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The South African Truth Commission

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COMMENTARY*

THE SOUTH AFRICAN TRUTH COMMISSION

Justice Albie Sachs**

It was not very long ago, I was in my chambers at the Constitutional Court in Johannesburg, my telephone rang and the receptionist said “there’s a man called Henry who wants to see you.” I said “show him to the security gate.”

I was quite eager to see Henry. He’d phoned me about a week before to say that he had been the person who’d organized the placing of the bomb in my car. He was now applying to the Truth Commission for amnesty. Was I waiting to see him? I said “yes.”

* Justice Albie Sachs delivered this lecture at the University of Montana School of Law on October 15, 2001.

** As a leading member of the African National Congress, Justice Albie Sachs was targeted as a race traitor by the Apartheid Security Forces, who in 1988 planted a car bomb in Maputo, Mozambique, in an attempt to assassinate him. Thankfully, Justice Sachs survived, but his right arm was blown off, and he lost sight in one eye.

This article is essentially a transcript of Justice Sachs’ remarks. Justice Sachs returned to South Africa to take an active role in negotiations for a new constitution and was passionate in ensuring that the new South Africa would cultivate a culture of respect for human rights. President Nelson Mandela appointed Justice Sachs to South Africa’s first Constitutional Court, where he continues to serve as a Justice today.

I went to the security gate, opened it, and there he was, a little shorter than myself, younger, lean, staring at me as I stared at him: So this was the man who tried to kill me. And I could see in his eyes that he was as curious about me: So this is the man I tried to kill.

He walked down the passage towards my office. I still recall he had a stiff soldier's gait. I decided to walk with what I call my ambulatory judicial style. We sat down, and he told me about his life. He said he came from a very good family; his mother in particular was a very moral person. He had done well at the university, been recruited into the army, and with great pride mentioned that he had risen rapidly through the ranks and had become integrated into Special Operations.

He was the person who had photographs taken of my car, and had arranged for the explosives to be put in it. He told me that, in fact, the operation had initially been postponed. He had dropped out because he'd fought with the head of the squad. But when he read in the newspaper afterwards that my car had been bombed, he knew that the plan he had organized had been followed. This was one of the matters in respect of which he was going to apply to the Truth Commission for amnesty.

He told me much more about their work in Mozambique, some incidents known, other plans not known. And I could have listened to him and questioned him and probed for hours, but I felt that wasn't my function; that was for the Truth Commission.

He seemed to be aggrieved, almost seeking sympathy from me, looking around my chambers seeing lovely artwork. I'm a judge, holding an honored position in society, and he now was a discarded, discharged soldier, abandoned by the generals who had given him medals and praised him, and repudiated by the politicians on whose behalf he had worked. He'd even told me that he'd had an injury to his foot as if to seek some kind of equality in his condition and mine.

Eventually I broke off the conversation, stood up and said, "Henry, normally when I say good-bye to somebody, I shake his or her hand." And then a cheap emotion overtook me: I would have said why I can't, but I didn't. I said "I can't shake your hand, but if you tell the Truth Commission everything you know and do something for South Africa, then maybe we'll meet again one day." I recall that as we went back down that corridor, he seemed to shuffle along this time without that proud stride that he'd had before. I opened the gate, and he went out. "Good-bye, Henry."

I was a victim of terrorism, together with thousands and thousands of other South Africans – terrorism from the State, terrorism from those in power. I can't help just reflecting on something I heard on National Public Radio yesterday: People from the Black American community saying that they've experienced terrorism here in the United States, the lynchings, the burning crosses. Terrorism in that sense isn't something new to this country. Native Americans have known terrorism. They experienced what it meant to be threatened, dispossessed, and harassed by the powerful. Terrorism is thus not something new here..

Oppressed people in many parts of the world have known terrorism in circumstances where their basic fundamental rights haven't been acknowledged by society. Certainly we in South Africa knew terrorism. What was unusual about me was that, unlike most victims of terror, I came from the privileged community. I was singled-out in a particular way for the kind of experience that thousands and thousands, and over the ages millions, of my fellow countrymen and countrywomen had experienced.

How did we, in our setting, respond to the terrorism of the State? I can recall the excited debates in the ranks of the ANC exiles in the 1970s when a Middle East group calling themselves Black September hijacked planes. Some of the people (ANC exiles) were saying, yes, that's what we must do. We're faced with a powerful enemy that tortures us and kills us and denies us the vote and any chance to express our legitimate claims through proper channels. They've got guns. We haven't got guns. They've got superior power. We must hit them where they are most vulnerable. But the leadership of the ANC firmly repudiated that approach. As they noted, when you start hijacking airplanes, it's ordinary people just traveling who become the victims of terror. You are simply transferring the victimization from yourselves to another group. You are not ending victimization, you are perpetuating it.

