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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

MONDAY MAY 29 1995

DISCUSSION : AUDITOR GENERAL

- RD: R Davies (ANC - Chair)
- KA: K Andrew (DP)
- PW: P Welgemoed (NP)
- FJ: F Jacobsz (NP)
- BH: B Hogan (ANC)
- MS: M Sisulu (ANC)
- GG: G Grovè (Law Advisor)
- GM: G Marais (NP)
- Gill G Marcus (ANC)
- Pat P Fahrenfort (Secretariat)
- Snakes S Nyoka (Secretariat)

Abbreviations in text

- FFC Financial and Fiscal Commission
- TC Theme Committee
- AG Auditor General
- RB Reserve Bank
- CA Constitutional Assembly
- CC Constitutional Committee
- PP Public Protector
- MPs Members of Parliament

RD Called 19. Its basically opening and welcome, the notice of the meeting and agenda, adoption and noting of previous minutes, law advisor's reformulated draft on the AG, Auditor General and then any other business. In the welcoming remarks I'd just like to make two brief announcements which I think are relevant to our forthcoming work. The first is that those who have been TC3 this morning will be aware that on the 5 June 1995 which is a week from today at 2pm TC3 will be organising a seminar on intergovernmental financial relations. So I think that what that mean is that it means that our own meeting will be have to scheduled for the morning.

Because I think we'll all want to participate in that. The second announcement was that party submissions on that issue which have been done within the ambit of TC3 are due on 16 June. So on the 16th of June party submissions on intergovernmental fiscal relations are due in. And I just want to raise the following possibility that we all agree because I think that what's happening now is that the time frames and everything are all becoming out of sink because I think this arrangement that we had of all going into TC3 has not really worked in the way in which I thought it would in the sense that those of us who have been to 3 have been participating about quite other issues. But what I would suggest that we could think about and from the ANC side is that the parties would write in their submissions on intergovernmental fiscal relations. Also their submissions on the FFC as well as if there are any point that arise in the other provisions - the other matters which we've left outstanding - the national revenue fund and whatever is that they'd like to put them in the same submission. In other words if we prepare one submission on all of these matters, some of it will be dealt with in 3 and then some of it will be dealt with here when we assemble again after that. But at least so we don't have to set another date for submissions. So I think if we could agree on that, that would expedite the process quite a bit. Ken.

KA I haven't got a problem with the timing in the suggestion in respect to the FFC but if people are going to put things on - well you know as you know we've put ours in any way but on national accounts, national revenue fund, annual budget and so on I think it would be highly illogical if it was actually included in the same document as fiscal, financial relations between the provinces. For example to the extent that one may want to comment on budget deficits or national financial accounting practises. to put that in a document which has to do essentially with relationships between provinces and I don't think that would be logical. I think to have it at the same time so we get them all and we can do it in one go. I think that makes sense. But to anticipate in general that TC3 people would suddenly find they get papers from parties suggesting something to do with national accounts or budgets. I don't think that would be entirely appropriate.

RD No, I think that's probably okay. If you recall a number of parties have already made their submission on that. But if you recall as well we decided to hold over our discussion on that because some people felt that what was said in terms of intergovernmental fiscal relations might affect a few points which they would make about the national revenue fund. But I think okay we can agree with that - that basically the FFC and Intergovernmental fiscal relations, one document and the other one if any body has anything additional to what they've already submitted - same deadline but another document.

Em okay I wonder if we could then proceed to the minutes of the previous meeting which are on page 2-4. Are any corrections that anybody wants to draw our attention to. If there are no corrections, I think there's one matter arising and that is basically dealt with in the memorandum from Cyrus

which is in the front of this rather thick document of papers. I don't know whether any - would people have looked at it. I know Francois and Piet were looking at it before hand. Basically Cyrus is just asking us for our approval of his proposed modus operandi for next week's meeting on the RB. And I think its very much, my reading its very much along the lines that we suggested. Basically he's saying that he's presented this. Its called summary of key articles. Piet points out to us it should be selection of key articles. The articles are here in toto but as a selection of some of the articles. He's then suggesting that he will prepare a summary of key questions and issues for us to discuss next week which will be circulated by May 31 which was what we agreed as well and then he's saying that he will make the presentation on June 5. I think that basically that is along the lines of what we have suggested. I'm only raising the matter because he asks whether this is acceptable to the committee. Is that acceptable to the committee. Could we ask Pat to communicate that to Cyrus and say that the committee agrees with what he has proposed

PW Depending on what he answers us on the - quite a lot that we ask him to prepare a memo on as we said in point 5, page 4 of the minutes of our previous meeting of the 22nd. We ask a tremendous lot of questions and I hope we will get the answers on those questions on the day after tomorrow. Specifically the technical details that we ask him. Given that we can see but if we don't get it and it is not - not all the things that we originally asked and I know it went very, very quickly, so if Cyrus put it down he was very good. But lets see what's happening on the 5th. Otherwise we can discuss specifically that document a little bit later again.

RD Okay I mean, I think he's indicating that he's going to prepare a memorandum - we'll see it on the 31st. We'll be able to see whether it covers most of the ground.

Okay then if that's agreed, I wonder if we could move to the main business of today and that is the Text on the AG. And this comes on page 6 onwards of our document, our thin document. What I would - well, we've all had an opportunity I take it now to read this document. And I think I'll follow the routine which we've followed before. Basically go as it were chapter heading by chapter heading. First one is **Establishment, independence and impartiality** - 4 clauses and 5 footnotes. Are there any observations that anybody would like to make on that. Ken.

KA Yes Chairperson may I just start by saying having had time to study this in some detail now I'm actually very concerned. I actually think that we are further back in sorting this out than when we were when we started when we made our original things where we were taking the existing provisions of the constitution and proposing amendment or not proposing amendment or changes as we saw fit. So that's a general point. And may I say in general also that wherever where there are deviations, it seems to me that there are deviations that reduce the independence of the AG or else rely on

legal interpretations or a law to entrench something that was previously explicitly stated. Now let me start then also one other general comment and that is, I think we have to make up our minds in general but this group too as well and that is we are constantly exhorted to make the constitution to make the constitution user friendly, easier rather than more difficult for people who haven't written it or who are not constitutional lawyers to read and understand. And then at the same time we get suggestions all the time that for brevity you can leave that out because in law this means that and that means that and therefore you don't actually have to say it. Now I think if we're actually going to have a user friendly constitution you've actually got to very often got to spell something out so you don't have to know that in law a certain word implies something else. Now turning to this specific s1 - you'd be pleased to hear that 1.1 I've got no problem with. But thereafter I might say almost every sub section in this thing I've got a problem with. Okay, 1.2

RD In that case can I just suggest in that case can we go through clause number by clause number. We'll ask you to have your objection to 1.2 and then we'll ask anybody else's view on 1.2. okay. 1.2 then. Ken you're still on the floor.

KA Okay, It says the first sentence "the AG shall be independent and subject to only to this constitution and and he law". Now the fact that one says "and the law" introduces - may I say in fairness that is in the current interim constitution so while on other occasions I might be cross with the legal advisors for introducing something that wasn't there when the parties submissions - this is not one those cases. But the moment you say "and the law" it introduces a connotation that in addition to the constitution being able to subscribe - reduce the independence that one could make laws that reduce the independence of the AG. And let me give you just one example of a cross reference in the constitution - when you have the public - because one may say well everybody's subject to the law which obviously everybody is subject to the law in a kind of colloquial sense. But the question is what does it mean if you put it in here. Now if you look as a cross reference just as an example - under in s2 of 111b of the existing chapter 13 - the Public Service Commission of the existing constitution it says "the commission shall exercise and perform - sorry exercise its powers and perform its functions fairly impartially and independently " full stop. there's no qualification there that its subject to the law. Now I might say if you look at powers of the president, you get a similar situation where there's no reference to "and the law". So I immediately say what's the difference. Why, What does that mean that it doesn't mean in the other case. And it therefore is a point of concern for me which I would need to get further legal advice if somebody feels its important that it stays there. Because to me it does an implication that you could make a law that the independence would be subject to, that you could make a law that impacts on the independence in addition to other normal laws. I mean obviously the AG can't murder somebody and get away with it. So that's my concern under this sub

paragraph

- RD Okay are there other concerns on this sub paragraph before. Or hang on, let's do it this way, let's just say can we have other views Ken's point. Is Ken's point agreed to or do other people have different views on that.
- FJ Mr Chairman no, I - Ken's now raising a number of points I think which we should investigate before we make our final decision on this.
- RD Do I = I don't see any dissenting views. Unfortunately I think it would have been useful if we had the law advisors here today which we don't have because we're going to have to ping pong this thing up and down now. Shall we just say that we are concerned that we don't know that the effect of "and the law" here is. Barbara.
- BH Sorry, can I just ask one question. It just strikes me as strange and subject only to the constitution because this is a constitution so why re-iterate it - subject only to the constitution and the law. TO me its a matter of redundancy, Ken or are you seeing something deeper into that
- KA The law or the constitution bit
- BH Both
- KA Well I think a point you make is absolutely is valid. The constitution I'm not concerned about because what's in the constitutions in the constitution and its there to be seen. the law can be changed in parliament one year after the next. So I'm concerned about what can happen in respect of the law. I'm inclined to agree with you that it may be reference that subject to the constitution may be redundant in itself and that a kind of wording more similar on 211(b) of the Public Service Commission might be more appropriate. Because I would have assumed - ya
- PW Would such a law be above the constitution I mean.
- RD Hang on before we go any further, can I just welcome Max Sisulu now as an alternate member of this committee who's come to join us. Ken
- KA You see the law cannot override the constitution because its a supreme law so that's fine. But the moment in the constitution you put that something is subject to the constitution and the law, the constitution is giving permission for a law to be made in this regard. So therefore if you make a law which impacts on the independence and in the same sentence you've said that that independence is subject to not only the constitution but also to the law. It is in effect giving tacit approval to have a law which may impact on the independence
- RD You see I think one of the problems myself is that in the phrasing in the

interim constitution, 192.1 it was originally "and shall exercise ad perform his or her powers and functions subject to the constitution and the law" and that implies that you would actually pass an act to deal with the powers and functions of the AG. But the fact that that sort of phrasing has been taken out in the interest of brevity means that this kind of confusion arises because it would imply as it stands in the 192.1 that the law would deal with the exercise of the powers and functions and not for example the independence. and I think that's where the confusion lies. Maybe we could just note that as something which we want to refer back

KA You see my question also arises. Look, I agree that is why in the Public Service Commission is there no such qualification. I mean Presumably the Public Service Commission is not above the constitution. So if that's what, you know why is there a difference in both cases you're talking of fairly impartially, independently and then in one case you put a qualification and in the other case you don't.

