

THE UNIVERSITY OF NEW SOUTH WALES

FACULTY OF LAW

THE HAL WOOTTEN LECTURE 2010

Response by Hal Wootten AC QC to lecture delivered by Albie Sachs

It is a great honour for me that Albie has delivered the fifth Hal Wootten Lecture, and it has been an enormous pleasure and honour to find him an instant friend. I did have some qualms about delivering this response when I read Nancy Scheper-Hughes introduction to the new edition of *The Soft Vengeance of a Freedom Fighter*. It begins:

In the presence of Justice Albie Sachs one wants to be a traditional praise singer in the Xhosa warrior tradition of South Africa. Draped in leopard skins and waving a ritual baton, one wants to leap and dart while loudly chanting Albie's many virtues.

Much I wish I was capable of rising to such an occasion, I regretfully decided it just wasn't me. Instead I will start with a small story from 40 years ago.

Back in 1970, when the Law School was incubating the founding vision that this Lecture commemorates, its very first political act was to declare solidarity with the cause of a free South Africa. The tertiary staff association had called a one day strike in support of the ANC. There was no complaint about the conduct of this university and while the faculty members fully supported the cause, they could see little point in disrupting its work by an act that brought no tangible advantage to South Africans. So they unanimously decided to stay at work and give their day's pay to a charity supporting the ANC.

Candour requires me to reveal that at that time a unanimous decision by the law school required exactly two votes – mine and that of a young lecturer named Richard Chisholm, now a retired judge of the Family Court. But the School's links with South Africa have grown over the years, most notably with Andrea's appointment as head of the School's human rights centre.

It is a measure of our guest that we all think of him as Albie – not Justice or Judge or Professor or Doctor or Mister or even Albie Sachs, but just Albie. We can indulge this familiarity because we know that Albie does not set himself apart; he companionably swims in the great sea of humanity with the rest of us, asking no more than that he be accorded the simple human dignity that he insists is the right of every human being,

I typed the single word "Albie" into a Google search and in 0.11 seconds had 1,350,000 entries. The second related to Albie Sachs. He was preceded only by an animated cartoon about a six year old boy with a distorted imagination. Six year old boys have a way of claiming precedence. When my daughter was five, she said to me, "Daddy, Johnny says that if you take cicada's wings to a chemist's

they will give you money". I politely doubted this belief, although I remembered sharing it when I was five. My daughter witheringly replied, "Well Johnny is six, so he ought to know".

When Albie turned six, his father expressed the hope that he would be a soldier in the fight for liberation. Albie fulfilled the wish metaphorically, as a lawyer in the fight for liberation, a freedom fighter who never fired a shot or landed a physical blow. When he was a 17 year old law student those who controlled the state sought to nip his career as a freedom fighter in the bud by prosecuting him for sitting on a blacks-only seat, but he was undeterred. When as a barrister his defence of those who flouted racial laws began to bite, they harassed him with raids and banning orders, but he went on. When they tried to break him with imprisonment, solitary confinement and torture, he responded with *The Jail Diary of Albie Sachs*. In 1988 they tried to blow him up. Some people never learn. He responded with *The Soft Vengeance of a Freedom Fighter*, a new and rejuvenated Albie Sachs and work on a constitution that would bury everything they stood for. A few years later, they gave in.

Incredibly, the freedom-fighters sought not revenge, reversal of roles, or dispossession of their oppressors, but, as Mandela had claimed at his trial, a society without black or white domination, a democratic and free society in which all persons live together in harmony and with equal opportunities.

Traditional wisdom tells us that a good society needs the four great pillars of peace, love, justice and truth. These four values are implicit in everything Albie writes or says. He sees four kinds of truth. To maintain a democratic society we need what he calls dialogical truth, "a truth based on interchange between people. We all have different experiences of reality, and diverse interests and backgrounds that influence the meaning of those experiences for ourselves. The debate between many contentions and points of view goes backwards and forwards, and a new synthesis emerges, holds sway for a while, is challenged, controverted, and a fresh debate ensues. The process is never-ending – there is no finalised truth."

To conduct this dialogue we in Australia rely on free media of all kinds, voluntary associations and the integrity of institutions like the ABC, SBS and universities, but it remains vulnerable. Albie took part in inventing two special places for such dialogue in South Africa: the Truth and Reconciliation Commission and his own Constitutional Court. He sees them not as places of compromise where deals are struck, but places of accommodation, where room can be made, peacefully, lovingly and justly, for human differences.

The founding vision of the Law School was not an elitist vision of a special holier-than-thou institution, but one of various possible ways of approaching an ideal to which all might aspire. It carried implicit in it a vision of a lawyer, which also might be realised in various ways. Thousands of miles away, in a different and more dangerous and challenging world, Albie was living that vision. Albie, we salute you and thank you for giving us insights into what it may mean, in Justice Oliver Wendell Holmes' phrase, to live greatly in the law. Most of all we thank you for so generously sharing yourself with us, not only tonight but throughout your visit.