As leaders of the ANC, we in exile wanted to demonstrate to the world that one day we would be fit rulers of our country, that we would respect humanity, that we would be sensitive to people's fears. We too travel in airplanes, and we too want that sense of security that we can go about our business without threat of harm. And so, we firmly squashed the idea that we employ the kinds of terrorism used by other groups in South Africa.

In the 1980s, when terrible massacres were occurring in my country, where people were being tortured to death, when commandos from South Africa would invade neighboring African countries and kill refugees, the idea was revived: We must hit back because until white mothers and fathers cry for their children, they will never understand our pain; they will never give way.

I remember a conference, a very important conference in 1985 in Zambia of the ANC in exile. The conference was surrounded by Zambian troops in case there were commando raids. We were discussing the struggle. We were discussing future democracy in South Africa. At one stage a prominent traditional leader from South Africa who had been forced to flee from the country and hadn't been very active in the struggle, got up and addressed the delegates. He spoke in the native language. He told the story of two men fighting fiercely with sticks while their wives were urging them on. One man was being severely beaten by the other. His wife said, "My husband, you are being beaten by the other man. Your cause is just. You are truly stronger than him. But you are beaten because you're fighting with only one hand. Your other hand is used to hold up a blanket to cover your nakedness. Drop the blanket, fight with both hands and then you'll beat him."

We all knew what he meant: he was criticizing us for restricting our targets to military personnel and installations, for imposing all sorts of limits on who it hit. In this way, the ANC was making its operatives more vulnerable and achieving what appeared to him to be far more limited consequences.

I would have jumped up then and made a serious philosophical speech about violence and the cycle of violence. The much more savvy audience, however, just laughed in a very friendly, kind way, heard him out, and moved on to the next item on the agenda. His whole approach was repudiated. As a result of our approach, we got a country. With his approach, we could possibly have hastened the downfall of apartheid, but we would have provoked a racial war. We would have inherited ruins, not a country. And I don't just mean physical ruins; I mean a ruined people with rancor and hatred being passed on from the former victims to the newly victimized. The whole thrust and point of the struggle would have been lost. Our struggle would not have been seen as a war of democratically-minded people who happened to be overwhelmingly black against an unjust system of oppression, but rather a war of

blacks against whites. Our leadership, although consistently under provocation, resisted provocation, resisted any possible temptations, and ultimately repudiated and denied that whole philosophy of violence.

The Truth Commission is an example of how a people deal with past injustice and injury in a way that helps to break the cycle of violence. We had to reflect on matters like this when our Constitutional Court was established. Nelson Mandela said “the last time I stood up in court was to see if I was going to be hanged. Today, I rise to inaugurate South Africa’s first Constitutional Court.” The next day we opened the Court with our first hearing which focused on the constitutionality of capital punishment. President Mandela, on behalf of the government, asked the Court to strike down the inherited laws which permitted – even required – capital punishment in certain circumstances for a whole range of offenses.

Crime is serious in our country. Law enforcement needs to be improved and strengthened. People have a right to feel that their personal safety is taken seriously by the State. But we unanimously decided capital punishment was not the way. As one of my colleagues said, “capital punishment doesn’t punish the crime, it repeats the crime.” As I wrote in my concurring judgment, the killer, on being executed, secures a perverse moral victory in establishing the calculated extinction of human life that’s done by the State is something legitimate and justifiable.

We wanted to break the cycle of one killing being responded to by further killing. Our rejection of capital punishment didn’t mean that killing and murder would go unpunished. We didn’t mean those responsible would not be apprehended and prevented from doing it again. Our decision meant that the killers could spend the rest of their lives in jail, but it also meant that the State did not become a killer. When I refer to killing by the State, I am not referring to killing in self-defense where there’s imminent threat of serious bodily injury. I’m referring to the State killing somebody who is strapped, trussed, and not offering any violence, simply as an example to society of the power of the State, a form of vengeance.

The Truth Commission was established in that broad kind of setting with an overwhelming feeling coming from the ranks of the firmly oppressed, those who had been the victims of massacre and torture and kidnaping. Archbishop Desmond Tutu was appointed as its head. It had three main functions.

The first was to listen to what Archbishop Tutu called “the small people,” the little people, whose voices had never been heard, who had suffered extraordinary pain and repression, the Albie Sachs, who had been on television, had written books, had been interviewed. The Commission did that. Our pain was recorded, established, spoken about, acknowledged.