RD I mean I've just had note from which I think I would want to follow up. She's asking whether she should go out and call the law advisor. I would suggest that we do that. And we come back to this point.

KA Ya may I just say. I mean I'm very happy to have the law advisor - is that First of all the person who probably wrote this in the first place and secondly I would want to go and check with my own law advisor as to an interpretation. So I mean I'm Quite happy to hear as part of the discussion but for the law advisors says well, you know its no problem xyz I'm - not irrespective of who the person is who arrives here. Em you know I'm not going to say no, I just accept that

RD Well, I'm just wondering in terms of our discussion can we leave this hanging because he may agree with us or she may I don't think its a she - may agree with us on this point and then we can leave it. We'll leave that one pending. We'll come back to it. If the law advisor doesn't come here then we'll consider what - how we want to communicate this point from here onwards. Can we now go on to 1.3

KA Thank you. Now this gets into the area of user friendly. You see you say organs of state and then there's - as defined in section 223 the constitution, organ of state includes a statutory body or functionary. Now there are number of things that arise for me. First of all the moment you have to refer in a footnote here which won't be in the actual constitution if we keep those words. Its not user friendly. Because inf fact with us reading it don't know what organ of state are someone has to refer us to some other section of the constitution then why should anybody else reading it understand. Secondly what about if in a new constitution s233 isn't in because a lot of things were transitional in that section of the constitution, transitional kind of provisions. And thirdly I might say even in terms of the definition, any

statutory body or functionary - now functionary means person - why don't we say person - if it doesn't then again not being a lawyer, I don't know specifically, obviously its a person within one of those organisations of something. But if we're saying that, let's say it. So on the issue of clarity, as to whether organs of state have a sufficiently precise meaning any way and secondly specifically the question of user friendliness. If we're going to accept words like organs of state we can actually forget about trying to have a user friendly thing.

RD Others views on that

BH Ken is your suggestion that we actually just say - any statutory body or functionary

RD Its got to be longer, its got to be more than that. Its got to be any department plus statutory body plus functionary

KA Well whatever the organs of state are and I imagine the list the list wouldn't be longer than 4 or 5 if that's what they are we should rather say that. It makes it a bit longer but then again as I say if we're trying to make it easier for a person who gets this and say I want to read about the AG - to read it and understand what you're saying, then I think we ought to do that.

RD I mean I would have a slightly different approach here because I think that the - that we - I think organs of state is such is a slightly ambiguous phrase but I think if it were to be like all state institutions or something of that sort then at some stage in the constitution state institutions as defined. I don't think because its not spelt out at length there's necessarily a problem here. As long as it is defined somewhere else in the constitution and as long as it has a sufficient common sense meaning to be user friendly. I agree about organs of state is a slightly odd phrase. But if you were to say all state institutions or something and then have all state institutions and then have "all state institutions shall include departments, statutory bodies and functionaries" or something like that, somewhere else in the constitution. As long as there's sufficient kind of common sense view there. But if that is going to be the chosen phrase throughout the constitution for some reason or other then you know so be it. SO I would see it. Other views.

GM Maybe we should use the word ...

RD No we don't want to take it further in that direction. What about 4 - 1.4

KA Sorry I haven't finished on 3 I'm afraid

RD Okay, sorry.

KA For some reason in the list of things that protect and ensure impartiality although its one of the characteristics up front is excluded - it used to be in.

In other words "his or her independence impartiality, dignity and effectiveness" you know it just escapes me why I would think the impartiality is also one of the important things that need to be protected and ensured. And it is one of the - you see in law one of the things you've got to be very careful about is if you mention a person in 2 has to be independent and they must function impartially and so on and then you say other people have to give assistance to protect and ensure his or her independence and you don't put impartiality, the law interprets that you deliberately left it out. That you repeated independence but not impartiality. and clearly you don't want people interfering with the AG in respect of the impartiality of his office.

RD Would - there's a proposal add "impartiality" anybody against?
Okay. 1.4

KA Sorry still on

Gill Did you spend the whole of Sunday on this

KA Without any joy I might say. Because I thought at the beginning two months I thought we were jolly close to actually finishing this whole thing. Until you - Its the whole issue and it applies in 1.3 and 1.4 Rob of the - where it says the AG - in particular the AG "be accorded by law all such immunities and privileges and interference with the AG or others" sorry "in the discharge of his or her powers and functions is prohibited. Now both of those again in a user friendly manner, but also in law. I don't see how that can automatically mean that the other members of the AG's office and in particular outside audit firms that are employed are necessarily granted the same protection. So that's the one point in relation to those two. The other thing if you look at s55.3 of the constitution which is to do with the powers and privilege immunities of members of parliament. When they want to say that you are kind of given immunities, it then lists in some considerable detail not liable to criminal civil proceedings, arrest, imprisonment or damage without reason and anything which he has said produced or submitted etc, it goes on for about 3 lines, and if we really want to protect the AG and its necessary in law to do it in the way its been done for members of parliament then I believe it should be in here in that kind of detail as well. Because otherwise you're leaving it kind of open ended in my view.

FJ Mr chairman could I just close in this regard. If you refer to 2 on 6 you'll see that the "AG may assign any of his or her powers or functions to such persons and subject to such conditions as may be prescribed by law" I would imagine I would have thought that when we talk about such immunities and privileges must be read together with that, that if he does assign, if he does delegate certain of his powers, that whatever immunities and privileges go with that will be according to such people as well. I'm just trying to see, isn't there a relationship between these two. I'm not arguing the case, I'm asking whether this doesn't really clarify your point that he

- KA I don't know if you can delegate your immunity. You see I agree that you can delegate your powers and functions
- FJ No but if I ask somebody else to do something, if I did that and I had immunity and by law I'm allowed to delegate that responsibility to somebody else, doesn't he also have the immunity
- RD I think the answer to this conundrum lies in the issue that in the phrase "there shall be accorded by law all such powers and privileges" what it's basically saying is that there will be a law passed which defines the powers and privileges and then it also says on page 6, 5.2 "may assign of his or her powers subject to such conditions as may be prescribed by law" so that the law - I think this is the point here - that the law would actually indicate the powers and privileges which those were delegated the powers would be subject to. I think that's what the thrust of the proposal here is. And that would then go against what Ken was suggesting that the immunities and so on will be spelt out in detail in the constitution. Saying there will be a law which provides for these immunities. I think that's what its basically saying
- FJ Mr Chairman I would suggest in any case that this matter should be cleared up. Ken's got a point that we should have a look at.
- KA May I just draw your attention to the existing 192.2 where for whatever reason the law advisors who in many cases were similar kind of people at Kempton Park felt it was appropriate to put in the AG and the persons appointed under s194.1. So and again you know we - I don't have to repeat it at every meeting. I mean I'm not a lawyer and but I mean some other lawyer thought it was necessary, otherwise presumably they wouldn't have put it in. The other thing that I also -there kind of - about 4 compartments of things relating to the AG that I think are critical relating to independence. One is the way the person is appointed, the one is the way they're dismissed, the one is the way they can use other people to do work and the 3rd is they're given resources which includes people to do the job. And I think those are the 4 things that need to be protected. And therefore I don't think that one should simply leave it open to a law to decide what kind of immunity and privileges are given to an AG. Because I think you actually want to make sure the person is protected. Because the whole reason you've got it in the constitution is if at some time in the future you have a government that is hostile to an independent AG because they don't want things done in a certain way, you don't want to have to rely on them to be generous enough to give proper immunities. And the more you get into all these things as we know in the past special secret accounts, defense accounts and so on and what you actually what you want to do is protect the AG up front in the constitution that cannot be easily diluted by the government of the day
- RD Let's just separate out the issues a little bit. I think we can probably all agree that perhaps what should go in here is that in particular the AG and persons

appointed under s5.2 as it stands here shall be accorded by law. That meets the one point if I think we just were to add in that.

