

TABLE OF CONTENTS

VOLUME II

EXTRACTS FROM ORAL REPRESENTATIONS HEARD IN THE EASTERN CAPE

(I)	THE HON. MR. JUSTICE N.W. ZIETSMAN	1
(II)	THE HON. MR. JUSTICE D.D.V. KANNEMEYER	5
(III)	THE HON. MR. JUSTICE T.M. MULLINS	8
(IV)	THE HON. MR. JUSTICE J.W. JONES	12
(V)	MR. L.J. ROBERTS, SC	15
(VI)	A TAPE- RECORDED MESSAGE TO THE COMMISSION BY MRS. T.NEVILLE	19
(VII)	MR. M. MPAHLWA	20
(VIII)	ADV. G.D. VAN SCHALKWYK, SC	21
(IX)	THE REVEREND S.G. LANGUSA	25
(X)	MR. L. COETZEE	26
(XI)	THE REVEREND DR. R.G. CLARK	27
(XII)	MR. B.B. ZONDANI	28
(XIII)	DR. RAMSTEAD	29
(XIV)	MR. SEGOLI	30
(XV)	ADV. K.V. MATTHEE	32
(XVI)	THE HON. MR. JUSTICE N.W. ZIETSMAN	35
(XVII)	THE HON. MR. JUSTICE B. DE V. PICKARD	37
(XVIII)	ADV. T.D. PILLAY	49
(XIX)	MR. W.J. JURGENS	56
(XX)	ADV. R.D. CLAASSEN SC	58
(XXI)	ADV. A.J. DICKSON SC	62
(XXII)	ADV. G.D VAN SCHLAKWYK	68
(XXIII)	ADV. L.S KALIMASHE	72
(XXIV)	ADV. L. MPATI	75
(XXV)	THE HON. MR. JUSTICE W.H. HEATH	80
(XXVI)	PROF. MOOSA	85
(XVII)	THE HON. MR. JUSTICE C.E.L. BECK	87
(XVIII)	ADV. N.K. DUKADA	91
(XXIX)	ADV. C.D.H.O. NEL SC	93
(XXX)	MR. S.G. POYSER	95
(XXXI)	THE HON. MR. JUSTICE F. KROON	97
(XXXII)	MR. H.M. LUSU	99

(XXXIII) MR ATTORNEY M. MAJEKE 101

FIRST INTERIM REPORT

VOLUME II

***EXTRACTS FROM ORAL
REPRESENTATIONS HEARD IN THE
EASTERN CAPE***

(I) **THE HON. MR. JUSTICE N.W. ZIETSMAN, JUDGE PRESIDENT OF THE EASTERN CAPE DIVISION OF THE SUPREME COURT**

In the course of his oral submissions to the Commission some of the points raised by the learned Judge President were the following:-

(1) “It is argued that there is no room in the New South Africa for historical sentiment and that Grahamstown’s claim based on historical grounds, namely the fact that Grahamstown has been the seat of the court in the Eastern Cape for more than 130 years is irrelevant, that is the argument. This argument, however, we submit loses sight of the fact that because Grahamstown has been the seat of the court for so long other institutions connected with the law have also become established in this city. I refer first of all to Rhodes University. The university has a strong law faculty and a healthy interchange of ideas results therefrom.”

(2) “I would like to refer then to the Master’s Office. Section 3 of Act 66 of 1965 provides:

“(i) Each Master shall have his office at the seat of the provincial division of the Supreme Court in respect of whose area of jurisdiction he has been appointed.”

The Master’s Office in Grahamstown has at present a staff of 33, which, according to the Master, is likely to be increased to 36 and the Master states that there are approximately 140 000 files housed in his offices. The office is centrally situated and is able to serve the whole region effectively.

A further important fact in my submission is the Fort England Hospital. This is a hospital dealing with mental health problems. Approval has now been obtained for the construction of a forensic unit at the hospital at a cost of approximately R5 million. This unit will enable the assessment of the mental health of persons referred for observation by the court to be done here in Grahamstown. It has in the past been necessary that these persons be taken to Valkenberg Hospital in Cape Town for this purpose.”

(3) “Then the fact that the seat of the court is presently in Grahamstown is also of course the reason why the judges, advocates, attorneys, state prosecutors and other persons connected with the Supreme Court live here. Mr. Chairman, all of these persons take an active and interested part in the city. The professional people in Grahamstown serve on numerous bodies in Grahamstown.”

- (4) “The fact that Grahamstown is a poor city with a large unemployment population and the cost to the city, if the court was to move from Grahamstown have, I think, been adequately documented. I can perhaps merely sum up the situation by saying that a move of the court from Grahamstown would spell disaster for the city and its people.”
- (5) “As far as the Ciskei is concerned it would seem to me, judging from the various memoranda, that it is virtually conceded by the supporters of the court at Bisho that that court with its present jurisdictional area is not really a viable court and the suggestion is that its area of jurisdiction should be vastly increased, all at the expense of Grahamstown. The suggestion is that East London and the whole Border corridor area be taken away from Grahamstown and added to the Bisho court’s area of jurisdiction.”
- (6) “The proposal would really seem to amount to this, namely that the Bisho court with its relatively small area of jurisdiction in the middle of and surrounded by the much larger jurisdictional area of the Grahamstown court should expand and ultimately take over and destroy the present viable Grahamstown court which has existed here for over 130 years.”
- (7) “An error made by the Bisho court proponents we believe is the fact that they speak of East London and Mdantsane as though they are suburbs of Bisho. Bisho and King William’s Town do go together but they are not part of the East London-Mdantsane city. To talk of a Bisho, King William’s Town, East London, Mdantsane metropolitan area, as does Pickard J. on page 64 of his written submission, or the East London, Bisho area as he does on page 15 is, we believe, misleading. They do not even fall under the same transitional local council.”
- (8) “What is particularly significant is that the East London attorneys do not join forces with the Bisho Court supporters. We agree with Pickard J. that Mdantsane must be regarded as part of East London, but the practitioners and people living there do not want to have to go to Bisho for their litigation, they want their own court in East London. In the written submissions made by the East London Attorneys’ Association they state at page 6 that 90% of the litigation that takes place in the Bisho Supreme court comes from Mdantsane and most of these litigants make use of East London attorneys. It would be far more convenient for them to have their work done in East London rather than in Bisho. For this reason we propose that a local division be established in East London with jurisdiction over the East London, Mdantsane and Komga areas.”

(9) “What I do want to emphasise, however, is my belief that to retain the Bisho court and to give it the increased jurisdiction that is proposed will in all probability lead eventually to the demise of the Grahamstown Supreme Court with the catastrophic results for our city spelt out in the various written submissions. A removal of the Bisho court as a Supreme Court and the upgrading of the East London court will have nothing like the same devastating effect. As far as the Bisho, King William’s Town area is concerned the area has received a significant economic boost by being chosen as the legislative and administrative capital of the Eastern Cape.”

(10) We are all agreed that East London, all of the East London work that the East London attorneys want done in East London should be done there, and particularly if Mdantsane comes into East London then there would be quite a large amount of work to be done in the East London court and we then feel that the position should be that there should be a local division in East London to handle all of that work. And that could easily be administered from Grahamstown in the sense of Grahamstown providing judges full-time as it were in East London to man the local division there, but we would obviously probably require more judges in the division.”

(11) “**CHAIRMAN:** Judge Zietsman, assuming the creation by the government of a local division, the establishment of a local division in East London, what suggestions would you make concerning the use of the facilities at Bisho, the Court buildings at Bisho, what do you foresee?

ZIETSMAN JP:Yes. We think that that would be perhaps be an ideal situation for a regional court, for the regional court headquarters perhaps, or certainly for regional court cases to be heard there. I am sure the Court would be used adequately for that particular area.”

(12) “**LEON J:** So you would be happy that Umtata becomes a local division but that appellate jurisdiction should be solely and exclusively in Grahamstown?

ZIETSMAN JP: That is what our proposal is, and obviously the suggestion then would be that some of the Umtata judges, or the Umtata judges would obviously be included in the appeal work.”

(13) “**MR MALULEKE:** The last point, lastly. From the lawyers’ point of view,

Pickard J. makes the point that you have a group of, a core of lawyers who were traditionally precluded to have access to courts, to seats of provincial divisions for whatever reasons, whatever historical imbalances. If you continue the *status quo*, which is what I understand the argument is now, don't you create a situation where the same group of disadvantaged lawyers remain disadvantaged and precluded from practising at courts higher than the smaller little courts in their areas?

ZIETSMAN JP: I think this raises the question again, should one have several small Supreme Courts in various areas to try and cater for that problem or should you have a central court? One must of course realise that with the increased jurisdiction that is proposed for the magistrate's courts in both criminal and civil matters - as far as criminal matters are concerned it is mainly the regional court, as far as civil matters are concerned the position now is that the magistrate's jurisdiction will be R100 000 - and we feel that these practitioners will certainly be handling very, very big sums of, shall I say disputes involving very large sums of money. They have that situation, but whether it is necessary that practitioners everywhere have access or very, very close access to a Supreme Court is the question, because if one decides that, we feel you are going to have little pockets of Supreme Courts all over the place with one or two judges, or if Pickard J's argument is, or his recommendation is accepted, then four courts, but all small with five or six judges each, we feel that is not really a viable court."

