

THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Patricia Viseur Sellers

International Center for Ethics, Justice and Public Life

Brandeis University

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Interviewee: Patricia Viseur Sellers

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SS: This interview is part of the Ad Hoc Tribunal Oral History Project, a project that really was launched by Brandeis University, the International Center for Ethics, Justice and Public Life.

And the idea is not so much to conduct a journalistic interview, but really to talk about your experience in particular during the first ten years of the life of the Ad Hoc Tribunals. I'll prompt you with a few questions about your experiences and your role in the Tribunal. Really, the idea is to be driven by your reflections and your memories that you think are the most relevant. This project fills the space left open despite the amazing amount of literature, scholarship and jurisprudence about the Ad Hoc Tribunals. It wants to reveal the experiences of the actors in the first ten years of the life of these courts. So we've been talking to prosecutors, to judges, and folks in the Registry, and to under-the-radar folks like the interpreters, translators or staff from the Victims and Witnesses Unit. You know, we want to get what their reflections of how the initial ten years were. So the conversation is intended to be broad and very much narrator driven. We want to hear what memories or reflections were important to you.

So I'm going to start with some basic questions. Feel free to go where you want. Okay?

The first question is really about your journey to the Ad Hoc Tribunals, to the ICTY. How did your appointment as a Legal Advisor come about at the ICTY and ICTR? And why did you take it?

Sellers: Okay, I think I've probably told people about the story. In essence I was in Europe, living in Brussels. I was working at the European Union; I was a permanent consultant on the desk for Thailand and for Myanmar, which was then called Burma. Knowing that I would stay in Europe, I was eager to return to practicing criminal law. At the beginning of my legal career, I'd been a public defender in Philadelphia. Prior to working at the European Union, I'd worked at Price Waterhouse in Belgium. Before living in Europe, I'd lived in Rio de Janeiro, Brazil, and had worked at the The Ford Foundation, funding human rights projects. And now that I lived Europe, I anxiously wanted to get back into law. However, I didn't want to practice private or commercial law. At the European Union, I basically was using my political science degree since the work concerned Thai and Burmese economic and political development issues. I came to understand that the UN was setting up this thing in The Hague, which was three hours away from Brussels. It would be an international criminal court. And so I asked the husband of my husband's cousin, who was a EU official in New York, to send me by fax — you know how long ago it must have been — the Tribunal's Statute. I remember receiving the Statute and reading it. I saw that it was criminal law, that it was international criminal law.

By that time I had become very familiar with torture because of the Brazil experience, understanding torture and human rights violations. I remember I had bought a book on crimes against humanity — it was mostly on my shelf, because I'll just collect those books and have nothing to do with them — and I remember pulling it off, a pink crime against humanity book and started reading it. And I saw the ICTY Statute and I read it twice, and thought, "oh, my

“Goodness.” I thought, “this might be a fit.” My husband's cousin then faxed another document about who were nominated to be judges. I saw that the American judge, Gabrielle Kirk McDonald, was a woman who had gone to Howard University. So I said to myself, “This has got to be a black woman if she went to Howard.” I called her at The Hague and introduced myself. I asked, “Could I be your law clerk? Could I in anyway work with you so that I could get back into criminal law?” Gabrielle Kirk McDonald was so generous; she came down to Brussels to interview me.

SS: You're kidding.

Sellers: Yes. And we went to have lunch somewhere. She interviewed me, and then she said, “Well, yes, I think you could be my law clerk.” And, I had to say, at the time, “I'm a woman who's 39 by now, not just out of law school.” And she says, “But you will have to come up to The Hague. The person who interviews everyone before you are permitted into the building is Graham Blewitt. So you do that and tell him that you want to work in Chambers.” I came up to The Hague — it must have been in February 1994 — and talked to Graham Blewitt about working at the Tribunal. Then I was supposed to go to the judges' office. Blewitt looked at my CV and talked to me. He asked, “Well look, would you like to work for the Office of the Prosecutor instead?” And I said, “Yes,” because I thought I could get back into trials, which I missed from my time as a public defender. So, I contacted Judge McDonald to say, “I just accepted an offer at the Office of the Prosecutor.” She said, “Oh, look, it's absolutely fine, I have another law clerk I'll be interviewing anyway.” She and I are very good friends until today.

That's how I entered into the Tribunal. And, I'm very happy — I never make cold calls, but I made one in my life that worked out.

SS: Really well. [Laughs]

Sellers: Really well. [Laughs]

SS: So what happened when you first arrived? What was it like? Were there surprises? What happened in your first few weeks and in your first few months?

Sellers: Well, the first couple of months — and I haven't thought about this in a long time — we were located in the building where the Tribunal is located today, but we only had two floors. The first floor was administrative personnel. The second floor was where the analysts and the attorneys sat. I sat, as a matter of fact, next to Pat Trainer, who I just ran into a couple of weeks ago. Pat headed up the strategy team that was in the same section or part of the office. And Theresa McHenry was also in the section where I sat. It felt very much like we moved into a building that was in the process of being evacuated for something. There were partitions, not walls, kind of like dressing partitions or things of that nature. People were just catty-cornering their desks around. Everyone, all of the investigators and the attorneys, in the Prosecutor's office fit on this one floor in a kind of haphazard manner.

Everyone was very open, very friendly and introducing themselves. There was a feeling that we were about to embark on a project that was exciting. Something was about to happen.

Everyone was reading the Commission of Experts Report (Commission of Experts Established Pursuant to Security Council 780 (1992) to Investigate Violations of International Humanitarian Law in the former Yugoslavia (1993-1994)). Many were people who came to The Hague lived in other countries, particularly the Americans, and had never been to Holland before. So, it was that kind of feeling — if you'd ever been to camp as a child and everyone greets each other and puts away their bags, saying, "When are we supposed to meet for dinner?" or "What's the first activity?" So there was a bit of a buzz in the air. In addition, there was this undercurrent that there had been a Commission of Experts. Some people who now were working at the OTP had been on the Commission, such as Nancy Patterson. Some of the interpreters had been on the Commission, such as Maja Drazenovic-Carrieri. Others were familiar with the Commission's work, such as Payam Akhavan and Morton Bergsmo because they had worked with the Special Rapporteur on the situation of Human Rights in the Yugoslavia, and Tadeusz Mazowieck from Poland. So there were those who'd been slightly engaged in this former Yugoslavia project. We knew that soon we would be engaged, but didn't know what types of day-to-day activities that we would do.

Graham Blewitt, the Deputy Prosecutor was in place, and Justice Goldstone, the Prosecutor, had just arrived. When I entered the Tribunal, it was July of 1994. So it was about six months after I had met Judge McDonald. I remember the first telephone list of staff members. There were about 35 of us on the list, so it was of a very preliminary nature. The word Prijedor kept coming up.

Hanne Sophie Greve, the Norwegian judge, and the Dutch lawyer, Professor Tineke Cleiren, who were members of the Commission, in many ways said that Prijedor was to be central to our undertaking. The word was that Prijedor might be among our first cases. So, it was that type of excitement, of knowing that you were at the very beginning of something, even though you had no idea where it was going and how it was going to get done.

SS: An amazing time.

Sellers: Amazing.

SS: When you were first hired, were you hired as a trial attorney?

Sellers: Yes, I was hired as one of the trial attorneys, but at that time — since it was almost hard to imagine when the trials would happen — trial attorneys were concerned with investigations more than preparing themselves to go to trial.

SS: Right, so what were some of those things that you were engaged in, in those early days with respect to investigation?