The second question though is the one about whether or not the immunity should be spelt out in the constitution or whether as the interim constitution suggests as well the immunities should be prescribed in a particular law. I think that's the issue at the moment. Ken is saying he wants them spelt out in the constitution. Can we have other views. Barbara

BH I would agree with Ken. I think leaving it simply to law is problematic. But I wouldn't want an endless legalistic definition around powers and immunities because then we're not getting user friendly

RD In that case what sort of - how do we spell them out. Is there some suggested formulation that somebody could come up with

KA Well, you know I agree there's a problem with user friendliness when you get into these things which do get quite technical. But it is spelt out in 55.3 - immunities and things. And I might say it was spelt out in the DP's submission. But that was taken from 55.3 because I wasn't going to try and reinvent the wheel. And that says, I'll read it to you "a member of parliament shall not be liable to any civil or criminal proceedings, arrests, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to a parliament or to parliament or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before to parliament or any committee thereof" Now it is quite a mouthful, I know. But I do think someone who's reading it and wants to - it conveys the meaning in relatively simple language if someone actually wants to go into it and for someone who doesn't want to go into it, reading through that you can say well the person's clearly protected. And there has to be slight modification. In fact in our submission we suggested because some of the words are not entirely appropriate. But I would think that's the kind of wording. And then if the law advisors can up with a you know, a better way of saying that same thing, that's fine.

RD Ya I think those are the immunities. Probably also then the right to have access to certain information. Sorry Max did you want to say something.

MS Ya Its a just a question. I take on board the points made by Ken and supported by Barbara, but I was just wondering whether you know we need to spell out all of these in the constitution. Is it not possible to have the main principles and then leave out all the details in sort of the legislation - accompanying legislation. My fear is that once we go into all the details and to all the clauses then you really have not a user friendly constitution but something that is very difficult to follow. So I would go along with the principles have to be spelt out clearly but leave out some of the details to sort of legislation. Its just a question for clarification

BH I think this, I would agree with Max that this 55.3 is very long winded but it does cover the basic issues. Is it not possible for the law advisor to have revised 55.3 so its more - so that the language is easier.

RD I presume this is something we throw about. I presume the new constitution will provide for the immunities of members of parliament. So what we could do is we could say that the constitution shall provide the AG with immunities equivalent or similar to those which will be provided for to members of parliament. Then there'll have to be a note that essentially we're in broad agreement with 55.2. We trust that something like this is going to end up in the final constitution. WE can agree on something like that. Okay

I think what we're going to do here since the law advisor's not here this is all being taped and this is going to get transcribed and they're going to have to work off these tapes. Is that all on 1.3 Ken and 1.4. okay. Perhaps since the law advisors, doesn't look like they're coming here just to for elegance sake we can finish off 1.2 "the AG shall be independent and subject only to this constitution and the law" we left that hanging if you recall with some concern that the law could undermine the constitution. I remember when there was a similar discussion in the CC meeting I attended they actually said that no law can be against the constitution. and therefore the constitution is prior. But whether the independence then is held to be prior, I think that what we did note though was that the question of - what was it

KA Rob I think the essential point on that - if you - its subject to two things - so the constitution is actually saying the AG shall be independent subject to the law. So the constitution itself is giving the law the power to limit the independence. I mean that's the problem. So it wouldn't be against the constitution because the constitution itself is giving the law that power

RD I wonder if we can just - ya

PW But to save time Mr chairman can't we say we - let's come back to 1.2 in the future, specifically ask the secretary to address with law advisor 1.2 and specifically the last part of sentence 1 "and the law". We want a clarification on what does that mean "and the law" and then we leave it. Because for us to discuss it here, I think we need the law advisors

RD Okay so Let's just put this as a matter of disquiet and the law advisor will read the tape, the transcript rather and see what happens. Okay can we now move over to Powers and Functions, Clause 2.1

Powers and functions

KA Well it was really editing. Remember we did discuss last time and suggesting that it read as follows "the AG shall audit and report on all accounts and financial statements of all departments and administrations of national and

provincial governments and of all local governments". So it was an editing thing. But you remember we did discuss it briefly last time. I think it just read and makes more sense

RD So can we just say we preferred the wording which we came up with last time which was included in the minutes.

KA Yes it was included in the minutes, was it okay.

RD Okay

KA Might I say you know the DP still has the views that other things should be prescribed as well. But I mean I'm dealing with this thing. In other words that all things that the state is the majority shareholder kind of - should be audited but -

RD That comes in 2.2 But we had - I think you're right, the formulation was essentially the same but slightly more elegant when we had it - the one we suggested. Okay, 2.2

2.2

KA Okay, well, first of all I know - this is trying because this was condensed from a previous version, this section 2 and clearly they were trying to give interpretation to our wishes. And that is to ensure it was clear that the AG had - was entitled to investigate. Now I have a problem of kind of what in law does the words "may in the public interest investigate". Now, Does that imply that if the AG believes it to be in the public interest, he or she has the power to investigate. Or does it mean that a law may authorise the AG to investigate. In other words say I've got a problem with what I see is the vague of those words, I think the intention was to say that the AG if requested to do so by the president or parliament or somebody may investigate various things. But I think as it is to me it hangs somewhat in limbo.

PW I would like to agree on that one Mr chairman specifically the words "in the public interest" and secondly I don't think and I say again none of us around or were in the past are legal experts, but of any institution in control of public funds it must be a little bit broader than just in control. Why I'm saying that is at the moment for example Telkom doesn't get a cent from central government but central government owns all 100% of the shares. In the case of the post office he gets a lot of money through a subsidy arrangement from Telkom to put the post office on its way to become a sort of cost covering entity in the medium term. Both of them are in the hands of the government. In other words, share holding are in the hands of the government. I say again probably for a legal man and a legal lady it is 100% correct to put - institution in control of public funds. for me and for other

people that are not legal, we don't understand it.

FJ Mr chairman there's another point that comes in here, if we are looking at the question

law advisor arrives

RD Ah I see our law advisors coming. Good.

PW Help us

RD I wonder whether we should not just em go back and just raise all the matters and if I can try and summarise them. Mr Grove, welcome. I think that there are a number of points which have cropped up and really some of them are problems which may arise from the lack of legal expertise of members of the committee and some of them people would reserve their right to consult other legal advisors. But maybe we should just run through them. I mean there is one in almost every clause. And we're on clause 2.2.

First one is in clause 1.2 - and the question here is that the clause was shortened from the formulation which was in 192.1 of the interim constitution. And it just - instead of saying the "AG shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this constitution and the law it says shall be independence and subject only to this constitution and the law" and there's some concern here that the law could be used to weaken the independence that's mentioned earlier on and that the precise meaning of the law here is very unclear. That's the first point that we have.

I think that there's some general consensus here that it should not be subject to any interpretation that would allow the law to undermine the independence. Does that cover the sort of thrust of what our concern here.

GG Shall I just prompt now chairperson

RD I think maybe we should clause by clause

GG Chairperson I think the - well the term law here it includes definitely statutory law and that would mean that parliament may be able to or will be able to make laws with regard to the AG. That is so. It can for instance as it has done make a law on the AG - the AG act that was made. It refers to laws such as that.

RD I don't think there's a problem with that. I think that we understand that the constitution is not going to cover every detail of the operation of the AG. But the question is whether that kind of phrase allows for the passage of a law which would in some sense weaken the independence or challenge the independence of the AG.

GG Chairperson with due respect I don't think the parliament will be in a position to do that because parliament's powers is curtailed by the constitution. So it will have to respect the clause dealing with the AG's independence. I think the idea here to include a reference to the law is to emphasise and to say that the AG is not an institution to act at the whims of a particular government. So its to exclude arbitrary actions on the side of any government or any institution of influence. So the - it says simply that the AG shall be independent and subject only to this constitution and the law. Its an institution that operates in accordance with the law.

RD I don't know whether that convinces anybody and not Ken in particular.

KA You see Mr Grove, the two problems I have are as follows. If you abbreviated that it says that the AG shall be independent subject only to the law. Now all I know that the constitution's the supreme law. But within the clause that is defining the AG's independence you are also saying that that independence is subject to the law. So therefore if the law were in some way to impinge upon the independence of the AG, it wouldn't be against the constitution because the constitution has provided for the law in respect of the independence. Its not just in respect of things in general. And what compounds my problem is that for example if one looks at s211(b) of the constitution as an example to do with the Public Service Commission, it says "the commission shall exercise its powers and perform its functions fairly impartially and independently" Now nowhere there does it say subject to the constitution and the law. There is a straight statement of how it exercises its powers and it does so independently, not subject to any law. So my problem is - its compound because in a sense if its not necessary there, why is it necessary here. Unless one is trying to achieve something different

CASSETTE TWO

GG The laws as I indicated - it will include statutory law. But that does not mean that parliament can make any law it wishes. the laws parliament makes must comply with the constitution and also with the principle of independence of the AG.

RD Okay then, Barbara

BH I wonder if Mr Grove would like to comment on a point that the chairperson made earlier on. My reading of this is that this is an abbreviated of a version of clause - clause 192.1 in the constitution in which it says that the "the Ag shall be independent and impartial and shall exercise and perform his or her functions - powers and functions subject only to this constitution and the law". It would seem to me that what that subject to the constitutional law is referring to the powers exercised and performed in his powers and functions. Whereas what here they've taken that out so it seems that the question of independence is intricately related to being subject to the constitution and the law. Isn't it just a bad editing of a clause

KA Yes, you see you know from my - all the time again, one doesn't to repeat the whole time one is saying from a layperson's perspective. If it read like this "the AG shall be independent and impartial". "the AG shall discharge his or her powers and functions without fear, favour or prejudice and subject only to this constitution and the law". then I think my problem would be overcome. Because the law is then impacting on how the AG discharges his or her powers and functions and the independence and impartiality is set aside as a statement of kind of principles which would then clearly override that law because the law or be greater than that law or be greater than that law

RD Is that acceptable to you Mr Grove

GG Chairperson, I think it can create another problem. Because the reference here to the law -- that will only relate to the powers and functions of the AG. It must relate to the whole institution of the AG. But we can try something else here to - I can see the problem is that you have immediately after the reference to the independence of the AG you say subject to the constitution and the law. I think that is the problem. WE can perhaps try and redraft the clause there to cater for that problem.

