

Next to the Man, and Not Forgotten:  
Gay McDougall and the Southern Africa Project of  
The Lawyers' Committee for Civil Rights Under Law,  
1963-1994

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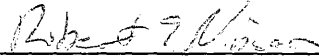
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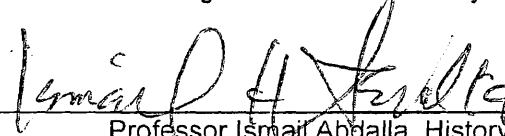
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## ABSTRACT PAGE

Between 1967 and 1994 the Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law became a leader in the anti-apartheid movement in the United States, and South Africa, and assisted in restructuring the constitutions and governments of both Namibia and South Africa. Founded in 1963 at the behest of President John F. Kennedy, Vice President Lyndon B. Johnson, and Attorney General Robert Kennedy, the Washington, D.C. - based Lawyers' Committee gained legitimacy during important civil rights battles before beginning its involvement in southern Africa. The organization proved instrumental during both civil rights struggles in the United States and anti-racist movements abroad. Longtime Southern Africa Project leader Gay Johnson McDougall, an African-American woman and "integrationist baby" who designed new constitutions and election systems in both South Africa and Namibia and accompanied Nelson Mandela to the ballot box in 1994, illustrates the deep connections between global civil rights movements during the late twentieth century. This thesis serves as an organizational history of the Southern Africa Project and biography of McDougall and argues for the inclusion of the important group and individual in historiographies of American civil rights, the Kennedy brothers, anti-apartheid resistance, and legal and gender histories.

## Table of Contents

Dedication. ....	2
Acknowledgements. ....	3
Introduction. ....	4
Chapter One. ....	8
Chapter Two. ....	32
Conclusion. ....	51
Bibliography. ....	63

## **Dedication**

This thesis is dedicated to those persistent individuals on both sides of the ocean who stood, both literally and figuratively, next to the man and gave my friends an opportunity to prosper in the new southern Africa.

And to those who died hoping that their patience and determination would eventually yield to their children a better place to live.

## Acknowledgements

The faults in this work are, of course, my own. The merits, however, come from the many individuals who have helped in creating this thesis - and who I hope will help as the project. My family and friends, of course, provided support and proofreading expertise, and ears off which to bounce ideas during the process. The activists and scholars who assisted me in telling the story of another, even when their own was valuable, deserve special mention.

Mom, Dad, Heather, Alicia, Skylar, Nyanya, Babu, and my new family - Greg, Sue, Kyle, and of course Jason, showed (or at least feigned) interest during all stages of this process, some of them editing drafts and giving valuable feedback. My fellow “comparatives” - Anne, Heather, Molly, and Zella especially - understood when it seemed like the work was challenging and celebrated when things went well. My Williamsburg support system - Amber, Jade, Michelle, Pete, Ryan, Seth and of course Penelope - had less to do with the actual research and writing processes but much to do with keeping me sane during them. The same can be said for my Arkadelphia buddies, especially Alicia, Alyse, Amanda, Audra, Lauren, and Sara (two of them actually)!

Robert Vinson, even during his sabbatical, provided gentle guidance in both research and writing. He read many, many drafts and pushed me to do better - without harshness and with genuine excitement about the project. All of those “tiny” and manageable changes have resulted in a markedly better project that never could have happened without him or the help of my other committee members - Ismail Abdalla and Kimberly L. Phillips.

While this story is primarily about Gay McDougall and the Lawyers’ Committee for Civil Rights Under Law, those activists who told me their stories, along with Gay’s, should be recognized next to her. Imani Countess treated me to lunch and a delightful conversation. I am grateful for the hospitality. Jennifer Davis, Adwoa Dunn-Mouton, Robert Edgar, Sylvia Hill, George Houser, Richard Knight, William Minter, and Hazel Ross-Robinson, shared (over e-mail and phone) their remembrances of McDougall and her relationship to their own work. At the Lawyers’ Committee Joe Moore and his assistant Cathy helped me set up and initially go through files.

McDougall herself gave me time for an interview, several phone conversations, and directed me toward the Lawyers’ Committee records. While this thesis only tells a small portion of her life’s story, I hope it is enough to illustrate her contribution to making life better for millions of people - just as she perhaps imagined while watching Dr. King walk down her Atlanta street.

Finally, Enuga (ES) Reddy corresponded often through e-mail and helped me filter through several thesis ideas before mentioning one organization and its director who he thought merited a place in history books. While ES catalyzed this project, he also participated throughout - sending me documents and notes and answering many questions. I hope this paper, and my continued research, resemble the work he envisioned.



United Nations photo archives

## Introduction

While Nelson Mandela voted in South Africa's first free elections, attorney Gay McDougall stood at his side.<sup>1</sup> The image of the former political prisoner being accompanied to his ballot box by an African-American woman who had been a child of the US civil rights era illustrated to anti-apartheid movement veterans and other observant viewers the solidarity between activists on both sides of the ocean. This thesis argues that the Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law demonstrates the strong connections between civil rights movements that developed during the late twentieth century and that McDougall, who led the project for about fifteen of its twenty-five years, drew on her experiences in the United States as she played an extraordinary role in bringing about change to majority rule in both South Africa and Namibia. McDougall and her colleagues participated in a sustained black freedom struggle against the global color line and understood the similarities between civil rights work in the United States and anti-apartheid resistance in southern Africa.

As the sole American - and one of only five foreigners - on the eighteen-member Independent Electoral Commission, McDougall and her colleagues at the Southern Africa Project<sup>2</sup> had been instrumental in facilitating transitions in both South Africa and Namibia. They had also been key participants in civil rights struggles in America for three decades. While fighting simultaneously in the United States and Africa, members

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<sup>1</sup> Robert Edgar, e-mail correspondence with author. November 16, 2007

<sup>2</sup> Also referred to in Lawyers' Committee records as the Southern Africa Program and Africa Legal Assistance Project. Since the Southern Africa Project appears most commonly, and since most activists know it by this name, I have chosen to reference it by that name throughout the paper.

of the Southern Africa Project helped bring about equal protection under law, voting rights, and humane treatment for millions of people in both their home country and on another continent. Although they remain virtually anonymous to scholars and lay observers, McDougall and the Southern Africa Project served as one of America's most important groups that combined civil rights and anti-apartheid activism.

Beginning in 1963, the Lawyers' Committee for Civil Rights Under Law helped create and enforce federal civil rights laws, defended black civil rights activists, and abated tension in the American South. During the late 1960s, as the Civil Rights movement in its own country lost some momentum, the Lawyers Committee expanded its work internationally by engaging in struggles against white supremacy in Rhodesia, Namibia, and South Africa. The Southern Africa Project of the Lawyers' Committee financed anti-apartheid work, provided assistance to attorneys working in southern Africa, assisted political exiles, exposed and publicized apartheid abuses in the United States, and published books by and about Steve Biko that exposed Americans to the evils of apartheid. Anticipating the success of sanctions enacted by the international community during the late 1980s, it sued American corporations for their involvement in South Africa. While these actions were invaluable, necessary secrecy on the part of the Lawyer's Committee, as well as McDougall's tendency to keep a low profile, have been key factors in the organization's anonymity.<sup>3</sup>

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<sup>3</sup> Ann Garity Connell. *The Lawyers' Committee for Civil Rights Under Law: The Making of a Public Interest Law Group* Ph.D diss., University of Maryland, 1997. This dissertation, written more than a decade ago, and a handful of newspaper articles—mostly in *Washington Post's* Metro section, focus on the Lawyers' Committee or Southern Africa Project. Even in these articles, few details suggest that the organization is important.

The closed records of the Lawyers' Committee also hampered efforts to construct a comprehensive narrative of the organization's work. According to a phone conversation with McDougall,

The role of the Southern Africa Project went beyond the raising of funds and awareness that countless organizations and individuals engaged in; its members recognized the need to combat white supremacy by trying and, sometimes, failing to bring about justice in a corrupt and broken system, thus drawing attention to injustices in South Africa. Under McDougall Project members also played less public roles, financing and providing assistance in political trials and engaging liberation leaders in Africa. They later recognized the need for a core progression in their mission as they became advisors to a new government, rather than just opponents of an old one.

Since Project employees worked largely in the background behind more prominent figures such as Mandela, Joel Carlson, Oliver Tambo, and Steven Biko, it is unsurprising that they maintained such anonymity. In the twenty-first century, however, it is necessary to recognize and analyze the achievement of McDougall and her colleagues, as they demonstrate how to use the law as an agent of change. They also model to future legal and social activists the importance of working in both public and private spheres, especially in building relationships with individuals involved in all aspects of a movement.

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about half of the Southern Africa Project's records will remain sealed until 2024. These contain reports from studies undertaken by the Southern Africa Project and documents referencing political trials the Committee monitored and supported. In addition, several boxes of files contain information about the Southern Africa Project's role in forming new laws, constitutions, and election systems in Namibia and South Africa. The author initially received permission to examine these documents, but Lawyers' Committee personnel revoked the privilege before this project became complete, citing "lawyer client responsibilities" (Joe Moore, e-mail to author, August 4, 2008). While supplemental information has been available in other archives, such as the Library of Congress, the ES Reddy papers at Yale University through Reddy, and through interviews with McDougall and her colleagues, it still paints an incomplete picture of the scope of the Southern Africa Project's achievements. Perhaps as more documents from the era become public, so will those of the Southern Africa Project, and researchers will be able to gain a more complete view of their work.

## Chapter One

### **From Birmingham to Johannesburg: The Lawyers' Committee for Civil Rights Under Law Expands from the American South to South Africa**

During the summer of 1963, violent conflicts between segregationists, policemen, and civil rights demonstrators reminded Americans of the severity of civil unrest a century after passage of the fourteenth amendment granting black citizenship. As ordinary citizens young and old continued fighting for these rights, President John F. Kennedy, Vice President Lyndon B. Johnson, and Attorney General Robert Kennedy lamented their own inability to control bloodshed in the South. Despite some civil rights gains like *Brown v. Board* and the integration of Little Rock Central High School, bus boycotts, and the 1960 founding of the vibrant Student Non-Violent Coordinating Committee, and the charismatic leadership of Martin Luther King, Jr., and Malcolm X, there remained a long road ahead. King and other civil rights leaders were in the midst of planning a March on Washington for Jobs and Freedom to push Kennedy toward enacting meaningful civil rights legislation and end racial discrimination in employment.

Just a month before the August, 1963, March on Washington, demonstrators in Birmingham felt their skin peeling off as they were sprayed by firehouses, and policemen sent their dogs into protests to attack and scatter the masses. Four little girls would die later that summer in the bombing of Sixteenth Street Baptist Church in Birmingham, an event that illustrated to anti-segregationists the deeply institutionalized hatred that they fought. In Jackson, Mississippi, white supremacist Byron de la Beckwith assassinated Medgar Evers in his own driveway as Evers' wife and children ducked under their beds and listened to the hail of bullets that killed him. That summer's violence would extend to the fall, and the president himself eventually became a victim. In November, the long

period of national unrest extended into a deep national mourning after Kennedy's assassination in Dallas.

By July 1963, President Kennedy, Vice President Lyndon B. Johnson, and Attorney General Robert F. Kennedy met with 244 lawyers in the East Room of the White House to create the Lawyers' Committee for Civil Rights Under Law. Frustrated with these conflicts in the South, the Kennedys and Johnson hoped that enforcing existing laws could produce change more quickly and efficiently than protest marches and other efforts to change public opinion regarding race relations.<sup>4</sup> Kennedy knew that quiet legal activism could be as effective as the more public and divisive civil rights protest campaigns of the Southern Christian Leadership Conference, Student Non-violent Coordinating Committee, and Congress of Racial Equality.