Thousands and thousands of people, many in the black townships, sometimes in distant rural areas, had their opportunity to stand up, to speak, to be heard. Sometimes hymns would be sung. There would be comforters. Water would be available. People cried. And so the stories came out.

The Commission also investigated the press. They asked different questions: where were you? Why did you carry so much disinformation, creating a climate in which these violations of human rights could be furthered? Business, where were you? Did you not provide repressive material? Did you not benefit from the laws that prevented black workers from organizing, and having effective unions?

We smiled when we saw these former elite and immune sections of society being interrogated by the Truth Commission. Then the Commission questioned the judges: where were you? We stopped smiling. We had very intense debates in our ranks and eventually sent a memo on behalf of senior judges saying that the judiciary had failed. The judiciary had enforced the apartheid laws. When it came to the security laws, the judiciary, with some very honorable exceptions, had just gone along supporting, interpreting the laws in a way which supported the police, despite the evidence of people being tortured, of being placed in confinement for weeks, months, sometimes even years, as though that was normal. It was a very powerful “*mea culpa*” from the judiciary, maybe unique in the world. And yet many people feel that wasn’t enough. The judges should have gone there and acknowledged directly that the judiciary, with some very, very honorable exceptions, had not done what it could.

The second part of the Commission was the granting of amnesty. Here it was necessary for individuals to come forward to accept personal responsibility for what they had done. There was no blanket amnesty. To the extent that they revealed the truth and established that they were acting in the context of the political conflict, they would be entitled to amnesty. This is what made our Truth Commission possibly unique.

And so “the perpetrators” came forward and acknowledged:

I executed, I tortured, I threw the body into the river to be eaten by crocodiles, I burnt the body not far from where we were having a barbecue. The Commissioners had to hear the evidence, decide if the criteria were being fulfilled, and then decide whether to grant amnesty. In some of the major cases, for example, the killing of Steve Biko, a very prominent and brilliant African leader, amnesty was refused. The police claimed that Biko had suddenly jumped up, lunged at them and that they'd pushed him back. According to the police, Biko had fallen and banged his head on a radiator, and died as a result. The Commissioners asked, "Well, where is the offense in respect to which you're claiming amnesty? We don't believe you're telling the whole truth, but in any event, on your story, you acted in self-defense; there is nothing to give you amnesty for, so you don't get amnesty."

Another case involved the murder of the General Secretary of the Communist Party, one of the leaders of the ANC who was a very popular, charismatic, brilliant figure who had escaped three previous assassination attempts. Now, in peaceful South Africa, he went out jogging one day. He came home. There was somebody waiting for him with a pistol, who shot him down. The person was found, the gun was found. The perpetrator was an immigrant from Poland, a member of an extreme right-wing group who had linked up with another white South African from that extreme right-wing group. They were brought to trial, convicted, and sentenced to death. Ironically, it was the ANC's opposition to capital punishment that saved their lives; whereas the groups to which they belonged, and on behalf of which they had carried out the execution, were campaigning strongly for capital punishment. In their case, the Amnesty Commission concluded that they had not told the truth, the full truth about who else was involved in your conspiracy. Amnesty was refused, and they are serving out their life sentences.

But other people who did terrible things, the people who sent the letter bomb that killed a friend and academic colleague of mine in Mozambique, received amnesty. It was painful to see people who had done cruel and terrible things getting amnesty, but that was one of the functions of the Commission.

The third function of the Commission dealt with reparations. That's the part that is most incomplete at the moment, and the most controversial. Because there might be a case coming to my Court, I won't say anything about that, except that in addition to any money payments that ought to be made, I

feel very strongly that one needs to provide as much emotional repair as possible, living memorials identifying the pain of particular families and groups. In that regard, money might be part of the answer, but it's not the core of the answer.

How successful has the Truth Commission been? By and large it's been lauded and praised internationally and held up as a spectacular example of what can be done to address past injustice. At the same time, it's been criticized and sometimes even denounced in South Africa from various quarters with different kinds of motivations. But to me, the truth is like that. The truth is painful, it's incomplete, it's raw. It's not satisfying, it's not consoling in itself. It's the truth about disaster and trauma and terrible deeds.

What have we accomplished with the Truth Commission? The first big achievement has been called "the transformation of knowledge into acknowledgment." There was knowledge that people had died in detention, that people had disappeared, that there had been massacres. But knowledge is factual and sometimes, as statistical information, it's cold. Acknowledgment means the information becomes part of you. It enters your moral and emotional universe. You just don't note it. You hear it. You think about it.

