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TRUTH AND RECONCILIATION

*Albie Sachs**

I was in my chambers last year sometime when I got a message from reception, “a man calling himself Henry is here to see you.” I went with a sense of intense interest to the security door to see Henry. He had telephoned me a couple of weeks earlier to say that he was going to testify before the Truth and Reconciliation Commission in connection with the bomb attack on my life. I opened the door. I saw a man younger than myself, thinly built, fairish hair, staring at me as I stared at him. We had never met before. I let him through. We walked down the corridor, he with a military gait, I with what I call my judicial ambulatory stroll. Glancing at each other, we got to my chambers, we sat down, and he started explaining to me what he was going to tell the Truth Commission.

He said that he had been part of special operations and his job was to organize photographs of people and places to be attacked. He got the photographs of my motor car, presumably photographs of myself, and contributed that to the unit that was going to try and kill me. He emphasized that the attack on me had been postponed, I think more than once, and six months before it happened, he dropped out of the unit. He had quarrels with the people in charge. I was curious to know who is this person. This is the first time we were actually looking at each other. And he was obviously curious about me. He explained that he had been a good student at Potchefstroom University. He told me he had very good parents. His mother in particular was a very honorable and decent person who had brought him up with good values, and he had been recruited into the army when he left university because of his good results, and he proudly told me that he had made rapid progress in the army. He was a good soldier, recognized, and quickly became an officer and was put into this elite assassination unit. I tried to find out more from him but I felt it was not my task to question him. That belonged to the Truth and Reconciliation Commission, the TRC as we call it, and I didn’t want to prod him too much in case he retreated.

He told me a bit about other activities, commando raids, boats that had been sent from South Africa had entered Maputo harbor, people had landed from the boats and been involved in various operations. These things had been denied, and he mentioned who had been the authors,

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who had been the senior command in those respects. We talked and talked and talked. He seemed envious, almost petulant. He said he too had been wounded. He'd had an injury to his leg and had been forced to leave the army a couple of years earlier, been given not a huge gratuity on leaving. He'd invested it in some arms deal. The whole thing had fallen through and he indicated now he more or less had nothing, and he looked around and he saw the beautiful pictures up on my wall and the spacious accommodations in the Constitutional Court building, as if to say, "you're a judge with a secure career, a good salary, comfortable," and he has ended up more or less with nothing.

Eventually, I stood up. The conversation had to end. I had a cheap emotion at one stage. I wanted to say, "Well, Henry, I'm sorry I can't shake your hand, you know why." But I resisted. And I said, "Henry, normally when I say good bye to somebody, I shake their hand, but I can't shake your hand. But if you give full testimony to the Truth Commission, if you make your contribution to the new South Africa, maybe we can meet again in the future and I can reconsider." We strolled back down the corridor. This time he was far less confident. He seemed a rather sad, rather defeated person. I took him to the security door, he left, and that was the end of that encounter.

This is the prolog to my presentation about South Africa's Truth and Reconciliation Commission. And the story of the Commission starts with a fiery, passionate, complicated, difficult meeting of the National Executive Committee of the African National Congress in August 1993. This was about eight months before South Africa's first democratic elections were due to be held. The eighty-five member National Executive Committee (NEC) were discussing what to do about the Motsunyane report. This was a report that had been prepared by the Motsunyane commission which had been set up by the ANC to examine allegations of violations of human rights committed by the ANC itself on persons who had been held captive by the ANC in camps in Angola during the course of the liberation struggle. And the commission reported that there had been violations of human rights, that there had been gross ill treatment of captives by guards in these camps, and the report suggested that the ANC follow through with some kind of appropriate action. And now the discussion was what to do about the report.

A number of people said, "It is obvious. We set up the commission, its report says that further action is required, we must follow through." And the people said, quite vehemently, forcefully, "we were fighting for justice. Justice had to exist in our ranks. If people in our organization behaved in an abominable way, we must take full responsibility for that. Hide nothing, follow through to wherever it leads." Others said that would not be right. These camps were in Angola which was then suffering from a terrible civil war. Everybody was living in extremely precarious conditions. The South African Air Force was bombing and organizing ambushes. Pretoria was sending individuals to mingle with the

guerrillas to try and kill the ANC leadership. It wasn't a paranoid reaction against political opponents, it was a real security attempt to find out who these killers were. The guards were youngsters without proper training, we didn't have a police force, we didn't have trained prosecutors, we had to respond *ad hoc* to a very difficult situation. It would be completely wrong to take any action against those people.