As former Howard University Law Dean and NAACP Legal Defense Fund leader Charles Hamilton Houston had shown with his army of trained civil rights lawyers like Thurgood Marshall, legal activism had already proven effective at dismantling Jim Crow segregation and mandating school integration, and the attorneys gathered at the White House hoped it could be just as effective at helping black Americans acquire equal voting rights and obtain access to higher education and other public facilities. The Lawyers' Committee was to enforce the legal victories secured by Houston, Marshall, and other NAACP lawyers in a series of landmark cases that culminated with *Brown v. Board* and included cases such as the 1936 *Murray v. Pearson*, *Missouri ex. rel. Gaines v. Canada*

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<sup>4</sup> Charles T. Lester. "The Lawyers' Committee for Civil Rights Under Law, 1963-2003." [www.lawyerscommittee.org/history](http://www.lawyerscommittee.org/history).

in 1938, and *Sweatt v. Painter* in 1950.<sup>5</sup> That summer Kennedy held eleven meetings with leaders in various fields - such as education, medicine, and religion - in hopes that an alliance of devoted citizens could succeed in mediating conflict where federal troops had failed.<sup>6</sup> The founding of the Lawyers' Committee for Civil Rights Under Law remains an important yet understated aspect of Johnson and the Kennedy's legacies.

The Kennedys and Johnson knew they were walking a tightrope within their party, seeking support from both "Dixiecrat" segregationists and the black citizens who had put them in the White House. They needed to show civil rights leaders that they intended to act seriously on the issue, while also demonstrating to conservative southerners that they were not too radical. In calling for the Lawyers' Committee's formation, they managed to help found an organization that acted independently of the administration while also using its status as the "President's Committee" to gain legitimacy.

Jack Greenberg, a member of the NAACP's Legal Defense Fund (LDF), writes that the Lawyers' Committee began its work at a time when civil rights activism seemed so "glamorous" that an increasing number of groups and individuals clamored to become involved.<sup>7</sup> Howard University's law school had since the 1920s trained civil rights lawyers such as Marshall, but one black attorney wrote that most law schools did not prioritize public interest work, choosing instead to teach students how to make a profit

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<sup>5</sup> Genna Rae McNeil. *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983); Richard Kluger. *Simple Justice* (New York: Vintage Books, 1975).

<sup>6</sup> Nick Bryant. *The Bystander: John F. Kennedy and the Struggle for Black Equality* (New York: Basic Books, 2006), 411-416.

<sup>7</sup> Jack Greenberg. *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought For the Civil Rights Revolution* (New York: Basic Books, 1994), 347-348.

practicing corporate law.<sup>8</sup> A number of attorneys, including Marshall and Houston, had fought tenaciously for black students from kindergarten to law school to be allowed an education. However, aside from those working with the NAACP's Legal Defense Fund, few attorneys had been willing to associate themselves with the struggle for equal rights.<sup>9</sup> Telling their audience that attorneys had thus far "failed miserably" to uphold the rule of law in desegregation, Johnson and the Kennedys hoped that their speeches would prompt the audience to consider using their valuable training for service, rather than self.<sup>10</sup> The time had come for attorneys to be, as Houston said, "social engineers rather than parasites on society."<sup>11</sup>

Following the meeting, attorneys began campaigns in the South, aimed at upholding constitutional freedoms and advancing past 1954's landmark ruling in *Brown v. Board of Education of Topeka*.<sup>12</sup> Bernard Segal, a corporate attorney in Philadelphia and future American Bar Association president, and Harrison Tweed, another corporate lawyer who often volunteered with Legal Aid, received the task of co-chairing the new committee. Although they officially formed the group later in the summer of 1963, several members of the Lawyers' Committee had already begun petitioning Alabama Governor George Wallace to admit black students to Alabama's public university. Segal's wife had served as the catalyst for this activism, making a comment to her husband about the appalling lack of condemnation from lawyers following Governor

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<sup>8</sup> Randall Robinson. *Defending the Spirit: A Black Life in America* (New York: Dutton, 1998), 85.

<sup>9</sup> Williams, 2-35.

<sup>10</sup> Lester, "Lawyers' Committee."

<sup>11</sup> McNeil.

<sup>12</sup> Greenberg, 347.

Wallace's illegal decision to enforce segregation. Working from Philadelphia, Segal collected signatures from forty-six attorneys and asked the Alabama's elected officials to defer to the "rule of law." Along with Burke Marshall and Louis Oberdorfer, Segal traveled alongside Robert Kennedy to monitor the situation. They also assisted Kennedy in drafting a list of attorneys who might be interested in using their skills and resources to fight for reforms in the South, as well as the rest of the United States and began recruiting new lawyers for the organization.<sup>13</sup> In addition to its prominent founders, the Lawyers' Committee included members such as Warren Christopher, Drew Days III, Paul Dimond, Conrad Harper, Edward Kennedy, William Taylor, Tom Williamson, and Judy Winston.

Initially, Lawyers' Committee leaders planned to work out of regional offices, hoping "to marshal the resources of the private bar, including its leadership, for public policy advocacy; to educate the public and the bar on civil rights; to enlist the skills of lawyers as negotiators and mediators to help resolve disputes; and to provide pro bono legal assistance to victims of discrimination." They dubbed themselves "missionaries to the bar."<sup>14</sup> Leaders included Segal, Tweed, Marshall, and Oberdorfer, as well as Lloyd Cutler, Cecil Burney, Berl Bernhard and John Doyle.<sup>15</sup> The Lawyers' Committee for Civil Rights Under Law used the resources of its individual and collective membership, rather than receiving funds from the federal government. Organizations such as Greenberg's LDF worked closely with the new group on projects such as securing housing rights for black and Hispanic citizens and advocating for every citizen's right to

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<sup>13</sup> Lester, "Lawyers' Committee."

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

vote.<sup>16</sup> While they cooperated with the Lawyers' Committee, established civil rights attorneys such as Greenberg and Morris Abram<sup>17</sup> still viewed the upstart group as a signal of Kennedy's mistrust of their own abilities to work with southern leaders.<sup>18</sup> Abram, however, argues that the new group brought about more unity among lawyers than other organizations previously had.

The new Committee became controversial with NAACP attorneys who had already become entrenched in this work and probably felt slighted by Kennedy. Nevertheless, the Lawyers' Committee began arguing prominent cases and mentioning the names of its high-profile membership when seeking to gain support. While a close relationship to the president may have been off-putting to some of the group's detractors, it ultimately helped attract colleagues from southern Africa to seek its help.<sup>19</sup>

Much of the Lawyers' Committee's early work centered around helping to pass the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Kennedy had introduced the former just two days before his meeting with the attorneys. Following its creation, members of the Lawyers' Committee lobbied for passage of the bills, while at the same time beginning to work in Mississippi. During 1963, members of the National Council of Churchmen asked the Lawyers' Committee for assistance after the state denied them permits to conduct protest marches against segregation. New York attorney

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<sup>16</sup> Greenberg, 427, 472.

<sup>17</sup> Abram, a Jewish civil rights attorney, initially joined the Lawyers' Committee. He left the organization in 1981, writing in his autobiography that it had become too focused on affirmative action favoring African-Americans, rather than striving for an open and color-blind society. Morris B. Abram. *The Day is Short: An Autobiography*, (New York: Harcourt Bruce Jovanovich, 1982).

<sup>18</sup> Abram, 139.

<sup>19</sup> See section about Joel Carlson (pg 14-20) for further discussion.

Robert Lunney traveled to Jackson, where he convinced local officials to grant the permits and also represented some clergymen under arrest for demonstrating without permission. Lunney also oversaw the establishment of a Lawyers' Committee branch in Jackson. Staffed initially by volunteers serving two-week terms, the office soon became permanent, with a full-time staff and a mission to represent blacks throughout Mississippi, mostly in criminal cases. Despite Lunney's work, officials in Jackson again arrested several hundred demonstrators for marching without a permit. The Lawyers' Committee and LDF filed a suit to challenge the constitutionality of such bans on public assembly and won.<sup>20</sup>

In Americus, Georgia, the Lawyers' Committee fought a similar case, sending Abram to defend five black teenagers who had been arrested and sentenced to capital punishment on sedition charges after being convicted of participating in a voter registration campaign during the spring of 1963. No white member of the Georgia Bar cooperated with Abram, and Sumter County's state senator, Jimmy Carter, proved unhelpful. Eventually Abram won the case, and Superior Court Judge Elbert Tuttle ruled the sedition charge under which the teenagers had been convicted under to be unconstitutional. All five defendants, including a fourteen year-old girl sequestered in solitary confinement, received their freedom. Abram wrote that after the case, local lawyers called him a "federal whippersnapper" and became embarrassed that events in Georgia had caused officials from Washington to once again become involved with Southern problems.<sup>21</sup> Despite these criticisms, however, Abram and Lawyers'

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<sup>20</sup> Lester, "Lawyers' Committee."

<sup>21</sup> Abram, 139-141.

Committee members considered the case a victory and continued expanding the organization.

In Mississippi and Georgia the Lawyers' Committee had some success in gaining fair trials for innocent defendants and "established the rights of blacks as a class, challenged discriminatory jury venires, changed the way the courts treated blacks, and helped to make Mississippi accountable to the rule of law."<sup>22</sup> Its focus shifted from recruiting individual lawyers who could handle disparate small cases to attracting larger firms and organizations able to tackle more prominent, high-profile cases, and to expand its geographical scope. Initially, Lawyers' Committee members in Mississippi attempted to convince local attorneys to represent black citizens in trials, but they received little cooperation. Hence they sent volunteer lawyers to provide representation instead. Following its actions in Mississippi, the Lawyers' Committee opened an office in Cairo, Illinois, where it had some success in stopping police harassment of residents protesting for increased civil rights. This project closed in 1972, but not before permanent offices opened in Atlanta, Beverly Hills/Los Angeles, Boston, Chicago, Cleveland, Indianapolis, Kansas City, Philadelphia, San Francisco and Washington. One of the Lawyers' Committee's main jobs became the Urban Area Projects - where its members fought for equal housing rights; other areas of emphasis included litigation regarding voting rights, employment discrimination, personal freedom and education, prison reform, and changing methods of jury selection. The organization soon established its permanent headquarters in Washington, D.C.<sup>23</sup> This work became important because, as Abram

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<sup>22</sup> Lester, "Lawyers' Committee."

<sup>23</sup> Ibid.

argues, it was easier to take legal action against segregation than it was to argue that segregation and segregationists were evil.<sup>24</sup> Enforcing existing laws and protecting constitutional freedoms took precedence over altering public opinion as members of the Lawyers' Committee for Civil Rights Under Law found their niche.

### **Beginning Work in Southern Africa**

If politics “has always been the systematic organization of hatreds,” as Henry Adams claimed, then the Lawyers' Committee certainly became counter-political.<sup>25</sup> Its members had become cause-lawyers, attorneys who paradoxically advocated for strict adherence to federal and constitutional rules while often arguing that local Jim Crow laws needed to change. These lawyers were able to use their legal knowledge to benefit clients, rather than themselves, and may have become more connected to their work in the process.<sup>26</sup> Cause-lawyering has been treated by some legal scholars as a conservative means to advance a liberal agenda, using systems already in place. In the United States, attempts to avoid “lynching in the courts” had become an important part of civil rights movements, pioneered by the NAACP's LDF and continued by the Lawyers' Committee

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<sup>24</sup> Abram, 86.

<sup>25</sup> Robert Kinloch Massie. *Loosing the Bonds: The United States and South Africa During the Apartheid Years*, (New York: Talese/Doubleday, 1997), 55.