Sellers: Well, in those days, for example, the demands or the rush was to go to the municipality of Prijedor. So I think that Bob Reid was already there. The Office of the Prosecutor was organizing investigative teams to commence the investigations in Prijedor. Then the word came

that refugees from the Prijedor detention camps might be in Germany, other places. Certain personnel in the Office of the Prosecutor were seconded or loaned to the Tribunal by the U.S. and other governments. There were several FBI officers. One seconded woman was already in the Prijedor enclave. Her first name was Sue, I believe. She was a nurse, I think, or had a nursing background too. I remember she and others were traveling back and forth on missions, right? The daily task was to familiarize yourself with the Commission of Expert's report. I remember talking to Pat Trainer about how he had to set up a strategy team. What should the strategy team do? Who would be on the strategy team? There were tasks about understanding the background of the Tribunal's Statute and understanding what was the mandate of the Statute. Bill Fenwick, a Canadian international lawyer who was there had shelves of international law books that he and Payam constantly referred to. Seminars were held for everyone, where Bill would explain what is international criminal law. Payam explained what are crimes against humanity. So we were at a stage where the staff, on a daily basis, were trying to familiarize themselves with facts, the law and then be prepared for a deployment of four-to -six weeks of on-site investigations.

SS: Were you on those missions, on the field missions and private investigations?

Sellers: Well, I was about to go on mission. Right then, one of the cases that was being discussed was Dragan Nikolić; I think it was Theresa McHenry's case. It was about November of '94, I think. It was our first indictment. By September or the beginning of October, I remember I was thinking that I was going to be sent on a six-week mission. I didn't realize

before that that was part of the job, you know. I had a son who was five years old and who had just started first grade in a new school. He had he turned six by then. A six-week mission would have been very difficult, frankly too much. I was already commuting from Brussels, you know six hours a day round trip. The logistics were challenging, to say the least.

But kind of fortuitously, during that time period Graham Blewitt, the Deputy Prosecutor, and Goldstone, the Prosecutor called me down into their office. They remembered my background from The Ford Foundation in Brazil, of working with women's NGO groups. In that post, I had had to understand torture and certain international law aspects of people coming out of the dictatorship in Brazil. But more importantly, that there had been quite a vocal participation of feminists in structuring the Statute. Groups not only from New York, but from other parts of the world had contributed to the Secretary General's Report to the Security Council that had established the Tribunal. Goldstone and Blewitt then asked me if I would look at sexual violence under our Statute to determine how we could investigate it, and how we could eventually prosecute the crimes. And so, because of that, I didn't have to go on the six-week [Laughs] mission.

SS: You deflected that.

Sellers: Right, I had a whole other mission to do.

SS: And you took that.

Sellers: "Yes, yes," I thought. However, I asked them, "Let me think about it for a night." I had a great sense of a coming together of parts of what I had done in Brazil for three years, and parts of what I had been engaged in as a public defender. Also, it brought together my past volunteer work with the Quakers that I had done for many years in Philadelphia, going on human rights missions throughout Latin America. I could see that this offer from the Prosecutor as work that was vital and necessary to the Office of the Prosecutor. I had interacted with and had been a part of NGOs before. So I didn't have a negative attitude or say that it wasn't for me, like "Oh, my goodness, the NGOs are banging at the door. Well, open the door. Do we have enough chairs? Let's see what..."[Laughs] And I think that Goldstone appreciated that with a rigorous legal approach and an investigative approach, we could confront the issue of sexual crimes. So I do have to say that that both he and Graham Blewitt knew and were much wiser, I think, than some of the other colleagues. They thought, "We're not going to outright dismiss this [the sexual crimes] because this is part of our mandate. The question is how do we do it?"

SS: Right, so it's interesting that in the last couple of comments you made, you hearken back to your work in Philadelphia, in Brazil, even in the European Commission. How did the ICTY compare with any of those other institutions that you worked with, with your role in those institutions?

Sellers: I think one of the quick comparisons was that in an Office of a Public Defender — at least the Philadelphia Office, which is a fairly large office — you're constantly engaged with

clients, the accused. They're indigent. They come from different ethnic backgrounds. In the Philadelphia office in which I worked, most were black or Puerto Rican. Most were young men under 30; however, not all. As a Public defender, you went to the prison system on a regular basis to do interviews. You went to district hearings. You went to municipal courts, and then to state common pleas courts. You had relations with interpreters for people who spoke different languages. You had relationships with different social services within the prison system for the accused.

Some of those very same responsibilities would be reproduced in the work with the ICTY.

When I worked in Brazil, it was really about understanding the social context of law. Some were the feminist projects that I funded in Brazil — projects relating to human rights in favelas or land rights, or projects related to The Maids Association of Brazil, who were women organizing as maids, at that time, since they were not recognized as that being a profession. So it's a very social consciousness with a human rights framework, and that could be brought to the ICTY.

Having been at the EU, which is really a bureaucracy, I didn't use my legal skills. However, I certainly brushed up on administrative skills, such as what I call the "Art of the Memo."

Everything is done in writing. It's a multilingual atmosphere. The main languages are English and French, but there were thirteen languages in the EU at that time. Any meetings could be in English or French. You're allowed to speak and write in your own language but often you listen to a meeting in a different language with headphones. It was an extremely European multicultural context but very, very bureaucratic, right? So that allowed me to work in a UN

setting and not be afraid of bureaucracy. I would joke with my colleagues, "But don't you know 'The Art of the Memo'? It's all about who to CC, and you volunteer to take their notes because whoever writes the memo basically tells you what the meeting was about. And that is what the meeting will be about historically."

SS: That's right. That's right.

Sellers: So those types of skills came with working at the EU for four years, such as writing reports on projects, or understanding the interplay of diplomacy with a project. All of those different aspects came together at the Tribunal, the ICTY.

SS: So, you've already touched on a little bit of this, but I wonder if you could say more about working in an international environment, where not only do you have different languages and different cultures, but you also have different legal cultures. I mean, you have a strong influence from the common law system but you also have civil law lawyers. So could you maybe talk a little bit about those challenges? And it could be back to linguistic or cultural matters, but also the different legal systems.

Sellers: Well, it was one of the important acculturations, I would have to say, to understand. It's not that you were building a new legal system; an international legal system existed. It's just that it had not functioned on a day-to-day basis in a tribunal setting since Nuremberg or Tokyo. Those two military tribunals were — if Yugoslavia was ad hoc, they were ad-ad-ad-hoc. I mean,

they basically began and ended within a year. At the Yugoslav Tribunal, and also at the Rwanda Tribunal, you had lawyers who were coming from not just an Anglo-descended common law system, but also the Germano-Roman civil law system. There was also a judge who came from Egypt at the time, Judge Georges Abi-Saab. So you had the influence of a Muslim-Arabic legal system, although Egypt also inherited some Anglo law aspects.

How this came about — I mean, now we might laugh, but at times there were some quite vociferous discussions. That's why I'm saying it was a type of acculturation, because you're brought up in a culture. You believe that your culture is not relative to other cultures, rather it's the truth. So therefore, when the common law lawyers would understand that hearsay evidence would be permissible, they just felt like, "Well, we can't do that; hearsay *per se* is not permissible because it's unfair, unless it's one of our 22 exceptions." [Laughter] And I remember that one of the discussions, particularly when prosecutor Carla Del Ponte came, was that she wanted us to interview all of the accused. She said, "And the accused will be allowed, before the trial begins, to speak in court." And the common law lawyers we're like, "No, you can't let the accused speak in court. And you're not going to swear them in? No one can speak without being sworn in!" I remember discussing that with German attorney Hildegard Hertz-Retzlaff. She said, "Well, you know in our system, yes the accused can speak in court and they don't have to be sworn in." And I said, "If you don't swear them in, how do you know they're telling the truth?" She said, "You don't necessarily think they're telling the truth, it's not about that — you're looking at this all wrong!"

