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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 5

THE JUDICIARY AND LEGAL SYSTEMS

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PRESENTATIONS BY
ASSOCIATION OF LAW SOCIETIES
MT STEYN, AG BROOKS & D OLIVIERA

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE FIVE

THE JUDICIAL AND LEGAL SYSTEMS

HELD AT CAPE TOWN ON 16.2.1995

CHAIRMAN: Although we are still slightly under our full numbers, I would like to welcome the delegation of the Association of Law Societies with us today. The delegation consists of Mr Brookes, who is the President of the Law Society of Natal, Mr Olivier, President of the Law Society of the Transvaal and Mr Steyn, who is the Councillor of the Law Society of the Cape of Good Hope.

We wish to welcome you. We really appreciate the time that you have taken to come and speak to us and we hope that we have a productive afternoon. Normally we allow you about 15 or 20 minutes to make a presentation, we are flexible on that if you need a little bit longer, and then we would like to have about an hour or so for questions and answers after that. So without further adieu I would hand over to you.

MR A G BROOKS: Mr Chairman, Ladies and Gentlemen, thank you for this opportunity, I am Allan Brooks, Mr Steyn is on my right-hand side and my colleague, Mr Olivier, is on my left-hand side. I understand that we are the last interested party to give evidence so we would hope perhaps that we have saved the best until last, but that is for your committee to decide.

When we looked at this topic, and I must say we have done it on fairly short notice, because the need to appear before the committee was upon us, but we were able to spend

a reasonable amount of time dealing with the topics that your committee is dealing with.

We were very conscious of the fact that the legal system that we have in this country should be the best that we can afford and we should understand that by affordability we come from the basis that South Africa is not a wealthy country and that we have very important priorities elsewhere. But given that scenario, we seek in our submissions to make proposals that may well have been made by other interested parties, but which we would hope would lead to the most efficient and the most cost-effective and the most available system of justice that it is possible to provide for our people.

We believe in dealing with the subjects that are before us today in the context of the Constitution, that we should concentrate on principle and not detail to an excessive extent. Because we believe it would be a mistake with respect to place too much detail in the Constitution itself because inevitably that would lead to the necessity to amend the Constitution, and as lawyers we believe it is unhealthy to have to amend a constitution too often. It should be a document that is almost sacrosanct and that is respected and only amended for very good reason.

So we are saying beware of change for the sake of change in the context of the legal system as it works. Let us not throw out the good with the bad. Let us look at the system and let us try and amend it or blend it to the new situation that we have in the interests of those factors that I dealt with earlier.

Traditionally if one looks at Item 1 of our submission, structure of the court system. Traditionally I would like

to think that our courts have worked as a sieve, if you like, in reverse. In other words, there must be a very broad base to the legal system. It must be available to the man in the street, and as the complexity of the disputes, as the gravity of the disputes increases, so they are sifted out until you get to the highest court in the land. And we believe that we should try and establish a similar sort of structure so that matters are dealt with on a broad base and gradually move up through courts of appeal or referral or review to the higher courts which are then not required to deal with excessive volumes of work.

This is a problem that we see particularly in the case of the Constitutional Court. We know that it has only just started its functioning and it remains to be seen how it copes with its workload. But we are concerned that if the Constitutional Court is the only court that deals with matters relating to the Constitution, and all other courts are excluded from those considerations, we will find that that court is grossly overburdened and will never be able to fulfil its real function.

So our submission, as you can see from our written paper, is that all courts, from the magistrate's court upwards, should have a constitutional jurisdiction and that they should be empowered within certain parameters to deal with constitutional matters.

We agree that the Constitutional Court should have the final say in constitutional matters, particularly with regarding the validity of legislation, Acts of Parliament and Acts of Provincial Councils.

Mr Chaskalson addressed the Legal Forum at Somerset West a few months ago, and I think several of us who were

here today were present, and he actually touched on that same concept in his address to the Constitutional Court. I have been fortunate enough to receive a copy of the proceedings of that Forum, and if members of your committee have a copy available, they may like to refer to page 54 where Mr Chaskalson actually asks the question whether the Supreme Court ought not to have a broader jurisdiction to deal with constitutional matters than it presently has.

I will not go into any great detail on that point at this stage, save to say that we support that concept. We believe if it is ever going to work properly, that has to happen. One must also bear in mind in arguing, if anybody does, that the Constitutional Court should have sole jurisdiction in constitutional matters, that by definition it is not a court of fact and the facts in any dispute will have to be sifted out at a lower level. It will be unconscionable in a dispute in a lower court where a dispute of fact and a dispute relating to a constitutional matter were before the tribunal that the matter should be adjourned so that the constitutional dispute can go to the Constitutional Court while the matter itself, the dispute before the court, has to wait in limbo until a decision comes down from the Constitutional Court. Another reason we say why the lower court should also have constitutional jurisdiction within certain parameters.

Mr Chairman, we have submitted written proposals in this regard. They have only just been circulated, so I am aware of the fact that your members have not had an opportunity to read them. With your permission I will briefly go through what we see as being a workable structure for the court system in our country. It would help if I

could explain this diagrammatically, but I do not believe that the boards we have available are large enough so I will very simply try and explain to you the vision that we have of how our courts should be structured in the future.

And to a large extent it accommodates the existing structures that we have. As I said before, we do not want to throw out the good with the bad.

We see a system of lower courts, or the magistrates' courts, if you want to call them that, dealing with smaller civil matters, minor criminal matters, the Family Courts being introduced into the magistrates' court system, the Industrial Courts and that type of matter, being dealt with on a broad base in every magisterial jurisdiction in the country through the medium of the lower courts, we would then see, and we believe it is an imperative politically and legally, that there should be what we have called in our submission a high court in each province. We have got the provincial divisions of the Supreme Court at the moment. We believe that each of the nine provinces should have its own provincial division or we would call it High Court, with in certain circumstances where the need requires, local divisions. So Kwazulu/Natal where I come from for example would remain as it is. You would have the Natal High Court and you would have the Durban and Coast Local Division.

The same sort of structure would accommodate the problems that I believe we have in the Eastern Cape at the moment with Ciskei, Transkei and the old Eastern Cape Division. You would have the High Court for that province and local divisions on the ground.