**(II) THE HON. MR. JUSTICE D.D.V. KANNEMEYER, A FORMER JUDGE
PRESIDENT OF THE EASTERN CAPE DIVISION OF THE SUPREME COURT**

In the course of his oral submissions to the Commission some of the points raised by Judge Kannemeyer were the following:-

- (1) “We have still, as the Judge President has pointed out, a system of circuits and they go not only along the border, even to Colesberg, though strictly no longer in the Eastern Cape but still within our jurisdiction, and down to Cradock and Graaff-Reinet, and these are visited regularly for criminal work. Persons therefore in those areas who are interested, particularly if a member of their family is involved in a criminal prosecution, are able to be present when the matter is heard, and it is also necessary to stress that all of the circuit courts also hear unopposed divorces. So a person living in Aliwal North can have his divorce heard there...”

- (2) “But the important point that I want to stress here, Mr. Chairman and Gentlemen, is that the proponents of moving these divisions to King William’s Town and Bisho are solely those people with personal interest in Bisho and King William’s Town. There is no suggestion that Queenstown for instance wants to be under the jurisdiction of Bisho. There is certainly no suggestion that Aliwal North wants to be.”

- (3) “And I want to conclude, with respect, by talking about this question of serving the people. In any area the average person in his lifetime, I would submit, has no dealing with the court at all. In criminal law if he transgresses the law unfortunately he will meet the court, usually in the magistrate’s division or in the regional division. That is always close to him and of no inconvenience. In the civil court he may end up unfortunately with civil litigation, but to try and count heads here and make comparisons with reference to the court roll of a particular division is, I suggest, not satisfactory. When the civil jurisdiction of the magistrate’s court in two separate areas is different, where it is lower in one than in the other, there obviously will be more Supreme Court work where the magistrate’s jurisdiction is low, than there will be in where it is high, and that is the position that presently pertains. So my suggestion is that trying to make comparisons by saying how many civil cases are set down, is not a satisfactory solution.”

- (4) “The important thing is that there should be a court available to people when it is necessary and the fact that there is a large number of people in a certain area does not necessarily mean that special provision must be made for them. It is not far from Grahamstown to King William’s Town. The road is perfectly all right until the Fish River, although not good perhaps, and in places on the other side it is not very good, but for - well, we can say since the beginning of the court here people have commuted for court work from Grahamstown to King William’s Town and Kings William’s Town to Grahamstown with no apparent difficulty. And we have the position here now that, in conclusion, the whole area has either indicated its desire to remain in, with Grahamstown as the seat of the court with the exception of those people in King William’s Town, and those who have not said anything, who I suggest we must assume are in favour of the *status quo* remaining. They would have objected if they were unhappy. East London itself wants the *status quo* to remain.”
- (5) “In conclusion I would like to mention the remark by Pickard J. in his memorandum that seldom as far as he knows, if ever, are all the courts used in this Supreme Court. I do not know where his information comes from, it is wrong. We had to have the fifth court made because on the four courts we had before we were unable satisfactorily to function from time to time.”
- (6) “**LEON J:** If you have the seat of the court here and you have local divisions, two or three, wherever they might be - one might be in Umtata for example - would there be merits in having a Deputy Judge President in charge of that local division or not?”

KANNEMEYER J: Yes, I am speaking on my feet without having given direct consideration to that, Judge, but I would suggest that perhaps a Deputy Judge President would be of value if you had more local divisions, some of them far away, to liaise with the Judge President in Grahamstown for the general administration of the whole division.”

- (7) “**CHAIRMAN:** Judge Kannemeyer, just one question. In the light of your long association with this court, first as a puisne judge and thereafter as Judge President, as a logical proposition how do you react to the suggestion which has been thrown out that in truth there is no merit in having a seat of a court at all in the Eastern Cape, coupled with a notion of a peripatetic Judge President?”

KANNEMEYER J: My reaction to that was one of concern.

CHAIRMAN: Why do you say that?

KANNEMEYER J: I consider that a peripatetic Judge President would not be able to effectively control the division.”

(III) THE HON. MR. JUSTICE T.M. MULLINS OF THE EASTERN CAPE DIVISION OF THE SUPREME COURT

In the course of his oral submissions to the Commission some of the points raised by Judge Mullins were the following:-

- (1) “**MULLINS J:** Mr. Chairman and Gentlemen, perhaps I could just first of all give you my personal credentials for being here today. I commenced practice at the Eastern Cape bar in June 1949 and I practised both in Grahamstown and in East London for a period of 30 years thereafter. Since September 1980 I have been a member of the Eastern Cape bench, the last ten years of which I have been in Port Elizabeth where I still reside. My career in the Eastern Cape therefore spans a period of 45 years. I have ceased active service as a judge and on reaching the age of 75 in two days’ time I will have no further obligation to perform service unless I consent thereto. The location of the court or the structure thereof does therefore not affect me personally in any way and I have no vested or self-interest in the matter.”
- (2) “I strongly support the views of the other judges of the Eastern Cape division that the future structure of the Supreme Court in Eastern Cape should be as follows: Firstly, the Eastern Cape division as the seat of the court to be situated as at present in Grahamstown with jurisdiction over the whole of the Eastern Cape, that is including the present, or what was the Transkei and the Ciskei.”
- (3) “Secondly I would support the continued existence of the South Eastern Cape Local Division as presently existing, with a seat in Port Elizabeth and with its present area of jurisdiction. Thirdly, the Transkei Supreme Court to be renamed the Transkei Local Division with its seat in Umtata and its present area of jurisdiction. It does not seem to be, Mr. Chairman, that there is any practical possibility of litigants from the Transkei wishing to litigate in Grahamstown and I do not think it would be necessary to exclude the concurrent jurisdiction of the Eastern Cape division from the Transkei. Fourthly I would suggest an East London Local Division, possibly if at all the Border Local Division with its seat in East London and with an area of jurisdiction to include Mdantsane, Komga and possibly the King William’s Town-Bisho area.”
- (4) “Lastly, as far as the jurisdiction of the court is concerned, Mr. Chairman, I would suggest that the areas of jurisdiction of all these courts be adjusted to coincide with provincial boundaries.”

- (5) “In regard to the relative accessibility of Grahamstown and Bisho, Grahamstown is far closer to the major metropolitan area of Port Elizabeth and Uitenhage. It is only marginally further than, well within a matter of half an hour to East London, than is Bisho. It is of course further from the Transkei than Bisho is and there is very little difference in the distance from the Northern districts such as Aliwal North and Queenstown and those, surrounding those centres.”
- (6) “The suggested move of the court to Bisho could, in my view, only be justified on the grounds of political expediency and not in the interests of the administration of justice. There is no need for the court to follow the legislative and executive authorities. For the whole of its existence since 1864 the Eastern Cape division in Grahamstown, or the Supreme Court in Grahamstown has been situated approximately 1 000 kilometres from the seat of the Cape Provincial Legislature in Cape Town, and this has resulted in no problem to the court or inconvenience to the litigant. In fact, the situation of the legislative and administrative capital has been quite irrelevant to the existence or location of the Supreme Court in the Eastern Cape. There is no interaction or interdependence between the legislature and the judiciary which necessitates their proximity to each other.”
- (7) “Apart from the economic disadvantages to Grahamstown the movement of the court itself with its adequate buildings and infrastructure would result in astronomical cost to the state. The Port Elizabeth court with chambers for eight judges and with seven rooms which you have seen, Mr. Chairman, as well as accommodation for a Deputy Attorney-General and his staff was completed in 1992 at a cost of R13 million. A new building in another centre adequate to house the seat of the court with at least the present 13 and possibly 15 or more judges would today cost several times that amount, even taking into account the existing facilities at Bisho. There is no justification for such expenditure of public funds to replace adequate existing court facilities, not only in terms of office and court, and office and facilities, but also in terms of the existing service to both to the public and to litigants and to the legal profession of the Eastern Cape as a whole.”
- (8) “Secondly, the South Eastern Cape Local Division. There appears to be unanimity that this division should remain in Port Elizabeth. There are four judges, apart from myself, presently resident in Port Elizabeth, and the system whereby the court rolls for Grahamstown, Port Elizabeth and East London are

shared by all the judges works extremely well in practice and need not be interfered with.”

- (9) “Thirdly, the Transkei Local Division. The present Transkei Supreme Court appears to be operating satisfactorily and could remain as the Transkei Local Division, with possibly a Deputy Judge present because of the distance of Umtata from Grahamstown. An interchange of judges as between Grahamstown and Port Elizabeth seems to me to be desirable but may not be practical. Full bench appeals should, however, only be heard in Grahamstown. The arguments against more than one final court of appeal within a single province are self-evident.”
- (10) “Lastly, the Border Local Division, as I call it. The establishment of this division situated in East London, would create relatively minor financial and administrative difficulties. The East London Circuit Local Division previously handled all the work from Mdantsane, which now forms part of the greater East London. Despite the increase in size of Mdantsane the work could as easily be dealt with in East London as in Bisho. In fact, East London will be far closer and more convenient for litigants and practitioners.”
- (11) “As far as accommodation in East London is concerned, Mr. Chairman, the South Eastern Cape Local Division was established in Port Elizabeth in 1974, some 16 years before the present new building, new Supreme Court building was built. At the time it was established judges were housed in the old magistrate’s court buildings, known as the New Law Courts, and at first only one courtroom was available and one room as a judge’s chambers. As the work increased the Supreme Court was allocated more courtrooms and more rooms as judges’ chambers and immediately before the move to the new building (which was in 1990), four courtrooms were being used. I mention this, Mr. Chairman, to indicate how a small Local division can develop from very small accommodation facilities until the need and the funds are available to establish a separate Supreme Court building.”
- (12) “To conclude, Mr. Chairman, I would submit that a court serving the best interests of the community does not come into existence merely by the erection of a magnificent building and the provision of sufficient judges. A court with proper amenities and facilities for practitioners and for the public and for the proper administration of justice develops and evolves over many years of adaptation to the conditions and circumstances of the area and the population which it serves. To uproot a court of 130 years’ standing would be disruptive of the stability of the administration of justice, it would be unnecessary and

undesirable.”