People were torn. It is not the kind of issue you can decide by simple majority vote. I remember Pallo Jordan, who is now Minister of the Environment, standing up, and firmly arguing in favor of following through, accepting the report, and in his rather high pitched voice saying, "Comrades, today I've learned something very interesting. There is a thing called regime torture which is bad, and there is ANC torture, which is good. Thank you for enlightening me!" And he sat down. And then somebody came to the microphone and said, "what would my mother say?" (My mother was a figure of an ordinary, decent, working-class African woman without much schooling, not a political figure, not sophisticated in the ways of the world, but with decent values and a lot of common sense). What would my mother say? My mother would say there is something strange about the ANC. Here we are exposing all of our problems to the world and threatening to punish people for the violations that they committed, which may have to be punished or have to be dealt with. But what of the thousands and thousands of people on the other side who have been torturing us, murdering us, defaming us, arresting us, raping us, and expelling us for decades, are they to get off scot free? Do you want to show that you are so super pure that you have to examine everything wrong done by yourselves, without bringing to book the others who have been doing such things systematically, over decades, forever, to millions? There is a complete lack of balance.

It was at that moment that Professor Kader Asmal, who had given his inaugural lecture a year before on truth commissions, came to the podium and said, "what we need in South Africa is a truth commission—one that looks not only at what happened in the camps in Angola but at all the violations of human rights committed by whoever to whomever. It has to be a national responsibility. You can't just leave it to one political organization to examine itself without proper resources. It will be the responsibility of the new South African government to make this kind of investigation." And that was the moment that the idea of a truth commission was born. It wasn't a group of people sitting around saying, "wouldn't it be wonderful to have a truth commission to deal with transition in the way that has been done in other countries." It came out of a very specific debate and an intensely felt need. It was rooted in our experience. It helped to solve one of our great dilemmas. How does a liberation movement deal with violations of its own ethos, values and principles by its own members? So that was the first pillar, the first essential ingredient of our truth commission process.

A few months later, we signed the text of South Africa's "negotiated revolution" in the form of an interim constitution to get a final constitution. We thought it was signed, sealed, and delivered. And those of us who had participated in the negotiations were now able to travel abroad and respond to requests from our friends all over the world to explain what had happened in South Africa. I'd been invited by the Catholic Institute of International Relations in London, who had played a very big role in Southern Africa in promoting democracy and exposing abuses of human rights, to come and speak to them. And I happily accepted. I was staying in a little hotel in Kings Cross, and I might mention, as the negotiations had proceeded, the quality of our accommodations got better. And now I was back to NGO accommodations. I mention that because this little hotel did not have a fax machine, and one evening there was a knock on my door and somebody said, "sorry to disturb you, but you have just received a very urgent fax from the Constitutional Committee of the ANC in Cape Town. I am told to hand it to you immediately." And I looked at the fax and it said that there was a crisis which was threatening our first democratic elections and the whole transition process. It arose from the fact that then-President de Klerk had promised the security forces that they would get amnesty in the new South Africa. The security people were now saying that they had loyally defended the negotiation process, that they would loyally protect the elections, that they knew of a bombing campaign that was being prepared by extreme right-wing forces that threatened to destroy the whole process, that they would do everything in their power to stop that campaign to protect the elections, but not if they were going to go to jail afterwards—that was asking too much. And the ANC leadership said they were not unsympathetic to the arguments being advanced by security. In fact, the ANC was not in a position to defend the elections, it did not have the informers, and some of the security people were penetrating these groups and were willing to risk their lives to save the elections. They had cooperated with ANC security in protecting the negotiators, and there should be some kind of a response to them. Now, as I remember it, and others might have different memories, at that moment I felt we couldn't give a blanket amnesty, which is what they wanted. They wanted a constitutional statement saying that any offense committed in the course of political conflicts up to the elections would be amnestied. There would be a general blanket amnesty given in relation, on either side, to any offenses committed in that way. And this meant assassinations, tortures on their part. It meant bomb attacks by the ANC, landmines, whatever it might have been, from the ANC and liberation movement sides.

I felt a blanket amnesty would be completely wrong. There would be no sense of accountability. There would be no knowledge of what really happened, who had done what to whom. So I made the proposal that we should link the amnesty concept to the truth commission concept. In other words, people could get amnesty to the extent that they owned up to what they had done, and told the truth on an individual basis. And

that is how the idea of linking the two came about, and I think that of all the more than thirty truth commissions that have been established in various parts of the world, the South African one has had far and away the greatest internal and international impact, and I think that has come about very much because of the linking of truth with amnesty.