Then in preparing for the submission we had the advantage of seeing submissions made by certain of the

judges of the Cape Provincial Division and they dealt with I believe what they call "circuit appeal courts", which would be the courts of appeal from the High Courts in each provincial division. Now here again there is a cost-saving involved and there is also the advantage that at circuit appeal court you would have different judicial officers hearing the appeals. And we see, as the judges propose before you sir, that there should be three circuit appeal courts each accommodating three of the provinces. So we could have the three western provinces in one circuit court, we could have perhaps the Eastern Cape, Natal and Gauteng in one, and we could have the other three provinces forming the other circuit appeal court. That would be the level of decision on fact. That would be the highest court to arbitrate on questions of fact. So that from that court your appeal would then be to what we call the Supreme Court, and the Supreme Court would comprise of two chambers, the Appellate Division, or whatever you want to call it. We thought perhaps it should be called the Common Law Chamber, and the Constitutional Chamber. So what we up to now called the Appellate Division and the Constitutional Court would be chambers of the Supreme Court and they would deal with common law matters or they will deal with constitutional matters and where the matters would go in respect of the two courts would be decided by the Chief Justice in committee. And we believe that we have to have a Chief Justice. We cannot have a Chief Justice and a President of the Constitutional Court of an equal status. We believe respectfully that that will not work. There should be a senior jurist in our country and he, together with Deputy Chief Justices of the two courts, can create the rules and

administer the processes of that pyramid as I have just described it. But we can go into more detail as to how we see the inter-relationship between those courts in section 2 of our submissions which will be dealt with by Mr Steyn.

MR M T STEYN: Thank you Mr Chairperson, Ladies and Gentlemen. To refer you to our document you will see that our submission, and as you heard now from Mr Brooks, is that the court system should be simplified and restructured in such a manner as to make it more intelligible and accessible to the people of South Africa. We believe that what we need under a new Constitution would be a simplified structure, not one that is more detailed and more complex than we have at the moment. The people of South Africa must understand how justice in this country is dispensed.

The restructuring that we propose, as you have heard, is that we should have two levels of courts. We should have the lower courts consisting of the magistrate's court and other similar courts and the superior courts. The magistrates' courts should basically have the appearance that they have now. They can be changed by evolution as and when circumstances demand it.

As far as the superior courts are concerned they should also to an extent maintain their present structure in that we want to convert the provincial divisions into provincial divisions of a High Court as opposed to a Supreme Court, each province to have its own High Court. From those courts will be appeals to the circuit courts of appeal and then of course to the Supreme Court.

As far as the inter-relation between these different levels of courts are concerned, I think Mr Brooks has quite adequately set it out. The only point I really want to

address you further on is the question of the structure of the so-called Supreme Court. We can have a separate Constitutional Court in this country, and I know that there is a lot of emotional feeling about it. The problem that we have is that in history there have often been occasions or similar instances where you had competing courts. In Britain for example in the previous century there was tremendous competition between the Admiralty Court and the Common Law Courts with the result that the Common Law Courts started chipping away at the jurisdiction of the Admiralty Court to such an extent that it basically disappeared. It had to be revived later. The question that we ask is if in this country we have an appeal court and a Constitutional Court sitting on the same level, having theoretically equal strength, who is going to be the final arbiter as to which of those two courts would have jurisdiction in the case of a dispute as to whether it is a constitutional matter or a mixed constitutional, law and factual matter. Because we believe that the party who has the final say is the party who is going to evolve or come out of the whole struggle as the victor in the end and that will become the Supreme Court of the country. We believe that the constitution should address that and avoid such a struggle because that will not be conducive to good justice. Therefore, to repeat what Mr Brooks has said, we must have a Chief Justice who will be the No 1 judge in the country and who stands at the top of the pyramid assisted by two deputy Chief Justices, one in charge of the common law chamber, for want of a better term, which will be the chamber deciding all matters of an unconstitutional nature but which will also have jurisdiction in constitutional matters. The Constitutional

Court on the other hand or constitutional chamber, will deal purely with matters of a constitutional nature, such as for example, where the validity of an Act of Parliament or of the provincial legislature is challenged and that is the court to which the matter will be referred. In the case of a dispute, we believe that those three top judges should sit in committee and decide where the matter should go, the casting vote to be on the part of the Chief Justice who will actually be then the chief administrator and not be having an interest in either of the two chambers.

I will ask Mr Olivier just to address you then further on certain aspects already contained in our interim Constitution that are relevant to this aspect.

MR D OLIVIER: Thank you Mr Chairman, Ladies and Gentlemen of the committee, I will be very brief. We feel that the Appellate Division as it is called at the moment, but which will be called, say for instance the common law chamber in the system that we propose, should also have the jurisdiction to deal with constitutional issues. Legislation of Parliament could be dealt with by all the High Courts, except that the Constitutional Court will have the final say on the constitutionality of the laws of Parliament, and as Mr Justice Chaskalson has indicated, that we support the view that an ordinary division of the High Court, as it is called, the Supreme Court at the moment, provincial and local divisions, will be able to pronounce on the validity of an Act of Parliament, but an Act of Parliament should not be declared unconstitutional by the High Court or by the provincial division or the local division.

As far as the jurisdiction of other courts are

concerned, like magistrates' courts and the High Courts or the Supreme Court as they are called at the moment, will be subject to the normal limitations on jurisdiction.

I think that as far as disputes are concerned there was a suggestion made that there will be a committee consisting of the Chief Justice and the two Deputy Chief Justices to decide which court should deal with which matter in case of a dispute. I think the Constitution should make provision for an Act of Parliament to prescribe the procedures to be followed in the case of an appeal to the Constitutional Court chamber and to the common law chamber. I do not think that it should be left to the Constitutional Court to make its own rules because we may find a situation as we have at the moment where some of the rules of the Constitutional Court may be perceived to be discriminatory, I want to refer to two for instance. The provision that only people who can appear in a Supreme Court can appear in the Constitutional Court, that is discrimination against attorneys. Rule 25, which provides that attorneys' fees should be taxed according to Rules 9 and 10 of the Appellate Division Rules, that is also a discrimination against attorneys. And where do you turn to then if you want to attack the rules of the Constitutional Court? Our suggestion is that the Rules Board should make the rules of all courts, including the Constitutional Court, so that you can turn to the Constitutional Court if you find the rules of the Constitutional Court to be unconstitutional.

The same applies as section 22 of the Constitution is concerned which gives you the right of access to a court. The Rules of the Constitutional Court provide that there should be leave to appeal and that may also be

unconstitutional, but where can you turn to in order to test that? That, Mr Chairman, in brief is what we have to say on the constitution issues.

CHAIRMAN: Thank you very much. I think that was a concise presentation. I have a couple of questions indicated already, Mr Schutte was the first one.

