think of TAC, if you think of some of the housing work CALS has worked very closely with Moray Hathorn, who's now left, but also other LRC people. So, there absolutely is a role, sometimes that role will be to partner with other organisations. The thing that I think the LRC has always had, is people like Geoff and others who just have this incredible skill in Public Interest lawyering, the sense of strategy. And certainly having people like Vincent (Saldanha), they just know the terrain, and they have an experience and a skill that is unmatched in many ways. I know they're still called upon by everybody to say: what do I do here, what do I do there? And it seems to me that what the Legal Resources Centre has always had as a strength and should continue to have as a strength, is precisely that strategic Public Interest skill, which they've held through all of the years. So, the LRC certainly has always been the place that people have gone to when they've wanted that really good strategic approach, because Public Interest lawyering is not just ordinary lawyering. And I think that's what their strength is in, and that's the strength they should continue to build.

Int Ok. Cathy I'm aware of the time...thank you...

**Cathy Albertyn –Name Index**

Boraine, Jenny, 3  
Budlender, Geoff, 2, 5, 6, 7, 9  
Chaskalson, Arthur, 5, 6  
Cheadle, Halton, 2, 6  
Davis, Denis, 2, 5, 6  
Dugard, John, 3, 6  
Durbach, Andy, 3  
Fine, Derek, 2  
Hathorn, Moray, 5, 9  
Heywood, Mark, 7  
Klugman, Barbara, 7  
Levin, Lydia, 6  
Luitingh, Martin, 5  
Mangan, Laura, 6  
Marcus, Gilbert, 7  
Mavivi Manzini, 6  
Mills, Shereen, 7  
Motlana, Nthato, 2  
Ntuli, Sam, 5  
Pillay, Kameshni, 6, 7  
Saldanha, Vincent, 2, 9  
Savage, Kate, 6  
Serote, Wally, 1  
Soggot, David, 5  
Suttner, Raymond, 4  
Tregrove, Wim, 6  
Tshabalala-Msimang, Manto, 7  
Wacks, Raymond, 3  
Zuma, Nkosazana, 7

**Cases:**

Jordan (Sex Worker), 7  
Queenstown Trial, 5  
Reproductive Rights Alliance (Abortion), 5  
Restriction Order, 5  
TAC, 7, 8, 9

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