In any event, the draft Constitution was amended, by means of what I call a post-amble, a statement right at the end, referring to the untold suffering and injustices of the past that had to be corrected, but that at the same time had to be dealt with not by means of retaliation and revenge, but by means of reconciliation and “ubuntu”—ubuntu being an African word indicating the sense of belonging to a community. I am a person, because we are all persons. We become human through living with other human beings, respecting and acknowledging each other. It is a very embracing, affirmative and warm concept, which finds its place in the post-script to our constitution. And accordingly, the post-script declares that “amnesty shall be granted in relation to crimes committed in the course of the political conflicts of the past, and the new parliament will be able to lay down the modalities through legislation the manner in such amnesty is to be drafted.” I have heard from somebody who was a negotiator on the other side, that they didn’t properly interpret those words and failed to realize that there would be a truth commission associated with the amnesty. If they had realized that, they might not have agreed to it at all. But the fact was the words were there, they were clear. It was simply left to the new parliament to decide the conditions and terms in which amnesty would be given. That was expressed. There was nothing secretive about it. And thus was created the constitutional foundation for our TRC.

A year was spent drafting the legislation for the Truth Commission with varying degrees of involvement of all the political parties. Opposition came from conservative quarters saying, “what do we need a Truth Commission for? We are getting ahead with our country, we’ve got a government of national unity. This is simply going to stir up rancor and create problems.” And people on the more radical side were saying, “what do we need a Truth Commission for? These gangsters ought to go to jail and no one should get any amnesty at all.” So there was a lot of pressure, a squeeze from completely opposite positions. Civil society became actively involved and made a major difference to the terms of the legislation. They managed to get the proceedings to be held in public, which turned out to be vital. I personally, at an early stage, felt that it would be impossible to have these proceedings in public, fearing that it would dissuade them from ever coming forward. But fortunately, I wasn’t involved in the legislation at that stage. I was now on the bench and, happily, my attitude did not prevail. One of the most significant features of the Truth Commission, namely everything happening in front of the television screens, the radio people, the journalist, a drama being

played out in public was established through the NGOs putting pressure on parliament.

It is important to have personnel who are not neutral, I repeat, who are not neutral. You can't be neutral between torture and human rights. You're against torture; you are for human rights. You are for the new constitution. You are for the fundamental freedoms and basic respect for the human personality as established by the constitution. There is no fifty-fifty about it—a little bit of torture being recognized. But you are impartial. You don't look to the persons. You don't have any particular loyalty to any particular formation or ideology or political grouping. In Archbishop Desmond Tutu, we have had the ideal personality to head this body. It is not only that he is a great communicator, that he hadn't belonged to any political party, and that he had campaigned against apartheid as a cleric, as a citizen, and as a person. He was also very savvy, street-wise, if you like. Sometimes we jokingly say that he spent twenty years in the Anglican church in London where you learn a little bit of knock-about, political rough and tumble, which you do with a bland, smiling face. The fact is that he was the ideal person to be in charge. And the other commissioners were also selected to be across-the-board and not have high political profiles.

The Commission was divided into three sectors. The first section listened to what Tutu called "the little people." Something like ten thousand people throughout the country came forward and told of their tortures, of the children who had been lost, the parents, the neighbors, the brothers, the sisters, comrades-in-arms, people in the trade union movement who had suffered.

The proceedings would often start with a hymn, some singing. There would be a comforter next to the person testifying—somebody to put her or his, usually her, arm around this person concerned, just to give them some support so they could speak and let the true emotion come out. Tutu cried. I have never heard of a judge who cries. The atmosphere was intimate. It was humane, it was personalized. It wasn't the usual forensic gladiatorial dialogue. The people just spoke and spoke and spoke with some guidance, some direction, and a few questions being asked. And the pain came pouring out from all over the country. The people who had never had a chance to speak, to testify. Not the Albie Sachs; I had been on television, I had spoken, written books. What had happened to me was acknowledged, exposed, maybe even overexposed. The people who had suffered not only the indignity of what had been done to them, but the extra pain of not even being able to communicate it—not having it acknowledged. In a way, this is what the whole TRC was about. It was converting knowledge into acknowledgment. Knowledge is simply having information at your disposal. It is very different from acknowledgment. Acknowledgment is understanding that information, locating it in a moral and emotional universe, giving it meaning, absorbing it into your social psyche. It was known that people had died in detention, that peo-

ple had been killed under apartheid, that there was massive injustice in the cells, and for that matter, it was known what happened in the ANC camps. But there was not acknowledgment of the pain of the human beings, of the individuals, who had suffered. And that is what came out. Their pain was being acknowledged in public, on television, recorded by the press. They were being listened to, they were being believed. The moral universe was being reconstructed. There was no denied violence, denied humiliation. The fact that it was what it was, was now acknowledged in public by the whole of our society.