MR D P A SCHUTTE: Thank you, Mr Chairman. Three matters. The first one is, the argument was that your proposal would simplify matters. But the way I read it and understand it you would actually introduce a further tier of appeals. In other words, there would be the possibility of appeal from a High Court to the Circuit Appeal Court, thereafter to the Supreme Court. Is that not in actual fact doing the opposite, to make it more complicated, and possibly also more expensive?

The second point is, do you envisage a possible appeal from the common law chamber of the Supreme Court on - I would assume that that would be the last instance of factual decisions - from that to the constitutional chamber, which would actually add a further tier of appeals.

The third question is, the way I read your submissions, the judges of the constitutional chamber will be appointed in exactly the same way as the judges of the common law chamber of the Supreme Court. If that is the case, why make a difference? Is there really a need for a constitutional chamber any more?

MR A G BROOKS: Mr Chairman, to deal with the first point, one should bear in mind of course that as the practice presently exists, there is an appeal from the Supreme Court, single judge decision to a Full Bench, and this Circuit Appeal Court would simply replace that present step in the

appeal process, but it would have the singular advantage that the Circuit Appeal Court would comprise different judicial officers. So the litigant would not see his appeal being heard by a brother of the judge who found against him.

The Circuit Court judges would be separate to what we call High Court judges in normal provincial divisions. We do not believe it would be any more expensive for that reason.

As far as an appeal from the common law chamber to the constitutional chamber is concerned, this has been the difficulty right from the beginning, insofar as the establishment of a Constitutional Court is concerned. We understand the need for the Constitutional Court from a political and an emotional point of view, and we believe that if it is going to work in practice the committee, if you want to call it that, comprising the Chief Justice and his two Deputies, will have to formulate rules to ensure that there are not a multiplicity of appeals as Mr Schutte has suggested might be the case. I do not believe there is a final answer to that at the moment. What we are trying to do is simply create a structure. Obviously movement between that structure will have to be determined by rules and regulations. As things stand at present one can unsuccessfully apply for leave to appeal, and you can have that application refused at the lower court level. We see that type of opportunity existing for discretionary decisions as to which court should actually hear the matter.

The third point raised was if the judges for the constitutional chamber are to be appointed in the same way as the common law chamber whether there is any need to have two different chambers. There, too, we believe that

political and emotional factors play a role. And the parameters that one might seek to apply in appointing or selecting a judge of the constitutional chamber might well be different to the ones that one would apply in appointing a judge to the common law chamber. That would be something for the Judicial Service Commission to decide in its wisdom.

MR J DE LANGE: There are a few issues I am going to ask. They are basically to clarify the model you have put forward really and not to ask much outside of that.

The first issue is really a question. I did not understand very well what was meant by Mr Steyn pertaining to competing courts. I had a bit of difficulty firstly in understanding the concept exactly although I understood the example he gave. And then secondly on that issue surely the example raised is not really applicable to us because I mean England, we know the legal system in England is nothing close to a constitutional state by any stretch of the imagination, and in a constitutional state it is quite clear who has the final say in any constitutional matter. And if the Constitutional Court, even as the Constitution stands now, says that the matter falls within the jurisdiction of the Constitutional Court, even what could be perceived as only a common law matter, if there is some impact on the constitutional issue the Constitutional Court will be the final arbiter. So if you can just clarify that. I don't have much argument with it. I am just trying to understand the concept.

Then the issue of Deputies of the top court. I think you called it the Supreme Court, the top court with the two chambers. I agree with you, you cannot have two bulls in the same kraal. But what you have done now is you have

emasculated the bull and you have given the power to the two little bulls because what you have done is you have made the chief the Chief Justice, but then you said he is an administrator or she is an administrator, and that the two Deputies will be the ones that run the courts. It just does not seem right to me. A Chief Justice needs to sit, whether it is on the one bench or the other, in matters, needs to decide and so on. I just wonder whether your conceptualisation of the top three whereby the one becomes an administrator really is a viable option. And whether one doesn't just do it another method. The one one would think of is you have your Chief Justice and as in any court you have judges that have certain seniority and the most senior judge would sit in a matter or whatever other mechanisms or traditions they work out for themselves. I am just worried that to entrench that type of situation really does emasculate the Chief Justice.

On your model of the Constitutional Law chamber, that also has some jurisdiction and constitutional matters which I imagine are referred to it by the Chief Justice or the committee. What happens there if there is a conflict between the two chambers? If both of them can hear constitutional matters, who has the final say between the two? For example, if the same matter comes up before the other chamber and that chamber were to give a different ruling, what does one do in that instance on a constitutional issue?

CHAIRMAN: Mr De Lange, can I perhaps suggest that we deal with those questions and come back to you afterwards?

MR J DE LANGE: I have got no problem.

MR M T STEYN: If I may respond to that. Let me start at

the end and work it back to the beginning. A conflict between the two chambers is exactly what our proposal seeks to avoid in that at the top level the Chief Justice and the two Deputies will decide which chamber is going to be seized of the matter. That chamber will decide the matter once and for all and there will be no to-ing and fro-ing between the two chambers. The mechanism there will have to be worked out exactly as to how that decision will be taken. We thought that a committee system will be best, in that the Chief Justice would have a casting vote, sit with the two Deputies, and you won't have the need of a legal argument before them as to which court should have jurisdiction as one can often have. It is time-consuming, it is expensive and it delays matters. We want to avoid that. We see that under the present system with an Appellate Division and a Constitutional Court you can have exactly the type of conflict that we are trying to avoid. Because as we read the interim Constitution, the Supreme Court and therefore it is Appellate Division, has jurisdiction in constitutional matters. At some point the jurisdiction of those courts could come into conflict with the jurisdiction of the Constitutional Court. We believe that the final Constitution of this country should make it impossible for such a conflict to arise and we believe that our model would go a long way, if not the complete way, to addressing that.

To get to your second point. You spoke about the Deputies and you said that would emasculate the Chief Justice. That, of course, depends on who the Chief Justice is. If it is a lady we will not have that problem! But to get back to the serious side of it. We do not believe it will emasculate the Chief Justice. We agree that he should

sit/...

sit in court. He should sit in both chambers in order to participate in the workings of both chambers, in order to understand the problems of both chambers. He is, after all, the Chief Justice of what we call a Supreme Court.

Mr Schutte has asked a question well then, is there a need for a constitutional chamber? Should you not simply have a Supreme Court that decides all matters? That is the position in the United States of America where you have one Supreme Court who decides all matters. We may come to that conclusion in the end in this country. At the moment, as we have stated, there is a strong feeling that we should have a Constitutional Court, that the country is going to become a constitutional country and therefore we believe that that feeling should be given its true force. And that is why we feel that we should have a constitutional chamber. We should give recognition to that movement in the country.