RD Ya you see, I think this is the point is that we don't want the independence and impartiality to be in any sense compromisable by law but that obviously a law must govern the functions of the committee - of the AG subject to the independence and impartiality being sacrosanct. I think that's basically the point. Can we leave it at this point and Mr Grove will come up with a suggestion.

FJ Mr chairman before we go on, could I just add another tale to this point. You see you have this situation that can arise here that you've got the audit arrangements act. That specifies the fact that the Statutory body called the audit commission established there. Part of that reasoning behind that is to make it independent from the executive. Now that could be changed by law. And law could come in again and say no, we're doing away with the audit commission and we're going to make the AG responsible for something else now who may be more closely associated with the executive

GG Chairperson I think the answer to that is that the audit commission is not entrenched in the constitution. So parliament can chop and change as it wishes but subject always to the principles enshrined in the constitution. So it will have to respect the independence of the AG whatever it does.

RD I'm not sure that we're going to take this matter much further now. I think we should leave it as it is now. I think the concern has been expressed

KA May I just - sorry for your interest, to mention another parallel under Public Protector. Because in a sense the AG is similar to PP and judges and people like that. Clause - s111.1 of the constitution says "the public protector shall

be independent and impartial and shall exercise his or her powers and functions subject only to this constitution and the law". So again subject to the constitution and the law is relating to performing - exercising and performing his or her powers and functions as opposed to the independence and impartiality. And I think that as an example of the construction, I don't think, well, it wouldn't cause me any problem when I speak to my legal fundi if they might but I don't think so. I mean to me It shows what the subject too is modifying.

RD Okay I think it just reinforces the point because its very similar to 192.1. In Clause 1.3 there was a smallish point which was around the reader friendly "organs of state" a slightly clumsy formulation but if the whole - if that's going to be the phrase that's going to be used throughout the constitution we're going to have to live with it. Otherwise there was a sense that maybe all state institutions or something like that - some other kind of phrase. But if that - as I say if "organs of state" is going to be the phrase that's going to be used throughout the constitution we'll just have to live it.

Then when we come on the next line "to ensure his or her independence" there was a feeling that we should put "impartiality" in again on the grounds that some members felt that to have a word up front and then to leave it out in the second sentence means that there is some intention that it shouldn't be applied here. Then in the - So we just prefer to read "independence, impartiality, dignity and affectiveness"

KA Can I just ask is under organ of state, is a government department an organ of state. I mean is it a - does an organ of state includes any statutory body or functionary. Department's not a statutory body so is it meaning in addition to statutory bodies and functionaries organ of state is you know department is an organ of state

GG shall I answer that. Chairperson the term organs of state has been defined in the interim constitution and I think it will be necessary to do so again in the final constitution. It will definitely be defined to include all state institutions, government departments or whatever organ of state. Its an all inclusive term. The other matter that was raised was that we should also have a reference here to impartiality. That organs of state shall give the necessary assistance to protect and ensure the AG's impartiality. I'm not sure whether that's right because the impartiality is inherent attribute - it is not something that be protected or ensured from you know from outside - from

RD What about Independence

GG Independence yes.You can protect a person's independence but you can't protect his impartiality. AS I say I think that's an inherent attribute.

BH I hear what you're saying but say for instance it would be argued that a

government department would put pressure on the AG in the interest of the RDP - could it not be argued that that wouldn't fall under independence of the AG. But you'd - a government department should be obliged to protect an AG even if he should produce something that might be contrary to the RDP for instance

RD I mean I'm - Ken - ya I'm just wondering whether we can say that - we can leave this - I'm not sure we're going to be able to resolve all these issues. I think we're to have to send it back to the law advisors to consider again. I think we could just say we have that concern from the committee. I'm not sure if we debate it at length, we're going to be very productive. I wonder if we can move on to the next -

KA Sorry, if I just make two points. First of all on that one, 192.4 at present it says "all organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the AG" So I mean previously in the interim constitution they did feel that impartiality was worthy of mention and could be protected. So that's partly where my problem arises. Then just may I say on "organs of state" the current constitution gives this under the heading of definitions sections 233 it says "organ of state includes any statutory body or functionary" It doesn't actually say what it is. Well, unless that's all it is. But it doesn't then give a definition of what a statutory body is or for that matter what a functionary is. But - so my question of does that include a government department. To me again if one's trying to make a reader friendly thing is not self evident. Because we know of the work that the AG actually does we assume that that must include it. But that's only because we know what the AG at present audits. Not because I know - if somebody came to me and said is a government department an organ of state, I'll say well I don't actually know in terms of a definition of an organ of state which is a fairly technical term. And sorry, I don't think the view that it was a clumsy term or anything like that. Its a question of trying to make it so that somebody's who's reasonably interested in the sphere of the work of the AG can read the constitution and say I understand that this says what its meaning, I don't have to kind of go to a lawyer to read up what certain difficult words mean. Obviously a person needs a certain understanding of accounts and things to follow a thing like this. That its not that its a wrong word in that sense, I just don't feel its reader friendly.

RD Well I mean what we suggest is that all state institutions was another one. But I mean whatever term is used in the constitution to describe the totality of state institutions which is government departments, parastatals, what does it say, statutory bodies and functionaries, whatever the term is used in the whole and the rest of the constitution that is what applies here

KA May I point out that under the definitions, every other definition and there are 14, says whatever it is, means something. Organ of state is the only one that it doesn't say organ of state means. It says organ of state includes

something which implies it includes other things as well which are not stated. Maybe a fuller definition in the new constitution may solve the problem. Either that or we should - one way or the other

GG Chairperson in any case we'll have to look at the definitions also. I mean if organ of state as defined in the interim constitution is not sufficient then we must look at something else. I agree with Mr Andrews that we should try and draft to be as reader friendly as possible. But I don't think state institutions will take the matter further. I mean -

KA I agree

RD Okay we've made the point then we need an inclusive definitions of the organs of the state so that it covers all the things which we mentioned earlier on

BH Are you saying that must be clause or are you saying that the definition of organs of state needs to be revised

RD What we're saying is we're saying the definition of organ of state needs to be revised and whatever and that revised definition needs must be applied here

KA Yes ideally if we could express that without people having to look up a definition, I'd prefer it. If it turns out the definition has to be quite long and complex then you may not have a choice.

RD Okay can we go on to the next sentence. I'm a little conscious of the time as we got a lot you know, every word is subject to some lengthy debate. The next one we had in particular the AG and then we wanted to add something "and persons appointed" under s5.2 which is the signing of the powers and functions to persons, other persons, so we were thinking that that should be included. "shall be accorded" and then we had a feeling here that the immunities and privileges should be specified in the constitution and they could be specified by reference to the powers and privileges which presumably would be accorded to members of parliament which is 55.2 is it, of the interim constitution. So basically em

KA May I suggest the other persons one just says clause 5 or section 5 because there are various 1 and 2 both result in appointing people.

RD Okay but I mean we want to make it clear that those powers and privileges are extended to those who are appointed and then that the way to deal with the definition of the immunities and privileges is essentially to say that they are the same as those accorded to MPs. We're assuming that there will be some such provision referring to MPs in the new constitution. In 55.2 its covered in 55.2 in the interim which we're generally happy with. Okay

- GG Chairperson, I have a problem here but perhaps this is something that will have to be resolved in the CC. the formulations we used here - they were also used in a number of other institutions like the Public Protector, the courts er and there was another one. In any case - now in other TCs take for instance on the public protector, we included these words, in particular "the AG shall be public protector shall be accorded by law all such immunities and privileges." now in the case of that TC these words have been deleted. Because they say and I agree with them that its already covered by this phrase subject only to the constitution and the law. the law already includes the power to give the public protector all such immunities and privileges as are necessary for this purpose. There we've done - we've altered number 3 - 1.3 by the inclusion of a certain phrase. If I remember correctly it would have read this way. "Organs of state shall through legislative and other measures give the AG the necessary assistance to protect" - to make it general you see and to leave out the part referring to immunities and privileges. So in this case it will read "organs of state shall through legislative and other measures give the AG the necessary assistance to protect and ensure his or her independence, dignity in effectiveness". And then we scrap the last sentence. Now we're going to have a problem if different TCs adopt different approaches to the same formulation. So I'm only mentioning this. But as I say perhaps this is a matter that will have to be eventually be sorted out in the CC
- RD Well, let's I wonder whether we can just say these are the views of the TC and then let the CC sort it out and debate it at the CC - maybe at the CA. I think that's the only way we can go here. But that we as a TC felt that the immunities should be specified and that they should be specified with - in some sense in a way similar to that which is specified for MPs in the interim constitution.
- BH I'm not sure what the position of the PP is but as I understand that the AG has a unique relationship to parliament in that he or she reports directly to parliament and that is the only place in which the AG reports. And therefore the AG would require immunity from prosecution in the same way that an MP requires an immunity from prosecution for deliberations and report whatever are presented to parliament. So isn't that the reason for including immunity from civil proceedings and whatever for the AG in particular
- GG No problem for the the retention of these words. No problem with that. I'm only pointing out that other TCs approach it differently. The phrase I suggested here would in any case cover that. If you say that "the organs of state shall through legislative and other measures give the AG the necessary protection". And then also Mr Chairperson the idea to include it
- KA Is parliament an organ of state
- GG Yes sir

KA Oh
RD Okay, carry on

GG The suggestion to include a reference also to persons appointed in terms of you said 5.2, s5.2 yes - now here again the reference here to AG is a reference to the office of the AG. So whatever you say in relation to the AG that he must be accorded by law such immunities and privileges that will automatically also apply to a person acting in his stead or performing any function under his auspices

RD This is something which sort of discussed we weren't sure whether it did or didn't. But basically then what I think we would be concerned with is if an accounting firm is asked by an AG to carry out an audit of the department of foreign affairs and finds that the chief director had his hands in the till, can that firm then be sued for what it says to the AG. That's the thing basically what we want. WE want to insulate them from that

GG I think Chairperson that will be the case. That person will also be protected if he acts in the name of the AG. May I add also in accordance with the instructions of the AG

RD I have a sense that a lot of these questions are questions that we cannot resolve at this TC level - that can only be resolved at the CC level. I think we've got our points made and we made it to the law advisor here. But I think that we should move on.

