



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

## THE WOUTER BASSON CASE – VIDEO TRANSCRIPT

### CHAPTER: THE CHARGES AGAINST DOCTOR DEATH

#### JUSTICE ALBIE SACHS

It was some years later the case of Dr Wouter Basson, referred to as Dr Death. Wouter Basson head of the South African Army's Chemical Biological Warfare Department. He didn't deny that.

The allegations were that he prepared biological weapons for war and chemical weapons for war. That wasn't the basis of the charges against him. He was charged with actually being the doctor that manufactured drugs that were used to paralyse SWAPO, South West African People's Organisation's combatants who'd be taken in a small plane and dropped in the sea. Drowned. A technique that had been developed by the torturers in Argentina against the Tupamaros and the other people. The Tupamaros in Uruguay; Argentina. Mainly the young, mainly the middle-class radical people who'd resisted the military dictatorship.

And the Basson trial went on for a long time, and there were a number of other allegations against him. Some of the key allegations related to fraud, that he'd actually stolen money intended for biological and chemical weapons, but used that money to buy, I think it was a farm and a pleasure resort and a golf course, something else like that.

#### CHAPTER: THE JUDGE

The case was heard by Judge [Willie] Hartzenberg, who happened to be one of the old guard, if you like, appointed in the apartheid era. And many people commented on... this is the public now... that... I think he was the brother of Ferdi Hartzenberg, who was the head of the right wing that broke away from the National Party under De Klerk saying that De Klerk was selling out to the ANC.

I think it's unfair to label judges in terms of similarities of names or of who appointed them, but you can look at the actual decisions taken. There was difficulty in getting witnesses. These things are all

done clandestinely. And one key witness who's cooperating with the state was severely challenged in cross-examination. And Judge Hartzenberg said that his evidence was unreliable. We can't depend upon it, it's not corroborated. The other charge against Basson was that in South Africa he'd conspired to create mechanisms to function in what's now Namibia, then South West Africa, to destroy SWAPO. And Hartzenberg said that it's not a criminal offense that's triable in our court - to conspire to commit a crime in a third country; maybe the third country can prosecute you, but South Africa can't.

The third issue was the fraud, and the defence by Basson was, *'Yes, I signed in my own name to become the apparent owner of the pleasure resort, the farm, the golf course, but I was actually holding it for an East German spy working, collaborating with me and a Russian spy collaborating with me.'* And Judge Hartzenberg felt that story could reasonably be true.

#### CHAPTER: WHAT'S GOING ON HERE?

So Basson is acquitted now, and in general there is public dismay *'what's going on here?'* The state is disappointed. It applies to the Supreme Court of Appeal for an appeal to be heard. And it is a bit dilatory. And the Supreme Court of Appeal says, *'you submitted the papers too late. We're not going to hear the appeal.'* So now the case comes on appeal to us from the refusal of the SCA to even hear the matter. And I can see my colleagues saying, *'you know, this is a messy, complicated kind of a thing. If they can't even get their papers in order, we don't want to hear it.'* I can see that. And I could be revolted by that.

It's complicated for us, Arthur Chaskalson says, *'You know, maybe something went badly wrong here, but it's not a constitutional matter. It's just an ordinary criminal law matter with a particularly challengeable personality involved. And it's not for us to hear.'*

And I'm like, stunned. This guy is being charged with war crimes of a grotesque nature, and you can't hear the matter because the documents were submitted late? This can't be. And if war crimes don't raise constitutional issues, and if it's not the country's responsibility to prosecute war crimes under international law, what is? What is a constitutional issue?

My colleagues are maybe inclined in the same direction, not quite as intensely as I am. And I mean, I can acknowledge this is touching on raw nerves for me. And in a sense, judges shouldn't have raw nerves. Raw nerves should be tempered. But they're nerves related to struggle for freedom, for human rights, for justice. It's not just a personal thing of *'My family was affected. And now I'm bloody annoyed.'* It's an historic emotion, if you like. And to make it worse, to rub salt into that feeling,

Basson is walking up and down, having the time of his life, loving what his lawyer's saying, loving the questions being put by the Court to the State. Why were they dilatory? Is it a constitutional matter?