Getting back to your first point about the competing courts. I think it really ties in with the conflict between the two chambers, that there can be competition. If the Appellate Division hears a matter that is a combined matter of fact, law and a constitutional aspect to it, where you have conflicts or where both issues are challenged, the Constitutional Court may jump up and say but you cannot decide whether that law is invalid. That must be decided by us as the Constitutional Court. We will decide that first, then we will send it back to you and you can then decide the other issues. That will cause delay. We believe that our model will address that in that the committee that we propose will look at this and say where does this best reside, in the common law court or the Constitutional Court? Where does its bias lie? Because in law you cannot put

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things in pigeon holes. They always cross the lines. You cannot say this is the simple principle, it is in its little box, nothing else affects it. The lines are crossed and at that level we should be able to deal with that crossing of the lines in a manner that will lead to expeditious dispensation of justice. I trust that answers the question.

MR OLIVIER: Mr Chairman, if I may just correct one thing. I think Mr Steyn is not correct if he says that the Appellate Division at the moment has jurisdiction as far as constitutional issues is concerned. I think that is one of the main criticisms being aired at the moment, that the Appellate Division is excluded entirely from deciding constitutional issues.

MR M T STEYN: Mr Chairman, let me just rephrase that. The Supreme Court at present has jurisdiction in constitutional matters. The Appellate Division is but a division of that court. You now find that the lower court can decide a constitutional matter, but when it goes on appeal, its own Appellate Division, its higher chamber may then, as Mr Olivier correctly points out, not have jurisdiction but it goes to another court, the Constitutional Court. It is not as organised as we would like to see it and we believe it can be dealt with better.

MR J DE LANGE: The issue on who has the final say between the two chambers. You have dealt with it extensively but it still does not solve the problem to me unless you are saying the following thing. Will we write into the Constitution that if a matter is referred to the one chamber then that decision of that chamber is the final one? What I have in mind here, I mean take any issue. You have an issue in

year 1 it goes to the one chamber. The committee decides we will refer it to chamber No 1 which is the mixture of the Constitutional Law and constitutional matters. It is a constitutional matter they hear. They come to a certain decision on that constitutional matter. Two years later exactly the same issue comes up and it goes in front of the other chamber and that chamber comes to a different conclusion than the first chamber. So I think that still does not - your answer has been it depends where the committee has referred the matter and that has the final say. But if next time it is referred to another chamber then you are not solving it. So if you can just deal with that practical issue of how that is dealt with.

Then the next issue I wanted to raise is, in your scenario, the way you see the two chambers, do you see if this model was to be agreed upon, in practical terms do you see that the present Constitutional Court will become the one chamber and the Appellate Division as it is now will become the other chamber, and somewhere along the line obviously the Chief Justice and the Deputies, if that is agreed to, will be chosen or elected in some way or appointed in some way? So in practical terms do you see that happening or do you see those two chambers being set up completely anew, separate from what we have on those two issues? The others are smaller, practical issues. Maybe I should give some other people a chance and if there is time I will get back to those.

MR D OLIVIER: Mr Chairman, I will deal with the first issue. I think if a decision was taken by the Committee that it should be referred to the constitutional chamber or the common law chamber, and once that decision has been

taken by that chamber it will be a final decision which will be binding on all courts.

There is a case pending in the Constitutional Court, a trial date must still be allocated, where the question is to be argued whether the principle of stare decisis can apply when you deal with constitutional issues or whether the court should always be at liberty to raise constitutional matters irrespective of what has been said by higher courts. That will be of course a very interesting decision and to see what the Constitutional Court is going to decide.

But to reply to the first question. I think in order to get clarity and to allow the country to know exactly what is going on, if a matter was referred by the committee to a chamber for decision, if the same matter is raised in future again it will be argued by the same chamber and it will not go to another chamber.

As far as the second issue is concerned, I will ask Mr Steyn to deal with that.

MR M T STEYN: I think the answer to that is that our view is we must not disrupt what we have at the moment unnecessarily. It has cost a great amount of money, time and effort to build up these structures over the decades and centuries. We see the existing Appellate Division as forming the so-called "common law chamber" and the existing Constitutional Court becoming the constitutional chamber. Some adaptation will have to be done along the line as far as numbers are concerned, but basically we do not believe that there will be any malfunction in a system that works like that. Otherwise we now have two High Courts in this country, one sitting in Bloemfontein, one sitting in Johannesburg, the judges of the two not interacting with

one another and we do not believe that that is a healthy situation.

CHAIRMAN: Could I maybe just ask you to clarify one point arising out of Mr De Lange's question. From my experience, as you have said yourself, many cases are inter-related and could you not find a case that ends up in your common law chamber where a constitutional issue is an almost secondary issue, but in the end it gets decided there and that you then in a later case end up with that same issue as being the substantive issue in a case and that it really should go to the Constitutional Court or constitutional chamber and they may end up with a different view on the matter. I think that would be the kind of practical difficulties that one may have. Particularly I think in the short-term where I think there has been concern expressed to us about the fact that your present appeal court does not necessarily have judges with great expertise in constitutional matters.

MR M T STEYN: Mr Chairperson, yes, I think that is a problem obviously I think that we all grapple with because of the inter-relation between legal issues. We have nothing to fall back in this country as far as experience is concerned or case law. We would like that to be avoided by having this committee model that we suggested, where the committee will sit and in my view all appeals will go to the Supreme Court. An appeal would not be to a chamber as such, it will be an appeal to the Supreme Court. The Supreme Court will then sit and look at this appeal and decide where does this appeal resort? Should it go to the common law side of the fence or should it go to the constitutional side of the fence? Is the constitutional element in it the overriding one or is it a lesser one?

How the mechanics are going to work exactly is difficult for us to say. But we are sitting with that same problem at the moment. There may be an appeal to the Constitutional Court but the Constitutional Court says but look, this should not come to us. This is not really something that falls within our ambit, it must go back to the common law courts. The common law courts may then say it has got such a heavy element of constitutional dispute in it, but nonetheless the Constitutional Court has decided not to hear the matter so we have to decide this constitutional issue. So I think you could find it inherent in the present system already, and in my view it is there. We want to address that, simplify it and make it easy for the judicial system to separate it into true constitutional issues and mixed issues.

CHAIRMAN: Are there any other questions? Mr Van Heerden?