SS: [Laughing] That's really interesting.

Sellers: It's very interesting. For the common law attorneys, there was also a procedural issue, in terms of the presentation of evidence. The defendant would speak only in the defense case. There was no way the defendant would speak prior to the opening of the prosecutors' cases. Unimaginable, right? For the civil law lawyers, this notion of cross-examination to them was quite ferocious, almost undignified. I remember we would have sessions to hone our cross-examination skills, to practice them or teach them. Geoffrey Nice was one of the outside attorneys brought in on one of these sessions. The civil law attorneys had real conflictual issues about going after a witness in what seemed to be such a harsh, demeaning, non-respectful manner. For the common law attorneys, we would look at that as a lack of skills, or a lack of legal ability. For the civil lawyers, they looked at that as an unnecessary skill — "I'll ask the questions and if my questions aren't sufficient, the judge will ask the questions and we'll be fine." And the common lawyer attorney said, "Well, the judges don't ask questions, they're there to watch the two of us ask the questions." And then we, as the common law attorneys, had to understand that the judges will ask the questions. They will often ask the questions that they believe were left unasked, that neither one of the parties asked, or a question that they want to ask anyway.

So we got used to these different legal styles, where a judge is more interventionist, where the judges feel they have to maintain the courtroom and they participate, where a cross-examination is used but hearsay can come in and be weighed like any evidence, where the accused might

speaking before a trial — most accused choose not to do that. The civil law attorneys wanted to hand up the dossier, the package of information to the judges, and the common law attorney said, "No, you have to submit that evidence according to the rules, and the judges aren't supposed to see the whole dossier; they're just supposed to see what was submitted into evidence." So, all of these legal/cultural differences had to go through the sieve of the Rules of Procedure and Evidence, presentation of evidence, and even the gathering of evidence at the investigation stage.

It was interesting five to ten years later when new attorneys would join the OTP. Whether they were civil law or common law trained, they would go through a bit of the legal cultural shock of, "What was to be taken from each side?" By that time period, we had worn off enough of our edges to almost think, "This is normal. This blended system is normal, because it gets to the truth, right?" We'd changed cultures, and here again it was because this culture would bring us to the truth. One can certainly see that process when the ICC was set up. Now you have victim's participation as part of the proceedings. Once again the international legal culture, in its day-to-day functioning for trials, has changed.

SS: Right. Before there was some acceptance of this "new normal" — to the extent that within your trial team you had different legal cultures — how were those differences resolved? If it wasn't something that the judges on the bench were called to decide on, but more as how you were going to pursue an investigation, how were those things resolved among the different legal cultures?

Sellers: You know, that was the importance of how the ICTY Rules of Procedure and Evidence would guide us. To the extent that the legal differences could be interpreted *via* the existing rules, that's what people reached for. I think it was lawyers who said, "Well, let's look at it, let's look at the Statute" or "Let's look at the Rules" or "Let's look at the regulations." That's how it occurred. There were so many differences — in terms of the presentation, the cross-examination — that some trial teams in the beginning, such as the *Blaškić* trial team, were all Anglophone. So they didn't have to worry, necessarily, about resolving such issues, although there were differences between the American legal system and the British legal system.

When Theresa McHenry was in trial, her lead counsel, at one time, was from Sweden and another one of her co-counsels was from Italy. So she really understood the blending of those processes in working with them in terms of evidence, in terms of the cross-examination, in terms of presentation, and in terms of objections made in court. You know, where civil law attorneys might make objections but common law attorneys act as if that's, you know, my "secret quiver," and "I can object to the extent that the defense attorney might not present their case." So there were those types of issues. The first trial team that I was on was had Mark Harmon and Mike Blacksill and myself. Mark Harmon dropped out. So Mike Blacksill and I, both common law attorneys, so we didn't have much of any evidentiary presentation clash. However, the attorneys who worked on the mixed legal teams might have really had to accelerate their acculturating themselves to both systems.

SS: Right, right. And to the extent that the first set of rules were amended — what, how many times? Fifty times? But the first set of Rules were largely based on the American federal Rules of Evidence and Procedure, and drafted primarily by common law lawyers, so they eventually changed over time. But to the extent that that was the starting point, did you sense that going to the Rules to resolve conflicts, or at least clashes between the different legal systems — were they often resolved in ways that you understood or were familiar?

Sellers: I think so. There was certainly more a propensity or a tendency to sense their common law background nature, except when accepting that hearsay evidence shall be included. Wherein Rule 96 states that "No corroboration is needed for evidence of sexual violence," even in certain common law systems, evidence of corroboration might have been required. Also, there were certain complicated rules that ended not being used as much. Rule 89 was for general evidentiary admissions or exclusions. As I said, specific evidentiary admission and exclusion came under Rule 96 for sexual violence rule, but Rules 97 and 98 were also specific evidentiary rules that were more complicated. They weren't resorted to as often. For an issue, that would have been the equivalent in the American common law exclusionary rule of the fruit of the poisonous tree. There were a couple of instances that came forth, but not very often.

So clashes were avoided as much as they were reconciled or resolved. Later on, the Rules really changed due to the nature of the compounded trials, using similar crime-base evidence for different accused. What you see is that, "Oh, maybe the civil law's dossier system of allowing in evidence that is written could assist us," as opposed to just saying, "That's a good rule, why don't

we have it in?" It became a necessary amendment to the Rules due to the trial circumstances. We, the common law lawyers, would probably have to say that with a bit of a grin; it was probably always a good rule. Given the circumstances, necessary too, to amend admissibility rules of crime-base evidence through Rule *92bis*, then Rule *92 ter*, then Rule *92 quarter* and Rule *92 quinquies*. So, there is much to be said for understanding the dossier system of giving crime-base witness evidence to judges as opposed to calling them in individually to testify in certain trials.

SS: Right, particularly with mass crimes cases where the evidence is so voluminous, and relevant to more than one accused.

Sellers: Yes.

SS: So we talked a lot about the legal culture. What other challenges come to mind when you think of those first five to ten years? We talked a little bit about linguistic and cultural, and legal culture. Any other kinds of challenges?

Sellers: Well, one of the challenges was linguistic. The EU was comfortable being multilingual with official English-French as working languages. The Tribunal became monolingual, in English, quite quickly. There were several people who spoke French. One of the deputy investigative leaders spoke French and had an interpreter that would accompany him to meetings. However, the Anglophone nature of the institution, particularly of investigators and

lawyers, was so overwhelming that it really pushed the linguistic culture into being English. That also shaped the legal culture to a certain extent, until you had civil law people who were fairly fluent in English. I want to bring that point out. There wasn't a lot of — how could I say — policy initiatives or money, budget, consecrated to keeping the office bilingual in English and French as occurred at the European Union, in terms of conducting day-to-day meetings or in terms of translating day-to-day memoranda. I mean, the Rules were translated. The only part of the office that retained a bilingualism were the judicial chambers. Certain judges worked in French. French was always a language within the court system, within the translation booth. However, it didn't become a working language in the Office of the Prosecutor.