<sup>26</sup> Austin Sarat and Steven Scheingold, eds. *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*, (Stanford: Stanford University Press, 1995), 1, 64, 203, 241. Sarat and Scheingold argue in their conclusion that anti-apartheid activists, particularly Mandela, should be seen as cause lawyers. These individuals, they claim, become more connected to their work than “regular” lawyers, since they seek a social or personal compensation, rather than a monetary one. In struggling for justice cause lawyers often act paradoxically, using the law to their advantage (as in the cases mentioned above) while simultaneously fighting to change it (Sarat and Scheingold, 466-467). Linda Malone, a human rights lawyer and law professor at the College of William and Mary disagrees, saying that cause lawyering does not usually call for the restructuring of an entire legal system. In this instance a cause and a need for legal reform coincided, perhaps causing Sarat and Scheingold to reach this conclusion. Linda Malone, e-mail correspondence with author, November 12, 2008.

for Civil Rights Under Law.<sup>27</sup> Ultimately, the Lawyers' Committee achieved what Greenberg suggests as the ultimate measure of success in cause-lawyering: it received pleas for help from other minorities, as well as one majority engaged in a similar struggle on a different continent.<sup>28</sup>

United States Attorney General Robert F. Kennedy played an important role not only in the founding of the Lawyers' Committee, but also in its expansion. In 1966 he visited South Africa and spoke to the National Union of South African Students (NUSAS) chapter at the University of Cape Town. A white lawyer named Joel Carlson listened in the audience. Carlson had been involved with the Treason Trial in Namibia, a legal proceeding similar to South Africa's famous Rivonia Trial. Carlson, intrigued by the attorney general's comparisons of the United States and South Africa, decided that Kennedy's country could provide the financial assistance he needed to save Namibia's freedom fighters from the gallows.

In contrast to the United States, where de facto segregation remained pervasive, apartheid in Carlson's South Africa remained in place because of its codification through a long series of legal acts and new laws.<sup>29</sup> After the late 1950s, when apartheid became established and governed every area of life for South Africans, protests and challenges to

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<sup>27</sup> Kenneth W. Mack. "Law and Mass Politics in the Making of the Civil Rights Lawyer, 1931-1941." *Journal of American History* 93.1 (June 2006): 39.

<sup>28</sup> Greenberg, 487.

<sup>29</sup> Dan O'Meara. *Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948-1994*, (Athens: Ohio State University Press, 1994), 67. Due to the ever-changing nature of these laws, many black South Africans did not understand them, much less know when they violated them. Thus, it became easy for them to be living "outside the law" unintentionally—also making it simpler for government officials to arbitrarily convict them of wrongdoing.

authority began in earnest.<sup>30</sup> Carlson chose legal activism as his form of protest, much like his colleagues in the United States had done. With the banning of the International Defense and Aid Fund (IDAF), however, Carlson soon lost his main source of funding and began looking elsewhere for donors. Inspired by Kennedy's speech Carlson traveled to New York, hoping that Americans would help him find alternate sources support. There he visited the office of Enuga Reddy, head of the United Nations Centre Against Apartheid.<sup>31</sup>

Reddy met with Carlson, who expressed concern for the safety of both his clients and himself. Prior to IDAF's banning Carlson had already received a number of death threats, and afterward acts of violence against him and his family began increasing. While the United Nations continued to support IADF, Carlson sought an alternate source - one that might not arouse so much suspicion against him, his family, and his clients. To this end, Reddy arranged meetings with Swedish Ambassador to the United Nations Sverker C. Astrom, who also served as chairman of the Committee of Trustees of the UN Trust Fund for South Africa, and this led to meetings with Justice Arthur Goldberg, the United States' Ambassador to the organization, and, finally, with Robert Kennedy himself.<sup>32</sup> Carlson urged Goldberg and Kennedy to pressure the South African

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<sup>30</sup> Elinor Sisulu. *Walter and Albertina Sisulu: In Our Lifetime* (Cape Town: David Phillips Publishers, 2003).

<sup>31</sup> Joel Carlson. *No Neutral Ground*, (New York: Thomas Y. Crowell Company, 1973), 189-190; E.S. Reddy, e-mail interview by author. August 9, 2008.

<sup>32</sup> Reddy e-mail.

government through sanctions and trade restrictions, and to encourage Americans to increase their own anti-apartheid activism.<sup>33</sup>

In addition to meeting with these public officials, Carlson spoke to church leaders and members of organizations such as the American Committee on Africa (ACOA)<sup>34</sup> in an attempt to gain private support for South African defense lawyers.<sup>35</sup> A major connection came when Charles Runyan, assistant legal advisor for African affairs at the Department of State, introduced Carlson to Morris Abram.<sup>36</sup> Abram in turn asked his colleagues to begin providing assistance to the South African struggle for civil rights. Shortly after his return to Johannesburg, Carlson received a letter with instructions for seeking and the much-needed funds.<sup>37</sup> In his memoir, Carlson wrote about the beginnings of his communication with the Lawyers' Committee:

“All of this was of great importance in that it provided a channel of communication along which a full exchange of information flowed. It was a link with professional colleagues dedicated to upholding civil rights in America, who fully understood what was necessary for lawyers working in a police state. Of the many worthwhile results coming from my trip, this was of inestimable value.”<sup>38</sup>

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<sup>33</sup> Carlson, 191-199.

<sup>34</sup> Connell, 270. In 1968, the church-based, ecumenical American Committee on Africa was the largest anti-apartheid lobby in the United States and sought to educate Americans by publishing information on South Africa. The ACOA also lobbied the executive and legislative branches concerning matters related to apartheid.

<sup>35</sup> Carlson, 199.

<sup>36</sup> *Ibid*, 270.

<sup>37</sup> *Ibid*, 200-202.

<sup>38</sup> *Ibid*, 202.

This “worthwhile result” led to a partnership between Carlson and the Lawyers’ Committee, which spent the next few years establishing its Southern Africa Project. In order to finance its initial trials, the Southern Africa Project received a \$5,000 grant from the UN Trust Fund, as well as an additional \$5,000 from the Marshall Field Foundation.<sup>39</sup>

With his newly-found financial support, Carlson began concentrating on his first case - a frustrating one that had taken much of his time and made clear to him the importance of outside support. His saga had begun in 1967, when an associate in London wrote Carlson about the inhumane prison treatment of several detainees, including South West African Political Opposition (SWAPO) leader Andimbe Toivo ya Toivo. Detention laws permitted South African officials to arrest and indefinitely “detain” individuals accused of subverting the government, and several Namibian political leaders languished in jail after their arrests for working with SWAPO between 1962 and 1967.<sup>40</sup> At that time, SWAPO remained unbanned in Namibia, but by holding membership in the organization, defendants were presumed guilty by association of attacks on police and government stations, many of which they did not commit. Namibian officials charged several of the defendants with trying to intimidate policemen and government employees, and with receiving military training both in and outside of the country - acts that fell under the new, broad definition of terrorism.<sup>41</sup> When Carlson visited the South West

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<sup>39</sup> Reddy interview.

<sup>40</sup> Carlson, 154. Most of the detainees were arrested in 1966 and tried under the 1967 Terrorism Act, which defined a terrorist as anyone who aimed “To further and encourage the achievement of any political aim by violence or forcible means, or by the intervention of, or in accordance with the direction or under the guidance of, or in cooperation with, or with the assistance of, any foreign or international body or institution . . .to embarrass the administration of the affairs of the state.”

<sup>41</sup> Ibid, 163.

Africa section of Pretoria Prison, he quickly discovered that the Namibians had been detained for nearly a year.<sup>42</sup>

Additional contingencies of the Terrorism Act placed heavy restrictions on the number of visitors each detainee could receive and provided for the prisoners to be represented by a public defender, but not by a personal lawyer. This almost certainly guaranteed detainees an unbalanced, biased trial.<sup>43</sup> Thus, Carlson's status as a private attorney made him ineligible to represent the Namibians. When he eventually received permission to serve as attorney to ya Toivo and his colleagues, Carlson lacked sufficient funding and feared government persecution.<sup>44</sup> After journeying to the United States, however, he found himself with enough Lawyers' Committee donations to continue the trial. Amazingly, Carlson successfully argued that none of the thirty-seven defendants should receive capital punishment. This positive outcome would have been impossible without the assistance of the Lawyers' Committee and the lobbying efforts by the United Nations. Much like the Rivonia defendants, survivors of the Treason Trial became icons in the struggle for independence. Many, such as ya Toivo, continued the freedom fight from exile and returned to become government leaders in a new and independent Namibia after 1990. This victory set the stage for future relations between Carlson and the Lawyers' Committee. In subsequent cases, however, the two found less success in the courtroom. Thus, they changed tactics and struggled to procure civil and human rights for all southern Africans. In the United States, the Lawyers' Committee had won most of

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<sup>42</sup> Carlson, 152-154.

<sup>43</sup> Ibid, 155-156.

<sup>44</sup> Reddy interview.

its cases, but in South Africa losing cases became the way to fight apartheid—drawing attention to an unjust system, rather than expecting to find real justice for clients.

### **More Than Just “Dabbling:” Continued Involvement With Southern Africa**

In 1968 the inquest into the death of James Lenoke provided an opportunity for the Lawyers’ Committee to become more involved in South Africa. After the assassination of King and both of its Kennedy founders, the Lawyers’ Committee found itself fighting a civil rights battle that was losing momentum. Working in southern Africa gave the organization an opportunity to expand its work, both at home and abroad. While Carlson lost this trial, its precedent of involvement became important. The Lawyers’ Committee established itself as an observer of southern African trials and began sending money and expert witnesses to assist with defending detainees.

In March of 1968, Carlson received a request to help the family of James Lenoke, who had died in police custody. The family needed legal help to prove that the deceased had been brutally killed, rather than killing himself, as the officers alleged.<sup>45</sup> Carlson arranged for a delayed burial and enlisted Dr. Jonathon Gluckman to examine the body.<sup>46</sup> After Gluckman found a “curious mark” on Lenoke’s right foot,<sup>47</sup> Carlson contacted the Lawyers’ Committee, which told Carlson to act on behalf of Mrs. Lenoke and pledged to give as much assistance as possible.<sup>48</sup> To begin, they sent Dr. Alan R.

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<sup>45</sup> Carlson, 217-224.

<sup>46</sup> Ibid, 225-226.

<sup>47</sup> Ibid, 226-227. The burn on Lenoke’s second toe is described in the pathology report as “a traverse linear mark on the superior surface, broken up into two positions; a medial one measuring a quarter of an inch, and a lateral one, measuring an eighth to a sixteenth of an inch in thickness.

<sup>48</sup> Ibid, 227.

Moritz, an American expert on burns,<sup>49</sup> to examine photographic material sent to him by Carlson and encouraged Gluckman to determine conclusively<sup>50</sup> whether Lenoke's injury was the result of an electric shock. The doctors discovered traces of copper on Lenoke's skin that indicated electrothermal treatment and determined that his death must have occurred within two to twelve hours of the torture.<sup>51</sup>

As the inquest continued, Carlson was denied access to photographs of Lenoke's body in his cell, but he did elicit testimony from prison officials who mentioned discovering Lenoke, tied by his belt to a cell window with his right arm raised above his head. As a result of the investigation, Carlson had his passport confiscated. Arthur H. Dean and Louis F. Oberdorfer, co-chairmen of the Lawyers' Committee, continued to encourage Carlson, and member Burke Marshall made a public statement praising his work.<sup>52</sup>

The court ultimately ruled that Lenoke had died after hanging himself. Carlson anticipated the verdict, but not the enactment in 1969 of laws amending police jurisdiction and creating a new force, the Bureau of State Security (BOSS). This came, Carlson believed, as a result of the Lenoke trial.<sup>53</sup> Although they lost the inquest, working

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<sup>49</sup> Carlson, 227-228. In 1947, Moritz published slides of electrical shock injuries similar to Lenoke's in the *Journal of American Pathology*. He had also served as the chief consultant pathologist to the United States armed forces and been an attending pathologist to the autopsy of President John F. Kennedy and adviser to the Warren Commission; Reddy cites this incident as an example of the Lawyers' Committee's creativity in battling apartheid using not just attorneys and defense funds, but all available resources.