MR F VAN HEERDEN: Just a brief question, Mr Chairman. In the last paragraph, 4.4, you just briefly refer there to the question of appearance of people who are not admitted as practitioners and then you express the opinion that that should be considered under Block 8. Can we therefore expect that you will deal with this when we reach that stage of our investigation?

MR A G BROOKS: That is correct, Mr Chairman. I would, if I may, before we finish, deal with Portion 4 of our submissions which we did not really deal with on their own. I will deal with it and Mr Steyn will deal with Portion 3.

Just to run through the submissions as they appear. We believe that only admitted legal practitioners...(intervention).

CHAIRMAN: Mr Brooks, I am just wondering, to start with new

issues now while we are not maybe finished with the other one. There are just maybe one or two things we still need to clarify, otherwise we are going to get mixed up on the issues. So I just wanted to propose that you give us a bit more time to do that.

MR A G BROOKS: Sure.

CHAIRMAN: I think we thought we had run out of questions, but I am sure we can rely on you to keep us going.

MR J DE LANGE: I am trying to just get the conceptualisation right here. I hear what you are saying about not rocking the boat and not changing things and so on. I do not fully share those views but for whatever it is worth. Isn't the three Circuit Appellate Divisions that your proposal is mentioning, isn't that the substitute of the AD as I see it? That instead of having one Appellate Division in this country, because we now have provinces which have certain exclusive jurisdictions etc. etc. that you are now creating basically three ADs in the country, so that you can kind of fine tune the work from there into those ADs and then it goes to the highest court. Isn't that the right place for the AD to go? That the AD judges get divided amongst those three and not try to create this amalgamation of trying to take the AD up to the Constitutional Court? You could still have two chambers like the German Court has. The German Constitutional Court has a two chamber court. And I am just trying to see the conceptualisation why it is imperative in your model that the AD has to go to the Supreme Court and does not actually form that line of three new ADs that we have between the provinces. Could you just try and deal with that issue please?

MR A G BROOKS: Mr Chairman, I will try and respond to that.

Of course the Circuit Appeal Courts will only have jurisdiction within the area of jurisdiction of the three provinces that they deal with and that would be wholly unacceptable for a court of final appeal because it would not have jurisdiction over the entire country. So there has to be an umbrella tribunal if you like that would deal as a final court of appeal in common law matters from the Circuit Courts.

We have not introduced a new stage, as I pointed out earlier. At present we have appeals to the Full Bench of the provincial division in each province. That will be dispensed with and instead it will go to the Circuit Court and then should the need arise it could go directly to the AD. It could - and we are conceptualising here - be an appeal directly from the High Court or the provincial divisions as we presently call them, to the AD which is a common occurrence in present time. I believe it is up to the parties, up to the matter, the importance of the matter, as to how it will find its way through the system. But we believe it is important to have those sieves, if you like, at each level and only the really important matters should get to the Appellate Division or the common law chamber as I would hope is the case at present.

MR D OLIVIER: Mr Chairman, if I may say. The reason why one would have to make provision for certain High Courts or Supreme Courts or whatever you want to call them in your Constitution, is to decide on the jurisdiction on constitutional issues. You can leave the mechanics to ordinary legislation of Parliament, as is done at the moment in the Constitution. You only have to differentiate between the various types of courts in order to decide what you are

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going to do with the jurisdiction of the constitutional issues.

MR A G BROOKS: Mr President, could I just respond to one other remark made by Mr De Lange. I think that he suggested that we were trying not to rock the boat, and those were his very words. It is not the case at all. But we do believe that there is no point in throwing everything out if it does not need to be thrown out. One must approach this in a positive mind-set. We have a vast history of jurisprudence that should be valued and should be used to its major benefit.

CHAIRMAN: Thank you for the promotion Mr Brooks, I am not the President yet! Can I ask you just one further question, and it is one on which we have not had specific argument yet. But at the moment there are not provincial divisions in each of the provinces, and in a sense I think we probably waiting for the Department of Justice to complete their work into the rationalisation of the courts. But have you got any thoughts on the feasibility of establishing provincial divisions in each of the provinces as they are presently constituted?

MR A G BROOKS: Mr Chairman, I think there is going to be overwhelming pressure to do that. I think each province is going to want its own High Court or provincial division. The buildings exist. Eastern Cape immediately comes to my mind. I am not an authority on developments in the Eastern Cape, but I understand there is a great debate in progress as to where the court should sit. And obviously if one accepts the principle that each province should have its High Court then the question of where it should sit is for that province to decide and the feasibility or otherwise

of establishing local divisions in other centres within that province is also for that province to decide.

CHAIRMAN: I think I was asking more about provinces like Northern Transvaal, Eastern Transvaal or North West, where there may not be very much of an infrastructure at all at the moment, and I think where it also would have certain implications for the profession if one were to move or to establish provincial divisions there.

MR D OLIVIER: Mr Chairman, in the Transvaal we have debated this matter at length and we will of course present our submissions to the Hoexter Commission once the Commission is functioning. We look at the interest of legal practitioners, especially that of attorneys, but we look at the interest of the public and we have decided that when we present our submissions to the Hoexter Commission, the interests of the public should take preference. If you want to establish Supreme Courts in Northern Transvaal where there is no Supreme Court who is going to pay for that? You may end up with a summons being issued at the cost of R600 in that court whereas it can be issued in Pretoria at the cost of R50. I think that that should be a very important issue that should be taken into consideration. We also accept that the politicians of the various provinces will also have an interest to have their own Supreme Court. I think that the people in the North West province where I come from will not like the court in Pretoria to pass judgment on legislation which was passed by the legislation in the North West. That may be a factor. But we are going to adopt the attitude that the interests of the public should take preference and if it is going to increase the costs then maybe we should not have a High Court in each

and every province.

MR B NGCUKA: I do not know whether it is because it is the first time that we have attorneys, but I have listened to their input. I think it has come out very much more clearly than all the inputs we have received before.

There are a few things, however, that I would just like to clarify in my mind. The question was asked by Johnny next to me. The distinction between the two chambers of the AD. If the other chamber is also going to deal with the constitutional matters, I heard you say that the other chamber will deal with the whole question of Acts of Parliament, declaring whether they are valid or invalid, jurisdiction, question of competences between the provinces and the national and all those factors. But other than that, what would be the differences between those two chambers? That will be the first thing. I need some clarity on that issue. Because then the matter can just as well be dealt with by one chamber of the AD. Why are we going to need two chambers of the AD to deal with this question? That essentially I think is the problem, and I think I would need some clarity on that.