The pain of the victims was acknowledged by the nation. We watched the proceedings on television, we heard them on the radio, we read about them in the press. People in all the localities watched, listened and learned what had happened to their neighbors. It's like a double acknowledgment, because for years, in addition to the pain of the violence done, was the pain of having to repress it and not being able to tell it for fear of further punishment. Now at last we live in a country where we can tell the story of what we went through, we can tell of these things that happened.

There was acknowledgment by the perpetrators of what they had done, not necessarily in that deep confessional sense. The acknowledgment was done in order to gain amnesty. Frequently, the lawyers were there. As people, almost always men, appeared in their suits with their prepared statements, I wished that their emotions could have been more spontaneous and real, that they had been less advised by their lawyers. The impact would have been so much greater.

Many of them expressed sorrow to the families for what they'd done. Sometimes they did it with a kind of half-and-half mixture of really trying to articulate genuine emotion and yet

making a prepared statement that they felt might help them. But it was something. Even if they didn't come out with all of the truth, even if it was only 20 percent of the truth, it eliminated any possibilities of denial in the future. No one can say in five or ten or twenty years, or in another generation, these things didn't happen, or that they were invented. No, the testimony came from the mouths of those responsible. In some ways it was far more chilling and fascinating in a rather awful way to hear the accounts from them rather than hearing from the victims or the victims' families what had happened to them. So there was a form of acknowledgment, even if a semi-compelled acknowledgment, by the perpetrators.

The acknowledgment of wrongdoing came from a broad range of actors. There were ANC security officers who had ill-treated captors during the liberation struggle in the camps in Angola. The ANC insisted that it shouldn't come in to the new democracy with secrets. Thus, they too testified. The leaders of the ANC had to take responsibility for actions which had resulted in loss of life. The leader of the National Party also testified.

P. W. Botha, the former President, was subpoenaed to give evidence about documents he had signed as a president. He refused to appear. He was then prosecuted for defiance of the subpoena. He was in his 80s. He had heart attacks, was physically feeble. He was nonetheless convicted by a young black magistrate. When his trial started, he got support from some of the old generals, and he made a point about "when you touch the African tiger, watch out." Someone pointed out we don't have tigers in Africa. But by the time the trial ended, there were demonstrators outside, and one had a poster saying, "P. W. Botha, Meow Meow." Even though he was acquitted on appeal, the fact is he had been compelled to go through due process of law. There was no automatic immunity because he was a former president. The basic values of the new society triumphed in his case.

But, to me, there was something more profound in the nature of the process, more elusive. I puzzled about this idea of truth. How can you have a commission to find the truth? You find the truth, you put it in a box, you wrap it up, and there we have the truth. Truth just isn't like that. It's dynamic, it's ongoing, it's full of contradictions.

I also wondered why it is that so little truth comes out in a court of law, so little that historians can rely on as established

historical fact, so little explanation as to the causes of why things happened, the framework behind the events in a court of law. Yet the truth, whatever that was, was pouring out lava-like in the Commission hearings, and it worried me as a professional judicial, forensic truth-seeker.

I worked out a kind of rough-and-ready classification that I found really helpful. First, there's what I call "microscopic truth." You map out a small area; you define its perimeters; you establish the major variables within that; you investigate them; and you draw certain inferences from your observations. Positive science is like that; a court trial is like that. In court we allege that so-and-so and so-and-so on such-and-such a date had wrongfully, unlawfully and maliciously killed somebody else. Then the evidence is brought, tested, examined, weighed and a verdict is reached.

There's what I call "logical truth," the truth implicit in a proposition in a statement. In this regard, I always think of the example of when I had the manuscript ready for my book, *THE SOFT VENGEANCE OF A FREEDOM FIGHTER*. I took it to my agent's colleague in New York (my agent being in London). Her name was Abbey. Within five minutes I knew her whole life. She ended up saying, "let's face it, Albie, men are a fundamentally flawed species." But I'm a man, so I am fundamentally flawed. It flows from the general proposition, the particular can be inferred from that – that's logical truth.

Most of our work in a forensic setting is addressing a combination of microscopic truth and logical truth, as well as the play and the interaction between them. For due process of law, that's what you need. If you're going to send somebody to jail, if you're going to take away their money, you need these highly formalized, ritualized processes to justify the particular results.