What I was actually going to suggest at some stage that we don't continually bounce this text up and down. That we convey our views and we say that - and we then get the legal people to take our views into account and to send this now on to the CC where at which point we're going to have to take up the issues. We record the issues that we've taken up and take them up again and the separate parties I think can consult their own legal people on that and debate them at that level. But I think I take Org's point, we're going to be here, we're certainly going to be here all afternoon any way as it stands now. But we don't want to be here all of tomorrow afternoon as well. So I wonder if we can move on to 2.1

2.1

GG Chair, there's another point. this drafting process, this is only an initial draft. So we will come back to all these issues in any event when the refining is done. And that would have to be done in consultation with the panel of Constitutional experts. So all these legal matters will receive due attention in time.

RD But I mean the point is that what's happened is that contrary to I think what we supposed initially that we've now been asked to comment on the text and that's what we're doing. Trying to do it as a group of people who

perhaps know something about the AG's office and how it functions but who know very little about the law and that's where we're stuck. And some of the comments are legal, layperson's comments. If we can move onto to 2.1 which is the last clause where we were at before you came in.

We felt that basically we had a formulation which we had earlier on by which was recorded in our minutes which I think was a little bit clearer than what's here "the AG shall audit and report on all accounts and financial statements of state departments and administrations " Well basically we - I'm not quite sure what - I think it reads a bit better now than I thought it did. But we wanted it to read that "all financial statements of all departments and administration at national and provincial level of government and local governments and all other financial statements required by law to be audited by the AG". Can somebody else who had a - who made the point, I think it was you Ken

KA Ya I just suggested that "all accounts and financial statements of all departments and administrations of national and provincial governments " so you take out "level of" there and then all the others stay the same - its just to make it briefer.

RD Okay So that's just an editing point. And then we were debating 2.2 **when you came in.** May in the public interest there was a question whether this meant that the AG could be requested by parliament or by the government to carry out an audit or could do it on the AG's own initiative or both. that was a question I think we were debating here. And then the question of "an institution in control of public funds" what did this mean, did it cover the case of government - of institutions where the government had a share-holding or did this only mean institutions where it was in receipt currently of public funds

GG Chairperson, the first point here the AG has a discretion here to investigate an audit and report on accounts and financial statements of any institution. So I think ya, I'll understand this provision simply to mean that the AG has a discretion

RD The AG him or herself has a discretion and the second point - institution in control of public funds, does that mean that the government has shares in it or does it mean for example Telkom does not currently receive a handout in the budget but the government has shares in it, could this allow the AG to audit Telkom if they felt like it or is it only institutions that are receiving funds from the budget

GG I won't say its only institutions receiving funds from the budget because it refers to public funds. I think the term "public funds" is a bit wider than allocations from parliament or from a provincial legislature.

- KA So if the government is a share holder in IDC and IDC is a shareholder in Iscor the AG can audit Iscor if he wishes to
- GG Chairperson I think that takes it too far. It must be in control of public funds. But the committee has another idea here then we'll have to reconsider the wording here. But I don't think it caters for the example Mr Andrew's referring to
- GM Dr Welgemoed has in mind where the government has 100% share holding organisations that were commercialised like the airports - you have government funds, so you must be careful Mr Grove pointed that you don't want to go to the indirect now also going to do an audit on .. somewhere we must get a balance
- RD I think it will allow I think the discretion it seems to me is important here that the AG is not obliged to investigate all these others. But if there is a firm it seems to me that the IDC has invested in and there's some financial skull duggery that the AG could use his or her discretion to investigate that. Seems to me that's quite important and it should be fairly wide since it is a discretion. Its not a routine that they will invest - that they will audit those accounts. But if there's a problem they would then have the possibility of looking at following the trail of public funds through a variety of possibly indirect routes. Seems to me quite important that they have that. If that provides for that I think its quite important that it does that
- KA I would make two points. One is on interpretation we're talking at present the trigger of the May is the AG. So as we currently have it there's no provision for parliament to instruct that other than in terms of 2.1 the AG has an obligation in respect of certain things. This one the AG has a discretion and nobody else has the discretion to instruct him to do so. So if parliament feel some things ... if the AG doesn't think its in the public interests or whatever, he's not obliged to do so. And the second point I'd just like to make I mean it gets back to in a sense the original point. If you think of people sitting around this table who know quite a lot about these things and we can't unravel what this actually means. I mean how can we seriously think that people who have not been dealing with these things on a daily basis are going to be able to understand what this actually supposed to mean
- RD Well I don't know whether we want to say that parliament should or we should leave the discretion to the AG
- MS Thank you comrade chair, I was also going to raise the same question about actually the role of the public - maybe the public via parliament. Actually they should be able to also request or instruct the AG. I mean its good that he's got the discretion but its also important that parliament you know should be able to have that discretion as well or maybe the authority. I don't have any formulation. I'm just very sympathetic with that point.

- RD Mr Grove
- GG Chairperson, I think its covered in 2.1 - the last sentence there and all other accounts and financial statements required by the law to be audited by the AG. Now parliament speaks through a law
- RD Okay that's the way the AG can decide to follow a paper chase - in the public interest or parliament can make a law
- FJ Mr Chairman could I just add a point here, excuse me, can I interrupt here, just if I may make a point. A number of years back there was a Brown commission that investigated the sort of organisations that the AG should report on. And there were also the instances of organisations or whilst they did not get government funds, their policy was determined by government policy. the government determined that they should act in a certain way. And those organisations - it was felt that their books should be audited in the public interest. Now an example of this was the Financial Services Board. I would imagine then what you have in 2.1 here that anything that's required by law be audited by the AG will be able to cover those things as well. We're not only looking at capital investment, okay. Is that so
- RD I think that's clear from what's just been said. Can we move on to 2.3
- BH Sorry, sorry to make your afternoon longer, I thought that having a separate provision of clause 2 was to give a constitutional right to the AG to investigate these organisations that we're not too clear on but that its nevertheless here. If we simply leave it to the law to define it is once again a question to the discretion of the law. And I think we were trying to entrench it as a constitutional right here.
- RD I think the point was made clear that there are two routes into investigating a whole range of parastatals. One of them is the AG's discretion which is covered by 2.2 and 2.1 is that parliament can then decide to make a law which says that it can go a certain range of institutions if there seems to be some problem. I think that seems to be covered. That's what you were saying Mr Grove
- GG Chairperson and also May I point out the phrase in "control of public funds" - in fact the whole of number 2.2 - it comes from 193.4
- RD Can we move on to Clause 2.3. Has anybody got anything to say about that. Ken
- KA Yes the phrase "all persons affected by the audit" in particularly the word "affected" and "all persons affected by the audit shall be obliged to give their cooperation" that seems to me to be a very kind of vague phrase, "all persons affected by the audit" as opposed to - it just seems to me to be very nebulous. I'm not sure what the phrase used previously was. I think it was in relation to you know a person who's part of an institution or whatever.

But maybe Mr Grove can just explain what "all persons affected by the audit" have to give their cooperation are

GG Chairperson, I think one needs here a very wide phrase - a very wide term, that all persons affected by the audit shall be obliged to give their cooperation. Its not confined to a particular institution. Because books that have to be audited by the AG may be in the possession of someone else outside of the institution. But that person surely is affected. I don't know from an interpretation point of view you're going to have a problem to interpret affected. I think it means what it says

RD Any body, is that sufficient answer, problem there

KA If we're saying all persons in possession of information shall be obliged to give their cooperation, I don't think affected in that sense is a very - unless its a highly legal term, its a very strange term in all course of events.

RD Got any alternative or anything to put by or something. Just leave it at that observation at this point.