The second point that I need clarity on is this Circuit Courts of Appeal. I have heard the fact that the problem would seem to be when you appeal from one judge to the Full Bench of a Division. Is that the only reason why we are instituting these courts? Isn't that going to be too costly? What are the cost implications of that? I have heard very little being said about the lower courts. I would have thought that as attorneys that would be your primary concern, considering that 99% of the criminal cases that are being heard in the

lower courts not in the Supreme Court. The Supreme Court is handing very, very few cases, only the cases that catch the headlines you know from behind me. Thank you.

MR M T STEYN: Mr Chairman, once again, let me start from the end. The question of the lower courts. I am afraid we did not get to Item 4 of our submission to you and we deal with it there. We understand the problem with the lower courts. We believe that those courts function and that they function adequately. The problem may be with the way in which they function, in that the way in which they dispense justice is not acceptable to all the citizens of the country. We think that the solution is not to change the structure of those courts but to look at the structure of who decides cases in those courts. In our view the simple solution would be to have lay assessors sitting with magistrates in as many matters as may be required, in all matters if needs be. The lay assessors would then assist the magistrate not only as far as the finding of fact is concerned, but also the finding of, for example, sentence or compensation in civil matters. Because as attorneys we get the impression that the courts are often out of feeling with what the public would expect to happen in a certain matter. We often hear complaints that a sentence is inexcusably light or that compensation that is being awarded is unintelligibly low and that if the public had been involved either by way of a jury or assessors a more just solution and outcome would have been reached. So as far as the lower courts are concerned we say put the public there but to be guided by a trained and experienced magistrate, one that is acceptable. Let us not confuse the structure of the court with the acceptability of the bench. We are addressing the

question of structure, not who is sitting on the bench as such, whether that is a good judge or a bad judge or a good magistrate or a bad magistrate. That is where we think the statement of the cries of illegitimacy of the courts come from. That should be addressed, that should be removed. But the structure we believe works. We do not believe that the jury system is going to work in the lower courts. We might try it in a few matters, but if you look at the number of cases coming before those courts it just seems impossible to have them heard before a jury. The country would not cope. Everybody would be sitting in the jury bench and nobody would be working. We would be having millions of people sitting in court every day hearing cases.

To get to the Circuit Courts of Appeal. There are numerous matters appealed from as far as the judgment of a single judge is concerned to a Full Bench. Those are matters that do not justify being taken to the Appellate Division. There should be a court that deals with that, there should also be a court that can reduce the workload on the Appellate Division which is our Supreme Court. We believe the Supreme Court should have the time to come to proper decisions on cases. When I say Supreme Court I am talking about the existing Appellate Division. I know that the judges in that court have to read vast volumes of records every day, sit in cases and write judgments. I find it difficult to understand how they can cope with that. This, if we may call it an intermediate appeal court, should relieve that.

And just to tie in with what Mr Brooks has said earlier. There should not be an automatic circumvention of the Circuit Court of Appeal to the Appeal Court. That

intermediate appeal court should be a sieve. All matters should go through it before you can even get to the Supreme Court.

It may result in some additional costs, but we believe that it will speed up the system to such an extent that those costs will be more than recovered in quicker justice and a quicker sorting out of problems, and also not involving our Supreme Court at levels where it should not be involved. So it will basically be taking the place of Full Bench appeals and we believe that there are enough cases there to justify such an intermediate court of appeal.

Then to get back to the first question, the other chamber of the Constitutional Court. Just to repeat. It is a problem that we are grappling with, should there be one Supreme Court and one Supreme Court alone with one homogenous bench? Or should it consist of two chambers? We rather gained the impression that the feeling is that there should be a Constitutional Court. We know that some of the judges have said to you there should actually just be one Supreme Court and that should deal with everything. We may get there, but we believe for the time being and because the whole constitutional issue is something new to us, something strange to us, let us have a constitutional chamber where the judges are appointed because of their skills in constitutional work and where they will be deciding constitutional issues. We believe that there are going to be many issues that are clearly constitutional in nature and where our Constitutional Law is going to be laid down in decided cases. Those cases will pave the way towards making it easier to reach decisions quickly in constitutional matters.

MR D OLIVIER: Mr Chairman, if I may add on the third point which was raised by Mr Ngcuka, the question of the lower courts. I would like to see that the lower courts, especially the magistrates' courts, will be forced to decide the constitutional issues that are brought before a court. I believe that as section 103 stands at the moment, and I assume that we are debating a new Constitution and not this Constitution, but I think the magistrate should be forced to decide the issue because we want the principle of fundamental rights to be spread all over the community at lower levels and if we take a very simple example, if there is discrimination against a person as to his colour and he is not allowed into the school, why should the people go to the Supreme Court to get an order to allow the child to enter into the school? That should go to the magistrate and the magistrate should hear that matter as a matter of urgency and it should not be possible for him to pass the buck. It should therefore be necessary by way of the ordinary legislation to amend the jurisdiction of the magistrates' court to take that out of the way so that there is nothing in the legislation which will prevent that from being done. So the magistrate's court should be more involved in deciding issues on ground level.

CHAIRMAN: If there are no further questions, I would suggest that we move on to the presentations of sections 3 and 4.

MR D OLIVIER: Mr Chairman, as far as section 3 is concerned, the composition of courts and appointments of judicial officers, we believe that as it is set out in the present Constitution that the judges shall be fit and proper persons to be appointed. We are not going to suggest

that academics not be appointed. We are not going to suggest that only advocates and attorneys are to be appointed. We believe that every person should be eligible to be appointed if he is a fit and proper person. And the guidelines should be decided by the Judicial Service Commission.

We also believe that the Magistrates' Service Commission should set out the guidelines and the requirements for magistrates to be appointed.

As far as 3.3 is concerned I assume that you would have expected us to come and say that we would like more attorneys on the Judicial Service Commission. I think that the role that the attorneys play in the community at large and in the legal profession is under-estimated. We have contact with the public which the advocates never have, which the judges never have and which the magistrates never have. We deal with issues that never come to court. And I believe that the attorneys will be in a very good position to decide and to give good input as to who should be appointed to sit on the bench to decide issues. That is the only reason why we suggest that we do that. I do not think that we should say that pro rata or taken together practising attorneys are more than all the advocates, all the judges, all the prosecutors, all the State advocates and all the academics put together. That is not the argument that we place before you. Our argument is that we should look at the composition of the Judicial Service Commission and more attorneys should be represented.

As far as 3.4 is concerned, I received a letter from Mr Louis van Zyl who is a representative of the ALS on the Judicial Service Commission advising us that the JSC has

decided that in future all hearings for appointment of judges to the Supreme Court will be open. We believe that that should be entrenched in the Constitution and it should not be left to the Judicial Service Commission to decide that hearings should be behind closed doors.

