



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

## THE MINISTER OF SAFETY CASE – VIDEO TRANSCRIPT

### CHAPTER: THE POWER OF THE POLICE TO EFFECT AN ARREST

THANDI MATTHEWS

Police brutality is something that is not only problematic in South Africa, it's a global issue. And in the case of our Minister of Safety, you dealt with the issue of the power of the police to effect an arrest; circumstances of conduct of the police when arresting ordinary people; the implications of what guidelines would mean for the police; and the flexibility required in order to effect arrests intentionally. What happened in that case?

### CHAPTER: 'PLEASE, CONSTITUTIONAL COURT, GIVE ME GUIDANCE'

JUSTICE ALBIE SACHS

*It was a strange case. It was brought by the Minister of the Police. And he said, 'Please, Constitutional Court, give me guidance. There are some judges who say the power of arrest is being abused - you can warn people to come. So for something like drunk and disorderly, you don't have to pick them up, throw them into prison, lock the key, make them spend the night there, they get out the next day. It's unnecessary. Just tell them, you've committed this offence and come to court on whatever the date is. And if they defy that, then you can lock them up. Another judge had said, no, you've got the power to lock them up. It's your discretion. You can decide. They're very disorderly, creating a ruckus. Lock them up. So please, Constitutional Court Judges tell us, which judge is right? Give us directions because we've got lots of damages cases being brought against the police for unlawful arrest, and we need guidance.'*

### CHAPTER: POLICE GOOD PRACTICE GUIDELINES

And I'm asked to write the judgment. And I look at a document of practice - good police practice - that all police officers have to study and read and understand. And it sets out everything in great detail. The importance of the circumstances, and the impacts, and whether it's necessary or not

necessary. And we're not going to give the Ministry of Justice, or police, in advance, a kind of checklist of factors that you tick off. That's not the way we work. We say it all depends on the circumstances. And each case has to be looked at. And they've already got very, very clear advice from their own internal document, which we really can't improve upon.

CHAPTER: WAS THIS A CONSTITUTIONAL MATTER?

So, we disappointed the minister. I'm sorry to say it hasn't stopped claims coming in of abuse of the use of power of arrest. There was quite strong evidence in this particular case that much more force was used than was necessary. Big disputes of fact. But these weren't constitutional matters. These weren't matters for that, for us. So, instead of a great shining truth judgment emerging, a very hands-on practical decision. You've got the internal procedures. Police know about it all. Just follow your own procedures, and then whether the damages cases are justified or not will depend on the facts of each case.

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