(IV) THE HON. MR. JUSTICE J.W. JONES OF THE EASTERN CAPE DIVISION OF THE SUPREME COURT

In the course of his oral submissions to the Commission some of the points raised by Judge Jones were the following:-

- (1) “I also, Sir, do not propose to deal with, what I regard as the very persuasive socio-economic and political reasons which have been put up in other memoranda against changing the seat of the Eastern Cape Division from Grahamstown, other than to comment simply that it would be quite contrary to the reconstruction and development programme which is the cornerstone of the present government of national unity. This would lead to destruction, not reconstruction. It would lead to retardation and not development of a town which has over many years been an important cultural educational religious and agricultural centre as well as a legal centre.”

- (2) “There is a superficially attractive argument in favour of the second solution and that is that because of the geography and demography of this province there should be a small number of scattered courts throughout the province at places where there are concentrations of population. The argument goes that this would avoid the cost and the inconvenience of people having to travel to a remote seat of the court to have their cases heard. It gives them access to justice. But this argument, with respect, breaks down when placed in the context of Supreme Court litigation. For the vast majority of people who appear in the Supreme Court as litigants or as witnesses access to justice means access to criminal justice and also to a lesser extent, access to the divorce courts. Proper provision has always been made for this in the Eastern Cape division and in the Transkei division, which I am told has regular circuits, criminal circuits in all the towns and villages of the Transkei. I of course am aware that that is indeed so in the Eastern Cape division. There are two country circuits, the Border and Midlands circuits which sit regularly at Graaff-Reinet, King William’s Town, Queenstown and Aliwal North. They also sit in a number of other towns as and when the need arises. Almost every town and village in which there is a magistrate’s court is potentially a circuit court in this division. Recently there have been circuits at Stutterheim, Dordrecht, either Elliot or Maclear, I am not sure which of those two towns, Cradock, Middelburg, Colesberg, Somerset-East, throughout the hinterland of the Eastern Cape as it is presently constituted these criminal circuits visit, and at those criminal circuits unopposed divorces are disposed of. So that the people who have the need for family courts are served, unless they have opposed divorces, then they have to come to Grahamstown.”

- (3) “The increased civil jurisdiction of the magistrate’s court throughout the country

makes it unlikely that except in rare cases litigants in this province, which is amongst the poorest of provinces in the country, litigants in this province will not have access to civil justice in the courts of their own town or in a few cases in the courts of a very nearby town if there is no magistrate's court in their own town."

- (4) "There is also a suggestion in some of the memoranda placed before the court, and this is the second additional point I want to make, a suggestion that the volume of work done in Grahamstown is pitifully small. People who have made that suggestion, I think it appears in one of Pickard J's memoranda, obviously have no idea of what happens here."
- (5) "There has been mention made, thirdly, of the wasted expense of subsistence paid to judges when they go away from Grahamstown to do other work. I would only say this, that it costs far less to pay subsistence to the judge and the circuit party, or to pay subsistence to a judge when he is out town for work in East London than it does to build and man and maintain a large number of permanent local divisions which will have to be served by staff which will have to have prosecution, masters and registrar staff and the like all available. To sum up then I think that a system of fragmented groupings of small local divisions is not a sensible method to give the people access to justice. This system is not in a better position to do so than a strong unified bench, which also has the additional advantages of enriching and healthy interaction between a large number of judges at a centralised seat."
- (6) "The other court libraries are no doubt adequate for ordinary purposes but no other court in this area can rival the library in the Grahamstown Supreme Court for research purposes and in addition we have here the law library at Rhodes University which is without doubt the best equipped research library, law library, in this province. This is available to the judges of this division when it is necessary for us to do research on appeal and it should remain available for that purpose."
- (7) "I think that it may be necessary for there to be in Umtata a group of resident judges. I think the attorney-general is correct, he may require a separate attorney-general's office there, completely separate. There may also be a need for a separate master, but the court should in my opinion remain still as part of the Eastern Cape division with its own perhaps deputy judge president, its own attorney-general, and I think that for the most part appeals should be heard at the seat of the court by those judges as well as by the judges operating at the seat of the court and living perhaps in Port Elizabeth. There has been a question asked

about the cost of bringing appeals as far away as Grahamstown if the appellant should live in Bisana or Flagstaff. I do not know that the cost will really be markedly more. The costs of appeal are the costs of the preparation of the record, the costs of the legal practitioner to argue the appeal and wherever that appeal is argued those costs will remain constant. It might cost more if the appellant himself wishes to travel to hear his appeal being heard, but that happens very, very rarely.”

- (8) “The volume of work and the facilities for research in Grahamstown justify that city as being the seat of the court. It makes economic sense to use available resources here instead of building or extending additional courts elsewhere to house not only the judges but also the attorney-general and the master and various other people. We need that money for health, for education and housing rather than to use it for structures which already exist in this town, and it is possible to accommodate the special needs of a particular area and yet retain the concepts of a seat of a court in a single provincial division to serve the whole of the province.”

(V) **MR. L.J. ROBERTS SC, ATTORNEY-GENERAL OF THE EASTERN CAPE DIVISION OF THE SUPREME COURT**

In the course of his oral submissions to the Commission some of the points raised by the Attorney-General were the following:-

- (1) “Now at the moment there are within the area of the Eastern Cape Division of the Supreme Court three provinces. The majority being the Eastern Cape Province, but on the north west area we have Colesberg, Hanover and Noupoort which are all within this area of jurisdiction of the Eastern Cape division, but fall in fact in the North Cape Province, the political province. Murraysburg also on the West is too within the area of this division, but it falls in the Western Cape Province, and then in contrast Willowmore, which is west of this area, falls withing the Eastern Cape Province but is still part of the area of jurisdiction of the Cape Provincial division. So it is all a little confusing for the public and I daresay for some of the magistrates who have to work in these five districts which I have mentioned. From the practical point of view it means that those that area applying the law in this division - I am thinking of the judges and the attorney-general and advocates, people who perform more in the Supreme Court - we have to maintain three sets of government gazettes dealing with each, or provincial gazettes, dealing with these three provinces, even though places like Murraysburg hardly ever have a case here, one has to be ready for that eventuality. It means keeping up to date with the developments of all of these provinces, legal developments, legislative developments and political developments. It goes beyond that. The criminal justice system has to interact with certain other role players, for example police services, the social working services and psychiatric services. Now all of those services are province based ...”
- (2) “In my submission it would be far more sensible just to redraw the lines so that the provincial boundaries on the west coincide with the legal boundaries or *vice versa*.”
- (3) “The more important point I wish to deal with is whether this province, the Eastern Cape Province, can adequately be dealt with and controlled from the criminal point of view by one attorney-general who would then stand at the apex of all prosecuting services in this region. Now the area is a very large one from a map point of view, purely geographical.”

- (4) “An area like Port Elizabeth, East London, Uitenhage, generates a lot more crime per capita or per 1 000 head of population, however you want to put it. In fact, if I can just give some statistics there. Of the 120 prosecutors in my area of jurisdiction about half are located in two magisterial districts, Port Elizabeth and East London, and I can assure you they are some of the busiest prosecutors in the division. So that gives an idea of the impact of a very urban area with all the crime and how that impacts on the whole demographics of trying to work out where the court is really required. That is true for violent crime, as is certainly almost more true for commercial crime, because the more business there is the more serious commercial crime there is.”

- (5) “At present we have three separate attorneys-general covering the Eastern Cape Province. The number of magisterial districts are the Eastern Cape Division, 44; Transkei, 28 and Ciskei, and I speak subject to correction here, I understand it is nine.”

- (6) “In this region in the Eastern Cape division the attorney-general’s office is in Grahamstown. We do have a sub-office in Port Elizabeth, but that sub-office provides a very limited range of services to the greater Port Elizabeth area, Port Elizabeth and I think there are four magisterial districts around it which have their Supreme Court work done in Port Elizabeth. In other words Supreme Court prosecutions for those areas go to Port Elizabeth. Now the system works like this, that person in charge of that office, the deputy attorney-general, has a very limited range of functions. That is not because of any attitude of the attorney-general who is power hungry and does not like delegating, it is simply a question of policy forming and having a grip on the strategy to be followed in the region to combat crime.”

- (7) “Now if one were to have one attorney-general governing this entire province there would be enormous difficulties if he is situated here, in Port Elizabeth or in Bisho, to effectively control on the similar basis to what we do here, what goes on especially in Transkei, communication difficulties, access and so on. Then there is a further problem that the people in Transkei have become used to having their own attorney-general to whom they can turn, if they are prosecutors and police, for advice and decisions and to whom they can go if they are members of the public, legal representatives and the like, if they have representations to make. It would be very awkward for them to have to readjust to the idea of having to come to Grahamstown for that.”

- (8) “The size of the Transkei as it is at present, if you do not add any further districts, for example the ones that had been mentioned here this morning in the bulge between Transkei, Lesotho and the Free State, that is to the north of

Transkei, is as it stands at present, judging from the figures from Umtata, quite adequate to justify a separate attorney-general office. Its size at the moment is roughly between the Free State and the Northern Cape. I think it has one or two members short of the total in the Free State and about the same or one or two more than the Northern Cape. So it is perfectly viable from the criminal point of view to have a separate attorney-general office in that region and the amount of crime and the size of the population also bear out that would be a viable proposition.”

