



A Curated Conspectus of the Life, Love, Law,  
Literature and Laughter of Albie Sachs

## THE COETZEE CASE (1997) – VIDEO TRANSCRIPT

### CHAPTER: A CRUCIAL PARADOX AT THE HEART OF ALL CRIMINAL PROCEDURE

THANDI MATTHEWS

Judge Albie, with the Coetzee Case, we dealt with the issue of whether a company could be held liable for criminal intent and the issue of the presumption of innocence, in a case where you were also quoted in the House of Lords, and maybe you'd like to talk to us about that a bit later.

*You are quoted as saying, 'There is a paradox at the heart of all criminal procedure, in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do the constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interests in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences, massively outweighs the public interest in ensuring that a particular criminal is brought to book. Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of the justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption ... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases.'*

### CHAPTER: LEADING THOUGHT AND NEW IDEAS

JUSTICE ALBIE SACHS

Well, it was a huge delight for me to see that my old friend Lord Steyn, now in the House of Lords in England - top court - refers to Tom Bingham, who's one of the great, great, great judges in England, having referred to a judgment of mine on the presumption of innocence, and he quotes it - he calls it eloquent - in full in one of their decisions. And it was especially meaningful for me because when I was growing up as a young advocate, we used to quote decisions from the House of Lords in England with enormous reverence, and now things are turning, and we're becoming a country with leading thought and new ideas that other jurisdictions are following.

So, it was a terrific delight for me, to notice that phrase. And the phrase is one of those that had come to me - I write about this - lying in the bath. It's a strange thing. You think your most important phrases, the ones that travel, come about when you sit at the typewriter, the computer and you work and work and work and make corrections. And it's not. In those days I used to be a bath person, I'd lie completely inert, and a beautiful statement would just pop into my head, ready-shaped, a lovely sentence. And I would get out with my one arm, splashing a little bit, and write it down before I forgot. And if my old papers had been kept, you would have seen little splashes of water on them.

#### CHAPTER: PRESUMPTION OF INNOCENCE

And this is one of those, that paradox, it's a central and crucial paradox of criminal procedure that the worse the crime, the more important the presumption of innocence. You'd think, and people were saying, and one of my colleagues were saying that, he really didn't like company directors. They were crooks. They hid behind the veil all the time. And if there was a violation, hold the company liable and hold the director liable.

And I felt that maybe the director was innocent, and he should be able to raise a reasonable doubt. And if there's a doubt, he doesn't have to prove that he's innocent. If he can at least raise a reasonable doubt, he shouldn't be branded a crook. And that was necessary partly for public confidence in the whole prosecution law enforcement process, that the chances of innocent people being sent to jail are slim, they're not impossible, but they are slim, that the law is weighted against that, and that statement of mine has been quoted, I think, in a number of different countries. It encapsulates, I think, what many people think. Maybe they just didn't lie in the bath at the right moment, or they lay in the bath and they didn't get out to jot it down.

I'm trying to remember the specifics of that case, but I think the main arguments were, look at the extent of company crime, look at the extent of the corruption, look at the extent of falsification and embezzlement. And if you don't put the onus on the accused then you never get a conviction. And one of the members of our judge of our Court who'd acted in Hong Kong, where embezzlement had

been carried, apparently, to a very fine high art, really felt you only catch the crooks if you put an onus on them, and if they don't discharge they're guilty. And dogged, steadfast Albie said, '*No, there's a paradox at the heart of the criminal procedure. The more serious the crime, the more important the protections.*' Otherwise, you'd say murder is rampant, rape is rampant, stealing is rampant, everything is rampant. You'd put the onus on the accused and the balance gets shifted and people then really get worried that you can be caught up and locked up when you weren't really guilty.

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