In Rwanda, at the Rwanda Tribunal, the first Deputy Prosecutor, Judge Honoré Rakotomanana's mother tongue was French. His ability to communicate with members of the Yugoslav Tribunal in English was limited. I remember Justice Goldstone always saying, "Well, the problem is I don't speak French, Patti. The problem isn't that Judge Rakotomanana doesn't speak English." This was a generous way of seeing it. There were more Francophone speakers at the Rwanda Tribunal at that time; after Judge Rakotomanana left the ICTR, the second deputy prosecutor from Cameroon, Mr. Muna, came in and the Office of the Prosecutor culture became more Anglophone there too. Also, Rwanda was becoming more Anglophone as a nation too. So I wanted to say that linguistics did, in some way, impact upon us. In the meantime, some of the Office of the Prosecutor staff spoke BCS, Bosnian/Croatian/Serbian. Thank goodness we attorneys didn't influence their linguistic culture, because that really assisted with the evidence.

Many of the BCS speakers were either field interpreters or translators, or were part of the strategy team. They had English as a very, very good second language.

SS: With respect to the mandate that Justice Goldstone and Graham Blewitt asked you to undertake, were there particular challenges in this first five to ten years that stick out as particularly difficult?

Sellers: Well, I mean the mandate had been to investigate and to prosecute sexual violence. I've written about this very briefly in some articles. One that you probably know is: "Gender Strategy is not a Luxury" [see "Gender Strategy is not Luxury for International Courts Symposium: Prosecuting Sexual and Gender-Based Crimes before International/ized Criminal Courts," *Journal of Gender, Social Policy and the Law* 17(2)]. I would direct anyone to the book that just came out yesterday, *Prosecuting Sexual Violence*, by Serge Brammertz and Michelle Jarvis, especially Chapters One and Two and Three. The book probably delves more into the actual execution of policy than the office ambiance. One might also read Richard Goldstone's article written years ago, in *Case Western Reserve Journal of International Law*, right? ["Prosecuting Rape as a War Crime," Volume 34, Issue 3, 2002.]

SS: I think that's right.

Sellers: He speaks about this time period, and in particular, about the challenges of trying to investigate and prosecute sexual violence crimes at the office, and the reaction of certain staff.

An investigative-driven office and a prosecutor's office in the 1990's, as a foregone conclusion, had a very male/macho type of office atmosphere. Most of the investigators hired or seconded by their countries were also male. Most of the prosecutors were male, although not all. To prosecute sex crimes wasn't seen as a very masculine undertaking, because we had to deal with more than serial killings. In most domestic situations, investigators and prosecutors who were assigned — way before the days of CSI [Crime Scene Investigation] television shows — to investigate homicides or serial killings were men. I worked at the Public Defender's Office and had quite a few contacts with my colleagues in the District Attorney's office in Philadelphia. Homicide and in the Philadelphia District Attorney's office was almost —

SS: All male.

Sellers: Yes, all male, as it was in many places around the United States, and in France, and in England. And as a matter of fact, at that time period, most female detectives worked in what was a family crimes section, where you did some sexual violence, or domestic violence. Female detectives rarely received promotions into upper level detectives ranks. Therefore, most could not be seconded by their governments and sent to the ICTY. So there are many reasons that the atmosphere in the ICTY was not only very masculine, but peopled with professionals who were men and who had been used to working mainly with males too in their home jurisdiction. Also, they assumed that it was normal for men to be in charge. They also felt it was absolutely normal in the crux of our job — when a war occurred — that they were to look for "who killed the dead

bodies," not where there was the sexual violence. They essentially transferred their domestic police outlook to the international arena.

So in many ways, that created an atmosphere that was challenging, not just for myself as a woman in the office and for other female lawyers and the female investigators, but challenging because all of a sudden — maybe not all of a sudden — that policy directive was, "We have to look at sexual violence too." To investigate sexual violence would not have given them high prestige and power in their jobs at home. Why would they leave their home jobs and come to The Hague to be assigned to a sexual violence case? You know, somewhere in retrospect I can understand that some might have thought, "That's not what I do, it's a bit of a demotion. Is that so important? Because it hasn't been important to me before."

There was a contingent of people from Australia who had worked on war crimes before. Graham Blewitt, Bob Reid, Ann Sutherland and others whose names I can't remember. Graham Blewitt, as Deputy Prosecutor, however, understood that under the Statute, we were to look at sexual violence. This hadn't been the experience of even people who had worked on war crimes in their domestic war crimes office. They had investigated massacres that happened in The Ukraine during World War II, and that were connected to members of the Australian immigrant community. So, in many ways it was a combination of who they were, where they came from, what they had done, and the unimportance of sexual violence for their home jobs that swayed them. To watch sexual violence investigation and prosecution become a prominent policy to

execute at the office was disorienting for them. There was a backlash against the subject matter, and therefore against me because of the subject matter.

To the extent that I could take it personally, even though I was the person charged with bringing it forward, I knew that I was a lightning rod. I was confused, in most of my colleagues mind, with my subject. I really embodied my subject, and probably in many ways they felt that this was an inseparable part of me at the office. I think, in addition, because I lived in Brussels, I really didn't socialize in the evenings or on the weekends, so they didn't get a chance to know me too much as a person. Also, since I had this heck of a commute, I didn't go to the cafeteria very often either. Like many women who commute, they work through lunch or take their lunch back to their desks. Once, I remember senior trial attorney Minna Schrag sticking her head into my office and saying, "Oh, I think you need to get to the cafeteria some time." But, you're always trying to juggle.

So I can understand that most of the investigators' and lawyers' association with me was very much on a work mode. I also understand that their association was about the different issues that sexual violence brought to them. In addition, besides strategizing for sexual violence, part of my portfolio was to examine the gender relationships in the office. The Office of the Prosecutor had made a decision. We were to form gender-integrated investigation teams as part of our gender policy. If not, it would be very difficult for the office to function and gather evidence of sexual violence. So that was, internally, more than challenging. Through it all, staff started to self-identify according to their interest in investigation or prosecution of sexual violence: Nancy

Patterson formerly from the New York District Attorney's Office; Janaka from Canada; Trudie Gillissen from The Netherlands; Brenda Hollis, seconded from the US; Rita Pradham from Nepal; and so forth. Just when you think that you're on a sinking ship, all of a sudden, you find that there are plenty of dolphins and porpoises. There were people ready to paddle. It was extremely, extremely sustaining. As you know, there was a wonderful swarm of legal interns who have gone on in their careers to be fabulous folks in the legal community; that was the upside. And, importantly, we had the support of Blewitt and Goldstone at all times.

SS: Which was probably very key.

Sellers: That was paramount. I mean that it was really fundamental.

SS: You worked on a number of landmark cases that came out of both the ICTY and the ICTR, you know, *Furundžija*, *Akayesu*, *Kunarac*. Can you talk a little bit about what are the most memorable cases for you and why they are so memorable?

Sellers: Well, all three cases were very, very memorable. Now, not only are they landmark cases but, thank goodness, they've been able to produce a flow onto other jurisprudence that is begetting itself over and over again. I find *that* is what's very interesting. Take these three cases, and then read about other cases that occurred around the same time, I now begin to group the experiences of the cases. For example, in the *Tadić* case that I worked on — we didn't ask, but the female witnesses asked for a group of women to interview them. So, a group of female

attorneys and investigators went to this location to interview "The Omarska Women" who'd been sexually violated; at least some were sexually violated. The *Tadić* case was delivered in '97, which really precedes *Furundžija*. When the *Tadić* case goes on trial, there had been no conviction for sexual violence against a female; however, *Tadić* delivers a conviction for male sexual violence. We'd worked on the female sexual violence in *Tadić*. Do you remember Suada Ramić who was shown in the video we saw last night? Her testimony was part of the *Tadić* trial. There was so much occurring on a day-to-day level at the office. We were thinking about other cases, working on the other trials, not just those three cases.