<sup>50</sup> Ibid, 228. The margin of error for such Moritz's atomic spectrographic test is one in one million.

<sup>51</sup> Ibid, 228. Pathologists found cysts just beneath the skin of Lenoke's toe evidencing that a blister had begun to form but was not completed before his death. This allowed them to estimate Lenoke's time of death.

<sup>52</sup> Ibid, 256.

<sup>53</sup> Ibid, 260-261.

together on it solidified the relationship between Carlson and the Lawyers' Committee. The two continued working together in South Africa for about a decade; during the late 1970s Carlson and his family received increased death threats and survived several assassination attempts, and decided to leave the country. The Southern Africa Project initially assisted Carlson with moving to London and then helped him relocate his entire family to upstate New York. During this process Southern Africa Project members wrote letters to American leaders, helped finance the Carlsons' move, and also navigated through some of the legal concerns Carlson expressed while seeking refuge.<sup>54</sup>

The Southern Africa Project's work increased during the 1970s. Lawyers' Committee members George Lindsey, a partner at Debevoise and Plimpton - the New York corporate firm where McDougall would soon begin her career (and now called Debevoise, Plimpton, Lyon, and Gates) - and Peter Connell decided that the organization had been merely "dabbling" in southern Africa and needed to become more involved.<sup>55</sup> Thus, they created a list of South African attorneys who might be interested in working for the Lawyers' Committee and decided to help them by providing funding, legal assistance on issues where laws were similar in South Africa and the United States, and expert witnesses - much like Moritz in the Lenoque Case.<sup>56</sup> Raising support for the new program proved to be difficult, as some Lawyers' Committee board members opposed it on the grounds that international work would detract from the original mission of

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<sup>54</sup> Lawyers' Committee Document Box 86.

<sup>55</sup> Connell, 283-288.

<sup>56</sup> Ibid, 289-290.

furthering civil rights in the United States.<sup>57</sup> The Ford Foundation, which had initially refused grants to the Project, on much the same grounds as the board members, eventually began to see it as useful and contributed \$100,000 in 1973. This donation was the Foundation's first major contribution and the first of many important donations.<sup>58</sup>

In addition to funds from private foundations, the Southern Africa Project, Lindsey also applied for continued funding from the United Nations Trust Fund, which provided money to anti-apartheid activists. During the late 1970s, US ambassador to the UN Andrew Young announced that his country would begin making a \$300,000 annual donation to the Fund, and the UN began awarding the Southern Africa Project an equivalent amount. This continued throughout the Jimmy Carter administration. During the Reagan and Bush administrations these donations discontinued, but after she became Project Director, McDougall lobbied Congress each year to continue the funding. This setback actually benefitted the Lawyers' Committee, as the successful lobbying caused the support not only to continue, but also to increase. As a result, UN Trust Fund grants to the Southern Africa Project dramatically increased - from \$50,000 in 1978 to around half a million dollars during the 1980s - more than the Project had received under Carter.<sup>59</sup> With increased funding, the group's activism also grew.

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<sup>57</sup> Connell, 311.

<sup>58</sup> Ibid, 293.

<sup>59</sup> Reddy interview; E.S. Reddy, e-mail correspondence with author. February 5, 2008. After IDAF was banned in 1966, the Trust Fund quit keeping records of the names of its grant recipients. According to Reddy, however, the Southern Africa Project's grants from 1970 to 1990 amount to the following: 1970 - \$5,000; 1971 - \$15,000; 1974 - \$30,000; 1975 - \$40,000; 1976 - \$40,000; 1977 - \$35,000; 1978 - \$50,000; 1979 - \$50,000; 1980 - \$50,000; 1981 - \$200,000; 1982 - \$250,000; 1983 - \$250,000; 1984 - \$300,000; 1985 - \$350,000; 1986 - \$400,000; 1987 - \$550,000; 1988 - \$525,000; 1989 - \$350,000; 1990 - \$500,000. Reddy credits this successful lobbying to McDougall's "creativity," a trait he connected to the Southern Africa Project's subsequent success.

## **The Southern Africa Project During the 1970s**

The Lawyers' Committee became more involved in southern African trials, sending representatives to attend the Trial of the Twenty-two, where Carlson defended a group of Africans, including Winnie Madikezela-Mandela, arrested in 1970 and accused of plotting subversion. Lawyers' Committee director Peter Connell, along with several other international delegates, flew to South Africa to observe the trial, and the pressure they applied to judges there may have contributed to the acquittal of the trial. Observers encouraged police not to keep the twenty-two in prison for longer than the one day they believed was necessary, and Connell met with Judge Gerritt Viljoen to explain their concerns. As a result, the trial progressed quickly and fairly.<sup>60</sup>

During the Southern Africa Project's first decade its struggle against racist regimes in Africa involved three components - aiding exiled leaders, trying to hold accountable American companies involved in southern Africa, and raising awareness about the region's problems. These activities laid groundwork for the organization's future work, which eventually included oversight of transitions to majority rule in Zimbabwe, Namibia, and South Africa.

### **Working With Exiles**

In addition to giving funds and arranging for expert testimonies in political trials, the Southern Africa Project enabled Africans to continue their activism by helping them find new homes in the United States, away from the threat of death or detention. In becoming involved with relocation issues in the United States, Southern Africa Project

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<sup>60</sup> Carlson, 348.

employees made personal contact with their clients, rather than just sending money to support trials thousands of miles away.

After helping the Carlsons with their move to New York, Southern Africa Project workers also wrote letters and petitions on behalf of Theo Ben-Gurirab, a SWAPO leader who had moved to the United States to attend Temple University in Philadelphia before going to New York, where he served as SWAPO representative to the United Nations. Ben-Gurirab had some problems obtaining a visa that would allow him to stay in the country, and Project leader Millard Arnold assisted him with re-applying in 1975.<sup>61</sup> With his visa re-approved, Ben-Gurirab remained in the United States until 1990, serving as Namibia's representative to the United Nations until 1986, when he became SWAPO's secretary of foreign affairs.

Shun Chetty, lawyer to Steve Biko's family, grew fearful for his family's safety, just as Carlson had, and went into exile in Botswana and then Great Britain. By the time he fled in 1979, Chetty's passport had been confiscated, and he feared he would be unable to obtain asylum. Arnold kept in close contact with Chetty - speaking to American newspapers about the sad plight of South African lawyers - and served as an advisor during the transition.<sup>62</sup>

Both Carlson and Ben-Gurirab continued their activism while in exile, but Chetty kept a low profile once in Britain. Carlson remained in the United States until his death, and his widow and children remain here. Ben-Gurirab returned to Namibia following

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<sup>61</sup> Lawyers' Committee Document Box 86.

<sup>62</sup> Bill Branigan. "Chetty Quits South Africa: Prominent Civil Rights Activist Fears Ban on Practice, Seeks British Asylum," *Washington Post* (August 11, 1979): A12. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 26, 2009).

independence and served in the country's cabinet, eventually becoming prime minister from 2002-2005. Chetty stayed in Britain until 1998, when he and his wife moved back to South Africa and began working for the United Nations. He applied in 1999 to have his legal credentials reinstated, but died during a heart operation before this could happen; posthumously, he received back the privilege of practicing law. For all three men, living as exiles had become the only way to protect their own lives, as well as to continue their work, and assistance from the Southern Africa Project allowed them to do this.

### **Fighting in American Courts**

Along with helping obtain visas for Africans, the Southern Africa Project began a creative, albeit largely unsuccessful, campaign to punish American companies for doing business with racist regimes on the continent. In law suits and lobbying projects against the *New York Times*, Civil Aeronautics Board, Department of Commerce, Polaroid, a Colorado contracting company, and the International Society of Travel Agents, the Southern Africa Project represented groups such as the Congressional Black Caucus and the New York Commission on Civil Rights in an effort to stop Americans from indirectly supporting apartheid. They also considered filing suits against corporations such as American Express, JC Penny, and Ralston Purina. In taking this legal action, the Lawyers' Committee followed the NAACP's mandate that economic sanctions against South Africa could be effective in the struggle against apartheid, an idea that activists had touted since the 1940s, although sanctions did not take place until the mid 1980s.<sup>63</sup> All of these court battles failed, but they did contribute to the growing momentum of a movement that called for sanctions against racist regimes in southern Africa, something

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<sup>63</sup> Lawyers' Committee Document Box 83, 90-92, 506.

that ultimately helped hasten the demise of apartheid. These cases demonstrate that the Southern Africa Project took concerted legal action with the goal of ending apartheid. The third component of its pre-1980 work- raising awareness about southern Africa - may have been more successful than this second one.

### **Raising Awareness**

Arnold's most successful public awareness campaign came when he published books by and about martyred Black Consciousness leader Stephen Bantu Biko. Without his efforts, anti-apartheid activists in the United States would have been much less familiar with Biko, and his tragic death would not have become such a rallying point for civil rights and anti-apartheid activists. Prior to his 1977 death, Biko had communicated with Arnold and Southern Africa Project lawyer Michael Peay, and afterward the Southern Africa Project sent Dean Pollack as an observer to the trial against the state brought by Biko's family. In addition, The Lawyers' Committee kept in close contact with Shun Chetty, the Biko family's lawyer, and Arnold told the *Washington Post* that Biko had died of head injuries inflicted by police, rather than a hunger strike - making him one of the first public figures to bring attention to the tragedy.<sup>64</sup>

Lawyers' Committee money enabled the Biko family to use high-class legal services and resources in both the United States and South Africa, something that would have otherwise been impossible.<sup>65</sup> Pollack collected several boxes worth of medical records, court transcripts, and documents, which remain in Lawyers' Committee records,

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<sup>64</sup> "Comments Misunderstood, Biko Family's Lawyer Says," *Washington Post*, (September 16, 1977): A15. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009); Jay Ross, "Key S. African Black Dies in Custody: U.S. Officials Criticize Death in Custody of Moderate Black Leader in S. Africa," *Washington Post* (September 14, 1977): page A1. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

<sup>65</sup> Joseph D. Whitaker, "Lawyers' Group Here Works for Civil Rights in South Africa," *Washington Post* (December 19, 1977): A6. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

and at least one of Biko's lawyers flew to Washington to consult with Arnold and his team before the inquest.<sup>66</sup> Despite the Southern Africa Project's undeniably important role in publicizing Biko's death and helping his family find top-notch lawyers, the group received criticism from American lawyers, who said that it had strayed from its original mission of fighting for civil rights in the United States.<sup>67</sup>

Arnold, however, continued working and kept a number of letters, editorials, and essays written by Biko,<sup>68</sup> which he contributed to the posthumously-published *I Write What I Like* in 1978. In addition, Arnold sent letters to a number of prominent African Americans, including activists such as Jesse Jackson, entertainers such as Sidney Poitier, and members of the Congressional Black Caucus, asking them to endorse the book.<sup>69</sup> The publication of *I Write What I Like* simply would not have occurred if not for Arnold's assistance, and nor would have *Steve Biko: Black Consciousness in South Africa*, a transcript of Biko's last public statements, which he edited.<sup>70</sup>

Since many anti-apartheid activists did not release their autobiographies and memoirs until the 1980s, Biko's writings would have been among the first glimpses into South African politics that some Americans - even those already concerned about southern Africa - would have read. *I Write What I Like* and *Steve Biko* became part of the canon, books that inspired anti-apartheid and civil rights activists in the United States

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<sup>66</sup> Lawyers' Committee Document Boxes 498-502; Whitaker.