- (9) “There is a further reason which I have not put in my written submissions why it seems to me that Transkei deserves a separate attorney-general and that is this, that if one judges by newspaper reports, media reports there has been a fairly large-scale breakdown of many essential services and I understand there are considerable difficulties in the functioning of the magistrate’s courts, the police and so on.”
- (10) “Then this brings me to the next issue and that is where should the attorney-general have his office, on the assumption that Transkei gets its own attorney-general. In my submission the answer is fairly straightforward. By far the biggest number of people working in the attorney-general’s office at the moment is in Grahamstown with its sub-office in Port Elizabeth, far bigger than the Bisho office and that is likely to be a geographical reality in the future. It is more central than Bisho from a geographic point of view, closer to the urban area of Port Elizabeth where the majority of crime, commercial and serious violence crime takes place. It has the staff to accommodate the attorney-general’s office, even if it is expanded. It would eliminate the cost of moving the present attorney-general’s office to wherever the other place may be and the little calculation that I performed is that to move my office as it stands at the moment, that is just compensating all the staff for their moves, would be well in excess of R 1 million. Add to that the cost of moving the furniture and all the rest, that is I am sure a considerable amount. I do not even have an idea what that would cost. The effect of moving the office from Grahamstown would impact very badly on Grahamstown as a community. That has been dealt with and I do not propose to add to that. Bisho, as I understand it, is already overcrowded when it comes to offices and the 40 or 50 offices that we are going to require of various sizes, I do not think are to be had there. So the necessity would be to have to erect some kind of new office and then leave behind offices which are not properly utilised here. I go along with the contention that it is desirable that the legislative and administrative functions on the one hand be kept geographically separate from the legal judicial functions on the other. That applies to me too as the attorney-general. There is very little call for interaction between my office and the provincial office at the executive level.”

- (11) “I do not go with the idea that there be a roving seat of the court which moves about depending on the exigencies and the situation and the seniority of judges at various regions from the point of view of the criminal justice system, because that would make our function very difficult. We certainly could not even begin to think of moving the attorney-general’s office around depending on who happens to be the judge president at the time and where he had his seat. That would be totally uneconomic and impractical.”

(VI) **A TAPE- RECORDED MESSAGE TO THE COMMISSION BY MRS. T.NEVILLE, TEMPORARILY OVERSEAS, REPRESENTING A GROUP OF WOMEN IN GRAHAMSTOWN**

In the course of her recorded message to the Commission Mrs. Neville said, *inter alia*:-

“I have lived in Grahamstown since 1952. This is a long time. Over the years I have served on numerous organisations which have striven to attract industries to Grahamstown without much success. For a small town Grahamstown has an overwhelming black population whose aspirations are frustrated by the lack of employment. Yet despite these disadvantages Grahamstown has survived. It has survived because of the university, the famous schools and the Supreme Court. These institutions form the very foundation of this historic city. For over 130 years Grahamstown has served as the judicial capital of the Eastern Cape. Any division of this authority will bring untold hardship. It would mean the exodus of a large and vital section of the community with the resultant removal of an extraordinary number of existing jobs. We think of the ripple effect down to the domestics, the gardeners and their families. Surely they have a greater expectation that the spectre of unemployment and consequent distress.”

(VII) MR. M. MPAHLWA, CHAIRMAN OF THE TRANSITIONAL LOCAL COUNCIL

In the course of his oral representations to the Commission some of the points raised by Mr. Mpahlwa were the following:-

- (1) “It is a known fact that removing the Supreme Court from Grahamstown will most definitely lead to almost a third of the local businesses not being financially viable. Some 259 direct jobs and some 200 secondary ones will be lost as a result of the removal of the Supreme Court. This will have a devastating effect in a town that already has an unemployment rate of between 70 and 80%.”

- (2) “Secondly, the removal of the Supreme Court will destabilise this community immensely. While the professionals may be able to be relocated with their families, the labourers will swell the ranks of the already large army of the unemployed. This will have a direct bearing on the already crime large rate. Thousands of people may be forced to leave the city, robbing the schools and churches of vital members needed for survival. Local property markets will be subjected to strong downward pressures. This will have serious repercussions that will effect this town negatively. It is no exaggeration, Sir, that this will probably reduce this town into a ghost town.”

(VIII) ADV. G.D. VAN SCHALKWYK SC ON BEHALF OF THE ADVOCATES AND ATTORNEYS LIAISON COMMITTEE FOR THE EASTERN CAPE

In the course of his oral representations to the Commission some of the points raised by Mr. van Schalkwyk were the following:-

- (1) “Mr. Chairman, I represent a committee which I can say without fear of contradiction in turn represents by far the majority of Supreme Court practitioners outside of Umtata. In fact, other than a handful of practitioners down in King William’s Town and Bisho the committee I represent enjoys the support of the other Supreme Court practitioners in the province, which I submit is an important factor.”
- (2) “Against that background it would appear that the central issue which emerges is whether the court in the Border area should be at East London or at Bisho. Quite aside whether we are dealing with seats of courts and the areas of jurisdiction, just that issue, because if the court, if there is to be a court in East London it follow that there will be no court in Bisho and *vice versa* once there is a court in Bisho one cannot justify one in East London.”
- (3) “The next principal issue between the parties, point of difference, is whether the provincial division, they are *ad idem* that there should be a provincial division, but should it be a provincial division with a fixed geographical seat? The contentions of the committee that I represent, the Grahamstown bench, is that there should be the traditional seat of the court. Mr. Justice Pickard’s submission as I understand it is to have a single Supreme Court with four separate courts of concurrent and equal jurisdiction with a roving Judge-President. And lastly, if the Commission were to decide that the traditional route is to be preferred, namely that there should be a seat, the only remaining issue then is should that seat be Grahamstown or Bisho?”
- (4) “The centre of gravity both in demographic terms and commercial terms as well as in terms of people using the courts, the centre of gravity is down at East London rather than up at Bisho. That is the first submission. Secondly, on any version, that includes Mr. Justice Pickard’s submissions to the Commission, the existence of Bisho as a court, as a venue, can only be justified if the areas of East London and Mdantsane are incorporated in its jurisdictional area. In other words it is a little bit like the tail wagging the dog. It has no right of existence on its own, it can only have some right of existence if it incorporates where the true

gravity or point of gravity rests. On any statistics, and I say this - this is my third point, on any statistics, and I say this without fear of contradiction and you will, Mr. Chairman, be hearing more of this in East London, by far the greatest number of attorneys practise in the East London area if one is looking at the Border situation. Fourthly, on any basis East London has by far the better infrastructure as regards, and I name but a few expert witnesses, especially medical witnesses.”

- (5) “I would be so bold as to say, Mr. Chairman, that if one regards that whole area from Bisho down to the sea, the Bisho- King William’s Town complex is at best a suburb of Mdantsane- East London. The only factor that Bisho can offer at the moment, of any moment, is that is has on the face of it, and I stress **on the face of it** better court accommodation ... This issue is again, Mr. Chairman, however bound up with the jurisdiction question. I say this because if, as we have submitted the East London local division is to be comprised of the magisterial districts of East London, Mdantsane and Komga, the existing court building can at a very moderate cost be upgraded to accommodate that local division. The East London Attorneys Association will be placing before the Commission in East London both plans and a cost estimate of what it would cost to, as it were, hive of part of the building, create one additional Supreme Court so that there are three courtrooms and all this could be done at a relatively modest cost to accommodate a local division comprised of those three magisterial districts. On the other hand if the Court were to be at Bisho and its area of jurisdiction were to include East London, Mdantsane, Komga, King William’s Town, Stutterheim, Cathcart and Queenstown as is suggested by the King William’s Town-Bisho faction, its building would be inadequate for the amount of work and one would in any event have the expense of altering the Bisho court.”
- (6) “Mr. Chairman, again, the last point on the East London versus Bisho argument, on all the available evidence East London, Mdantsane and Komga justify the creation of a separate local division. This is especially so if the magistrate’s court jurisdiction were to be applied uniformly throughout the province, because your bigger work, the work above the R100 000 level, will emanate by and large from East London which is the commercial centre. That is where the banks are, that is where the factories are.”
- (7) “Mr. Chairman, I then turn to the next point and that is the concept of four mini divisions within a larger provincial division. What, as I understand the recommendations of Mr. Justice Pickard entail, is that there are to be four small subdivisions with Umtata having five judges, Bisho having six judges, Port Elizabeth, surprisingly enough, where the bulk of the work is done, only five judges and Grahamstown six judges. From the ranks of these there are to be four

deputy judges president and one roving judge president whose role appears not to be very clear, but that is the theory. I submit that in the case of a Supreme Court it is desirable rather to have one large strong body of centrally-based judges serving local divisions and circuits than to have a Supreme Court fragmented into four little courts.”

- (8) “I may just, while dealing with that, mention there was handed to us this morning what purports to be the submissions of the government of the province of the Eastern Cape, we were only given this document this morning. I mention it in this context because it is an interesting document. It goes on for some paragraphs to stress that justice should be brought to the man on the street. It then goes on to stress but that the court should be at Bisho so that justice can be brought close to the government, when the government is the one litigant that can travel ...”
- (9) “Mr. Chairman, if I may turn then to, again on the assumption that you decide that there should be a seat of the court, that as to why in our submission Grahamstown should remain that which it is. There is firstly the existing infrastructure of Grahamstown which we would suggest cannot be ignored. This includes the following: Firstly, the courts themselves, the library and ancillary buildings. Secondly, the offices accommodating the attorney-general, the master and those ancillary services. Accommodation for counsel and attorneys. Hotels and accessibility to Port Elizabeth served, Grahamstown is served by a good road from Port Elizabeth which is in turn served by main arteries from across the province and by jet aircraft from elsewhere in the country. A further important factor is the geographic location of Grahamstown, this has been touched upon. It is virtually equidistant from the two metropolitan areas, if I may call them such, Port Elizabeth on the one hand and the Border area on the other. But it is also better situated to the hinterland as it were of the western half of the province than any other centre.”
- (10) “Should it not, should Grahamstown be excluded as a Supreme Court venue or should steps be taken which would result in its demise as a Supreme Court venue, the Supreme Court here, the master’s offices, the space rented by the master’s office, the space rented by counsel, all that would become redundant. Whereas as you have heard, and it would seem on the limited investigation I have been able to do, that the regional court which sits in Zwelitsha at the moment is ill-housed and could well occupy what is now the Supreme Court in Bisho.”
- (11) “That for the litigant in the magistrate’s court who appeals against either a civil or a criminal judgment, it matters not to him other than travel now, but on a question of legal costs whether that appeal is made to a local division or to the

central seat of the court. The same record has to be typed, the same record has to be perused by the attorney at the seat of the court and counsel has to be briefed to argue the matter. It does not make it any cheaper to have four divisions or four seats of the Supreme Court if you like, than to have one hearing appeals. That cost is constant.”

