



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

THE INDEPENDENT NEWSPAPERS CASE – VIDEO TRANSCRIPT

CHAPTER: ACCESS TO INFORMATION

THANDI MATTHEWS

Freedom of expression has to do with access to information. It's become quite common now for lawyers to submit access to information applications when powerful entities don't want to disclose certain aspects of information. There was a case that you dealt with called *Independent Newspapers* that had to do with the Intelligence Agency withholding information in the public interest.

How do we balance access to information in the public interest vis-a-vis non-disclosure, also in the public interest?

JUSTICE ALBIE SACHS

Okay, for me, that case was easy. Easy. The act was an old act from the apartheid era, that allowed the intelligence agencies themselves to decide, and to withhold anything, full stop, end of matter.

CHAPTER: OPENNESS

And that was intolerable in the new South Africa, the point of departure had to be openness. Not government knows best, and you have to establish a right to have access. It should be the other way around. And I wrote quite strongly on that matter. I don't think mine was the majority opinion. I'm not even sure what the outcome was. But that was a relatively easy case. It's more difficult when it's not simply a law from the past where everything was draconian, everything was handed over to the authorities, where security took over politics, they took over law enforcement, they took over just about everything, even culture, things you could see, read, and hear; all subject to a kind of police control. And now we've got a government that's battling to deal with international crime, with money laundering ... all sorts of problems, sometimes created by the government itself, but others imposed.

CHAPTER: NEW THINKING, CROOKS AND RASCALS

And new thinking has to be brought to bear on the kind of information that shouldn't be shared - that if it is shared, it's going to be used by crooks and rascals - but not by people who happen to be your political opponents or who are critical of your policies.

And certainly not to avoid embarrassment, not because you've messed up and it will reduce the public respect for the intelligence services or whatever it is, if they get to know how you've messed up. And I remember writing specifically about that, in that case. Somebody contacted me recently and he quoted something I'd written in that judgment - although it wasn't the main judgment - in an opinion that he gave to somebody that's drafting legislation. He found it very, very useful. And, of course, that's very comforting to know that words that you used at a certain stage still have a lively meaning.

END