3.1 Reports, 3.1

1 for the second time of asking

KA Its do with prescribed by law - Now I mean I actually want that spelt out. I don't want it prescribed by law because I think its an important connection that we have suggested that - I think in the current AG act or whatever it says something like where satisfaction cannot be obtained then and I would like that in here - I don't want it subject just to the law

RD I think what's not subject to the law is that the reports go to the appropriate level of government. That's the - You do a report on local government, it goes to local government. What's subject to law is who else it goes to. And you want to say what

KA Well there are words in our which I haven't got here in that recent AG amendment bill which we passed last week which says "provided that where the AG is not able obtain satisfaction then it goes to another level". So it actually prescribes which is exactly what this will do if that law didn't change. But I want that to be in the constitution and not in the law which could be changed. SO I'm happy with what's in the law at present. But I would like that in the constitution so it doesn't have to be prescribed by law, its actually prescribed by the constitution

RD It shouldn't only cover cases of dissatisfaction because you may want to say that as a matter of routine the law may want to say that local government reports - or audits should also go to the MEC or something, you may want to say that for example. Its not just dissatisfaction. It may be for reasons of administration or something

- KA Well I think was - I haven't got the phrases here. I mean its something voted unanimously last week so I presume people were happy with those phrases. I just used the phrase colloquially - dissatisfaction - that word may or may not be one of the words in the clause but that's what we had in mind. I might have something closer to the words here
- RD Other views
- GG May I point out that the only purpose of the law here is to identify the various institutions to whom the AG must report. Its only to identify. But the obligation to report is in the constitution itself. I don't think its possible in a constitution to prescribe the various institutions to whom the AG must report. So we have to use rather general language here. But the obligation is in the constitution
- BH I thought the point that Ken was raising wasn't where one reports but that if one has - if where one reports is an unsatisfactory response - I mean we've had cases say in the homelands situation, the AG's report was never tabled in parliament. Now - is that what you were referring to Ken. What recourse does one have
- KA Yes I think a phrase - I haven't got that actual bill here was something like the "AG shall report unresolved problems". In other words the reporting is at a particular level but if there's unresolved problems the AG takes it a step further
- GG Chairperson you must excuse me, I don't think I'm er - Perhaps I can phone Mr Andrews afterwards and get a clearer picture from him but at this stage I don't understand what the instruction is
- RD I think what he's saying is suppose that there's a report the AG does at local government level to local government but that the same old problems crop up year after year and they never are resolved that then the AG would then submit a report to provincial government. That sort of idea
- KA Ya or if it can't get access to the books. the books are continually not written up. So the auditors now 9 months behind or two years behind or whatever. But I mean the actual wording, there is a specific clause or now it will be a section of course in the AG amendment bill which was passed in parliament last Wednesday which may or may have been signed by the president now. Last Wednesday it was actually passed and there is an actual clause in that specifically giving the conditions under which it goes to someone other than the respective level of government
- RD Could we put
- GG Is the idea to include that clause in the constitution

- RD That is what - em **3.2** in principle
- FJ Ya
- KA Ya I mean to me in principle is almost meaningless. If you don't set out what principle applies when it won't be made public its - you know as they say I agree with you in principles which means that in practise I have no intention of doing so. But I don't know really what that means. What specific obligation it puts on the AG.
- FJ Mr Chairman on the other hand doesn't this if you put that in there give an amount of discretion that we don't really want. And what we want to do is to see that all these reports are made public
- RD I think what we said last time that the report should be public but that obviously the AG would be bound by you know not able to reveal certain things in the report but that the report that the AG actually writes it should be a public report
- FJ But in the act the AG is covered as far as that is concerned. There used to be in the old act 6.3(a) which made it mandatory for the AG with the concurrence of the president and the minister of finance to publish. Now he has that right himself. So what he decides on must be published
- PW Isn't it easier just to say that the reports of the AG shall be made public and leave out the rest and make it simple and clear. Because the rest is already in the changed, amended act of last week
- GG I must point out Chairperson if you say that then all reports will have to be made public. I don't know if that is the idea here. There are in certain instances the AG auditing books and accounts and so on that are state secrets to put it that way.

tape fades

- FJ That is the intention
- RD 4.1 I think we all have a problem with 4.1 in that we want to essentially to carry over the existing practise and that the phrase of representative committee of parliament doesn't quite cover what we wanted. I think we would want the president shall appoint as AG a person nominated by a committee of parliament consisting of one representative of each party willing to participate and who's nomination is then approved by parliament by etc, etc. So the committee should be a committee of one - of a rep from each party as is spelt out in the interim constitution. And that was the point we had there on 4.1 and we also wanted it - it covers over into 4.7, the same thing. The same sort of committee and the same sort of majority to remove the AG. Ken

KA Yes, the other issue was the constitution at present says that the approval or otherwise by the national assembly in the Senate or you know parliament, em shall be without debate. Now I think its generally desirable. I would be very concerned if there could be an interpretation if you don't have without debate in the constitution, that implies in terms of normal free speech and so on that you can't have a parliamentary rule that precludes debate. So I'm not so much fussed that its not in the constitution if the parliamentary rules could say debates on that matter will be without debate but em so it was in the constitution, its now

CASSETTE 3

MS I wasn't present at the last meeting and I'm not sure I follow the logic of why we need to say - we're drafting a constitution for the future and here why do we need to specify that there must be a representative of all the parties. Shouldn't we just leave it as a committee of parliament without specifying the details of who serves on that committee. AS I say I wasn't here so I don't know the logic behind it

RD The logic was simply that everybody else who was here that it should be the same as the interim constitution and that says a special committee. Basically it must be agreeable to everybody who - is the idea

FJ I think the point also goes a bit further than that. In view of the fact that the AG is responsible to parliament we want to ensure that every single political party in parliament would have some say in his appointment. It could be that if you just say that a parliamentary committee it would not necessarily mean that every political party there would be represented

MS Look I'm not insisting - I mean parties might decide to walk out, what happens then, you have to wait until they come back

RD It says willing to participate - it says in the interim constitution and that's what we wanted to put in. I think that's what I said just now. Nominated by a committee of parliament consisting of one representative of each party willing to participate

Okay 4.2

KA I think there's a comma missing after auditing in the third line "experiencing, auditing, state finances, its not auditing state finances and public administration. Its auditing, comma
And at the end any political party or political organisation which is in the current constitution and I don't think its only related to the fact that maybe some parties have only recently become political parties in a formal sense. I think clearly you don't want somebody who's an office bearer in the AWB for example merely because it may or may not be a registered political party. I think the whole idea is that people who have got office i.e. public profile

in political organisations should not - including parties obviously it should not and therefore one has to extend party to all political organisations.

RD Is that something which can be coped with. It says so already political organisations. I'm trying to wonder where the boundaries are. Anyway, okay

4.3 - no comment here

4.4

KA No I think Francois's brains is in the wrong place after last Thursday. There was too much boxing without a helmet. No, okay, now you see I have a problem in the second line. You say "if the AG is absent or unable to discharge his or her powers or functions " or "if the office of the AG is vacant" okay, and then if you turn to 5.1 over the page we say "the AG may appoint such persons as may be necessary for the discharge for the work of the office of the AG" Now in the 1 the office of the AG is vacant which seems to me to imply the office of the AG is an individual. In the next one "the work of the office of the AG" seems to me to be implied that you're talking about an office in a broad - like we talk about the office of the AG and if we mean the person in the second time round why don't we just say of the work of the AG. So just does office mean exactly the same thing in those two clauses, I just find it a little bit confusing. I've got a further separate point on 4 but

GG Chairperson I think it can be best explained in Afrikaans in the first instance it refers to the amp - the office and the second instance to the kantoor. I think in context its clear

RD I wonder if we couldn't change it to - if the position of AG is vacant or the post of AG. Clause Ken, another comma in the wrong place

KA No let me not comment.

RD Its very important

KA No, I shall comment. I won't make the side line comments. The question and again the AG himself said highest ranking member in terms of the way they work, it could be problematic because of ranking and in fact saying the most senior officer is a more appropriate way of saying it. I'm just bringing up the point from him I would not have known the difference because I'm familiar with public service terminology. But if you recall the AG made representations to us earlier this year and suggested that one use the phrase "most senior officer" rather than "highest ranking member". But I just made the point for what its worth so it doesn't get forgotten. There may be a good reason for not changing it. But I don't know

RD Well, shall we, I think if that has the same impact let's go with it "most

senior officer". Noted under 14. It says its your proposal from the DP any way. I think we can all go along with that.

GG Chairperson can - sorry sir, the em I'm not sure whether we should include in the constitution the detail like in No.4. Shouldn't the committee consider whether its really necessary to include it. In terms of guidelines of the panel of experts, that were adopted the other day in the CC whether this really necessary to have it in a constitution. I'm speaking of 4.4. And that also applies to number 5 chairperson

RD That's true

PW Number 6 also

RD That's true I mean - that's true or whether those clauses 4-6 could not be dealt with in legislation in other words.

KA Ya I think 6 is in a slightly different category. 4 and 5

RD Well shall we go backwards then and shall we all agree that 6 is legislation

KA No, I don't. You see I think that ties up with the thing like you should not hold office in a political party or a political organisation. Em We - the 4 and 5. 5 I've got no problem coming out. 4 I just want to think through it.

PW None, I mean none of the people in the AG's office can do out side work. I mean they are all under 6. Why only specify the AG

RD I think that means the office. But 4 is - do we need to say what happens if there isn't an AG. You know we don't say what happens if there isn't a PP or there isn't a judge in the constitution and presumably has to be dealt with under some legislation. So what's the view, legislation. 4 legislation, 5 legislation, 6 now Ken is saying whether that is - 6 out okay. 7 We've amended to have the same as 1 already. Are there any other points on 7. You're number 4 now. We've amended in the same way as 1. So is the same sort of committee as in 1. Are there any other points under 7 which now becomes 4. 8 which now becomes 5.