As far as permanent and acting appointments are concerned. At the moment provision is made for the appointments to be made by the President. I do not think we should take away that prerogative from the President. We have said in our submissions by the Minister of Justice and/or the President. Maybe we should leave it with the President. But our argument is that we have got a Judicial Service Commission which screens a lot of people and they will be in a good position to advise the President on who should be appointed to act as judges in the Constitutional Court or in the Supreme Court. We therefore believe that the Judicial Service Commission should also be involved in the appointment as acting judges.

That is more or less what we have to say as to the composition of courts and the appointment of judicial officers.

As far as the judicial officers in the magistrate's court is concerned, I have noticed from the Press that evidence was given before you that the magistrate's courts can be considered to be the Third World court, that the level of civil law applied in the magistrate's court is of a very low level. I think one must place the magistrate's court in perspective. As a result of that Press report I had a look at the 1992/1993 report from the Department of Justice. According to that about 2,2 million criminal cases, which include traffic offences, were registered in

the magistrate's court. About 1,5 million was registered in the magistrate's court. Of course they were not all trial matters. For the same time the number of criminal cases in the Supreme Court only amount to over 100 000, but in addition to that the magistrate's court heard so many maintenance cases, so many meetings were held in terms of the Agricultural Credit Act etc. etc. The magistrate's court and the magistrate is playing a very big role in the ordinary life of an ordinary citizen. He is doing a lot of work which is not related to legal work. Surely there is scope for improvement. But I do not think that we should at this stage sit back and say that the law in the magistrate's court is falling apart, that the quality of the law pronounced in the magistrate's court is of such a poor quality that we should get very concerned about that. Surely we must improve that. And we support the suggestion that attorneys be appointed to act as acting magistrates in order to assist the magistrates, to be trained and educated as far as civil matters are concerned. Thank you, Mr Chairman.

CHAIRMAN: Are there any questions about this part of the presentation?

MR J DE LANGE: Firstly I would want to know why you would use the same appointment mechanism for all the courts other than magistrates' courts. In many parts of the world, Germany, America, Portugal, particularly the ones where there is a single judiciary, but others as well, there is a different appointment mechanism procedure for the appointment of the highest court in the land. Someone pointed out to us yesterday here, I cannot remember who it was, Mr Wallace, for instance the German system. You have

a system of professional judges but when it comes to the appointment in the highest court many of the people appointed there are academics and so on who have not necessarily been professional judges and so on. So I would just like the motivation why you would have one mechanism for all the higher courts in the land.

Then I would also be interested to know why we should have different mechanisms for the high courts of the land and the lower courts of the land. Why should we have a Judicial Service Commission and a Magistrates' Service Commission? If we want to start getting a uniform approach to the type of people we want on the bench, why is it necessary for a different commission to be formed and actually to start developing a different set of criteria for the appointment of personnel because that is what is going to happen in reality.

Thirdly, I am not going to argue very much with you about your last statements about how you view the lower courts, but I want to reiterate very strongly that if you are amongst the vast majority of the people in this country then they regard the magistrate's courts nothing other than B Justice. I have never in all my time anywhere, even in white communities, come across people that feel that the system of law and the justice they receive in the magistrates' courts is anything other than B Justice. Maybe there is other experiences in other parts of the country, I have not been, but I must honestly say that to you, that I have not experienced that in my practice nor in my political life. Surely the points that has been made by the attorneys' profession here on a very mild level as to the problems that we have in the magistrates' courts. I mean

surely/...

surely you cannot solve the problem merely by having assessors on the bench. Of course that will help the problem, particularly the legitimacy issue. That does not serve the quality of work. And in particular I agree with you. For example, a division between actual court work and administrative work needs to be done - all those things need to be done - but I want to just see whether if it is all as easy and as simple as this and we do not have any bigger problem than you stated here because that is not my perception and not my experience of these issues. Thank you.

MR D OLIVIER: Mr Chairman, I think that there are various matters that one should take into consideration, especially if you want to compare the type of work and the quality of the work done in the magistrate's court if you want to compare that to the Supreme Court. First of all Mr Chairman, when a case comes before the Supreme Court, a criminal case, it has been investigated in detail, the case has been dealt with by the prosecutor in the magistrate's court, the police had investigated the case, and by the time the State Advocate gets the case the work has been done properly.

As far as civil matters are concerned, the applicant has got the assistance of an attorney and in many cases more than one counsel is working on the civil cases, whereas in the magistrate's court the attorneys have a fairly busy practice, and presumably they are also to be blamed to a certain extent for the quality of the civil work which is done in the magistrate's court. I am not saying that there are no problems in the magistrate's court. All that I am saying is that I don't think there is reason to despair as

far as the magistrate's courts are concerned. I was trying to find a newspaper clipping which I kept for some time where the Minister of Justice of Namibia said some time ago, I think it was about nine months ago, that the law in the magistrate's court in Namibia was on the brink of collapse because of magistrates who had been appointed who were not qualified to do the work.

I think that the Department of Justice is doing, under the circumstances, they are doing very well to train the magistrates and to get magistrates appointed to do the work. There is scope for improvement, I agree to that.

As far as the High Courts and the lower courts are concerned, why should there be different mechanisms to appoint them? I think that there are at the moment 820 magistrates. They will have to increase tremendously in number. Inspectors will have to go around to see what the quality of work is that they do and therefore it will not be possible for the Judicial Service Commission to look after the appointment of magistrates as well. I think it is much easier to judge the judges which you are going to appoint than it is to judge magistrates. You have to look at the judgments given by the magistrates, you will have to go through the records to see how many appeals were upset, you will have to go through the records to see how many reviews were successful etc. And I think that that is sufficient reason to justify why there should be a separate panel to appoint the magistrates.

As far as whether there should be different courts, we have already debated that. I think what we have done is that the ALS committed itself some time ago to accept that there is a need for a Constitutional Court which is accepted

by the public, which is accepted by the politicians, which is accepted by the majority of the people to be legitimate, without coming with any bad experience from the past, and that is sufficient reason alone to have a separate Constitutional Court and keep it as a separate Constitutional Court, either as a separate court or as a separate chamber of the Supreme Court.

