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

THE NOKOTYANA CASE – VIDEO TRANSCRIPT

CHAPTER: MY LAST CASE… VIP'S

THANDI MATTHEWS

Your last case, Judge Albie, was it your favourite case?

JUSTICE ALBIE SACHS

My favourite case, if people ask me, is the one I'm working on at any moment. When you're finished, it's gone, and the next case comes, and you throw yourself into it totally. And you don't choose your cases, they come to you according to a process of setting matters down, there's an objective scale of timing and intervals in between the cases and so on. But I was so pleased that the last case we had was about the subject matter of that case. And it was a complaint that had been brought – a constitutional complaint being brought - by residents of a very poor informal settlement area who had been promised ventilated, improved latrines - VIPs - with concrete, and only given unventilated latrines. And they said we didn't mind waiting one year, but the second year… nothing, third year… *'Well, while we're waiting, at least we want the VIP's.'*
And I thought only in South Africa could a case like that reach the top court in the land.

CHAPTER: THIS SYMBOL OF INEQUALITY

And I actually thought back… in 1990, late 1990 or early '91, the ANC Constitutional Committee, the Centre for Development Studies at the University of the Western Cape, Centre for Applied Legal Studies of WITS, and other organisations, organised a conference on Constitutional Courts.
We were now envisaging constitutions gaining importance. We didn't have a tradition in South Africa of constitutional courts. Should we have one? If we had one, how should it be created? And interestingly, the first paper was presented by Arthur Chaskalson, and the second paper by Pius Langa. And one of the participants was the assistant, from France, from the Conseil constitutionnel of

Robert Badinter. Now he's one of the giants of European legal thinking. His father had vanished and been killed by the Nazis. He became a prominent lawyer, Minister of Justice in the Socialist government that abolished capital punishment, and then appointed to the Conseil constitutionnel, and transformed the work completely from a court that dealt with elections and relationship between different organs of government into… he connected it with the Declaration of the Rights of Man, and he brought human rights in, and it really totally transformed the nature of their jurisprudence. He was like a hero. And Dominique, his assistant, says he's sorry he can't come but he invites you to come to the Conseil in Paris.

Woohoo! Palais-Royal. I end up for a week… I'm in in the Palais-Royal! Not the Palais-Royal Hotel. I'm in the Palais-Royal! I'm quite close to the famous square where the Louvre is. Very, very central area. And I was even able to phone Ronald Dworkin, who had become a friend of mine because of other things, to say '*Hallo, Ronald*. *I'm phoning you from the Palais-Royal. Not the Hotel Palais-Royal. Would you like to meet me on the steps outside and I can bring you in?'* He was very excited.
So, I spent a glorious week there. Go to the opera, see Paris, have lovely discussions. And at the end of the week, he [Badinter] arranges a meeting with about six of their judges to go through an ANC draft Bill of Rights. And we go through it for a whole afternoon. Six of their top judges, [with] our draft Bill of Rights that Kader Asmal and I had had a lot to do with drafting in Dublin a couple of years earlier. And he's very diplomatic, full of praise, but very, very, very delicately, he [says], '*Okay, we're going for social and economic rights, you can understand that, but to have a right to sewage,'* he says, *'…that's going too far. That's a bit undignified for a Constitution. It just doesn't fit*.' And I said, '*President Robert, you know, in South Africa, one of the most distinctive aspects of apartheid, one of the most ugly aspects of apartheid, is how people relieve themselves. It's become such a symbol of inequality*'. He said, '*Well, that really shows, you know, how dastardly apartheid is. Maybe you can keep it.'* And I'm not thinking consciously of that comment, but here it is, a case is actually brought, and it's not to ask for a beautiful house even, just a [ventilated] concrete pit latrine.

CHAPTER: 'DON'T APOLOGISE TO US'

So, it was Mbuyiseli Madlanga who was representing the province. He stands up and he says, *'Before I go any further, Justices, I'd like to apologise on behalf of the provincial government to the Judges.'* He says, *'We promised the new houses within a year. Three years have passed. We haven't produced the houses. We've got no excuse for that, and I apologise to the Judges*.' And [Deputy Chief Justice] Dikgang Moseneke says, *'Don't apologise to us, apologise to the litigants.'* And Mbuyiseli, Xhosa-

speaking, turns to them and repeats the phrase to them. And they are so pleased, just to have that acknowledgment.