The second section of the commission dealt with reparations—how to respond, how to acknowledge on behalf of society that so many people had suffered in so many ways. It has made its report. It proposes a relatively large sum of money being paid out to all the persons who suffered. And the government is concerned because that means taking money away from housing, from education. So many people suffered under apartheid. It's invidious. And it is accepted, generally, that people cannot be compensated as if they were victims of a road accident or an industrial accident or some other kind of injury. To ask the new Mandela government to compensate people for what the previous governments had done doesn't have a commanding sense of right. On the other hand, there must be something specific. There might be a mixture of some lump sum, more than symbolical, but nowhere near full compensation, and gardens of remembrance, scholarships, stipends, nurseries for the children of people who suffered, a street name, a library, something creative, something living, walls with the names on it. Hopefully, we are not going to have monumental monuments, big piles of cement, concrete, brass, littering into the sky saying, "look at me," and diminishing the little human beings down on the ground and diminishing and depersonalizing the pain of those who suffered.

The third section is the Amnesty Commission. This has been the most controversial one. This section has two judges in each panel. Their job is to hear the perpetrators, the people who violated human rights, broke the law, to hear their stories and decide if they establish that they were acting in the course of political conflict under political command. I am paraphrasing now. If they tell the whole truth, and if what they did took place within the period designated, and finally, if their act was "proportional" to the political objectives, then they get amnesty.

Thousands of people applied. Many of them were ordinary prisoners serving sentences in the jails saying that when we held up the bank, we did it for political motives. They were not believed. When I killed so and so, I did it because of a political reason. Not believed. Overwhelmingly the applications have been rejected and no amnesty has been given. But there have been cases where ANC people have said, "yes, I was responsible for the bomb on Church Street. It was close to a military building. I ask for amnesty in respect of those who died." There have been many more cases where police and soldiers have said, "yes, we killed so many

people at such and such a place, we buried the bodies. In one case we threw the body into a river so the crocodiles would destroy it. In other cases, we burned the bodies. In some of the worst cases," and this has become a symbol of that whole era, "while the body was burning, and it took seven hours for the body to be completely destroyed in the fire, we had a barbeque fifty meters away and drank beer. The generals came and congratulated us and said 'a job well done.'" All of these stories came out, and we saw on television, we heard from the mouths of the perpetrators what they had done—not show trials, nobody being tortured, only the hope of getting amnesty for telling the truth—not always the whole truth, but often much of the truth. We had some extremely high profile cases, which I will refer to at a later stage. But the fact is that the country was stirred up by this whole crisis.

Former President P.W. Botha was called to testify. He refused. They wanted him to explain his signature on documents by the State Security Commission speaking about, I forget the exact words, but "removing people from society." You don't use the word "kill." I think in the Viet Nam war the phrase was "terminate with prejudice." In South Africa, "permanently removed from society" was the phrase that cropped up in some important document. In any event, he refused to testify. He was prosecuted for contempt of the Commission, and what made a very big impact was that the magistrate who heard his case was a young African man. So this former president of apartheid South Africa was now having to say, "not guilty, Your Worship" to an African magistrate. This was a symbol of how things had changed. He was sentenced to quite a heavy fine, the matter is on appeal, and I can't comment on the substance of it. F.W. de Klerck, former President, testified on behalf of his government, his organization. Former ministers of government, some of them testified. Thabo Mbeki, whom everybody expects to take over for Nelson Mandela as president of South Africa, testified on behalf of the ANC with complicated legal consequences following. Everybody was involved. They asked the judges to appear, "Where were you, what were you doing? How could these things happen?" And in the end, some colleagues of mine wrote a very strong piece explaining that the judiciary as an institution had failed, had not done enough to expose the torture, violence, had leaned in favor of the executive in circumstances where it was not obliged to do so, but also refused to actually appear before the Commission simply on the basis that it might establish a dangerous precedent if judges could be made accountable in that way. It was quite controversial. In South Africa, books have already appeared on that topic. The press, "Where were you? Feeding us with all this information, creating a climate in which these things were possible." Business, "Where were you? Manufacturing the materials used by apartheid? Setting up security operators in every enterprise, collaborating with the police? Where were you? Just making profits at the time?" It was an all-embracing, very comprehensive inquiry.