<sup>67</sup> Whitaker.

<sup>68</sup> Lawyers' Committee Box 498.

<sup>69</sup> Lawyers' Committee Box 507.

<sup>70</sup> Millard Arnold, ed. *Steve Biko: Black Consciousness in South Africa* (New York: Vintage Books, 1979).

toward action. They soon found their ways onto college syllabi and into classrooms, where teachers emphasized the cruelty of Biko's death and used it to illustrate the need for increased anti-apartheid work and solidarity in freedom struggles both at home and abroad. Thus, the Lawyers' Committee's involvement in southern Africa also helped it remain true to its original mission of advancing civil rights here. Much of the outrage over Biko's death - and his subsequent canonization as a symbol of apartheid's cruelty - would not have taken place if not for Arnold.<sup>71</sup>

Biko's death served as an important event in publicizing South African human rights abuses, but it was not the first. Since 1970 Southern Africa Project members had been working with American activists, including prominent scholar Angela Y. Davis, to raise awareness about South Africa's prison conditions. Following their own practice of using the law as an agent of change, the attorneys successfully lobbied for prison reform in the United States and then attempted to use these new standards as guidelines for international law.<sup>72</sup> By setting acceptable American standards for treatment of detainees, the Southern Africa Project had tried to change public opinion about prison conditions and use this new outlook to point out the contrast between how prisoners and detainees should be treated and how they were being treated in South Africa.

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<sup>71</sup> Stephen Biko. *I Write What I Like*, (Toronto: Bowerdean Press, 1978). The book's introduction contains a paragraph thanking the Lawyers' Committee for its contribution to making the book possible.

<sup>72</sup> Lawyers' Committee Boxes 85 and 87.

## Chapter Two

### **Constructive Engagement: Gay McDougall, the Southern Africa Project, and the Death of Apartheid**

During the 1980s the Southern Africa Project shifted course. Under McDougall's direction, it became the type of transnational outlet for activism that David Hostetter and Donald Culverson write about, although it remains absent from their work.<sup>73</sup> As it expanded its mission in Africa, it also became instrumental in creating changes in America, finding itself at the center of a pivotal and unprecedented event. Using her relationships with Americans and Africans, McDougall became a leader in a group of African Americans who, for the first time, changed the course of US foreign policy by successfully lobbying for and enforcing comprehensive sanctions against South Africa. Following this, apartheid crumbled, and McDougall once again became a central figure in an important struggle and invaluable during the transitions to democratic rule in Namibia and South Africa.

In 1980 Arnold stepped down and eventually began working in the State Department, and McDougall took his place as director of the Project. While it remained committed to helping political prisoners through monetary support of their attorneys, recruiting expert witnesses for trials, and sending observers to them, the Southern Africa Project had a new focus. In contrast to the previous tactic of working primarily within the American anti-apartheid movement, McDougall and her staff focused on maintaining relationships with activists from Africa and later, on gathering information that would

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<sup>73</sup> David L. Hostetter, *Movement Matters: American Anti-apartheid Activism and the Rise of Multicultural Politics* (New York: Routledge, 2006); Donald R. Culverson, *Contesting Apartheid: US Activism 1960-1987* (New York: Westview Press, 1999).

help in re-writing the constitutions for Namibia and South Africa and designing elections there.

Three decades before she stood next to Mandela, a teenage McDougall had walked down her Atlanta street to watch leaders such as Martin Luther King, Jr., Julian Bond, and Stokely Carmichael speak to members of her community. “His (King’s) mother and my mother were friends,” McDougall told the *Washington Post*, noting that her family highly valued community involvement. As the daughter of a teacher, and niece of several social workers, McDougall became interested at an early age in using her vocation to help people, and her hometown’s high-profile guests demonstrated one way to do this.<sup>74</sup> She later told another reporter that “(Atlanta) was the center of . . . the world. It certainly was the center of the civil rights era . . . and all of these figures were just down the street, doing what they were doing, which in many ways seemed to be what I care most about doing.”<sup>75</sup> After growing up down the street from King and Carmichael’s protests, McDougall became the first black student to integrate Agnes Scott College in Georgia. “It was not a good experience,” she told a *Washington Post* reporter in 1994. “I remember I wrote in my little diary then how much I was really tired of people coming into my room, telling me how well they treated their Negro maids at home.” She then transferred to Bennington College in Vermont, where she became involved in voter registration drives and other civil rights campaigns, yet remained determined to make a career out of changing people’s lives.

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<sup>74</sup> Dorothy Gilliam, “Namibia’s Triumph Has Roots in D.C.,” *Washington Post* (December 7, 1989): B3. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

<sup>75</sup> Mary Ann French, “South African Odyssey: Gay McDougall Has Fought Apartheid from Afar. This Week the Washington Lawyer Will Toll its Death,” *Washington Post* (April 26, 1994): E1. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

After law school at Yale, McDougall began work at Debevoise and Plimpton, where she learned about law and saved enough money to work without salary as a southern Africa specialist for the National Conference of Black Lawyers (NCBL). As NCBL's representative to the United Nations and the creator of a task force focusing on African liberation movements, McDougall had her initial experiences of relating to the UN and mobilizing Americans to care about international issues. Desiring to learn more about international law, and hoping that American civil rights leaders could learn from African freedom fighters, she traveled to London. There, interactions convinced her of the similarities between the problems of black Americans and black Africans. "That kind of detailed realism sinks in and grounds you in an understanding of the real-life parts that go into making historical events," she told Dorothy Gilliam. "It is important that this work is done within the context of an organization that focuses on U.S. problems as well. I wouldn't want to have a human rights focus in other parts of the world to the exclusion of those at home. In many ways, they are the same problems from the same sources."<sup>76</sup>

Bringing her contacts network and passion to the Southern Africa Project, McDougall used her acquired wisdom to transform the organization from a small one operating within the United States to "harass the South African government. It was a small, under-the-radar operation. I came with something that none of the previous directors had had (a relationship with leaders of southern African liberation movements)."<sup>77</sup> In London McDougall had studied under Rich Alstrom, an advisor to the Lancaster House talks that resulted in Zimbabwe's freedom. She also met key ANC and

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<sup>76</sup> Gilliam.

<sup>77</sup> Gay McDougall, interview by author. October 5, 2008, Washington, D.C.

SWAPO figures such as Oliver Tambo, Freddie Ginwale, and the Mbeki family. Most African liberation movements had headquarters in London, and McDougall found herself “taken in by all of them; (I) got to know that community very well.” These contacts allowed McDougall to bring a new outlook to the Southern Africa Project. “There was a real sense of involvement on the ground, even at a distance,” she said. “We were able to bring that ground to the movement here.”<sup>78</sup> Indeed, relationships with Africans, as well as with Europeans and Americans, allowed McDougall to bring a rare perspective to the United States and to mobilize activists in her own country.

### **Relationships with Americans**

At home, McDougall proved effective at demonstrating the need for increased United States involvement in southern Africa, as well as at mobilizing attorneys to actively oppose apartheid. This allowed her to utilize American resources and precedents to help change policy both in her home country and in Africa. After working for Debevoise and Plimpton and the National Conference of Black Lawyers, McDougall had established contacts with many attorneys - including many corporate lawyers who were otherwise disinterested in activism.<sup>79</sup> She used this network while at the Southern Africa Project to motivate her colleagues toward anti-apartheid work.

Perhaps one of McDougall’s largest roles in American anti-apartheid activism came during the 1984-1986 demonstrations outside the South African embassy. These

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<sup>78</sup> McDougall Interview by author.

<sup>79</sup> Ibid.

protests, which became some of the largest in United States history,<sup>80</sup> began shortly before Thanksgiving in 1984, but McDougall had been involved in planning them for nearly four years. Upon returning from London, McDougall attended a meeting at TransAfrica, where employees wondered how to publicize death and dying in South Africa. After several years of consideration, TransAfrica and a group of activists, including McDougall, decided to protest outside the South African embassy in Washington, D.C., for one week.<sup>81</sup> McDougall created Lawyers Against Apartheid, an organization that encouraged and mobilized “stodgy, corporate lawyers”<sup>82</sup> to become active in anti-apartheid work. More than one thousand attorneys joined the group and picketed the embassy during the protest. “It created so much play that we decided to keep it going for a while,” McDougall said. Thus, the Free South Africa Movement came into being.<sup>83</sup>

The protests continued for nearly two years, and each day several activists attempted to enter the embassy and were arrested. “Designer arrests,” as they were named, helped demonstrate to Americans connections between fighting for civil rights at home and against apartheid abroad; black and white leaders demonstrated the significance both struggles held for them. While thousands of ordinary citizens found themselves in jail after protesting, celebrities and politicians brought publicity to the event, and many of them volunteered to picket and spend a night in one of Washington’s

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<sup>80</sup> *Have You Heard from Johannesburg?* Produced by Connie Fields. 90 minutes. Clarity Films, 2006. One DVD.

<sup>81</sup> Robinson, 156.

<sup>82</sup> McDougall interview by author.

<sup>83</sup> Robinson, 156.

jails. The most prominent protesters included politicians such as Detroit Mayor Coleman Young; Washington, D.C., congressman Walter Fauntroy; D.C. Mayor Marion Berry's wife Effie; Ron Dellums, Charles Rangel, Julian Dixon, and all but two members of the Congressional Black Caucus, and Ben Cardin; celebrities such as Rory and Douglas Kennedy - children of Lawyers' Committee founder Robert Kennedy; Stevie Wonder, Arthur Ashe, Paul Newman, and Harry Belafonte; and several prominent civil rights activists. Coretta Scott King marched, along with her children Martin III, Bernice, and Yolanda, and Jesse Jackson brought all five of his children; both activists, along with their families, found themselves under arrest after attempting to enter the South African embassy. On December 1, 1985, Rosa Parks<sup>84</sup> commemorated the thirtieth anniversary of her arrest on a Montgomery bus by participating in the demonstration and then spending the night in jail.<sup>85</sup>

McDougall became responsible for visiting the jail daily and arguing that the prisoners be released based on their own recognizance.<sup>86</sup> She performed this service for more than three thousand people.<sup>87</sup> These embassy protests illustrate McDougall's importance to activism, and they also show her position of high status among attorneys. She remains well-known and respected in the American legal community, as demonstrated by her ability to convince one thousand of her colleagues to become active

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<sup>84</sup> On December 1, 1985, Parks—a seamstress and former secretary for the National Association for the Advancement of Colored People (NAACP) - refused to leave her seat in the whites-only section of a Birmingham bus. Her subsequent arrest resulted in a massive boycott of the city's public transportation by its black citizens.

<sup>85</sup> Robinson, 156-157; Field documentary.

<sup>86</sup> Robinson, 156.

<sup>87</sup> *Ibid*, 156.

in a movement that had until then little affected their consciences.<sup>88</sup> McDougall encouraged her peers to involve themselves not only with the embassy protests, but with condemning apartheid through public statements and resolutions.

At the American Bar Association's annual meeting in 1985, McDougall and her colleagues at the Southern Africa Project sponsored a panel where American attorneys heard South African lawyers speak about the illegal harassment, lack of due process, and ill-functioning courts in their country.<sup>89</sup> During the panel, McDougall's guests spoke about the strong history in both countries of gaining social and political justice through proper use of the law and convinced their American colleagues to pass a resolution opposing apartheid and asking their own government to condemn it as well. The group also held hearings before the Senate Banking Committee, recommending that the United States impose sanctions against South Africa.<sup>90</sup> Major Washington law firms sent hundreds of lawyers to the day of lobbying on Capitol Hill.<sup>91</sup>

The following year, McDougall arranged for an unofficial Congressional hearing on South African children in detention.<sup>92</sup> Not content to simply let lawyers and public officials speak about apartheid, the Southern Africa Project gathered together fifteen senators and representatives, as well as a panel of South African citizens, to testify before them. The group of lawyers, psychologists, counselors, social workers, children, and

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<sup>88</sup> Imani Countess, interview by author. October 6, 2008, Washington, D.C.