KA Yes, I just - the use of the word "such" there are two things. First of all previously it was said in the constitution that it was pending a decision - maybe suspended and then there's also the word - the use of the word "such" here in which you - normally when you use "such" you're using "such" in the same sub-clause. You're referring to something that is in the same sub-clause. Here you're referring - you say subject of such an investigation and you're referring to an investigation which you actually set out in the previous sub-clause. Em so the - let me just look up this pending a decision of what - how we worded it before. You see in - previously, 191.10 said may be suspended by the president pending a decision on in

such investigation.

RD Ya I think it has to say something - where the AG is the subject of an investigation into the matters referred to in clause 4.

KA Or Ya, sub-clause 4 ya

GG Chairperson there's no problem with the use of the word "such" here. You can even say the said. Its in the same section, so there's no problem with that. We often to it. Now the - but we can add the words pending a decision in such investigation as in the interim constitution

RD Agreed on that. Okay, we're on the last lap now. 5.1, page 10 5.1

KA Now is the - we've cleared up the point of office.Em I still - I mean we've removed the contradiction. I'm still not sure whether the use of the word "office" we are familiar with the term, the office of the AG, whether that's a normally understood general term. A particular point to me is the - is the question of outside audit firms. If you give them a contract, do they become part of the office of the AG. Because you see unlike most of - if you're contracting right outside of the civil service and the public service, and just one other thing on 5.1, there's a footnote 19 which doesn't exist.

RD What does the law advisor have to say on that

GG Footnote 19 chairperson

RD I don't mean - you can comment on the absent footnote or not but I mean the point about persons who are contracted out to completely outside the public service, private sector law firms that are - auditing firms that are contracted, do these become part of the office of the AG

GG I don't think they become part of the office of the AG. But sub-section 2 applies to them. To say the AG may assign any of his or her powers or functions to such persons as may be prescribed by law. So it can be done by law.

KA So are the "such persons" and the "such conditions" prescribed by law. You see this is part - the previous 5.1 says the AG may appoint such persons as may be necessary for the discharge for the work of the office of the AG. then the next thing starts by saying the AG may assign any of his or her powers or functions to such persons. Now are those "such persons" not the "such persons" you mentioned in 5.1. Are they different, they could be different - the could be the same or they could be different "such persons"

GG Ya, its a wider concept ya, wider term. The "such" refers to the as may be prescribed by law. Such persons and subject to such conditions as may be prescribed by law.

- RD Okay
- KA I'm not convinced entirely but er - its the question, it is the grammatical construction of whether "and subject to such conditions may be prescribed by law" whether it applies to the "such persons" or their assignment of powers and functions. But er
- BH If it was referring to the previous clause surely it would be saying to such persons referred to in clause 5.1. Its obviously referring to persons specific to clause 2.
- KA Well I mean we just covered it in the previous clause where the such investigation referred to the previous sub-clause
- RD The footnotes, I've just been looking through those, is 18 is also missing and 19. I think - and then there's no 22. I think that 20 is 18 em I think that 21 - no sorry, 19 is 21 and 20 is 22 and 21 doesn't exist, if that's not too confusing.
- GG We'll correct that chairperson
- RD Okay. Can we come on to the last clause 5.3.
- KA Yes in the second line, I would like us to say power and functions of the AG shall be paid for from money which shall be set aside by parliament for such purposes and from fees raised ... You see I want to make it absolutely clear that parliament's obliged to set aside the money and its not simply money that may be set aside. So what I'm asking therefore that we say AG shall be paid from money, that we insert the words "which shall be set aside by parliament for such purpose". So its an injunction upon parliament to set aside the money. Because its the - one of the basic points I mentioned earlier on of ensuring that the AG has the resources.
- RD Vies on that - agreed, okay. I think that's it, we've come to the end
- GG Chairperson sorry, one last point. Can you perhaps refer there to footnote 20, footnote 20 - ya the idea is to - its a note in relation to clauses 1, 2 and 3. Perhaps the committee should consider whether these clauses are in fact necessary or whether its not better to deal with it by way of ordinary legislation. And to all the other matters that will in any case have to be dealt with by legislation.
- RD Okay, the same question again
- KA Yes I would not be happy. I think its important that these things are here. Particularly this last one. And em I'm not quite certain why the establishes the AG automatically implies appointment of staff and various things.

- GG Chairperson I don't think it can ever be the intention simply to appoint one person to do all this work. He'll need assistance. For sure. But my problem goes further than that. You see in the case of the courts and all the other institutions, we do not - we have no provisions similar to this. And if we have it here for the AG it will - I don't know, its
- RD I think the question of delegating the powers is an important one. In other words I think 2 and 3 are important. 1 I think in some sense we could say that the office implies that that person also has a staff. Could we agree on that. Barbara
- BH Does it imply that the AG has the authority to appoint the staff and no one else 1.
- RD Okay well that's a point
- KA May I say unless it frames the PP to current PP clause 113, s113 in fact sets out exactly these kinds of things. PP may appoint the next one, the PP may delegate and the 3rd one is expenditure will be voted by parliament. So its currently therefore the PP. I don't know if its now disappeared or not
- GG Ya I'm referring to the drafts for the other TCs some of which has already been discussed in the CC.
- RD Okay, I'm just trying to work out how we can handle this. I actually think that the independence of the AG implies the right to appoint his or her own staff. So I think that 5.1 we could agree doesn't have to go in. 5.2 I think we think is quite important because of the powers of delegation. But it doesn't necessarily apply to - I mean we wouldn't want to see a judge delegating his or her powers to somebody else. So that I think has to go in there. And I think that the point about having to provide the money for the AG to function is an essential part of its independence. I think we agree on that. So I we'd say 2 and 3 should go in and not 1. Can I just re-iterate what I said earlier on about where we go from here. I think that what we should do is we should not try to have the revised draft come back here again and we keep going through it again and again and again. I think that what should happen now is that it should, Mr Grove will get our tapes, he's been here. He will draft the thing again and - he can consult if he feels that there are points raised by any individual people here. I think he can consult with them and see how it goes. I think that the text should then go now to the CC and presumably I will then go along as chair and present it again at the CC. If there are points that don't seem to be covered in the text, members of the committee can come to me and ask that it be raised at the level of the CC through the chair. Or alternatively they can go to members of their own party who are members of the CC and the matter can be taken up at that level. But I think that essentially we are reporting a high level of consensus on the text on the AG from members of this TC and I think that probably quite a positive single which we can be sending out at this point. Ya Piet

and then Ken.

PW Mr Chairman, probably a difficult question but just a technical question on - if you can't answer I would like anybody else around the table to answer. You remember the IFP made quite a number of suggestions and we incorporated it in the blocks if I'm correct, Snakes must help me. There's was a block for them in any case and we tried to accommodate them when they were out and when they came back we carry on. But they are out now again. How are we going ahead - that is the question I would like to ask and if nobody can answer it I will be happy to leave it until a later date. If we go on to the CC and what is happening to the suggestions that we accept it from their side but they were not here now to yes but the work must - just to take an example the comma must not be where Ken said it must, it must be at another place in that sentence, how are we going to accommodate that if it is possible. Because I foresee going through this over the weekend. I foresee that one or two points that might come back in the future as a problem to us. Whilst, and I'm asking the question, whilst we've got more or less 99,99% consensus here today on the AG.

RD I think that the way I understand the process is that the IFP's written submissions which were in before they left the CA are taken into account and I think we took those into account in our report. We went through them, we said which of them agreed with, which of them we disagreed with. What we can't do, is we can't second guess and what IPF would have to say about the text. I think the fact that they're not here means that they are not able to influence this aspect of our process. And I think that's unfortunate but that's the fact of life because they're not in the process at the moment. But I think that we did - all of us who are here we went through their proposals, we saw which ones we agreed with, which ones were points of agreement and which ones we disagreed with, which are points of contention so and so forth. And what we can produce is something which reflects the views of those of us who are participating in this process up to now. I think that is basically the way it's been working at the level of the CA As a whole. Ken.

KA Two points, remember I did ask you if we were going, when we got to the end of this if we have something in writing in terms of what resolution we are you know as opposed to just verbally saying, sort of a summary from the chair and then the chair reporting to the CC. Em I mean if the words are actually in the minutes that we've agreed that there's a high level of consensus, then I think you know that's acceptable to me. But as long as its those precise words.

RD That's what I said, I think everyone agrees with that, there's a high level of consensus on the - what we can't do, since we haven't got the final text in front of us. WE've agreed about the all the points we've made. I would even go further than 99%. I thin we've agreed a 100% on what we want to recommend. How that's translated in the drafting process we can't

guarantee because we don't have the text in front of us. And what we're saying is we don't want to bring the text back here to the committee. We want it to go on to the CC

KA Well as you know there are certain points that we don't agree, that we do feel the AG for example, where the status majority shareholding should be auditing, I mean as an example which is a point I'd been pushing further today because we've just discussed it previously, so you know its not - if the call the DP's position, what's the - for example in respect of Transnet, the AG should actually as of right be involved in checking up on those audits. And that's not incorporated here. But it was not a - so on that sense, besides the translating into legal language of agreements, there were aspects on which the DP did not agree, in which the committee did not reach agreement but where the majority held the view, this has been translated. So that's why its important to me that one doesn't get to a CC and there's a misunderstanding and you report something and either I'm sitting there or I brief one of our people who's sitting there who then says no, Mr Davis is not telling the truth, there isn't that degree of consensus. So that's just what I want to - we wouldn't do it deliberately so i'm not

RD I think that what's happened is, that we've probably reached a degree of higher consensus as a result of this discussion. I mean for example on that particular point, we've now said that the AG - we've all agreed the AG may on you know his or her own - in public interest definition investigate all kinds of other institutions where there are public funds at stake and or there is a right of parliament to pass a law to oblige them to do that. I think we've reached -

BH No, my understanding was that we had said that there would be referred to in the law. Because I also raised an objection, I thought it should be a constitution or right for the AG to have the discretion to audit and that it should be incorporated and I think the response was that it should be incorporated in the law

RD No, let's just clear this one up then. Em where are we now, we're at - we're at 2.2 and the point there was that the AG may in the public interest investigate, audit and report on the accounts of financial statements of any institution in control of public funds. That is a discretionary power which is given to the AG to decide to as it were, follow a paper chase through a range of institutions which have access to public funds which may be in the form of shareholding or may be in the form of a disbursement from budgetary funds. That we all agreed, that would provide the discretion for the AG on the AG's own initiative to follow such a trail. And then the clause above that, all other accounts and financial statements required by a law to be audited by the AG, that gives parliament the power to pass a law which asks the AG, requires the AG to do the same if parliament wants to take the initiative. I think we'd agreed on all of that, did we not.