The case of *Akayesu* came out in '98, but it was in '97 that the trial began. So, really I started work on *Akayesu* in '96, during the *Tadić* trial. There were all of these phases of working on different cases at the same time. The judgments were often delivered at different moments. I worked in Rwanda and at the same time I worked in Bosnia, with victims, witnesses and with the investigators and attorneys from each Tribunal. What hits you is the blending together of how to deal with victims, the Tribunals' mandates and the diverse work forces, simultaneously. I remember one of the issues coming up in *Furundžija* — you might remember it — whether we should charge this as forced prostitution. It could come within the mandate, once Article 3 of the Statute expanded the inclusion of war crimes. However, was it descriptive of the accused's conduct — of what he did — or not? Was there a ponderous weight with the use of that legal terminology? Thinking about the law, actual facts, and thinking about victims, it all blends together.

What was very momentous was to keep all of these issues going and that somehow they all came together in a positive way. Notwithstanding that on any given day, you might be thinking about three different cases or three different testimonies. In hindsight, a lot of good decisions were made. When one gets to the particular choices, it can be very difficult. I remember the day the Gagović indictment was handed down; the Gagović indictment eventually became the *Kunarac* case. Gagović was killed while being arrested. The Gagović indictment was handed down on the day of or the day after the *Tadić* case began. I remember Gaby Miskowski, from Medica Mondiale, a NGO based in Germany —

SS: Oh yeah.

Sellers: The indictment is released. Gaby is at the Tribunal. She receives a copy and reads the crimes charged in the indictment. Afterwards, she drops into a chair. Medica Mondial had advocated for the prosecution of the Bosnian sexual violence and for how it should be pleaded. She now has in her hands a historic indictment that only charges sexual assault crimes. It is beyond what she could have imagined. She is, in essence, thoroughly stunned, okay? I mean, her reaction sticks with me. And I had that same reaction from Kelly Askin. When we'd met, the first time in Indiana, she'd done her wonderful doctoral pieces on wartime sexual violence. When she finally gets a copy of the Gagović indictment, and reads it, she too is stunned by the charging strategy. When we first think about it, and *Kunarac*, maybe we should've charged persecution only to brave something that's — But it's like seeing a color you've never seen

before when you first saw it, and now we've gotten used to that color. What else do you want to wear with this color, or should we highlight it more here? That moment sticks out for me.

In the *Akayesu* case, a couple of things were really prominent. I was certainly by then used to the kickback of gender politics, of trying to bring sexual violence into everything. But my goodness, to insert it into the law of genocide, there are limits in international criminal law [Laughs].

SS: Let's not be crazy.

Sellers: Let's not be crazy. You can play with crimes against humanity — as a matter of fact the Statute has a nice express provision for rape, there — but not the "sacred genocide" law. There's an image in my head of the discussions some of my colleagues had with me. They were very sincere. They didn't want me to make a fool of myself, you know. They referred to the Restatement of the Foreign Law Act to show me what the U.S. position was on genocide. "I'm concerned about you doing this," they said.

SS: Isn't that interesting?

Sellers: That was very interesting. I remember — again about the wonderful, gracious interns; Michelle Jarvis was on that case. Christen came over to talk to the legal advisory staff, you know to see how sexual violence could constitute genocide. I had written a very brief external

article where I questioned sexual violence as compatible with genocide. I offered that, "Well, we'll have to look to see whether the Genocide Convention was made for sexual violence or not. We'll have to really look at this." And Rhonda Copelon called and said, "Well, how close were you looking at that?" I said, "We're looking at that." [Laughs] Later on she says, "Don't you regret that article?" I said, "No, no, that article was good camouflage, you have to understand." [Laughter]

There was something profoundly iconoclastic about examining sexual violence as an act of genocide as a matter of international criminal law. It was outside of the boundaries of what was considered the international law norm. However, the more you contemplated the proposition and drew closer to the doctrinal essence of the crime of genocide, there was a coherent logic. The provision in the Genocide Convention of "causing serious problem, no harm" was drafted due to the reproductive experiments upon sexual organs, and the inherent sexual violence. I mean, sexual violence was innate to the crime, and not ultra-vires or foreign to it, as many thought. *Akayesu*, embodied that legal tension. At the Rwanda Tribunal, we eventually went forward with the charges. It was misunderstood, in many ways, at the Prosecutor's office at the Yugoslav Tribunal. When the case was into its final days, Pierre Prosper and I worked to draft the closing brief. It the first closing brief that any case at either Tribunal filed. It received almost no office support except from that small group of dedicated colleagues. We would file a closing brief in *Furundžija*. Later on, closing briefs became a norm at the office. Some in the administration complained that the *Akayesu* brief was too long. Now briefs are voluminous.

[SS: Laughs]. *Akayesu*, if I recall, reached forty pages, my goodness! On top of that, it had maybe more than fifty footnotes, footnotes on genocide. And now it's become —

SS: Standard.

Sellers: So those cases standardized closing briefs, developing international criminal law procedural norms in terms of legal filings to close a trial. When finally the judgment in *Akayesu*, was rendered, all the legal advisors gathered in a conference the room at the ICTY. Two of the Yugoslav Tribunal attorneys talked about the importance of the case at great length. They spoke about everything except for the sexual violence charges. They had almost dismissed the meeting when I said, "No, hold on. There was something else *momentous* that happened in this case concerning the sexual violence." What's thoroughly amazing is that twenty years later, everyone talks about the sexual violence of the *Akayesu* case and not the killings,

SS: Right.

Sellers: Right. It flipped, you know. We came to comprehend that the sexual violence took legal prominence, not because it was a symbolic "sexual violence case" but because it was central to the main holdings of the crimes. There have been many cases that have charged and rendered convictions for sexual violence and that have also held convictions for killings. Sexual violence is what stands out. Those memories are uneven, although it must have seemed as if I were always advocating for sexual violence. Finally, concentrating in this area of law is quite

acceptable. Human rights clinics and legal institutions are set up to forward investigation or adjudication of sexual violence, an issue that at first was considered to be a "distraction."

SS: Right. Right. With respect to *Akayesu*, there's been a lot written about how the sexual violence came out during the trial through the testimony. Were you surprised by that? Maybe I should step back. We talked a lot about how you first came into the ICTY, and then had this request to take on this sexual violence mandate. That mandate you took on with respect to both the ICTY and the ICTR, correct?

Sellers: Right.

SS: Because Goldstone at the time was serving as a Prosecutor for both.

Sellers: For both Ad Hoc Tribunals, right.

SS: So to the extent that you had this responsibility in both Tribunals, and there's this case that is being litigated in the Rwanda Tribunal, all of a sudden this testimony comes out about sexual violence. Were you surprised? What was your response to that coming out, mid-trial, and what kinds of conversations with the investigator and Prosecutor in that case did you have pre- and post-testimony?

Sellers: Right, right. Well, I think now that can be spoken about a bit more openly. There is a movie called "The Un-Condemed," [SS: Yeah] which recounts the entire process. Pierre Prosper, Sarah Dashorri and I just saw each other a couple of weeks ago. In the movie, what actually happened is that during the investigative phase of *Akayesu*, the indictment first came back with no sexual violence charges. Binaifer Norowjee by this time had written a fabulous book for Human Rights Watch. It wasn't a book; it was more of a well-developed memorandum, called "Shattered Lives." I had a copy of it. I read it through and shared it with the investigators. There was sexual violence that had occurred in the commune where Akayesu was the mayor that should be investigated.