"Experiential truth" is of a completely different order. The idea came to me from reading M. K. Gandhi's book, *MY EXPERIMENTS WITH TRUTH*, based on his years as a young lawyer in South Africa, which transformed him from somebody who had taken dancing lessons, elocution and French in London, into the leaner, aesthetic Gandhi that the world knows.

Experiments with truth. To me, experiments were things you did with Bunsen burners and graphs. Ghandi went to the Old Fort Prison as part of his passive resistance campaign and noticed that black African prisoners didn't get condiments with their food. He said if I want to live like and understand – enter into the soul – of the most humble amongst us, I must live like

the most humble amongst us. And so he made the decision to give up condiments with food. He didn't start with the idea and apply it to his life. He started with his life. He questioned his life. He examined things that were happening to him experientially and built a philosophy on that basis. Even his giving up of sex came as a result of his experiences when he was in a medical auxiliary with the British Colonial forces in what was then called Zululand. Hundreds of captured Zulu rebels, as they were called, were being lashed. He would wash their bodies. He felt if the body is a site of such pain, he couldn't use his body as a source of pleasure. These were his experiments with truth, deriving from lived experience certain conclusions about life, about existence. And, for most of us, the way we interrogate the world is based far more on experiential truth than on microscopic and logical truth.

And finally, the fourth category is what I call "dialogical truth." It's the interaction between all of these experiences and all of these investigations, swirling, contradicting, fusing, never ending. The strength of our Truth Commission was the way in which the experiential truth and the dialogical truth interacted. This interaction made for a huge drama, a piece of participatory theater, in the best sense of the word, played out on a stage in front of the nation.

We heard the laments, we saw the tears, we saw the torturers – replicating in front of the cameras the way they put wet bags over the heads of people who today are members of Parliament. "Tell me, Sergeant Benzien, how could you do it? How could a human being do this to another human being?" A simple question. Sergeant Benzien, a former representative of power who at one time could do whatever he wanted, wept in front of the cameras. There are so many stories in those images – the defeat of Sergeant Benzien's whole world, the notion of torture conveyed in a way that we could all react to it with shame and embarrassment, the pleasure and delight that these atrocities were being revealed. To my mind, the true strength of our Truth Commission process was to be found in the fact that the nation participated in the whole process, arguing and debating each case.

The process has enabled us at last to start to live in a single country with the beginnings of what can be called a single undivided memory. If we continue to live in a country with completely divided memories, whites seeing South Africa as having been this, blacks seeing South Africa as having been

that, these divided memories, divided relationships with past pain, play themselves out into the future and perpetuate future incomprehension.

If we all accept and acknowledge what happened in the past, at least in its basic outlines, then, as an American put it, for the first time we South Africans start living on the same map, we're in the same moral universe. That has been the Commission's huge achievement. It's not just getting the factual knowledge; it's not just finding a practical way to enable society to function with so much hidden crime in the past. It's establishing that torture, violence, terrorism, repression are unacceptable, can't be hidden, have to be acknowledged, and have to be dealt with in some kind of appropriate way. If we have had any achievement in the last couple of years in South Africa, it's been to establish that.

In terms of reconciliation, if people were hoping that the former victims and the former repressors would embrace each other, they were disappointed. Although it happened in a few remarkable, astonishing and wonderful instances, it basically didn't happen. Many of the people who'd suffered, who'd lost families, felt it's not for the State to forgive. If anyone is to forgive, it's going to be me. It can be us. But nevertheless, to the extent that we're living in one country, the foundations of reconciliation are there. What's really needed for real repair is transformation of our country, ending the massive inequalities still very much associated with race, giving people real full-life opportunities, overcoming the crime, dealing with unemployment, finding humane and effective ways to respond to the terrible pandemic of AIDS, and in particular, enabling people to be able to live dignified lives. That will be the true repair and reconciliation on a massive scale.

Let me conclude by returning to the story with which I began this lecture. I'm at a party at the end of the year, tired; we'd worked very hard. The band is playing, and I hear a voice saying, "Albie." I look around. "Albie." I see a face half recognizable. "Henry." He's smiling. He comes up to me. We go into a corner to be able to speak over the sound of the band. "What happened?" Very animated he said, "I wrote to the Truth Commission. I told them everything I could, and Bobby and Sue and Farouk came on their behalf to question me." Bobby, Sue, Farouk – first-name terms, calling me "Albie." I've been out of politics for many years, but it was as though he was establishing an ANC group with himself as a member.

He continued, "I gave them all of the information I could." I said, "Yes, Henry, I need only see your face to tell me that what you're saying is the truth." And I put out my hand and shook his hand. He went away absolutely elated.