- (12) “Then the point is made in some of these memoranda that this anachronism, that is Bisho, which was created in the mad social engineering days of separate development, has nurtured certain so-called disadvantaged practitioners. That is so, but it would be to the disadvantage of those practitioners to continue to be nurtured in this protected atmosphere ...”

- (13) “I put it so high as to say an insult to those practitioners to suggest that they need the cosy little corner that is Bisho. They are quite capable of taking care of themselves. The removal of the court from Bisho would not have the effect that that handful of practitioners there will no longer practise. They will join the ranks of the practitioners in East London, because the true work is in the Mdantsane area and their true work, the majority of their work comes from Mdantsane.”

(IX) THE REVEREND S.G. LANGUSA, HEAD OF THE METHODIST CHURCH OF SOUTHERN AFRICA IN GRAHAMSTOWN

In the course of his oral representations to the Commission some of the points made by the Rev. Langusa were the following:-

- (1) “My church is a member of the Grahamstown Christian Council of Churches and as minister of the church I also participate fully in the activities and deliberations of the Christian Council of Churches. The churches in Grahamstown are deeply concerned about the imminent removal of the Supreme Court from this city.

- (2) “Sir, this city has no industries and depends entirely on the Supreme Court for a sound economy without which the church would be poor in many respects. Apart from the economic situation of the town itself, the removal of the Supreme Court from Grahamstown would create catastrophic results in that this will uproot the already settled families and introduce a new wave of migrant labour which the church has always resisted in the past.”

(X) **MR. L. COETZEE, A RESIDENT OF GRAHAMSTOWN FOR 35 YEARS, AND THE VICE-CHAIRMAN OF THE UNION CONGREGATIONAL CHURCH, WHICH IS A MEMBER OF THE COUNCIL OF CHURCHES**

In the course of this oral representations to the Commission some of the points made by Mr. Coetzee were the following:-

- (1) “I rise to support the non-removal of the seat of the Supreme court from Grahamstown.”

- (2) “It is an unassailable fact that especially the disadvantaged section of our community will suffer the most socially, economically and culturally if the Supreme Court was to be removed. The removal of the Supreme Court will inevitably bring unemployment to the greater Grahamstown. Unemployment leads to poverty and that has destructive and destroying effects on a community. It will further contribute to problems of alcohol and drug abuse, depression within families and violent crime.”

(XI) THE REVEREND DR. R.G. CLARK ON BEHALF OF THE COUNCIL OF CHURCHES

In the course of his oral representations to the Commission some of the points made by the Rev. Dr. Clark were the following:-

- (1) “Recently we conducted a survey for a community radio station, a listeners’ survey, which was a random survey of every tenth home and it is very significant to find that those statistics of the level of unemployment were authenticated somewhere between 60 and 70% which means that in a family of four only one will be employed. Therefore the economic consequences which will flow from the removal and knock-on effect in the town it does seem that it is, would be immoral on those grounds to move the Supreme Court from the city.”

- (2) “The second point that the churches want to stress is that we want a Supreme Court that is independent of party political interference. It is therefore disturbing to see in this morning’s paper a report that the Eastern Cape provincial government had submitted a late written submission in which one of the points they made in saying that they want, would like to have a Supreme Court in Bisho was that it would be not only practical but politically prestigious. It seems that perhaps that statement provides an even more cogent reason for keeping at least some distance between the geographical location of the Supreme Court and the site of the provincial government.”

- (3) “No one has tried to suggest that the Grahamstown-based Supreme Court has not been fulfilling its duties competently ... In the churches we would believe that the Commission, your Commission, would be very unwise to make a decision which contradicted the very clear recommendations of the judges themselves.”

(XII) MR. B.B. ZONDANI, PRESIDENT OF THE INFINGO VILLAGE PATEPAYERS ASSOCIATION

In the course of his oral representations to the Commission some of the points made by Mr. Zondani were the following:-

- (1) “I would really extend my appreciation for offering me this opportunity to briefly spell out the effect that this removal of the Supreme Court will have upon our citizens in Grahamstown.”

- (2) “The Supreme Court to Infingo villagers has been really so important to the extent that it was a monument of hope for victimisation in this land or in this country. I stand here representing residents of not less than 20 000 in Infingo Village. I must also add and say I have been in this area for more than 50 years. Now that there is a threat of removing the Supreme Court, we all understand and know that if this threat is carried out it will mean that those thousands I have mentioned, or more than those thousands I have mentioned will really suffer. The unemployment rate in Grahamstown is more than really we entertain, hence we are concerned about this removal. In the first place there are limited job opportunities in Grahamstown. If this threat is really carried out of removal of the Supreme Court, sir, a number of people, not only those who work at the Supreme Court, those who depend on the income of those who work I mean in the Supreme Court, the entire city will really suffer.”

(XIII) DR. RAMSTEAD, A CITIZEN OF GRAHAMSTOWN

In the course of his oral representations to the Commission some of the points made by Dr. Ramstead were the following:-

- (1) “I think the more one integrates into a small town the more one becomes aware of that fact of integration. It is a fabric of society as has so often been said. That foundation that creates the society is essential to that society and the only point I wish to make in that context is that members of the Supreme Court play an extremely important role in that broader sense of the society, far outside their specifically confined sense of being members of that Supreme Court. I am sure you are aware that members of the Supreme Court do and have over the years played extremely important roles in the university, on its council, on its board of convocation.”

- (2) “They form members of all the societies that make up the whole, they are members of organisations which are cultural organisations, which are one way or another involved with the local governing of the city, such as the Ratepayers’ association, they sit in various subcommittees of the municipal system and they play an extremely important role. Removal of anybody, and especially of a large number of people at one time will have a very much broader effect on the society than is obvious if one just sees an individual in terms of their work, and it is that fact that I would like to place emphasis on before this Commission and I thank you for that opportunity.”

(XIV) MR. SEGOLI REPRESENTING THE RHODES UNIVERSITY LEGAL AID CLINIC

In the course of his oral representations to the Commission some of the points made by Mr. Segoli were the following:-

- (1) “I am the present principal of the clinic as it is presently constituted, because there are many of these clinics, I have counted over 17 of them all over the country, but they are not all doing the same work. They were originally established in order to provide legal advice by the students and lawyers to members of the community, mainly ignorant people and indigent people, but there has been an extension of that function now and some of the clinics now are actually involved in training candidate attorneys who have become articled to the principal and had practical experience in order to qualify as attorneys of the future.”

- (2) “The thrust of my argument is that it will not be in the interest of the legal aid clinic here at Rhodes if the court loses its status or is abolished here. I even hear that there is a threat even to abolish it altogether. It will not be in the interest of this, of our clinic because one of the main advantages of the Rhodes legal aid clinic over the others is that it is about, it is only stone’s throw from the Supreme Court in High Street here and the clinic, the premises of the clinic is only across the street from the back of the magistrate’s court, which is of great advantage of also the candidate attorneys because they just walk across to get to the magistrate’s court to get their practical experience there or to the Supreme Court in High Street, it is a short walking distance where they will be working with advocates and will be listening to cases there, first handled by them because they will be able to brief, through me they will be able to brief advocates in all kinds of civil and criminal cases and then they will be able to attend court and listen to the advocates arguing their cases there and to the judgments being sent down there.”

- (3) “The clinic hopes to admit and employ young graduates from Rhodes University as well as from the other universities like Fort Hare, University of Fort Hare and the University of the Transkei and even from far afield, bur mostly graduates from all over the Eastern Cape, that is the province as it is now. I have had applications from all over the Eastern Cape and we have already agreed to employ to other candidate attorneys from Mdantsane and Cradock as from the end of November.”

- (4) “I may only further mention that this is a joint venture between the universities and the legal board. The Legal Aid Board has undertaken to provide the salaries of the candidate attorneys ...”
- (5) “I may also mention that in our centre here the Legal Aid Board has provided all the facilities like computers, telephones, the most modern equipment, typewriters and also the premises, that is the building which houses the clinic, is being renovated and restructured and actually being altered extensively at a cost of over R 60 000, and although I do not anticipate that if the Supreme Court is removed we will close down, but certainly it will not affect as many candidates as it does. So for those reasons and without being sentimental about it, I was born in the Transkei and I was a teacher in the Transkei and in the Ciskei at Lovedale. In fact I started at Healdtown and Fort Hare which are in the Ciskei and I live in Port Elizabeth. So that what I am saying here has nothing to do with being parochial about it or being, there is no real self-interest, but for the proper training of attorneys for the whole of this province.”