The commission reported in five brilliant volumes. I was worried that it would be one of those long governmental reports that only people doing Ph.D.s would bother to read. In fact, it is a series of books with photographs, with excerpts in boxes of poignant, powerful testimony, with reflections on how this kind of organized, systemic evil was possible. I am sure many of us will disagree with many of the observations and findings, but the fact is it has the passion, the power, the emotion of the Truth Commission proceedings themselves.

I have reflected, as have many South Africans, on the significance of the proceedings, and some of my ideas are as follows. First of all, with regard to truth, I was very puzzled. So little truth comes out of court hearings—truth on which you can confidently rely. So much truth came pouring out of the Truth Commission, you would think due process of law is a greater guarantee of truth than the very open proceedings of the TRC, but it was the other way around. There was a veracity, an honesty, an integrity when you just heard the people speaking, and they weren't speaking to denounce somebody in the defendant's dock, or to get more money; they were speaking simply to relieve themselves of the pain. But also there was the corroboration from the mouths of the perpetrators themselves, truth from two sides. And it worried me at first, as a lawyer, a judge, that due process seemed to reveal so little truth while these other processes without strict regulation were so productive of truth. And it made me reflect on what we mean by "truth." What is truth? The question asked in jest nineteen hundred and sixty odd years ago—still has not been answered.

It then occurred to me that one can categorize different kinds of truth. These are very rough functional classifications I invented for myself—four categories of truth. The first is what I call "microscopic truth." You define a field, narrow it down, establish perimeters around it. You control the variables, measure them and infer certain relationships as a result. That might be the truth of positive scientific experimentation. It might be the truth of a legal inquiry, where through the indictment and pleadings, one defines an issue, asks certain narrow questions and comes up with an appropriate answer in terms of the structure of the investigation—microscopic truths.

Then you have "logical truth." The truth that is implicit in a statement doesn't require further observation. A generalized statement contains within it a multiplicity of necessary consequences. An example comes to mind . . . when my book "The Soft Vengeance of a Freedom Fighter" was ready, I gave it to my agent in New York, and in five minutes she was telling me all about her life. And she said, "Let's face it, Albie," and I won't try the American accent, "men are a fundamentally flawed species." I am a man, therefore I am fundamentally flawed. That flows from the logic of the general observation. A more neutral theme might be that one and one makes two. The logic of that would mean two and two makes four; it is implicit in the character of the statements that are being

made. Most of legal activity consists of relating microscopic truth to logical truth, of “to-ing and fro-ing” between the two. And due process of law is absolutely appropriate and necessary, if you are going to send someone to jail. It is not truth you are after, it’s proof. They don’t always coincide. Truth is an element of proof, and proof involves considerations of fairness and sobriety that could be more important than raw truth.

Then you get the third category, what I call “experiential truth.” This concept came to me some years ago when I read a beautiful book written by M.K. Gandhi called *My Experiments With Truth*. It’s the autobiography he wrote after he left South Africa, where he had spent twenty years, including many spells in prison, where he had transformed himself from the elegant barrister in London who learned French and took dancing lessons into the Gandhi that we all know, the person clothed in homespun cloth, leading a simple, austere life. It was his experience in South Africa that brought about that change. I thought experiments meant Bunsen burners, boiling water, seeing something go from one tube into another, making the measurements. But he related experiments as experiments in life. They were phenomenological. You exist in and are part of the very field you are examining. You are not an outsider looking in, rather, you are examining your relationship with others and your experience of being there. It is a profound source of truth, both in social sciences, certainly in psychology, and in all the everyday areas of life.