KA You see I've let me - I've got a basic problem and that is, in our discussions

this afternoon in varying ways there are probably something in the aura of 20 or so things that have to be looked at and possibly changed or deleted or re-worded in a document if you take out the footnotes of about 3 or 4 double place. Then there's an enormous number of changes. And I think that its very problematic, well its impossible for me to say yes I'm in consensus that what we've now agreed is, I'm happy with. I'm not asking to prolong this discussion at all. I'm not necessarily even asking that this come back to this committee. But I'm just saying in that sense, I've got to reserve my position until in fact I see the next edition to see whether to me the important points have been taken up or haven't been take up or, whether I've understood correctly the discussion where I thought we perhaps reached agreement that we have or we haven't and its been conveyed correctly or not. So I just think there's so much that is going to be changed in what we have in front of us before it meets what I would say yes, I'm happy that that's acceptable, that for me to say it's acceptable subject to all those changes which are in imprecise form as opposed to I didn't hand in written amendments and so on. So I would have a problem there I'm afraid.

RD Well I think that is right because we're not going to see the final text, we're going to have to deal with it at the level of the CC and I'm suggesting there are two routes and probably would want to follow both of them. One of them is they can come to the chair and say that this point about which we reached some kind of a consensus or I understood we reached a consensus does not seem to have been taken up adequately by the law advisor. Then that would go into report to the CC. And the other of doing this is to go to your own party reps on the CC and to say a similar thing. I mean I think its both routes are there. So that we may not reach as much agreement on the final text, it's true as we appeared to have reached on the substantive issues here. But I think that on the substantive issues, most of them we've reached agree - I don't know, less I've misunderstood what's been going on this afternoon. Go on Piet.

PW Mr Chairman I would like to ask, isn't there a 3rd route that this thing comes back on Monday and then we have a final look after advocate Grove went through it and then we send it through. Because I don't know if the CC's going to sit. It seems to that on Friday there is some budget votes on Friday the 2nd and Friday the 9th. And if we can discuss it here again and just have look at it, not going into it in detail again. And then we make up our mind. How far we differ from each other or how close are we to consensus. I think there are actually 3 routes, that's my opinion and then we must decide which route is the best. But to force it again and to come back later and say no, no, no, this was totally wrong like we had with other issues. I think is also totally wrong.

RD Well, I think the thing is that we won't be able to deal with it on Monday because as I think we've got a very full agenda on Monday. We're going to do just to the RB issue. We've got Monday afternoon, we've got that levels

of government. If you want to say the following Monday we must come back again and deal with this, we also need to be moving on. I mean I don't know how many cracks of this we want to have before we send it through. Ya. Snakes.

Snakes

On a point of information, the CC is actually meeting on Friday between 8 and 10. So if this meeting agrees that it's got to go to the CC, it will - the document will be going on Friday

PW But do we

RD If it's going on Friday then I'm going to then I actually won't be able to be present, I'm going to be out of town on Friday. We'll need to then delegate somebody else to go to the CC and present it. Em alright, there are two options. We can ask for it to come back again and look through it again. Em

BH Can we make one proviso that if you know if we come across things that are major problems you know, if there are things that we do object to, that we just give it to you beforehand so that you have some idea of how much time we're going to have to devote to it. I think people should just be giving you an idea of whether its going to be merely just a thing of going through the clauses or whether we're going to be going through it in as much detail as we did today.

RD You see the thing is that I don't what we - we can't guarantee anything. I mean whether its going to be a small discussion or a large discussion, I don't think we can guarantee anything at this point. Em when might we be able to get the text, let's just ask

GG Chairperson, well, I'm not sure whether this draft - if it has to go to the CC on Friday, then we'll have to complete it by tomorrow.

FJ Mr chairman I think we should have a look at this again.

RD Alright then shall we, then I think the only thing we can really seriously propose is that we meet on Wednesday. Em

KA Chairperson if CA things can't meet on Tuesday, Wednesday, Thursday, I mean its a practical thing as well as - its not a kind of point to principle

RD I was going to suggest a lunch time meeting or something in the interest of getting it going, I don't even know if I can do it, I'm just looking myself. I mean that's the only solution we can come to otherwise we're going to have to delay it several weeks basically what it amounts to

PW Not on Wednesday Mr Chairman

- RD Well Thursday I'm out of town, but that doesn't matter, somebody else could chair the meeting and then present it. Does Thursday lunch time suit anybody. I mean I'm very, very reluctant to cut into the time on Monday I must say because we've got this RB business and I think that that - em
- FJ What time will be starting off on our - this committee meeting on Monday
- RD On Monday, well, I'm not quite sure
- Pat We don't know we were going to decide today
- RD Well I think we need to discuss it. We need to meet on Monday morning because we've got this other TC3 meeting on Monday. I would say we'd have to meet on 9 o'clock on Monday morning
- FJ And then we can do the AG as well - is that what we
- RD I wonder if we could. Okay there'll be a very strict time control. The AG will not be more than half an hour. If there's more issues arising than that then we'll refer it to the CC - how about that. 9 to half past 9 AG. Half past 9 onwards RB. Is that agreed. Okay then, then let's try and do it that way. Okay. Okay well. Thanks everyone
- KA Chairperson could I please, plead with you, could you on Monday come on that AG thing with a resolution in writing, please you know then we'll know exactly if you're saying because otherwise I'm just going to have to say no, not because I want to be obstructive but otherwise I don't actually know when one's saying we agree that there's generally a high level of consensus and so on that what in fact I'm agreeing to
- RD I think on Monday we want to basically say that the committee endorses the text, that's basically what we want to talk about on Monday
- KA When are we going to get that text then. Because I mean if you want me to actually endorse the text I'd have a few days to go to a legal person besides any discretionary things as a lay person that I may want
- RD Okay on Tuesday, you said it will be ready on tomorrow
- GG Well if it has to be tabled on Friday otherwise I've got the one problem .. that everything is urgent. It's actually difficult. I'll have to make time
- RD Thursday for Monday
- KA Well you know it's not because by the time I get it Thursday and then I have to copy it and then I have to send it to a legal advisor and then I have to get their opinion back which you know I'm not then going to be ready at 9 o'clock on Monday morning to be able to say yes this draft is okay. There's

actually no panic on this. I mean nothing else is being held up by this, nothing whatsoever, so there isn't a panic

RD No but what

KA There isn't a panic, and I also - you know I understand and I take in the spirit that you say it and everything. But if you know how we have been - not in this sub-committee but in general been bugged around in the CA with months and months of delay and kicking for touch, I cannot then start asking people to work through the night on something because you know everything get's left and everything get's left. So I don't take offence at all because I understand the spirit in which you're saying it. But you know if you're looking at - if one's just looking at the range of work that we all have to do, I mean you know what we've got at finance committee at 8 o'clock tomorrow, 9 o'clock state expenditure at 2 o'clock tomorrow, then we've got public accounts at 4 then we got public accounts 9 o'clock and then you've got to prepare submissions and then it goes on. Its just not possible

RD Well I think thing is you know, what's not possible, we're getting very squeezed in terms of our time table and its partly of this insistence that we go off into 3. We haven't been working on the FFC and quite frankly we wasted a lot of time there. And I can see what's going to happen, we're going to get caught in the last few weeks of June. We're going to get caught with having to do all these things in one .. swoop and that's what I'm trying to avoid is that we then string over a whole series of things which we can deal with fairly expeditiously. We keep delaying them and delaying them. I don't know when could you - if you got it Wednesday instead of Thursday would you be able to -

KA If I got it by Wednesday lunch time, so I can get it copied, in other words when I come back from public accounts on Wednesday, you know 12 o'clock, half past 12. If I can then send it to - well I can then check it I can then send it to a legal person, I can then expect to get a comment back by Friday afternoon, which means over the weekend I can then say right, for 9 o'clock on Monday morning I've now - can take a view

RD Could we implore you to try and get it by Wednesday afternoon - okay

BH I just want to point out

KA I'm not - I'm asking that he have Thursday and Friday to do it. To get back to me

BH Thursday, Friday, Saturday Sunday

KA No, but Saturday, Sunday's no reason why my law advisor should work on Saturday and Sunday. I mean I can't run to people and ask them please well, you might work on Saturday and Sunday. I don't have endless institutes

working for me

RD Well, alright, we don't have a group of engaged and committed law advisors with the DP - they have to pay for them. Alright, then okay, well, Wednesday afternoon we have to get it

Transcriber: P Fahrenfort