(XV) ADV. K.V. MATTHEE OF THE GRAHAMSTOWN BAR

In the course of his oral representations to the Commission some of the points made by Adv. Matthee were the following:-

- (1) “I have mentioned I have practised in this area since 1987, covering both the Bisho and Grahamstown area. At the moment some 90% of my practice is in fact in the Bisho area and in fact if the court was removed from Bisho I would have to work considerably hard to in a sense restart a practice either in East London or in Grahamstown, although at the moment I have got chambers in Grahamstown, but as I state some 90% at least of my work in fact is in the Bisho area. So if nothing else I am arguing against myself in the submissions I am to make.”
- (2) “The really poor and disempowered in our province are the people from the rural areas, and I cannot stress that sufficiently, Mr. Chairman. Having the Supreme Court in Bisho or Umtata or East London or Port Elizabeth or Grahamstown will not in itself make the Supreme Court accessible to these people. As an example, one of my greatest frustrations during the past four years or so at the Bisho bar has been the inaccessibility of the Bisho Supreme Court to the rural communities of Ciskei. The reason for this inaccessibility has essentially been twofold: (a) The failure of that court to go on circuit. I am of the opinion that justice will never and can never be seen to be done in these rural areas without the establishment of circuit courts in Ciskei.”
- (3) “Then the second point under the reason why the Supreme Court has been inaccessible is the whole issue of funding. All I wish to highlight in this respect at this stage is that this problem is greatly exacerbated when the defendant/respondent is the government, which from my experience invariably litigates by attrition. This brings me to the second issue I want to address, namely the advisability of having the Supreme Court in Bisho as the seat of government in the Eastern Cape. As I have already stated, from my own experience the government as the rich and powerful litigator often employs attrition as a tactic against the poor and powerless. This approach involves amongst other things the taking of endless *in limine* points, failure to discover, repeated applications for postponements, refusal to attend rule 37 conferences timeously and a great reluctance to settle matters which ought to be, and in my experience eventually are, settled.”
- (4) “An illustration of this is that I have acted for 30 plaintiffs during the past Bisho

court term, which is the third term, where the defendant was either the commissioner of police or the minister of defence. All of these matters were eventually settled at the doors of the court without any evidence being led or argument forwarded in court. There were special pleas and plea-overs in all of these matters. If I might also just add at this stage that at least 12 of those matters, it was not at the door of the court on the first day, it was after five days in court and the matter being postponed from one day to the next, incurring five days of costs without any evidence being led in court or any argument being forwarded in court.”

(5) “One final observation in this regard is that at the very least, from the point of view of public perception, it would be far better to have the seat at a different location to the seat of government, as far as perceived independence of the judiciary is concerned.”

(6) “**LEON J:** Apart from this possible argument about the seat of the court where the capital is, which may be a good or bad argument, I do not know, are you able to think of any reason in principle, in practice or in logic why Bisho should be the seat of the court?

MR MATTHEE: No, Mr. Chairperson. If there is to be in that area, and the only reason I can, I feel might have some merit is that there is a greater concentration of people in that area, but then it should be in East London, because the concentration of people in that area would be Mdantsane or Jackson, East London, Duncan Village, which in fact now forms part of the city of East London and not Bisho.”

(7) “**MR MALULEKE:** ...One of the submissions made in the papers was that the creation of the courts in the homelands may have been ill-conceived but has done one good thing, that it helped develop the core of black practitioners who did not seem to have the same amount of opportunity to develop before this. What would be your view? You have practised at length in Bisho and you interact with the bar there at Bisho for instance. What would your view be about that, if the court at Bisho were to close down and Grahamstown remains the seat and you have East London, would it have an effect on the development of practitioners?

MR MATTHEE: Well if I just think of the bar as a practical issue, I think at least half of the bar at Bisho in fact live either at Mdantsane or East London. They actually live there. So if anything they would be close to the court. The majority of the attorneys, particularly black attorneys or judicially disadvantaged attorneys in that area are either in Mdantsane or East London.

Some of them would have satellite offices in Bisho simply because the court is there. Bisho itself is in fact a very privileged part of our province and has been artificially created, and I think that is why people have brought in many cases only postboxes attorneys to Bisho. So from the practitioners' point of view at worst it would make no difference, at best in fact it would bring the court closer to where they live and where they have their offices, namely East London and Mdantsane."

(XVI) THE HON. MR. JUSTICE N.W. ZIETSMAN, JUDGE PRESIDENT BY WAY OF REJOINDER

THE REASON WHY THE LEARNED JUDGE PRESIDENT WAS AFFORDED A FURTHER OPPORTUNITY OF ADDRESSING THE COMMISSION APPEARS FROM THE FOLLOWING REMARKS BY THE CHAIRMAN:-

“**CHAIRMAN:**.. yesterday at a late stage a written submission was received by the Commission well out of time from the senior legal adviser of the premier’s office. As a special dispensation we have agreed to hear the senior legal adviser at our sitting in East London, but the problem arises that the interested parties who addressed us yesterday in support of the suggestion that Grahamstown be retained as the seat of the court have not had sight of the submissions advanced by the premier’s senior legal adviser. This document was circulated at a late stage yesterday afternoon and I intimated then that in receiving it that fairness required an opportunity to reply on behalf of any party who desired it, and the judge president has informed the secretary of the Commission that he wishes to deal briefly with some of these submissions set forth by the premier’s legal adviser.”

In the course of his rejoinder some of the points made by Zietsman JP were the following:-

- (1) “It is not absolutely clear to me whether this last-minute written submission which was handed to us yesterday is a submission by the regional government as a whole or who actually is the author of this particular submission, but what strikes me is the fact that the idea of small independent Supreme Courts with a roving judge president put forward by Pickard J, which is without doubt an unusual and almost a revolutionary idea, is reflected and repeated in this memorandum. It is our submission, and we have already stressed this, that because the regional government is situated in a small town it is important for the independence of the judiciary that the seat of the court be seems to be separate and independent from the legislative and executive arms of government.”

- (2) “What I have difficulty in understanding in the argument submitted by Pickard J and repeated by this further written submission is the argument that Bisho is accessible to everybody but that Grahamstown is not accessible. The argument sees to be that Grahamstown people can very easily get to Bisho but that Bisho people cannot easily get to Grahamstown and I fail to see the logic in this argument.”

- (3) “The need in the Eastern Cape is for development and not destruction, for the enrichment of all the towns and districts and not the impoverishment of some of them. This development and enrichment is taking place in Bisho, in Pickard J’s words, “*at an astounding rate*”. Why then take away from one of the most important country towns in the area one of its major assets, which we would regard as an act of folly which will greatly exacerbate the impoverishment that already exists in the area? We urge therefore, Mr. Chairman, that nothing be done to diminish the size and importance of the Supreme Court here in Grahamstown.”

(XVII)

**THE HON. MR. JUSTICE B. DE V. PICKARD, JUDGE PRESIDENT OF
THE CISKEI SUPREME COURT**

In the course of his oral representations to the Commission some of the points made the learned Judge President were the following:-

- (1) “We have today a situation where, and I will elaborate on this, the white legal fraternity has come into a clash with the black legal fraternity. By that I do not mean that all on the one side are white and all on the other side are black, but predominantly that is the situation.”
- (2) “Everybody is telling how Grahamstown will suffer, but the interesting thing is I looked at those memoranda submitted to this Commission and I did not find one that did not start from a wrong premise. Everyone of them is headed, if it has a heading at all, the effects on Grahamstown of the removal of the court, the removal of the court.”
- (3) “... but to this day we do not know, I submit, and the Commission does not know what the effect on Grahamstown will be if the seat of the court is removed and not the court. Statistics about R22 million loss of income, 200 and 250 people losing jobs and all sorts of submissions on the basis of the removal of the court from Grahamstown. That is what is now presented in support of their case. I submit it does not support their case, not at all, because their case is not that, nobody’s case at this point in time is the removal of the court from Grahamstown. It is not my case, it is not theirs.”
- (4) “So what we have here is a joining of forces between East London, Grahamstown and Port Elizabeth attorneys and, with respect, the bench. They are joining forces. There is nothing wrong with that, I do not have a war with that save to say that the result of this has been that the old establishment has now joined forces in order to fight the challenge of the new establishment.”
- (5) “So now they have come together and they are now opposing Bisho and not only has the judge president now decided that he is prepared to give them, or to recommend for them a local division, he has decided that that local division is not to include, is not to include King William’s Town as he initially thought.”
- (6) “What we are looking at here in the Eastern Cape is a metropolitan area which

extends from the sea up to beyond Zwelitsha.”

- (7) “A large number of people live in East London and work in King William’s Town-Bisho. Virtually the whole civil service in Bisho lives in Mdantsane. There are a large number of people who live in King William’s Town and work in East London. It is in fact one metropolitan area and any suggestion to split in two in terms of court jurisdiction would in my view be absolute folly, and that is my clear submission on that.”
- (8) “The real issue here is the fourth division, is it going to be Bisho or is it going to be in East London?”
- (9) “I presume you have seen the magistrate’s court in East London. I was there this morning for the first time in my life and quite honestly I do not think, I do not want to put it high, I do not think it is worthy of a Supreme Court whether you alter it, change it underneath in the basement, do as you please, I do not think that building is worthy of a Supreme Court. (A) It is in the wrong locality, (B) it is an old building, (C) the magistrate’s court presence there is really not conducive of the prestige of a Supreme Court.”
- (10) “I do not believe that the Bisho buildings are too small to accommodate a sufficient number of judges and courts to handle the work of the East London and Border corridor area.”
- (11) “They [East London] do not have a bar. We have a bar. They have a lot of attorneys, but with attorneys I will have to deal separately. The moral of the story is it would be correct to say that to establish a court, a permanent local division, in East London would be to start a court from scratch. That is not the position in Bisho.”
- (12) “If the areas of jurisdiction are adequately and properly demarcated the situation would be that you could have a fairly equal distribution of approximately six judges in each venue of the court. I purposely say “venue”. If you have six judges in each venue, I can without any changes at all I can accommodate seven, as is today.”