Fourthly, you get what I call “dialogic truth.” This emerges from the interaction of all these other kinds of truth, but through multiple participation, people arguing, debating with, listening to each other, so the truth emerges and changes, emerges and changes, never-endingly. There isn’t a definitive discovered, reasoned, or experienced truth. It is just a constant process of ideas mingling with other ideas, experiences mingling with other experiences. Protagonists interacting with other protagonists, to establish levels of conviction about certain episodes and phenomena. More and more people come in, and more layers of conviction emerge. There can’t be a definitive statement or final narrative about what happened in South Africa by an authority that is absolute and commanding. There are only a series of statements of greater or lesser validity and persuasiveness, interacting with each other, establishing layer upon layer of representation of what happened in a meaningful fashion. The report merely represents closure at a particular moment, but then the Truth Commission report itself will undergo new meanings, new understandings, and be the subject of new commentaries as time passes. As far as the Truth Commission is concerned, the essential moments and modes of truth were experiential and dialogic. The country participated in the process of the victims testifying, the perpetrators testifying, often about the same events, with sometimes extraordinary interactions between the two. The commissioners themselves were not neutral, empty containers that simply received knowledge and converted it into a report. They were South Africans who had lived through these experiences. They were people

who were hearing the testimony. They all had to receive counseling themselves. The journalists had to receive counseling, they couldn't hear these stories day after day and not be involved as human beings. They also had, because of their life experience, different understandings of what had happened, different modes of identification, different ways of hearing the stories. So the final report itself is a layered report of layered experiences. It is appropriate that the Truth Commission functions in that way, quite differently. The amnesty section was in-between. It had some elements of due process of law, extra regulation, more formality to it, but the Truth Commission in general was not simply reporting on South African history, it was part of South African history. It engaged with people who responded to it in all sorts of different ways. It had its own resonance. It was not outside of the process it was dealing with, but part of it. Possibly its greatest significance lies in "never again," the lessons we can learn so that it doesn't happen again. The very way in which it functioned, the open manner in which the stories were told, was the greatest guarantee that these things shouldn't happen again, far more telling than the actual report.

Reconciliation. If reconciliation is understood simply in terms of "I forgive thee" on a massive scale, it didn't happen. There were some extraordinary cases. I don't know if any of you have heard of Amy Biehl. She was a wonderful, wonderful young American woman who came to the University of the Western Cape. She actually worked in the corridor where we did most of the foundational work on the new constitution of South Africa. Just before she was due to return to the United States, after her very last day at work, she took some of her black colleagues to the townships to drop them off at home. Her car was stopped. She was dragged out and killed. We were horrified—not simply that a visitor who had come to participate in the establishment of democracy in South Africa should be treated in that way, not simply because it was a purely racist kind of action, but because we had lost a friend, someone who we had really admired and loved. We were so angry we spontaneously marched to the spot. I can still remember there was blood on the weeds growing on the side of the road, and I was given the megaphone and I said, "We have been fighting all our lives against apartheid, against the pass laws that say some people can go here other people can go there, and now that we have got rid of the pass laws people want to stop us with stones and tell us where to go and where you can't go and we want to be free people in a free South Africa!" We were so indignant and pained. Some months later, Amy's mother and sister came to Cape Town and they were referred to me to explain the criminal proceedings that were due to take place in relation to the youngsters who had been responsible for Amy's death. I could see where Amy had got her values from. I said, "Mrs. Biehl, when you are in court you might see the family, the parents of the killers. If you feel it inside you, if you can find some way of establishing a connection with them, it is very meaningful in terms of African culture that the whole community must take responsibility for traumas.

We must speak up for each other, and give each other support.” She said she would see, she wasn’t sure. When I saw her a couple of days later, she said, “You know, I was sitting in court and I saw the old man, the father of one of Amy’s killers, sitting there and he was looking in my direction and he nodded to me and I nodded back to him.” At the end of the trial, the father was interviewed and said to the press, “It is terrible to see your son involved in activities like this, and to say good-bye knowing that he will come out a middle-aged man and will lose a lot of his adulthood, but,” he said, “I will get my son back, I really feel for Mrs. Biehl, she will never get her daughter back.” And she was quite overcome by that. She felt the humanity and the personal connection in that way. And when eventually it came to the youngster applying for amnesty, she said to the Truth Commission that she understood the social circumstances in South Africa that had created so much alienation and anger, and appreciated that these youngsters had been swept up by some demagogic talk. She would never forget her daughter, and the circumstances in which Amy had died, but she supported the truth and reconciliation process. She felt that it was healing for South Africa, that it represented the spirit of Amy, and she was not against amnesty being granted. That was a wonderful representation of what I would call the best qualities of our two countries.

We had another case of survivors of persons who had been killed by the same people from the same political organization, the Pan-Africanist Congress, in a church just before the elections. We had won our freedom, we’d won the right to vote, and now suddenly, these people attacked, had grossly, inappropriately, horribly entered a church, killing people sitting there at worship. And the charismatic church leader had said, “We are being tested in our faith, in our capacity to love the enemy.” A number of the survivors who had lost family actually said, “We forgive you.” And in one case, which those of you who saw the Bill Moyer’s film recently would have seen, a Mr. Ackerman told the killers, “turn around, look me in the eyes,” and he was weeping as he was doing that. “Look me in the eyes.” He didn’t want to just forgive them in abstract, he didn’t want to forgive the back of their necks, he wanted to look at them. And he said, and it didn’t come easily for him, that he forgave them.