So I asked the Prosecutor, Judge Arbour, who was a bit skeptical. I said, "Do you mind if we hire a consultant?" And so we hired a consultant, Lisa Pruitt, who went down to the Taba Commune in Rwanda. She did a fabulous report on sexual violence in the Taba Commune where Akayesu was the mayor. When she returns to The Hague, she delivers a report to the Prosecutor. I, the Prosecutor, and Win Chi, a legal officer responsible for the ICTR matters were present in the room. Lisa Pruitt's experience at the Rwanda Tribunal is quite telling. People saw her as doggedly pursuing crimes of sexual violence. There was a bit of a macho kickback from her presence in the Tribunal, which is appropriately highlighted in the movie. However, Prosecutor Arbour says, "Well, we can't charge it because I don't see how any of the sexual violence is related to the accused." Pruitt was disappointed. I, too, was extremely disappointed and I didn't want to show Lisa how disappointed I was. "Well, we'll keep the report on file," I told her. Hence Prosper and I were quite aware of the sexual violence all around. However, we knew that

unless it could be linked to Akayesu, it would not be charged in the indictment. The case begins. Pierre is prepping Witness H before she testifies. He calls me in The Hague after he preps her. He says, "This – sexual violence – has come out in prep, and I'm putting the testimony on the stand." So we knew that day that it would come out. And it came out, as it should. I mean, Witness H talks about her recollections of rapes that happened. It is startling for two reasons. First of all, its evidence that hasn't been heard before, but it's primary because it's evidence of Akayesu being present during the rapes and other sexual violence. There is the link.

SS: Which didn't come out before.

Sellers: Right, which didn't come out before. What hadn't come out is this link of Akayesu to the sexual violence. It should have been revealed through better investigation. I mean, if the case had been investigated properly, some type of link to him might have been revealed, because the sexual violence was ubiquitous. So the testimony is heard. We now know the reaction from the judges. Pierre consults with the Prosecutor who informs him that he should ask for a recess, and request more time to investigate. During the request, the judges are actually admonishing the Prosecutor, as they should have, before granting us the recess to further investigate.

Investigative teams in Rwanda are reconfigured. They go back out to investigate. We took back out Lisa Pruitt's report, and went back to the women and about sexual violence at the mayor's compound. As happens sometime with sexual violence, when you say that so and so has already testified on the stand and said this and that – it allows spaces for other statements and testimony to be taken. Sometimes testimony fills out evidence where it should have been included earlier.

The investigation went really very well; very, very well. It was a watershed. It was an investigative team, this new team who were excellent; I mean, I sing their praises. It was a Madagascan woman and a Dutch man, and he was 6'2, and blonde, and she was like 5'1, and dark hair. I mean, they were just so complementary. They would arrive in Taba on Saturdays, to do their food shopping. The women thought that they were married or a couple. They really had this wonderful relationship with the women. I was with them for a day or two on their missions.

At the end of this period, we really had gathered a lot of evidence — some from people who we'd spoken to before, but we also had new leads. We had evidence that brought Akayesu even closer to, and consistently in the presence of, the sexual violence. In June, we asked for the indictment to be amended to include the sexual violence. When granted the request to further investigate, we informed the court that we would move to amend the indictment. In the meantime civil society groups, including the one led by Rhonda Copelon, asked the court to amend the indictment. I remember talking to Rhonda on the phone. I couldn't tell her that we were going to move for an amendment. I couldn't disclose that such procedures were underway. I thought then, everything is welcome: "Come in, come in with your *amicus* brief, that's absolutely fine." My understanding is that the *amicus* brief was not filed prior to the prosecution moving to amend the charges. I've heard Judge Navi Pillay say that the bench had never read the *amicus* brief. Although there's knowledge of the brief, it's hard to find in the Registry's record, having not been properly submitted. The judgment does refer to civil society being very interested in the pleading of the sexual assault evidence.

Civil society's support was greatly welcomed. Also, it gave civil society a way of buying into this first case. "Shattered Lives," and I have to say that Rayika Omar from Africa Rights had written a wonderful account of sexual violence perpetrated during the Rwandan genocide. It was Rayika Omar's account and "Shattered Lives" that I read and gave to Lisa Pruitt. The indictment was amended. I remember going to a meeting in Toronto, in October of that year, after the case had reopened and we had presented the evidence. The indictment was amended in a manner that — persons who didn't completely understand international criminal law didn't understand how the amendment had been drafted to include sexual violence. The prosecution amended the genocide count by adding more evidence to provision of "causing serious bodily or mental harm to members of the group," in addition to the killings. The amendment to the genocide charge consisted of the allegation of additional facts and not the inclusion of a separate, new charge. However, in regard to the crimes against humanity, we amended to add the express charge of rape. The war crime of outrages upon personal dignity, which was based upon the sexual violence, was also added. Some civil society groups, they claimed that the prosecution "only amended the crimes against humanity and not for genocide," although as amended, the sexual violence evidence was included in the genocide count and as a war crime.

When the case reopened, the women came to testify in Arusha. Pierre and I had discussed the re-opening with the defense counsel and with some civil society groups. Pierre and I — and, of course, James Stewart, then ICTR Chief of Prosecutions, now the Deputy Prosecutor of the ICC — and Sarah acutely knew that the sexual assault testimony would be a pivotal moment.

However, it was quite uncertain to what extent the "sacred genocide" law would incorporate

sexual violence as rapes. We were more certain to prevail on the rape charged under crimes against humanity. After the presentation of that testimony at the trial, we waited almost a year for that judgment to come out.

SS: To a happy surprise. [Laughs]

Sellers: Happy surprise, yes. One day before the handing out of the judgment, Pierre called me in The Hague. He would say something like, "Okay, countdown 8 or 5 or 3 days to judgment." You know, this nervous or anxious pondering. He would say, "I saw the body language of the legal assistant," and I would cautiously say, "Come on, Pierre, stop your speculation." [SS: Laughing]

SS: [Still laughing] Hysterical.

Sellers: Right. So we were extremely tense. In addition, it was wonderful for *Akayesu* to be the first ICTR case delivered. It set the judicial tone, even though the tone warbled after that in relation to presentation of sexual assault evidence.

SS: So that leads me into my last set of questions, which is really about the relationship between the Ad Hoc Tribunals and Nuremberg, both looking backwards and looking forward. So one series of reflections is of the Ad Hoc, the Nuremberg legacy, and to what extent the Ad Hoc are a manifestation of that legacy. Then sort of separately, what is the impact of the Ad Hoc on

the future of international criminal justice; and more specifically, even the impact of those first ten years on the future of international justice?

Sellers: You know what? I continuously read the Nuremberg and the Tokyo judgments and the subsequent judgments. Literally, I was rereading parts of them this past week, to put my syllabus together. I've taught parts of the Nuremberg judgment, and Tokyo and some subsequent trials for the past ten years at Oxford. The more I understand Nuremberg, the more the Ad Hocs appear to me as the descendants of Nuremberg. I'll say it this way: that the substantive crimes — holding Nuremberg/Tokyo subsequent trials together — the crimes against humanity and the war crimes have similar bearing to the Yugoslav Statute. For the Nuremberg Tribunal, the London Charter listed examples of war crimes. In the Tokyo Charter, war crimes were listed as just "violations of the laws or customs of war." In the Yugoslav Statute, essentially Article 1, the grave breeches, and Article 3, "Violations of the Laws or Customs of War," really became the operable war crimes. The *Tadić* appellate decision supports that the substantive matter jurisdiction of the Tribunal extends to war crimes that are not necessarily enumerated. In that manner, the Yugoslav Statute is interpreted almost like the Tokyo Charter. It's a similar type of mechanism there.