<sup>89</sup> David Margolick, "Bar Group Meets on South Africa," *New York Times* (July 7, 1985): 9. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

<sup>90</sup> *Ibid.*

<sup>91</sup> McDougall interview by author.

<sup>92</sup> The Lawyers' Committee gives annual reports and budget to Congress. This is the first instance I have found, however, of the organization initiating a Congressional hearing in order to argue for policy change.

mothers of detainees became the first “ordinary South Africans”<sup>93</sup> to testify before members of the United States Congress. Members of the House and Senate cosponsored the unofficial hearings in the Rayburn House Office Building, and McDougall told participants that when activists mentioned cases of detention and torture of South African youth in the future, “nobody on the Hill should be able to say they didn’t hear about it.”<sup>94</sup>

McDougall said that she did not know how much of an impact the hearings had had until the mid-1990s, when an official at the South African embassy told her “how much it had rattled them” to discover that the hearings had educated congressmen on matters the regime’s publicity managers had kept carefully guarded.<sup>95</sup> This activism of the mid-1980s eventually resulted in the passage of the Comprehensive Anti-Apartheid Act of 1986 (CAA), when McDougall and other participants in the Free South Africa Movement successfully lobbied for the override of a presidential veto in order to create the legislation. McDougall’s importance in guiding United States policy toward South Africa during this period cannot be underestimated. She worked behind the scenes in every major event leading to the passage of the CAA. After its passage, she continued urging Congress to abide by the CAA, rather than half-heartedly supporting the sanctions it imposed - writing reports and lobbying to keep her government responsible.<sup>96</sup> This work continued not only during the 1980s, but into the 1990s, when President George Bush considered lifting sanctions, citing Mandela’s prison release as evidence that the

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<sup>93</sup> McDougall interview by author.

<sup>94</sup> Carla Hall, “From South Africa, a Children’s Crusade,” *Washington Post* (June 26, 1987): B1. [www.lexisnexus](http://www.lexisnexus) (accessed January 28, 2009).

<sup>95</sup> McDougall interview by author.

<sup>96</sup> Gay McDougall. *Implementation of the Comprehensive Anti-Apartheid Act of 1986*. Prepared for United States Congress, 1988. Library of Congress. Accessed July 22, 2008.

country had moved forward, and McDougall and several other lobbying organizations urged him to reconsider.<sup>97</sup> After fighting apartheid at home and abroad, McDougall became important to American activists in 1990 and 1994, when she organized them to monitor elections in Namibia and South Africa.

### **Relationships with Europeans and the United Nations**

By the time she became director of the Southern Africa Project, Gay McDougall had already gained support among American attorneys and activists. In addition to this, she cultivated relationships with individuals of international significance. Within the first year of her tenure, McDougall had formed a friendship with several Swedish diplomats, one of whom became director of the United Nations Trust Fund.<sup>98</sup> This relationship proved beneficial, as the Southern Africa Project subsequently funneled money to attorneys and legal clients through the Trust Fund. In addition, the Swedish government became one of the Southern Africa Project's largest contributors, and McDougall turned to it often when writing grants.<sup>99</sup>

These relationships became critical, since the Southern Africa Project worked through a variety of networks to provide assistance in Africa. McDougall spoke nearly every year before either the UN's Center Against Apartheid or its Special Political Committee. Throughout the process, McDougall's reputation with these individuals and organizations has remained positive, as is evidenced by her selection as director of the human rights watch group Global Rights and, more recently, appointment by the United

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<sup>97</sup> Mary Curtius, "Plan to lift sanctions on S. Africa decried; Foes criticize expected US step as premature," *Boston Globe* (July 10, 1991): 1. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 28, 2009).

<sup>98</sup> McDougall interview by author.

<sup>99</sup> Gay McDougall, phone interview by author: January 27, 2009.

Nations as its first Independent Expert on Minority Issues. Perhaps the only person whose trust McDougall did not win over was Canon John Collins, head of the International Defense and Aid Fund in London. Collins disliked organizational competition and viewed any group working legally in the United States as somehow related to the State Department and, therefore, an ally with the Nationalist Party.<sup>100</sup> Certainly the Lawyers' Committee's beginning as a special presidential committee and its high-profile membership must have contributed to this perception.

While working to end apartheid, McDougall's network extended far beyond the Americans and Africans with whom she primarily worked, legitimizing her work in the eyes of international observers. Despite her influence with world leaders, however, McDougall's most important asset remained the close relationships she had built with her African colleagues, followed closely by her ability to mobilize Americans.

### **Relationships with Africans**

McDougall brought to the Southern Africa Project a network of African contacts. When she became director of the Southern Africa Project in 1981, few South African lawyers worked with political prisoners. Through contacts in London, McDougall became acquainted with Griffiths !Xlange, a Durban attorney whose main practice consisted of defending political prisoners. The Southern Africa Project's support of !Xlange was short-lived, but illustrated to McDougall her organization's importance. Shortly after she and her colleagues began funding !Xlange, the news of his "brutal

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<sup>100</sup> Reddy e-mail interview.

assassination”<sup>101</sup> reached them. !Xlange’s death in his own driveway had been a punishment, McDougall discovered, for receiving funds from international organizations, including the Southern Africa Project. “It was a statement to me of how serious this was,” she said. “It was quite a shaking, jarring thing to me.”<sup>102</sup> The experience produced some feelings of guilt among staff at the Southern Africa Project but reaffirmed feelings that their work was important.<sup>103</sup>

In 1981, shortly after McDougall became its director, the Southern Africa Project sent an official to observe the trial of *State v. Ramaligela*, a trial resulting from the bombing of a South African police station. During the investigation police arrested twenty people, at least five of whom were tortured, and one of whom died. Attorneys for the prosecution argued that police had killed one of the detainees. Surprisingly, the magistrate ruled that policemen could be responsible for the death of a prisoner, marking only the second time in South African history that police officials were convicted of wrongdoing in the death of a detainee. Unfortunately, police officers appealed the case, and a judge overturned the verdict, saying that they should not be held guilty for the death. Despite the disappointing outcome, Southern Africa Project staff argued that the case had illustrated the value of their work.<sup>104</sup>

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<sup>101</sup> McDougall interview by author.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Lawyers’ Committee for Civil Rights Under Law. *Observations of the Trial of the State v. Ramaligela, Mangaga*. Prepared for United States Congress, 1983. Library of Congress. Accessed July 22, 2008.

While the Project continued sending money to South African attorneys, it did so without knowing much about these lawyers, understanding the importance of anonymity in protecting themselves and their clients. Shortly after !Xlange's death, the South African government announced its new tricameral government for white, Indian, and colored citizens. As riots and a state of emergency followed, the Southern Africa Project increased its funding—sending upward of two million dollars per year into the region during subsequent years.<sup>105</sup> During one series of Johannesburg township riots, where more than 10,000 children went to prison and solitary confinement, the Southern Africa Project helped form an “elaborate method of communication” to help attorneys gain freedom, or at least stays of execution, for their clients.<sup>106</sup> This led to continued involvement with political prisoners, and the Southern Africa Project eventually funneled money to defense lawyers in all three 1987 treason trials and sent an observer to one of them.<sup>107</sup>

During the mid-1980s the Southern Africa Project experienced a major milestone - sending sixth circuit court of appeals judge Nathaniel Jones to observe a political trial. This marked the first time a United States federal judge had observed a trial in another country, and Jones probably became the first black judge to ever sit in a South African courtroom. He took with him papers proving his appointment, as well as an affidavit from the NAACP, and a lawyer escorted him each day to court. Despite these

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<sup>105</sup> McDougall interview by author.

<sup>106</sup> Ibid. McDougall did not elaborate about these communication methods, and I had trouble finding more information about them. Like much of the Southern Africa Project's work, this situation necessitated a secrecy that still exists, and perhaps the unsealing of records in a few decades will help shed more light on it.

<sup>107</sup> Ibid.

precautions, Jones did experience problems in South Africa. During one trial he received word that Griffiths !Xlange's wife, a lawyer who had taken over his case load had been assassinated in the family's driveway, just like her husband. While the trial recessed, Jones traveled to Cradock to visit with !Xlange's family, as well as with the widows of some political activists. At one house, a group of policemen arrested Jones and took him to jail. Despite his protests, and even despite his official documentation, the policemen refused to believe that Jones was a judge. Some of Jones's friends finally contacted the treason trial's magistrate, who called the police station to verify that Jones was "indeed a judge. A black judge."<sup>108</sup> Thus, an American judge became, at McDougall's insistence, the first black official to sit in a South African courtroom, as well as the first American judge to observe a trial outside of his own country.

McDougall applied for a South African visa in 1985, and officials denied her request without explanation. She continued applying every year, only to be turned down, and it became obvious that the South African government was keeping her out of the country.<sup>109</sup> Due to this restriction, as well as concerns about the safety of her clients, McDougall traveled often to the Frontline States - particularly Botswana - for meetings. During one of these, she and a contact decided to try a new campaign against the Nationalist Party - placing advertisements in South Africa's major newspapers decrying apartheid. Surprisingly, most of the ads ran, perhaps bringing increased panic to a regime

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<sup>108</sup> McDougall interview by author.

<sup>109</sup> McDougall phone interview.

already under attack by its own citizens - as well as by other members of the international community.<sup>110</sup>

One of the Southern Africa Project's last assaults on apartheid occurred during the mid-1980s. Project employees had been involved with the Legal Resources Center, their Windhoek counterpoint. David Smuts, director of the LRC, visited Washington, D.C., and asked the Southern Africa Project for assistance with the Kassinga Detainees, a group that had been in prison for several years. McDougall and Smuts drafted a "Habeas Corpus-like appeal"<sup>111</sup> for the presumed detainees.<sup>112</sup> After Smuts argued his case before a South African court, the detainees were unconditionally released—a "fantastic, joyous thing" that McDougall claims was one of the largest international successes during this period.<sup>113</sup>

Following this success, McDougall received a visa to visit Namibia—as well as her first chance to connect with clients inside South Africa. In 1985, she became the first person to enter Namibia despite not having authorization to visit South Africa.<sup>114</sup> When she arrived in Johannesburg, a policeman escorted her from Jan Smuts International Airport's international arrivals terminal to the domestic lounge, from which she would fly to Windhoek the next day. McDougall received permission to stay in the airport's hotel

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<sup>110</sup> McDougall interview by author.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid. Due to the length of captivity for these detainees, the exact identities of many of them was unknown. McDougall said that she and Smuts drafted their list of possible detainees from by looking at a group of people who had disappeared around the time that detention might have begun.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid. This is even more remarkable considering that McDougall had not only entered Namibia without a visa for South Africa, but had entered the former despite being denied entry to the other.

while waiting for her plane, although the policeman remained stationed outside her door all night and escorted her onto her plane the next morning, even fastening her seatbelt, and ensuring that she did not venture into South Africa.<sup>115</sup> Following her visit to Namibia, McDougall returned to the airport, where she found no guard waiting for her. After realizing that she had been forgotten about and left unattended, she called two friends - underground members of the UDF - to collect her at the airport. "It was really more dangerous for them than for me," McDougall said. "They were underground."<sup>116</sup> During her twenty-four hour stay McDougall and her friends went on a "wild tear through Johannesburg," meeting and eating dinner with Albertina Sisulu and Winnie Mandela and meeting several lawyers and other contacts of the Southern Africa Project. "It was a fantastic, illicit time," she said.<sup>117</sup> For McDougall, this visit was the first time she had been able to meet many of her clients and beneficiaries.