Then there was somebody blinded by the ANC Church Street bomb who heard Ismail Abubaker, an ANC military commander, testify that it was part of a freedom struggle that people had been driven to, because there were no peaceful avenues, they didn’t have the vote, and the attack was aimed at the military installation, and yet he regretted so much the casualties that resulted. And the blind person said, “Please bring me to Mr. Ismail.” He shook his hand and said, “I understand you were involved in a freedom fight.” But these examples were rare. Generally speaking, the families, the people who’d suffered, were not able to say, “I forgive you.” One person on that program memorably said, “The killers have asked the government for forgiveness, they have not come to me

and asked my forgiveness.” Again, that is very African. That person desires direct human being-to-human being response, not institutionalized response. So if reconciliation was judged simply in terms of individuals who were injured saying to those who did it, “I forgive you, it’s all over,” then the process hasn’t been vastly successful, although there have been a few remarkable cases. But that is not how I judge reconciliation. The true reconciliation comes from laying the foundations for us to live together in one country as human beings sharing certain common memories and common moral values. You can’t have an equal, shared citizenship on the basis of divided memories. The experience is divided, white experience of apartheid and black experience of apartheid are completely different. But when it came to these particularly horrendous manifestations of apartheid, if you had denial, if you had people saying it wasn’t so bad or it didn’t really happen, or it was just a few bad apples, or maybe they asked for it, or they were terrorists and they were dangerous, what do you expect?—if that carried on into the future, there would be such alienation, such a sense of distance, that you wouldn’t be able to live in the country with each other. And what has happened now is there is no denial. Even the most conservative newspapers, right wing papers, are saying, “well, it is true, the Truth Commission has revealed horrible things that many of us either ignored or suppressed or did not want to know about. We refused to listen when we were being told those things.” Even if they go on to make other denunciations of the Truth Committee, they do not deny that these things happened. And that’s the foundation of our new society—that is where you establish a kind of normality that some things are acceptable and other things are unacceptable in a decent civilized world. And there is agreement on those things, coupled with at least grudging acknowledgment of the pain, of the cruelty, and the violence, and the need to make some kind of reparation. It is to that extent that we have reconciliation, not just these few, occasional marvelous cases of individuals being able to rise above, or perhaps I would say, sink deeply into their circumstances, important though they are, but to the extent that, as one American put it to me, we are all on the same map. We are sharing the same moral territory in South Africa now for the first time.

Justice. This is the part I find hardest to communicate to American audiences. The philosophy here is that somebody has got to pay, and you pay either by coming up with some money or by going to jail. There are more things in Heaven and Earth, Horatio, than are dreamt of in your legal and moral philosophy. That is what I’ve learned from my experience. There is punishment. People testify on television. Sergeant Benzien: “I put a wet bag over the head of the person concerned and held it tight for two minutes, three minutes, until they nearly died, and then took it off. I applied electric terminals to the genitals.” He’s doing it on television. Tony Yengeni, now in Parliament, asked him, “I just want to know what kind of person does this, who were you to do those things.” And he cried, the Sergeant cried, he looked crumpled, he’s needing post-

traumatic distress disorder support now, as many of them are, abandoned by the people who sent them into the trenches—abandoned morally, philosophically. What they were rewarded for, given medals for, promoted for, suddenly they discover are horrid, cruel actions. He goes home. His wife will look at him. “You did that?” His children will look at him. “You did that?” His neighbors will look at him. “You did that?” That can be more punishing, more powerful, more meaningful than simply going to jail. Oh, he’s gone to jail. How much justice is there in just sending him to jail. What about the others? What about the people who commanded him? What about the people who traded with South Africa, who supplied them with arms? What about the people who defended those who were trading with South Africa, supplying them with arms? And the trend goes on and on and on. Why just send him to jail? The fact is his face appeared on television. He’s punished by shame. Many have made apologies, sometimes very feeble apologies, but it was something. Our criminal justice system doesn’t allow for apology, maybe a little bit in libel cases, you can reduce damages if you apologize, but it doesn’t seem to be part and parcel of the criminal justice system. Yet it is such a powerful thing. It is very important for restoring a sense of normality in society, because you are acknowledging the wrongdoing that you have done. It is very strong again in African culture, the idea of apology.