I also read that, even though it was a military tribunal, the military representatives came from different legal systems. Like the lawyers at the Ad Hoc Tribunals, the Nuremberg and Tokyo lawyers had to discuss and devise harmonious means to use their different legal systems in this singular judicial institution. I just finished reading accounts about the interpreters who worked at

Nuremberg and at Tokyo. As a matter of fact, simultaneous courtroom translation was first used in the adjudication of international crimes at the Nuremberg Tribunal.

SS: I didn't know that.

Sellers: Yes. And at the Tokyo Tribunal, they used it, but not to the same extent. IBM invented the first courtroom translation equipment so that you could listen and translate in English and French and then in Russian, and then in German. So, yes, I can imagine that there are Nuremberg and Tokyo legacies in more than one way. Understanding what is the jurisdiction scope of international customary law, and what are fair trial rights for major war criminals, were issues that were thought about for the first time at Nuremberg and Tokyo. And then, of course, the Ad Hocs and the military tribunals judged massive crimes. When reading the Nuremberg judgment, you realize that the judges said that the evidence was overwhelming. They decided to concentrate, in the judgment, on maybe five different types of war crimes: the slave labor policy; the persecution of Jews; the ill treatment of prisoners of war; and so forth. What the judges selected to discuss in the judgment wasn't a complete reflection of all the evidence that they heard during the trial. They didn't seem to exclude any evidence at trial in the Nuremberg judgment; they acknowledge certain crimes related to gender and cite to evidence of the deportation of 500,000 women as "domestic workers" in Poland, and to sexual reproductive experiments.

In the Tokyo judgment, if you read Chapter 8, it reads almost like a modern judgment from the ICTY. It describes war crimes in different geographical locations. It finds that rape was prolific, sometimes accompanying civilian massacres; sometimes it accompanied troop invasions or military occupations or withdrawals. One should read the sections on torture, especially sexual torture. Yes, these two instances of international criminal law tribunals are extremely related.

Are there differences? Yes, there's no appellate jurisprudence emanating from the Nuremberg or Tokyo tribunals. The Ad Hocs have rendered, for the first time, international appellate criminal law jurisprudence. Which I still often say to Michelle Jarvis and her team has been "undermined" in importance. We haven't considered the appellate nature of the international law process, particularly from a feminist perspective. Rwanda, Yugoslavia, and the Special Court for Sierra Leone, Cambodia and then the ICC have delivered an entire new body of international criminal law appellate jurisprudence.

SS: Right. When you say "undermined," do you mean "under-examined?"

Sellers: Under-examined.

SS: Okay.

Sellers: I'm giving a French meaning — *pas assez miné* — not delved into enough. Also, the relationship of Control Council No. 10 law for war crimes and crimes against humanity trials in

the American sector, often called the subsequent trials, are relevant. Well, actually subsequent trials were held in many sectors. We've reduced our legal history too much. There are "subsequent" trials happening now in Bosnia and Croatia, in Serbia. I remember at the ICTY when "Rule 11 *bis*" was issued to transfer cases, everyone wanted everyone else's case, but not their case, to be transferred. I was certainly among those people, "Please don't take *Stanković*, we're almost ready to try him." Right? But it's normal — with the amount of criminality, criminal conduct, and then the number of perpetrators and victims — that these cases be held in national jurisdictions. Now we're back to that same conversation of national prosecutions that happened after the Nuremberg and Tokyo Tribunals.

SS: It's interesting.

Sellers: Yeah, I continue to see parallels.

SS: Yeah, so really interesting, the sort of complementarity at work there through your Control Council No. 10, in the same way that we think about complementarity, informal and formal complementarity today.

Sellers: Yes, and of course I'm grateful that Control Counsel No. 10 changes the crimes against humanity from those in the Tokyo and Nuremberg Charters by adding rape and torture. I've never looked at the preparatory works, but you ask yourself, why would they add rape and torture, particularly since none of the subsequent Control Council No. 10 trials specifically

looked at rape? My impression — and there needs to be research on this — is that the reason they added in rape and torture is that there was so much evidence of rape and torture at Nuremberg that wasn't directly dealt with as an expressed crime. Therefore, the subsequent trials incorporate them to explicitly address the crimes.

The subsequent trials in different jurisdictions, they talk about rape as part of the war crimes and part of the violations of the customs of war. And even in the UN Commission, when they talk about their legal basis of war crimes, they go back to the 1919 Commission of Experts report of World War II, in which they list rape as a war crime. Even though rape and torture are not expressly listed in the London Charter, or the Tokyo Charter — we know that they're incorporated under the war crimes provision in the Tokyo Charter because Chapter 8 of the judgment is just full of sexual violence and rape. Return to Article Three of the Yugoslav Statute and Article Four of the Rwanda Statute that uses Additional Protocol II's express provisions for rape and torture. In one sense, yes, the Ad Hoc Tribunals descend from the WWII military tribunals and, yet, they could be said to flow back and forth to each other.

SS: Right. What about the impact of the Ad Hocs on the development and continuation of international criminal justice, looking forward now? What's the legacy of the Ad Hoc Tribunals on that?

Sellers: I think now that the ICC is operational, the Ad Hocs are a little like Nuremberg, except they're too close time-wise. Nuremberg has the benefit of almost being revered, setting on the

high hill of a legal Acropolis, almost a ruin where you go to touch the sacred stones. One doesn't really get too close or worry about residing there completely. For example, we won't notice that certain windows are missing, like explicit liability modes. We can be content to admire it as a wonderful structure. The Ad Hocs remain too close and might be a little menacing. They are still recognized as making a powerful contribution, particularly with the *Karadžić* judgment just being delivered. The *Mladić* judgment is getting ready to come out and the Rwanda Tribunal still has a couple of suspects to pursue and judge. Compared to the fact that the ICC isn't fully functional — I mean, they're not running five trials at the same time. It is not handing down ten judgments a year, for very good reasons. So the Ad Hocs are still chronologically too close to be completely revered, but when one reads the judgments and the decisions that have been delivered, it's certain that the Ad Hocs, the Special Court for Sierra Leone, and the Cambodian Tribunal, in the future, will be the referential basis in terms of legal precedents apart from the jurisprudence originating under the Rome statute.

Will those tribunals help the ICC's interpretation of its own statute? They have good working relationships. Certain procedural instances are completely different. There's no preliminary examination at the Ad Hoc Tribunals, there's no extensive pre-trial confirmation decision. Those procedures only function at the ICC. No shadow will ever be cast on them in terms of how things were done at the Ad Hoc. I hope that fifty years from now, the Ad Hoc Tribunals can [Laughs] take their place on the Acropolis, albeit not quite as ruinous.

Fifty years from now, under the steady functioning of the ICC, we'll realize that the beginning of twentieth century represented a missed opportunity, when tribunals failed to be established after World War I. Then an era of military and subsequent trials occurred, and after a gap, the Ad Hoc and other international tribunals and courts and related national prosecution began, including the ICC and its national complementary trials. Also, these international judicial courts spurred the legal redress of historical crimes that had enjoyed impunity such as the Guatemalan genocide or the Cambodian genocide. However, there are more that escape broader legal examination, such as the Bangladeshi war crime trials. What will it mean to our understanding of international law if we don't enlarge our jurisprudential perspective and look at the Ethiopian genocide trials or the Argentinian crimes against humanity jurisprudence. Hopefully, in the next fifty years, there will be a sea of current and past international criminal law jurisprudence emanating from international and national courts.