MR A G BROOKS: Mr Chairman, if I may add something. Mr De Lange spoke of B Justice. The problem that we have is quality as its price and we see that in the education system, we see that in the health care system. We would obviously like to see the magistrates' courts being on the same level of quality as the Supreme Courts, but pricewise we are afraid it is not achievable. If you look at the volumes being handled by the magistrates' court it has got to be done at a "cheap rate", if I may call it that. Matters have to be processed quickly. The country simply cannot afford to have a higher quality of justice at that level than we have at the moment. If we can afford more, we as the attorneys' profession would obviously welcome it. We are already doing a lot of work for no pay for example in the Small Claims Court as a profession, volunteering our services to give justice to the public at no cost to them. We realise that there is a tremendous dearth of funds at that end of the legal market, if you would allow me to call it that, therefore we would like to see the magistrate's court improved, but where is the money going to come from to do that?

Mr De Lange also raised the question of a separate mechanism for the appointment of members of the highest court. We believe that there should be two systems of

courts, lower courts and superior courts. The members of the superior courts should be of an equal quality. They should all go through the same sifting mechanism and in fact they will probably move up through the ranks from the High Courts to the Supreme Court. We do not see the need in this country for a separate mechanism to appoint members of the Supreme Court and a Constitutional Court, if I may call it that. In the United States for example the system is completely different. In many places judges are elected. They don't go through a sifting mechanism. When they come to the Supreme Court, the final obiter, they have public hearings, which is what we advocate here too, in respect of all judges appointed to the High Court.

MR B NGCUKA: Let me say at the outset I have no intentions of engaging in the debate about what I said. But I am the one who spoke about the Third World Justice. And I stick to that. So I do not want to enter into that. Save to say I hope very few magistrates heard that, because I still intend to appear before them.

I just want to tease your mind on the issue of the MSC, Magistrates' Service Commission, in terms of its composition. Do you think that Parliament should be involved in that? The JSC we do have members of the Senate who are represented in it, as well who have four appointed by the President. Do you have any views on the composition of the MSC, besides just wanting more for the attorneys? What other interest groups ought to be represented?

MR D OLIVIER: Mr Chairman, in view of the entire work spectrum of the magistrates' court, what is going on in the magistrates' court is not only law. A lot of things are being done in the magistrate's court and I have no problem

with the magistrate's court being used to do that. If the magistrate is not going to render that service in the smaller places where will you go to for your meetings for the Roads Board or whatever that may be? And surely to a certain extent the politicians or the government can play a bigger role as far as that is concerned, and surely if the Department of Justice is going to be responsible for the training of prosecutors and the training of magistrates, I think they should be involved as well and they should have a strong representation on that committee to deal with the appointment of the magistrates.

We have a situation where a lot of reviews, I think in the same report that I referred to, something in the order of 42 000 cases went on automatic review and reports come back from the judges and there are comments on the way in which the magistrates are giving judgment. It is therefore possible for the Department of Justice to send out their own inspectors to go through those reports and to see exactly how the magistrates are doing and what they are doing and that of course can be either given through to the Magistrates' Court Commission or the Department of Justice can have a bigger representation on that commission.

As to figures and who should be represented, I have not given a thought to that. Surely there can be other members involved as well, because we are now very closer to the community, we are very closer to the man on the street, and it may very well be that we need to look at other organisations being represented on that committee, apart from politicians, apart from advocates and apart from attorneys, because we are very close to the community and we are very close to the man in the street.

CHAIRMAN: Mr Gibson, I am sorry, I think I overlooked you.

MR D H M GIBSON: Chairperson, the question of the possible introduction of a system of community courts has served before us, and I wonder how Mr Brooks and his colleagues would react to the idea of having community courts with jurisdiction very low down the scale, say fines of R30 or whatever, and jurisdiction to deal with family disputes and so on, with presiding officers who are not necessarily legally trained people and with no right of attorneys to appear. What would you think just off the cuff of such a system? Perhaps I could just say that the point is made that there is an enormous number of people out there who do not in fact, and who feel as well, that they do not have access to the courts or to a system of justice, and that there is a level of dispute or a level offence right close the community which doesn't really belong in the magistrate's court or anywhere higher up.

MR A G BROOKS: Mr Chairman, Mr Gibson, of course there are the Small Claims Court which perhaps do not get the credit that they deserve because they are designed to bring free justice to the man in the street in respect of civil disputes.

As far as the community courts is concerned, yes, there has been some publicity in that regard in recent times. I do not think any of us profess to have any particular knowledge in that regard but we alive to the fact that historically one has had Justices of the Peace for example dispensing justice on a limited scale, the old Squire type of idea in the United Kingdom goes back centuries, your tribal courts perhaps also have a role to fill there. It is something to be investigated and may well be something to

be supported.

I think Mr Olivier was in fact pointing out to us this morning that there are several existing provisions in our legislation for the appointment of tribal officers or community officers to dispense justice. I recall one provided that the Governor General could appoint a judicial officer and that will give you an idea of how old that legislation was, but perhaps Mr Olivier can enlarge on that.

MR D OLIVIER: Mr Chairman, I am not going to take much time on this. I think what Mr Gibson is saying is correct. I do not think we will have a problem with that type of issue. First of all it will be in the interests of the public, and that is all that is at stake at the moment, not the interests of the attorneys' profession because the attorneys' profession in any case is not rendering a service in that area. Those cases are not getting to the magistrate's court in any event, and if we can improve the system by doing that then I can assure you that the Association of Law Societies will be in favour of those kind of provisions. Of course there will be a limited kind of jurisdiction and no person will be able to be sent to gaol and things like that, and there will be a limit on the jurisdiction.

CHAIRMAN: Are there any further questions. If not, could I ask Mr Gibson to do the honours for us.

MR D H M GIBSON: Chairperson, allow me to abuse the occasion first by saying that in real life I am not a politician I am an attorney and I am a senior partner part-time in the firm of Moss Morris Inc Sandton and in Johannesburg. I would like to address myself to Mr Olivier firstly, President Olivier, and tell him he must not allow

himself to be seduced by the delights of the Cape. He knows and I know that the centre of civilisation is firmly placed somewhere north of the Vaal River. I would have said Gauteng until he told us he was in the North West Province.

Secondly, and more seriously to thank Mr Brooks and his colleagues for coming along today and giving us such clear and definite exposition of their views. Some witnesses come and they tell you this and then they tell you on the other hand that. The attorneys have the virtue of actually giving us a direct and positive message. My brothers and sisters who are sitting on this bench with me don't necessarily all agree on every single point and might not agree with all of the recommendations made by the Law Societies, but one thing we do know is that it is a very important body and certainly the views that they have expressed will carry a great deal of weight with all the members of this committee.

On behalf of all of us I thank the three of them for taking the trouble to prepare themselves and to come down here and give us the benefit of their experience and their advice.

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