We secured Justice in the sense that we achieved democratic government, constitutionalism, and the rule of law. This was part and parcel of the transition process. We could have demanded prosecution. The civil war could have gone on for another five or ten years. Thousands more lives could have been lost. The country could have been destroyed. Instead, through the process we got democratic elections, we got a bill of rights, we got a constitutional court, we got a Truth Commission. We built up our institutions of democracy and justice on the basis of this agreement. This wasn’t an agreement like General Pinochet unilaterally imposed, granting immunity to himself. This was an agreement negotiated with the oppressed, with the people who had themselves suffered. It involved the telling of the truth, which General Pinochet never did, and Pinochet has never acknowledged the crimes. He has always insisted that what he did was honest and necessary and even noble, a very different kind of situation; the crimes remain unresolved.

So, we are installing justice in our country. There is some kind of reparation of acknowledgment of all the individuals who suffered. That is part of what justice is about. And as far as the perpetrators are concerned, their lives are sharply affected by what’s happened. They are not going to go to jail, they are not being dismissed from their jobs. They are being removed from jobs where they can possibly do these things again. So it does have an impact on their careers. Does this mean that there is no scope for prosecutions? The answer is no. South Africa played a very strong role supporting the International Criminal Court, even a crucial

role. The fact is, it is not a choice between amnesty and prosecution. We had prosecutions in our country. Without the threat of prosecutions, no one would have come forward to ask for amnesty. Some of them risk prosecution and maybe won't even be prosecuted. And remember, we were not dealing with friction-free ropes and weightless pulleys, where you could make a completely free choice. We didn't have evidence. We didn't know where the bodies were buried, we didn't know who had done what. Crime covers up for itself. The people responsible were standing together. It is only now, as a result of the investigations, that we know who pulled the triggers, who lit the fires, who provided the poison, who operated the electric shock machines. We didn't know that before, so we didn't have the chance, really, of prosecuting on any major scale.

Finally, as far as justice is concerned, the real test, in my view, is not so much who gets paid out what, or who goes to jail for how long. The real test is what do we do in South Africa to change and transform our country, so that the massive injustices, institutionalized, systemic, which led to the violations, are corrected, that the people who suffered so much historically can now get on with their lives and enjoy their lives and feel full, free human beings. And that is what justice in the broad sense requires. That is the most profound need in our country, to provide the housing, the education, the water, the electricity, and more than that, the skills, the confidence, the sense of self, the fun, the adventure, the culture, the ebullience, of a free people. And that is the real test before us—not sending a few crooks to jail.

In November last year, at the end of the year, I was at an end of year party organized by Jan Turner, who has now become a film producer. When she was a young child her father, Rick Turner, professor of philosophy, a famous progressive was assassinated. To this day we don't know who was responsible, and she cradled him in her lap as he bled to death. She went to England. Her mother sought a new life, got married to Ken Follett, a well-known thriller writer. She had a good comfortable life there. All the time she wanted to know who had killed her daddy and what system had been responsible for that. She still has not found out, but she is now living in South Africa. She is a producer on an excellent soap opera called *Isidingo*—hard, gritty, maybe not as engaging as *Dallas*, but quite captivating for us living in South Africa, to see the problems in a small mining town: love affairs, murder, strikes, collective actions, financial maneuvering, and so on, and so on. I was at her party for the cast, and I was speaking to somebody and suddenly I heard a voice saying, “Albie Sachs.” I looked around. Music was playing loudly, people were dancing. “Albie Sachs.” And I saw a face, a little bit familiar, I couldn't quite place it. “Remember me?” He said, “I'm Henry.” At first the name didn't mean anything, and then suddenly, “Henry, of course, you came to see me!” And we went into a room where it was a little quieter. “What happened, what happened?” And he said he had written everything that he could to the Truth Commission, and they had sent Sue

and Bobby and Rashid to take full statements from him. These were the first names of people who had been in exile with me in Mozambique, and they had been involved in underground activity. I hadn't. But he was speaking to them as though they were almost friends of his. And he said, "I explained everything to them and I applied for amnesty in your case, and in five other cases, six cases all together." I looked at him and I said, "Henry, I've no guarantee that you are telling me the truth, but from your face, I am convinced that you are." And I put out my hand and I shook his hand, and he went away absolutely beaming, and I walked away and almost fainted into the arms of my friend.