(13) “The difficulty in this province, Mr. Chairman, gentlemen, is that we have a concentration of judges of something like nine judges in Grahamstown. This is the biggest single problem. You ask yourself why and you come to the conclusion that the only reason why that is so is because of the artificiality of the system of a provincial division from where judges move out into wherever they have to go.”

(14) “**CHAIRMAN**: ... I am asking you a theoretical question. On the assumption that this Commission should recommend to the President that in its view it is necessary or essential that there should be a seat of the court, where in your submission should that seat be located?

PICKARD JP: My written submissions deal with that.

CHAIRMAN: Well what is your answer?

PICKARD JP: Bisho. Bisho-King William’s Town”

(15) “**LEON J**: Isn’t the difficulty with that submission *prima facie* that Bisho is a very small place, Mr. Pickard, to have the seat of the court?

PICKARD JP: If you exclude Mdantsane, Mr. Commissioner, it is considerably bigger than East London in terms of population. It is smaller in terms of housing capabilities, but as it is judges do not all live right there.”

(16) “**LEON J**: I am asking about Bisho itself as a place, Mr. Pickard.

PICKARD JP: You mean the suburb of Bisho?

LEON J: Just Bisho. What is Bisho? What does it consist of?

PICKARD JP: Bisho is a suburb of the TLC of King William’s Town. King William’s Town, Bisho, Zwelitsha.

LEON J: What does Bisho consist of, Bisho itself?

PICKARD JP: Bisho consists of, at this stage a number of building, business buildings and office buildings an I think about 2000 houses.

LEON J: You suggest that should be the seat of the court, if there is a seat of the court?

PICKARD JP: No, no, no, Mr. Commissioner, with the greatest of respect, that is not what I said. When I say Bisho I say Bisho ... (intervenes)

LEON J: But you said in answer to the Chairman when he asked you where the seat of the court should be located, your answer was Bisho.

PICKARD JP: When I say Bisho I would have thought the Commission would understand, when I say Bisho I mean Bisho, King William's Town, that area. There is no such thing as Bisho as a town any more. There is, it would be like saying Waterkloof when I mean Pretoria. There is no Bisho as such."

- (17) **LEON J:** ... Assuming that Bisho is not the capital of the Eastern Cape would you still contend that Bisho should be the seat of the court?

PICKARD JP: Without any doubt I would have, Mr. Commissioner.

LEON J: You would take up the same stance?

PICKARD JP: I would take the same stance for ... (intervenes)

LEON J: No, no, I just want to understand that.

PICKARD JP: There are advantages, prestigious and others, for having them in the same seat, but I do not think there is any magic in it."

- (18) "... I want to explain my memorandum just because it was so horribly misquoted. There is no question in my memorandum of a fragmentation of the courts into four independent courts. It never was the suggestion. The suggestion is that we should have four venues of the Supreme Court of the Eastern Cape and in order to achieve that may I just explain my point clearly by reference to the Supreme Court Act. At the present moment jurisdiction and seats of court is determined by section 4 of the Supreme Court Act, which has a very provision:

"The seats of the several divisions shall be in the places specified in respect of those divisions in the second column of the first schedule."

That is their jurisdictional area. Sorry, that is their seats, not their jurisdictional area, that is there seats. If you look at the second column of the first schedule, Mr. Commissioner, you will see, or Mr. Chairman, you will see that it consists of three columns, name of the division, seat of the court, area of jurisdiction.

Then it says Eastern Cape Division, I refer to Eastern Cape here because that is what we are dealing with, Eastern Cape Division of the Supreme Court of South Africa in the column seat of court, Grahamstown.”

(19) I am saying that in terms of the seat of the court there will be, it will sit in four places and when it sits here it will have this jurisdiction, when it sits there it will have jurisdiction over that area and when it sits there it will have jurisdiction over that area.”

(20) “**LEON J:** Now on that view of the case, you would then have a peripatetic judge president?”

PICKARD JP: Well, no. The term was used, that one I accept. The one that rather bothered me is the one that was coined by Grahamstown bench, a roving judge president. Nobody suggested that, but I make bold to say that we have a number of roving judges president right now in South Africa. Eloff J of the Transvaal is no less than roving judge president and Howard J of Natal is no less than a roving judge president. Every time I phone either of them I have to find out where they are, and I am proposing nothing different, nothing different Eloff J sits in Johannesburg frequently. Howard J sits in both, I do not know where he lives, whether he lives in Durban or Pietermaritzburg ...(intervenes)

CHAIRMAN: He has to live in Pietermaritzburg.

PICKARD JP: Oh, he has to actually ... (intervenes)

CHAIRMAN: It is the seat of the court.

PICKARD JP: Yes, well. Very well, he has to live in Pietermaritzburg, yes, but he is in Durban frequently. So we have a peripatetic judge president there, and that is all I am saying, I am saying no more.”

(21) “... I say also that it does not matter where he lives. Obviously as the Chairman points out, he will live at one of the seats of the court, but let us assume ... (intervenes)

CHAIRMAN: You mean one of the venues?

PICKARD JP: Well I call them seats because I say, at this point in the argument I am calling them seats, Mr. Chairman, because I have now said that it will have four seats.”

- (22) “The fact that I took the liberty of suggesting that the judge president should go to Umtata for at least a month a year, I think I said in my, or something like that, as a matter of policy, appears to either have misled a lot of people or upset a lot of people because it is pretty inconvenient to spend a month in Umtata, I can assure you. But be that as it may, I never suggested that the judge president become a rover. I suggested that he should as a matter of policy visit all the seats of the court and be seen to sit there. The people must get to know him and be aware of his presence and he must have an opportunity of becoming acquainted with what happens at that particular seat of the court. It is a large province and if this does not happen and Grahamstown or Bisho or any particular place is the sole seat of the court and the judge president stays there all the time, I dread the consequences.

CHAIRMAN: But does he currently stay there all the time?

PICKARD JP: No, he does not.”

- (23) “I have been at pains to ask numerous senior counsel, judges and judges president a simple question. For some time now I have asked this question every time I meet one of them. I say: tell me, what is the advantage, if any, what is there to be said for concurrent jurisdiction? Why should one division have jurisdiction over the whole area and another division have jurisdiction over only a limited area? Tell me that. And I am perfectly honest to say that the only answer I got, nobody could give me any reason except one, and that was Howard J of Natal who said well it works pretty well in my division.”
- (24) “...and this brings me back to Grahamstown - it has a lot of anomalies developing from it, besides the abuses that I have mentioned that attorneys and clients will take out of the situation you also have some unfortunate consequences. One of the consequences in the Eastern Cape has been that at this point in time nine out of 13 judges live in Grahamstown when, and let me not get into a war with Zietsman J on figures, when something between 46 and 53% of the work is being done elsewhere. This is the problem. Now I calculated on the first term of 1994, it is the only judges duty list I had for Grahamstown, it is the only one I had, Zietsman J calculated 94/95, he came to 46%, I came to 53%, because that is what it was in that one. Now I calculated at 53% out, and I will show you the calculations if you care, but at 53% out calculated at R300 a day per judge and R300 a day for his wife (which it invariably is), I will give you the exact figures, it presupposes on a 53% absence from base, it presupposes R734 000 per annum. If you assume, as happens, that these judges who are out, frequently spend weekends out - in which case they also get S & T for the weekends, because if you go to Port Elizabeth for three weeks you might stay the two weekends - it amounts to R 1 million a year. Now we talk about building courts and spending

a couple of million in building a court or expanding a court, we can save it in S & T in less than ten years, in Grahamstown alone. Let alone what the position will be if the Grahamstown suggestion of a central seat in Grahamstown with most of the judges residing and being based there, moving out all over the province will be because at this stage at least the judges in Umtata and the judges in Bisho do not have to travel.”

- (25) “**CHAIRMAN:** ...You mentioned earlier the number of attorneys in East London. Why is it that there are, on your submission, so many attorneys in East London?”

PICKARD JP: Let me say one of the biggest firms, one of the biggest firms always has been probably one of the busiest practitioners in my court, I do not know why there is so many, I do not know what the nature of their work is, I imagine there is a fair amount of MVA work, I imagine there is a fair amount of deeds office work, there should be quite a ...(intervenes)

CHAIRMAN: Quite a number of?

PICKARD JP: Deeds office work, conveyancing, and I should imagine there is probably quite a lot of criminal trial work. I do not know, Mr. Chairman, but they have always had a lot of attorneys ...”

- (26) “They are not Supreme Court attorneys. It was suggested, it was suggested, Mr. Van Schalkwyk I think suggested it, that most of the civil trial work in my court is done by East London attorneys. I can assure you this is not so. Just look at the civil trial roll that he annexed. The work is done by and large ex Bisho and King William’s Town.”
- (27) “In 1982 there were a small number of black attorneys in, I am hesitant to say Bisho now because I do not want to be misunderstood. When I say Bisho I mean Bisho, Zwelitsha, King William’s Town, it is one town, it is one area. In fact the houses join, they are one town. When I got there, there were a very small number and quite frankly all they did was the odd little criminal case in the magistrate’s court and more often than not way out in Whittlesea of Middeldrift or wherever it happened to be. Today we have a strong contingent of black attorneys and I say without any trepidation and in absolute honesty that they do exactly the same and the same quality of work that any white attorney in this whole border region that ever has anything to do with my court does. They do excellent work. In fact, some of those black firms, well the one black firm in particular, no names, no pack-drill, if I had to litigate myself tomorrow I would go to them.”