The debate went on afterwards and it turned out that, maybe under pressure of the litigation, the houses would now be built. So, it became unreasonable to have [ventilated] concrete pit latrines for one year only. That money could be spent in the meanwhile on overhead lighting and other useful things. So, we turned down the application. I remember the [lawyer for the] applicant, she was furious. She stormed out of Court. She was so invested with the clients. And instead of feeling *'We're getting our houses, it's taking a little bit longer'*, she wanted to win that case. She wanted that kind of victory. Absolutely furious.

CHAPTER: SYMBOLIC OF THE NEED FOR A NEW CONSTITUTIONAL ORDER

But I was so pleased that this was our last case. Symbolically, it couldn't have been closer to why we desperately needed a new constitutional order in South Africa. It wasn't just for the vote; it was for dignity, and for people to feel they can come to this Court and get a good hearing and be understood and treated with respect.

CHAPTER: THE LAST DAY

When journalists came to me afterwards… the last day now… there are four of us original Judges of the fifteen originally appointed who are still alive, still active: Kate O'Regan, Yvonne Mokgoro, Pius Langa and myself… '*Well, Justice Sachs, how do you feel on your last day in Court?' 'I don't want to go.' 'But how do you feel?' 'I don't want to go*.' That's how I felt. Just a sheer sadness that that phase of my life, that had been so occupying, so brilliant intellectually and emotionally and conceptually and linguistically and humanly, with marvellous colleagues, and so interesting, was now coming to an end.

CHAPTER: LIVING OUT OF THE BOX

A few days later, we had a farewell and Justice Johann van der Westhuizen was in charge of a ... meant to be a fun, a light thing… and there was a sort of competition between the four of us. Each one would ask a law clerk to make a statement about his or her Judge. And which law clerk was going to shine the most? And maybe four of us will give four different opinions. I remember Kate's law clerk

gave a very witty, clever, nice and warm response. And I don't remember… everybody loved Yvonne… and it came through in Yvonne Mokgoro's. And again, Pius Langa was adored by his clerks. But Farzana Badat stands up – they're all are reading their prepared statements - she's not reading. I trained them to make points and speak from those points, not to read. To get the ideas interiorised. Get the ideas, and then you can talk with your own voice. And she started off, she said, *'Albie doesn't think out of the box, he lives out of the box.'* And it was brilliant. It was spontaneous. It was rich. It was very personal. And I felt that pride… I shouldn't have felt that my clerk gave the best farewell speech.

CHAPTER: 'ELVIS' AND 'ALBIE'… ALL SHOOK UP

Meanwhile, when I was called up to speak, Johann van der Westhuizen said - and he'd had a very lovely Afrikaans folk singer, progressive folk singer, to play some music… very beautiful, very decent, lovely sound - he said, *'You say the word Elvis, and everybody knows who it is. You say Albie, and everybody knows who Albie is. Albie, will you come to the microphone?'* So, I go up to the microphone, and I sing, *'I'm all shook up…,'* and there's no laughter. That generation didn't know Elvis. So they're wondering what the heck's going on with this Judge? *'I'm all shook up.'* And then, I forget exactly what I said, but it was a very warm, very wonderful evening in the Court building that we had created, and that had meant so much to me.

I go there quite often now. I take people on tours. Occasionally, I'm invited to see a Judge. I feel very tentative going behind the scenes. I remember when we were working and former colleagues came, we loved to see them, but we were so busy. You've got your agenda worked out to the minute, and you don't want to be unkind, but we could see the attention wasn't really with us. And now I'm feeling the same thing. I remember Johann Kriegler would come to the Court, and he'd look around carefully to make sure there were no Judges there, and he would dash into the chambers that he occupied, not wanting to be intrusive - the bravest, the boldest, in some ways the strongest of all the Judges - it was just a respect for the institution and the collegiality.

The last moment for me was at the end, the security door was [electronic], and my only pointer finger had the code, and I'd press, and it would open, and I could still open that door… I had some power. And a year later, I come in and the door doesn't open. So, I'm now, what we call *functus*. It's a horrible word. Defunct. *Functus officio* you're defunct. You're out of office. But it doesn't mean you're not active. You keep very, very busy. The first year was a year actually of depression. I didn't

realise it at the time. I got three honorary degrees, I got the Lincoln Medal in [Washington], my book was published to considerable critical acclaim, and so on. But I felt very depressed. A year passed and suddenly I'm sort of bouncing again. As you can see, I haven't stopped bouncing since then.

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