CHAPTER: 'MR BASSON, YOU ARE A LIAR'

He's smirking. I can't bear it. So, it comes to my turn to ask questions. *'Mr Basson you are a liar.'* I make that statement. There's dead silence in the Court. *'We know he's a liar, because he himself says he's a liar. He says, when he signed as the owner of the pleasure resort and the golf course and the farm and so on, he was lying to protect his...'* There's uneasy emotion in Court.

Teatime comes and my good friend Richard Goldstone says, *'Albie, you were wrong to raise the issue in the way you did.'* And I said, *'Richard, I was wrong.'* I didn't say, *'but I'm not sorry.'* And it was that smirking that I couldn't stand. And from then onwards Basson stopped striding up and down with a big smile on his face.

He's got to take the procedure seriously, whether he's guilty or not, whether it can be proved or not, but he can't come and smirk when you're dealing with issues of that kind. And in a sense, in that way, I'm like millions of South Africans who've known people who died as a result of state action. We all accepted that imperfections though there might have been in the judge's decision that his story about the farm and so on could have been true, we can't interfere on appeal. If we did, we'd be going against the normal appellate approach to the Judge who hears the witnesses and decides on credibility.

CHAPTER: A CONSTITUTIONAL ISSUE

We said that, nevertheless, a constitutional issue was raised. I pushed very hard for the war crimes dimension, raising a constitutional issue so the Court could be engaged. And we rejected the argument that the fact that you conspired in South Africa to commit a crime in Namibia, meant you were not guilty of a crime in South Africa. There were a number of supporting reasons.

The one was that there was a direct connection between the planning in South Africa with the South African military that were occupying Namibia. So, it wasn't like planning a bank robbery in Venezuela. There was a direct connection, a direct connection with South Africa's control over Namibia, treating it as a colonised territory, giving that jurisdictional element that wouldn't have been there otherwise. And of course, the war crimes dimension.

So having made those points in my judgment concurring in the decision of the Court that the trial Judge was wrong to dismiss the charges, and that he should now or could now be recharged by the National Director of Public Prosecutions, I added a very strong caveat, a very strong comment. I said

the fact that the charges are charges of having done, I'm paraphrasing now, extremely villainous things aimed at destroying the system of the rule of law and international law, doesn't mean that the accused person is not permitted to rely on those principles for his own defence; and saying that, if anything, it's even more important to show the difference between their values and our values; that you uphold the basic principles of the right to a fair trial not on pedantic technicalities, but on the substantive demands of a fair trial. And I felt very strongly about that. It was more important that Basson gets what's called a fair trial, that he's convicted on the evidence, and not on smear or rumour or unproven evidence, unestablished evidence, that's more important than that he goes to jail. And I feel that way today.

It looks like, looking back now, that he's gotten away with it, in the sense that the evidence that was needed to establish the conspiracy depended on getting witnesses from inside the military establishment. And there'd been too many contradictory statements and maybe pressures and so on, that the prosecution decided we won't win the case, it's not worth going ahead. And attempts to have him struck off the Medical Roll -- the professional Council struck him off, but that was challenged on procedural grounds, and as far as I know, the case has kind of stalled there.

And the last story I heard was that he's working as a heart specialist at a hospital in Bellville. His patients like him. He's saving lives. He's doing good work. For me, it's not vital that a crook goes to jail, that's not the key thing. What is really vital is that our procedures are free and fair. That's much more important.

And if he benefits from it, from my point of view...from my point of view, that's the price you pay, and it's a price worth paying. And basically, he's been defeated. His values have been defeated. The things he stood for have been defeated. There's a sense of ignominy that's associated with him, even if he's making money and leading an ordinary, unremarkable life in the wealthier areas of the Northern suburbs of Cape Town.

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