Shortly after McDougall's clandestine visit, her loophole closed, and travelers to Namibia became required to obtain South African visas. The contacts she made during that visit had been valuable, however, and in 1990 McDougall received a visa to legally visit both countries—observing Sam Nujoma's inauguration as president of the newly-independent Namibia<sup>118</sup> and seeing the results of an election that she had almost single-

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<sup>115</sup> McDougall interview by author. McDougall reports that the policeman asked her the next day, "Who are you? They tell me I have to guard you, but what are you doing?"

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

handedly designed.<sup>119</sup> McDougall then traveled to South Africa for about six weeks, and shortly thereafter began building the New South Africa.

During the early 1990s McDougall received gratification for her activism. In 1989 she had formed the Commission for the Independence of Namibia, a thirty-one member bipartisan group of Americans who monitored events in Namibia during the year prior to 1989's elections, and assembled a team of election observers. The Commission intervened a number of times when South African-drafted laws threatened voter registration and election laws and helped ensure fairness during the voting process.<sup>120</sup> McDougall created the monitoring system that kept South Africa's influence out of Namibian elections and demonstrated to Namibians that they had solidarity from across the ocean. Ninety-six percent of Namibians voted, a testament to the success of efforts by McDougall and her colleagues.<sup>121</sup> After the election and transition took place, the Southern Africa Project kept a file on "Lessons Learned from the Namibia Transition,"<sup>122</sup> and soon applied these in South Africa. Several boxes of documents contain reports and research conducted by McDougall and her staff on topics such as constructing a multi-lingual society, implementing affirmative action, and registering voters.<sup>123</sup>

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<sup>119</sup> Reddy e-mail interview.

<sup>120</sup> Richard Knight, e-mail interview by author. September 24, 2008.

<sup>121</sup> Gilliam.

<sup>122</sup> Lawyers' Committee Document Box 508. These lessons appear to pertain mostly to voting irregularities and methods to make voting easier in South Africa.

<sup>123</sup> Lawyers' Committee Document Boxes 501-502. One large folder contains information about Canada's successful establishment of a bi-lingual society, and another report studies the use of affirmative action in nine countries, as well as an analysis of how it could be used in South Africa.

Utilizing this information, the Southern Africa Project cosponsored - along with the African National Congress and the Centre for Legal and Constitutional Studies at the University of Witwatersrand - a February 1993 conference and workshop on constitution writing. McDougall served as a chief counsel to the ANC and provided reports and analysis of comparative constitutions.<sup>124</sup> During the four years leading up to the multiracial elections, McDougall spent up to six months each year in South Africa, where the ANC had asked her to organize a system for them to request legal research from the Lawyers' Committee during constitutional negotiations. The Lawyers' Committee organized volunteer teams of legal researchers to provide quick answers to ANC questions and organized for prominent international constitutional scholars to advise the party.<sup>125</sup> Thus, McDougall found her niche in the politics of a changing South Africa, and in 1994 she received perhaps the highest honor of any American involved in the process. Her relationships and credibility within South Africa, as well as the United States, made her an ideal candidate to lead both countries in implementing the new democratic structures she had helped fight for.

In 1994 the Independent Electoral Commission of South Africa monitored voting. The sixteen Commission members included five foreigners and one American - McDougall, the woman who had "organized South Africa's nearly flawless elections."<sup>126</sup> After being nominated for the position by the ANC and approved by all political parties,

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<sup>124</sup> Knight e-mail interview.

<sup>125</sup> William Minter and Sylvia Hill, "Anti-Apartheid Solidarity in United States-South Africa Relations: From the Margins to the Mainstream," *The Road to Democracy in South Africa, Volume 3: International Solidarity* (Cape Town: SADET/Unisa Press, 2008).

<sup>126</sup> Robinson, 284.

McDougall served as the IEC's vice chairman and began the eight-month process of helping design the elections and educate citizens about voting rights and procedures. As the sole American on the IEC, McDougall bore the responsibility of training and coordinating the efforts of about five hundred of her countrymen as they came to educate voters and monitor polls.<sup>127</sup> The delegation she oversaw included groups from several colleges and universities, the Martin Luther King, Jr., Center for Nonviolent Social Change, and volunteers and employees from groups such as TransAfrica, the American Committee on Africa. South African exiles Jennifer Davis and Dumisani Kumalo and Americans such as Gail Hovey, Betsy Landis, Prexy Nesbitt, Aleah Bacquie, and Jesse Jackson participated.<sup>128</sup>

Along with IEC Deputy Chairman Dikgang Moseneke, McDougall received the additional responsibility of monitoring elections in Kwa-Zulu Natal.<sup>129</sup> The homeland had become a particularly difficult area, due to a feud between Inkatha we Sizwe president Chief Mangosuthu Buthelezi and the ANC. McDougall and Moseneke, however, ensured that the election would continue and educated as citizens about voting procedures in the hope of mitigating fears that violence would follow voting. They also oversaw the operation of about nine hundred polling booths.<sup>130</sup> While about two hundred people died

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<sup>127</sup> Lynn Duke, "Teaching the Baby Steps Toward Democracy in South Africa," *Washington Post* (February 25, 1994): A13. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 26, 2009).

<sup>128</sup> Gail Hovey, "'Faces Filled with Joy:' The 1994 South African Election," in William Minter, Gail Hovey, and Charles Cobb, eds., *No Easy Victories: African Liberation and American Activists Over a Half-Century, 1950-2000* (Trenton: Africa World Press, 2008).

<sup>129</sup> McDougall phone interview.

<sup>130</sup> Ross Dunn, "Plan to include homeland in South Africa poll," *The Age* (Melbourne, April 11, 1994): 12. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 26, 2009).

in violence leading up to the election, IEC members such as McDougall arranged for army and police forces to guard polling stations.<sup>131</sup>

Despite long lines and violence leading up to them, the elections ran much more smoothly than anticipated, according to Hovey and Robinson. On April 25, the day before the elections, McDougall and her colleague received word that Mandela had decided to vote in their province, and that one of them needed to accompany him to the ballot box. McDougall - despite exhaustion from not having slept well in several days - stood at his side as he cast the first vote of his life and became president under the constitution she had helped design.

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<sup>131</sup> Sam Kiley, "Fortified Polling Stations for Zulus," *The Times* (April 16, 1994): overseas news section. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 26, 2009).

## Conclusion

### **No Longer Anonymous: The Importance of McDougall's Southern Africa Project**

Despite the prominent and effective work of the Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law, and despite McDougall's importance as director, the two remain largely anonymous. Several factors may contribute to this, not the least of which is that perhaps historians feel, as they often seem to in looking at recent events, that not enough time has elapsed for an objective analysis of progress. The absence, however, of McDougall and the Southern Africa project in scholarship from other disciplines suggests that more factors are at play than a simple desire to wait for the present to become historical. Perhaps, as suggested earlier, this organization and its director have simply been overlooked, or maybe a combination of factors, including McDougall's gender and, ironically, her prominence in the movement, have led to neglect by scholars.

McDougall remains well-known and respected in all the fields where she has worked. Attorneys practicing both corporate and social justice law, civil rights and anti-apartheid activists around the world, and even heads of state, have recognized her as invaluable to their causes.<sup>132</sup> In addition, McDougall's appointment by the United Nations as its first Independent Expert on Minority Issues demonstrates that she is held in high esteem both by that body and the international community that supports it. In 1999 she received a \$350,000 Genius Grant from the MacArthur Foundation - an unsolicited

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<sup>132</sup> Countess interview by author; Hazel Ross-Robinson, phone interview by author. October 22, 2008.

honor that demonstrates her importance to her field.<sup>133</sup> Thus, she is not anonymous to her colleagues or to members of her professions; she remains overlooked only by scholars and many private citizens.

By McDougall's own account, anonymity has been an important, and at times unwelcome, element of her work. Providing finances to lawyers in defense trials jeopardized the lives of those attorneys, and the deaths of !Xlange and others illustrates the dangers posed by becoming recipients of aid from sources such as the Southern Africa Project. Thus, in order to protect clients and beneficiaries, as well as themselves, members of the Southern Africa project shied away from journalists and attempted to keep a low profile. This insured not only the survival of those they assisted, but also decreased the possibility that McDougall and other attorneys could be pressured to discontinue their work. Such surreptitiousness became necessary, although McDougall has admitted that it was not always welcome. "It's hard to be anonymous sometimes," McDougall said, mentioning that it was often difficult to see her colleagues writing memoirs or giving interviews while she looked on. "But I don't think I regret playing the role I played. I would have liked to get the publicity, but that's how it goes sometimes."<sup>134</sup>

Since it necessitates secrecy, the nature of McDougall's work has further contributed to her anonymity. Hazel Ross-Robinson, a former employee of the Congressional Black Caucus and wife of former TransAfrica leader Randall Robinson,

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<sup>133</sup> Countess interview. For more information, please also see Emily Wax, "Genius Has Its Own Reward: MacArthur Fellowships Honor 32 Who've Done Their Best," *Washington Post* (June 23, 1999): C1. [www.lexisnexus.com](http://www.lexisnexus.com) (accessed January 26, 2009).

<sup>134</sup> McDougall interview by author.

has argued that public policy is often created by people who remain widely unknown, while more prominent figures publicly implement it.<sup>135</sup> Thus, McDougall is one of many policy makers who has not received sufficient attention for their efforts. In addition, while some lobbying groups used public relations professionals or spokespeople to communicate their organization's goals with the general public, the Southern Africa Project never employed such methods or individuals.<sup>136</sup> This may be in part related to McDougall's explanation that secrecy remained necessary, and it may also be due to the small staff and limited operating budget with which the Southern Africa Project functioned.

In recent years McDougall has agreed to interviews by documentary film makers and Richard Knight of the African Activist Archive Project at the University of Michigan.<sup>137</sup> Much of her interaction with the media comes, however, through giving interviews as an expert - on law, on civil or human rights, or on areas of the world where she has visited during her time with the United Nations.<sup>138</sup> McDougall seldom tells the story of her own work, and she has not written an autobiography, as so many of her colleagues have.<sup>139</sup> Her apparent insistence that pressing on with important work is more

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<sup>135</sup> Ross-Robinson phone interview.

<sup>136</sup> Countess interview by author.

<sup>137</sup> *Have You Heard From Johannesburg?*; Knight e-mail interview.

<sup>138</sup> An online search of McDougall's name recalls dozens of articles where she is interviewed about human rights abuses, but only about a half dozen about her own work.

<sup>139</sup> American anti-apartheid activists such as Ron Dellums, George Houser, and Randall Robinson and South African attorney Joel Carlson all wrote autobiographies detailing their work. In the 2008 publication *No Easy Victories: American Activists and Africa, 1950-2000* by William Minter, Gail Covey, and Charles Cobb (Trenton, NJ: Africa World Press), the authors solicited chapters from activists describing their work and its success. McDougall chose to write about her role model Jean Sindab (pg. 173), rather than about

important and fulfilling than talking about one's past work makes McDougall unique when compared with some other activists, but it still fails to explain fully the lack of information about her. Despite arguments that McDougall and the Southern Africa Project controlled their own image, it is still possible that they could have received more attention from outside sources - such as journalists and scholars - if their work had been recognized as important. A three-fold reason concerning attitudes about gender, race, and nationality may further explain why they remain largely anonymous.