SS: Right, right. So two final questions, and I promise this will be the end. The first is just an open question, anything that you want to say that we haven't talked about already; again anything that stands out, that was important to you in your memories and reflections about the first ten years. And the second question is related to almost the beginning of our conversation, which I should've asked earlier. You spoke a little bit about your previous experience as in the Philadelphia public defender's unit, the Ford Foundation, the European Commission, and how all of those experiences came together at the ICTY. What we didn't talk about in the beginning was why you were motivated to work as a public defender, or in human rights work in Brazil. Or why

you wanted to go back to criminal justice work, from a different perspective in the Prosecutor's office. In this case, what drove you to those fields of "justice" to begin with?

Sellers: Right. I think it began when I was a girl and a young teenager. Being African American, I came of age at a time when among our heroes were Thurgood Marshal. We, the African American community, understood social engineering through the law, such as the work of the NAACP Legal Defense Fund. I was born in 1954, which was the year of *Brown vs. The Board of Education*. Law was held up as a manner to obtain justice, or one of the approaches to racial justice in the U.S. At the same time, and I'm not going to say that I only was inspired by those glorious heights. There were TV shows, like "Judge for the Defense," wherein these two lawyers, father and son, would walk down the steps that looked like the The Supreme Court. I don't know how much of that also just sunk in. It was the beginning of law shows on television. I do know that fairly early on, somewhere between twelve or thirteen or fourteen, I decided I wanted to be a lawyer. I never, ever wanted to be anything else. You know, maybe I thought that I' do a little jazz dancing on the side, but never as a profession, right? I just always knew I wanted to be a lawyer.

Paul Robeson, one of my mother's heroes, was a lawyer who went to Rutgers. That's what I was going to do. He was quite an advocate for social justice. Since my father had been in the army and I'd lived abroad when I was younger in Germany, I'd learned how to speak some German. Then at school I took Spanish courses, and languages were fairly easy for me because it's something I enjoyed. Paul Robeson spoke supposedly thirteen languages. The summer camp

that my sister, brother and I went to in North Jersey, it's a Lutheran camp now. It was here that Paul Robeson gave one of his farewell performances. It used to be, I think, a socialist workers camp. Paul Robeson was a big influence on me, and, as I said, a hero to my mother. He went to Rutgers College, and I went to Rutgers College. I was in the first class of women that were accepted into Rutgers College after two hundred years of existence.

SS: I didn't know that.

Sellers: Yes. Paul Robeson was from South Jersey, the Princeton area, not too far from Camden, in between Camden and Rutgers. When I was at Rutgers College, they held his 75th birthday celebration at Carnegie Hall in New York, but he was too sick to attend. He spoke to us via a recorded message. I was in the audience at Carnegie Hall. They praised his life; he was very much a Renaissance man. He went to Rutgers and then got a law degree from Colombia. Between him and Thurgood Marshal, the first African-American Supreme Court Justice, law is what I wanted to do. I was always very keen on it. I was raised in a family that would have dinner conversations about racial justice and social justice. Those issues were very much a part of how I perceived my world.

By the time I got to college, I had done a lot of — it wasn't necessarily volunteer work, but work around Camden, a poor community in which I lived. I'm from Camden, so working in summer day camps there was normal. I was also very engaged in music, in school bands. After graduating Rutgers College, I went to Puerto Rico to work for the American Friends Service

Committee to look at human rights violations that were related to the question of independence. Then, I went to law school at the University of Pennsylvania, which is in Philadelphia, right across the bridge from Camden.

Penn had a small number of students who were African American and Puerto Rican. We were about thirty all together and we mixed a lot. The town I came from had a lot of mixture between blacks and Puerto Ricans; we went to each other's parties, and danced salsa and whatever; you know, we'd shake it. Those experiences inform my make-up, my world view. What it is to be American, African-American while interacting with Puerto Ricans-Americans in America, and in Puerto Rico. I always knew that there were myriad ways of being inside of the country and there were other places that weren't really outside of the country. I was conscious of the everyday use of different languages within the country and the importance of issues of social justice, such as with the Quakers. Those instances touched me in high school, law school and at my university. After I graduated Penn, I knew that I wanted to be a public defender. It was my dream. Although most people say when you go to Penn, you're supposed to join a big law firm. If you want to be a public defender, you should go to some other law school. But I wanted to get the best legal education I could and become a public defender. I didn't even interview at any other law firms. I interviewed at the public defender's office. It's the only interview I did.

SS: It's interesting.

Sellers: And, yeah, I got hired. [Laughter] The interview was all in Spanish. When I walked into the Public Defender's interview, they said, "We will conduct the interview in Spanish." I didn't know that that would happen. However, thanks to all that background that I brought, I said, "Yes, go ahead." They did.

SS: Fantastic. Fantastic. I didn't realize the connection between the Puerto Rican community and the African American community, that's interesting. Anything else that you think we haven't touched on that you thought was important in those first ten years of coming into the Tribunal?

Sellers: Well, one of the things — and I think you brought it up from your past question — is that it was very important to realize that institutions are really made of people. People give the tone and tenor of institutions. They determine what to prioritize/de-prioritize, remember/forget, learn/unlearn, in terms of institutional responsibilities and execution of its mandate. The ICTY was very fortunate in its initial years of configurations to have people like [Elizabeth] Odio Benito on the court. She comes from Costa Rica, a country that doesn't have an army, therefore, no military culture. She came from a background where she had been very much engaged in understanding questions of justice and gender. It's very fortunate that we had Judge McDonald, who comes out of a civil rights tradition. She did voter registration in the South, in the '50's. She graduated at the top from Howard Law School and only wanted to practice in one institution — the NAACP Legal Defense Fund. Then you had Antonio Cassese's very deep traditional international law background. Graham Blewitt had worked with war crimes. Justice Richard Goldstone came out South Africa, witnessing the end of apartheid. He was on the famous

commission of inquiry that reviewed criminal police conduct during in apartheid. The tenor and tone that they brought to the work of the ICTY, and to those who later joined them, was very crucial. If there had not been a Justice McDonald, I wouldn't be here. If there hadn't been a Goldstone or Blewitt, even if I'd gotten to the ICTY, I would not have had that career trajectory. And that we wouldn't have had a *Čelibići* judgment, in terms of sexual violence, if we had not had Judge Odio Benito to look at the facts through her sense of being and her eyes.

Even though you have a rigorous legal analysis, you end up bringing yourself to the tasks, too. I would encourage people to bring themselves. I know that I have brought myself to this. It's the experiences that have shaped me growing up. Working in one of the biggest countries in Latin America, Brazil, and then re-locating to Europe, imparted to me immigrant energy. I needed it in Europe. It helped me to get on that train and travel between Brussels and The Hague every morning, and catch it back that to Brussels every evening. So there were a lot of things that I'm grateful for, that eased into my bones and allowed me to become me. It was the beginning of a wonderful career moment of my life. Fortunately it continues.

SS: It does.

Sellers: Yes.

SS: So I think that's an appropriate place to end. I want to thank you, Patti, for your time, reflections, and memories.

Sellers: Well, thank you for making me recall thoughts that I've never exactly put together in such a way before. It's cathartic too.

SS: I think it gives us, as you said, tone and tenor, and I think also texture to the actors in these first ten years in a way that we don't really see and hear much of. So thank you again, I appreciate it.

[END]

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