Important women have often received insufficient attention. The argument that her gender caused McDougall to remain understudied is valid. As an attorney and activist she worked alongside men, often as a manager or superior. Many women in the anti-apartheid movement played such important roles, although many also served important functions as spouses, supporters, and secretaries. McDougall may merit comparison with American civil rights activist Ella Baker; Baker's biographer has argued that her gender perhaps caused Baker to be more attentive to details than the high-profile men she worked with while receiving less credit for that important work.<sup>140</sup> Since women so often worked "behind the scenes," McDougall's role as a leader can be viewed as even more remarkable, however, in contrasting it with the less public roles that many women played. Countess, another woman who held a leadership position within an anti-apartheid group, has argued that while it is important not to overemphasize McDougall's

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her own accomplishments. In the essay McDougall compares Sindab to fellow American activists such as Ella Baker, Shirley Chisolm, and Fannie Lou Hamer. Countess argues that McDougall and Sindab, who worked closely together, are remarkably similar in their backgrounds, work styles, and importance to anti-apartheid work. Countess interview.

<sup>140</sup> Barbara Ransby. *Ella Baker and the Black Freedom Movement: A Radical Democratic Vision* (Chapel Hill: University of North Carolina Press, 2003): 171-174.

gender, it is necessary to recognize that female anti-apartheid activists have been disproportionately understudied when compared with their male counterparts.<sup>141</sup> Like many women in both the United States and southern Africa, McDougall and her organization's primary role was to enable the work of other activists, causing her to perhaps take a backseat to them when the time came for kudos.

As both a woman and a black person working on issues related to Africa, McDougall may appear not glamorous or worthy of attention to some journalists and scholars. Africa remains vastly understudied, and as a result scholars have found plenty of material simply by looking at "obvious" and already prominent subjects such as Mandela, Tambo, Sisulu, Robinson, or Houser. Thus, historians have perhaps seen no need to expand scholarship or African studies by researching lower-profile activists such as McDougall.<sup>142</sup> In addition, McDougall's race may have played a role in her low profile. Journalists and members of the general public may have viewed activism pertaining to Africa as a sort of "black man's burden" - perhaps as an effect of Pan-Africanist trends or as an outgrowth of the American civil rights movement - although the link between civil rights and anti-apartheid activism makes this story more interesting, not less. McDougall's long vision and knowledge of connections between movements should have made her more interesting to historians, but perhaps had the opposite effect.

Finally, McDougall's nationality may have influenced how other activists viewed her and, thus, the importance they ascribed to her. McDougall stood next to Mandela

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<sup>141</sup> Countess interview by author. Countess served as the director of the Namibia Information Agency and Washington Office on Africa. She now works for the TransAfrica Forum.

<sup>142</sup> Ibid.

when he voted, an event that certainly testifies to her importance, but one that also may have aroused jealousy or anger among other activists who felt that she was given too prominent a role in South Africa's transition.<sup>143</sup> South Africans may have seen McDougall as out of place - an American standing next to one of the movement's most famous symbols and posing for a photograph that would itself soon become iconic. In addition, the idea that a non-South African had served on the country's Independent Electoral Commission may have angered some South Africans who felt that the country's victory should be celebrated most prominently by citizens of their country.<sup>144</sup>

McDougall had worked more closely and directly with southern Africans than had many American anti-apartheid activists - activists who had attempted to guide US policy toward South Africa and raise public awareness of the country's problems more than they had tried to directly influence South Africans. As a result, it is unsurprising that she played arguably the most important role of any American during the transition. Jealousy and anger, however, may have caused fellow activists to be hesitant to speak about her to journalists and scholars, or to have downplayed her role while emphasizing their own.<sup>145</sup>

Despite this sense of competition, however, Sylvia Hill noted that recognition of McDougall's efforts demonstrates and appreciation for the entire anti-apartheid community, something its members appreciate:

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<sup>143</sup> Countess interview by author.

<sup>144</sup> Ibid.

<sup>145</sup> Each activist with whom I was able to speak praised McDougall and cited her important role in anti-apartheid work. However, it is possible that jealousy lingers elsewhere.

“We were very proud and felt she deserved to be there. Gay’s genius is understanding the legal basis of democracy, imperialism and forms of oppression. When Mr. Mandela placed his vote in the ballot box, it was a collective feeling of exhilaration for Gay to be there! I think I can safely say that Cecelie Counts, Sandra Hill and myself saw her as an extension of all of our work. We were on a three-way call and simply crying with sheer victory, since we started out (together) working against Portuguese colonialism. We never thought the South African regime with its Western backers could be defeated, even after Zimbabwe and Namibia had been liberated. To see Gay with Mandela was an extension of all of the US anti-apartheid movement’s work. It was a political symbolism of solidarity between, as Samora Machel often said, two forces fighting for a common objective. Her presence symbolized the international solidarity work against apartheid worldwide.”<sup>146</sup>

It is true, as Countess and Ross-Robinson have said, that not every activist or policy maker will find prominence in historical scholarship. It is probably also true that any oversight of McDougall has not been the result of an intentional effort by scholars, although it may be a sign of the scant attention paid to women and black Americans working on issues related to Africa. Members of the Southern Africa Project, including McDougall, continue to fight for social justice and legal equality, and a complete analysis of their work may not be possible yet. As time passes, however, perhaps they will find a more prominent role in scholarship of the anti-apartheid movement.

According to Gay McDougall, anti-apartheid activism was in many ways a failure. “We don’t believe that people should have a right to livelihood, to health, shelter homes,” she told William Minter. “I don’t want to be too harsh here because I think that we did real good with what we saw out there to do. But it was, in many ways, a shallow

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<sup>146</sup> Sylvia Hill, e-mail interview by author. November 20, 2008.

movement politically.”<sup>147</sup> American activists, according to McDougall, cared less about social and economic equality than political rights, a problem that can be illustrated by her story of watching television news images of bodies floating down Rwandan rivers during the 1994 South African election - a sign that the rest of the world had ignored problems in Africa until they became dramatic enough for television. McDougall correctly argues that social justice and human rights remain elusive in much of the world,<sup>148</sup> but attaining political equality in southern Africa is a large and significant step in solving these problems - creating a new government not only for Namibians and South Africans, but also a model for future changes. Still, in freeing prisoners lobbying for change, McDougall experienced a tangible victory - knowing that her efforts in the United States had directly helped South Africans.<sup>149</sup>

Part of the Southern Africa Project’s success comes not only from what its employees accomplished between 1967 and 1994, but also from decision ability to move ahead and face new challenges. “One of the most important things to note about the Southern Africa Project is that they closed,” Countess said. “They had the ability to figure out, ‘This is the end.’”<sup>150</sup> McDougall ended the Project after returning from South Africa in 1994. She began working at Global Rights<sup>151</sup> and later moved to the United Nations, while other Southern Africa Project employees also found work elsewhere.

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<sup>147</sup> William Minter, “An Unfinished Journey,” in Minter, Hovey, Cobb, pg. 9-58. Quote pg. 53.

<sup>148</sup> Ibid, 53-54.

<sup>149</sup> Hill e-mail interview.

<sup>150</sup> Countess interview by author.

<sup>151</sup> Then the International Human Rights Law Group.

Prior to working for the United Nations, McDougall played a key role in organizing the World Conference Against Racism, perhaps appropriately held in Durban in 2000.<sup>152</sup>

McDougall has used her experiences in Namibia and South Africa to try enacting change in other societies.

While her subsequent roles may not have been quite as public as “standing next to the man while he votes,”<sup>153</sup> McDougall has gained high esteem in the eyes of her peers. Minter has called her “high-profile activism” an “exception” to the limited role that most American activists were able to play.<sup>154</sup> Reddy and Hill agree that McDougall effectively found her niche and was able to “get along with people,” rather than becoming bogged down in organizational competition, as so many of her peers did.<sup>155</sup> Ross-Robinson praised McDougall for a number of personal traits, as well as for her continued activism. “She has an extraordinary mind and has made a huge contribution to social justice, not only in South Africa, but now at the UN around the world,” she said.<sup>156</sup>

In addition to winning the respect and admiration of her colleagues, McDougall’s style of work has also earned her some detractors. Countess, who says that “in my next life I would like to be Gay McDougall” also adds that “she’s a really smart woman. Some of that fearlessness is really hers, and it leads to people really admiring her or

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<sup>152</sup> Countess interview by author.

<sup>153</sup> McDougall interview by author.

<sup>154</sup> Minter, 50.

<sup>155</sup> Reddy e-mail interview, Hill e-mail interview.

<sup>156</sup> Ross-Robinson phone interview.

writing her off as a bitch. She's hard to work with but effective."<sup>157</sup> A *Washington Post* article mentioned that some of her South African colleagues found McDougall "abrasive," but that her toughness and determination enabled her to accomplish important tasks with very little support, and even despite opposition, something that most individuals find difficult.<sup>158</sup>

That effectiveness makes McDougall an interesting candidate for future research. While this thesis has focused on her work at the Southern Africa Project, there is certainly a much larger life to write about - one that involves activism in American civil rights, in southern Africa, and throughout the world. If she allows it, a biography of McDougall could highlight her important and undeniable contribution to human rights work in the United States, South Africa, and elsewhere. In addition, a more detailed look at the Southern Africa Project, and indeed at the entire Lawyers' Committee for Civil Rights Under Law, may be feasible at some point, particularly as more documents become available. While actors from the Southern Africa Project remain alive and serve as useful sources, document research remains difficult - and will until the unsealing of records nearly fifteen years from now. Perhaps undertaking such a project in a few decades will result in a comprehensive look at the Southern Africa Project's activism. Finally, as Countess has said, little scholarship looks at the important role of women in American anti-apartheid work. The new film *Have You Heard from Johannesburg?: Apartheid and the Club of the West* contains interviews almost entirely with women, although the film does not examine gender. Certainly Countess, Ross-Robinson, Cecelie

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<sup>157</sup> Countess interview by author.

<sup>158</sup> Duke.

Counts, Gail Hovey, Jennifer Davis, Adwoa Dunn-Mouton, Sylvia Hill, Dorothy Thomas, and others impacted the movement tremendously. McDougall certainly was influential, but these women should not be forgotten either.

Despite her obscurity, McDougall appears to treasure her memories of working in southern Africa, saying that standing next to Mandela was “all the recognition I need.”<sup>159</sup> Indeed, she seems fulfilled by the work itself. Knight’s claim that McDougall is “exceptional” should be taken seriously, as she deserves credit for guiding successful transitions to majority rule in Namibia and South Africa, after decades of working toward that goal. Her activism has benefitted oppressed minorities while simultaneously winning the respect of her colleagues. “Most people are really lucky if they have the opportunity to be part of something that’s good for the world,” Countess said. “Gay’s had that opportunity several times. Moving from Namibia to South Africa to Global Rights, (McDougall) was very much a part of a real struggle for civil rights. It’s amazing for one person to be a part of, and even catalytic, in so many things like this.”<sup>160</sup>

That McDougall and her group have been catalytic in so many arenas is important to note, and this project represents an important step toward bringing them the recognition they deserve. They belong in the historiographies of not only the American civil rights movement, but that of African liberation movements as well. Indeed, the Lawyers’ Committee is an important part of the legacy of John and Robert Kennedy and Lyndon Johnson, and these men’s early contributions should not be forgotten. Scholars and biographers should remember the fateful meeting the three held in 1963 and note that

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<sup>159</sup> McDougall interview by author.

<sup>160</sup> Countess interview by author.

the organization they envisioned succeeded even beyond their own expectations. Historians of gender will note McDougall's role in standing next to the man, literally in 1994, and throughout the movement as she dominated an area of politics for which men are most prominently known. Finally, this thesis supports the emerging trend of seeing global civil rights movements as connected and interactive during the late twentieth century. McDougall, the integrationist baby who fought segregation in the United States and apartheid in southern Africa, and her colleagues stand as proof that leaders of civil rights movements during the late twentieth century deeply influenced, and were influenced by, each other.

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