(28) “What I am saying by this is the existence of the Bisho court, albeit a creature of apartheid has done one good thing and that is it has empowered the black legal community in my area. I read Beck J to say the same in his submissions. What we are saying, is those people have come from nothing to something. One of the attorneys said to me the other day, he said Judge, I must say to you thanks for being so damn difficult in the beginning because that is the way I learnt, but this was the process, I came to Ciskei in order to assist the local people and teach them because we have certain expertise that they did not have. They have been disadvantaged for years and years and years.”

(29) “The blacks are now equals and we have got to treat them like that and our perception in my constituency or let me not say ours, let me say the conception in our constituency, and I am inclined to share it, is that there is a definite move afoot among the white society and the white lawyers fraternity to try and protect their vested interests. I do not blame them, I suppose it is their good right to do so, we all have the fear, but unless we learn to live shoulder to shoulder with the black man and unless the black man learns to live shoulder to shoulder with us in the legal fraternity somebody is going to get terribly hurt.”

(30) “**LEON J:** Are you suggesting, Judge, that the attitude of the East London attorneys is motivated by racial considerations?”

PICKARD JP: Well, I do not say that. What I do say, is
...(intervenes)

LEON J: Well that is what you are implying.

PICKARD JP: What I do say, is have they consulted Mdantsane attorneys?

LEON J: But that is what you are implying.

PICKARD JP: No, I am saying that is a white syndrome. That is a white syndrome. They are all, we are all inclined to do it if we are white, and I am warning the Commission not to be, to be sensitive to that in order to see to it
...(intervenes)

LEON J: Well I can assure you, as far as I am concerned, Judge, I am utterly free from any form of racial prejudice and I have been my entire life.

PICKARD JP: I am very much aware of that.”

(31) “Fort Hare University has decided to move its whole law faculty to Bisho as from

next term, and I think the Commission had the advantage of seeing where the campus is, it is right next to our court virtually. The whole law faculty is coming there. What goes for the Grahamstown University goes for the Fort Hare University save that once again the Fort Hare University may not have been the alma mater of any of our judges in Ciskei, but it certainly has been the alma mater of some of the greatest leaders today in Africa.”

(32) “We have an enormous problem with the Master’s Office. We have had two Masters, the first of which was charged with taking bribes, and acquitted I might add, but be that as it may, it had a detrimental effect on the office. The second Master can never be found, he is never in office. We have the greatest difficulty when certificates of suretyship have to be issued for urgent applications because they cannot find them.”

(33) “**CHAIRMAN:** Well you have certainly persuaded us that your links with your current Master are tenuous.

PICKARD JP: They are very tenuous, but the fact of the matter is I don’t say the Master’s Office must really go to Bisho. I think, I personally think if the Master’s Office is well accommodated in Grahamstown my own view is let it stay there. The necessary amendments to set that right or what is a matter for the Commission to recommend. I say there is no need for the Master to be at my court if my court is one of four equal seats of the court.”

(34) “Mr. Chairman, there is a allegation on ...page 14 of the submissions by the Liaison Committee, paragraph 2 ...

“... The Bisho, King William’s Town society is small and the social circuit even smaller.”

I object to that statement ... We perceive it to mean that it is not an 1820 settler social circuit. That is what we perceive it to mean. It is not a white English social circuit.”

(35) “We go on from there :

“The risk of a perception that the court will be less than independent in the light of inevitably frequent crossings of the paths of members of the executive and the judiciary is a very real one.”

Now quite honestly I do not think my path ever crosses these people other than officially in probably as much as Zietsman J's path crosses them. But be that as it may, why is this an objection?"

- (36) “**MR MALULEKE:** ... The most serious point which Mr. Matthee seems to make against the Bisho court was that the Bisho court never afforded greater accessibility to the poor people around in that it never went on circuit.

PICKARD JP: That is right.

MR MALULEKE: Can you perhaps just address that?"

- (37) “The furthest point from us is Whittlesea ... and that is two hours travel from Bisho, and Whittlesea does not have a single hotel in the whole of it ... The next ... furthest place in the Ciskei is probably Alice, and Alice is half an hour's drive away. So there has never been a need for circuits with us compared with the others.”

- (38) “So we have a lot of litigation against national government in our courts. Now the difficulty with government litigation is this: Anybody who has had any dealings with, particularly when you, well also when you are dealing with trials with evidence, but more particularly when you are dealing with applications which frequently there are and they are frightening applications. I mean the majority of those applications run into hundreds of pages. What happens is there is an exchange of affidavits. Now Mr. Van Schalkwyk suggested how difficult it was to get instructions from any government department. Well, I have seen counsel and attorneys struggle and courts delayed for an enormous amount of time with trying to get government officials to make affidavits. A new affidavit is put in by one of the parties, that has to be replied to. I have litigations stretching, applications stretching over three or four days with this type of stuff happening. Now when this happens and a minister has to make an affidavit for a permanent secretary, which is the old director general has to make an affidavit and the case is in Grahamstown it becomes perfectly impossible to make any headway in any sort of reasonable time. When it is in Bisho it is (I say this in capitals) COMPARATIVELY simple because a minister or a permanent secretary does not have to leave his office for the day. They can consult him in half an hour, they can, he can go on with his work, they can do it. If he has to give evidence he can sit in his office till ten minutes before he has to give evidence and join - that is why government feels strongly about having a court at the seat of the government. They cannot, those are very, very busy people.

CHAIRMAN: Well the same submission is strongly advanced on behalf

of the premier I think.”

- (39) **“LEON J:** I just want to ask you a question while is occurs to me. We have had a representation from Mr. Kalimashew whose policy is challenged in the newspaper. Do you know whether he had seen your submissions when he made his?

PICKARD JP: I presume he had.

LEON J: Because they are almost identical.

PICKARD JP: I am sure, because after I drafted my submissions, you will recall one thing, Mr. Commissioner, is that by my thinking, rightly or wrongly, but I am sure I am right, the premier and I have sitting in the Judicial Services Commission when matters of the province are discussed. This whole issue will turn in the Judicial Services Commission at the end of the day, I presume. After I drafted, when I drafted my memorandum, before I posted it, when I posted it off, at the same time I posted a copy to the premier with a little note *“copy for your information, yours faithfully”*. I thought it was a courtesy.”

- (40) “Zietsman J ... suggested that the magistrate’s court jurisdiction in Bisho is less, accordingly our rolls are inflated. Certainly there is a proportion, I did a head count for about a month and my colleagues helped me, the one that does roll call always had to give me the figure of what percentage of our litigation would have gone to them, not have gone to the magistrate’s, this was when the jurisdiction was R20 000. With R100 000 I do not know and I do not think Zietsman J knows what proportion of work we are going to lose as a result of that, nobody knows, but on the R20 000 ... (intervenes)

CHAIRMAN: What is your guess on that issue?

PICKARD JP: Personally I think very little ...”

- (41) **“CHAIRMAN:** What is the standard of justice in the magistrate’s court?

PICKARD JP: Criminally reasonable.

CHAIRMAN: Civil justice.?

PICKARD JP: Civilly, pathetic. I cannot give you a better word. The people are not trained.”

- (42) “... part of the mandate of this Commission is to determine the number of judges in each division. Now whether you decide East London, whether you decide Grahamstown, whether you decide one court, two courts, three courts, five courts, ten courts, whatever you decide, there are no statistics available for Bisho or Transkei, they are just not available because they were not kept, they were not part of the South African department of justice. This is my last point. I am going to close off. I just want to finish with this. Nobody knows what the workload is, comparatively speaking.”

(XVIII) ADV. T.D. PILLAY OF THE BISHO BAR ON BEHALF OF THE BORDER BRANCH OF NADEL

In the course of his oral submission to the Commission some of the points made by Adv. Pillay were the following:-

- (1) “... NADEL Border covers the areas of East London, Mdantsane, King William’s Town, Bisho and Queenstown. There, are according to our estimations 42 black lawyers in this area, save for two of them all such black lawyers belong to NADEL Border branch. We therefore speak on behalf of all members of NADEL in the Border region and I may inform the Commission that the proposals that we are, the submissions that we are to make to the Commission have been discussed with the other two non members.”
- (2) “Secondly we would like to dispel a perception if it exists, that the East London Attorneys Association speaks on behalf of all attorneys in the area, and this is now confined to the East London attorneys. East London Attorneys Association is in fact a statutory body according to our knowledge and as such our members are obliged to be members of that association ... The East London Attorneys Association is in fact a circle of the law society of the Cape of Good Hope, which is a statutory organisation ...”
- (3) “The point that we wish to make, Mr. Commissioner, is this, that whilst our members are members of that statutory body, that statutory body has never and does not speak on behalf of the black lawyers in this area.”
- (4) “We understand that a submission was made that during the proceedings in Grahamstown these past two days that 90% of the work in this province as it is presently constituted occurs on I what might term the western side of the Fish River boundary dividing the province. That is not entirely correct. Anyone who practices on the eastern side of the Fish River will know that a substantial amount of litigation takes place in what I would refer to as the Transkei Supreme Court.”
- (5) “Let me make it perfectly clear what we understand Bisho to be. Bisho is but a convenient word for saying that Bisho is Bisho-King William’s Town which is the provincial capital. It is also the TLC area of King William’s Town, which means that it is Bisho, King William’s Town, Zwelitsha, Dimbasa, Elita. Those are the major areas falling within the TLC of what we refer to as Bisho. It is a

major area in terms of population, possibly several hundred thousands of persons.”

- (6) “I do not wish ... to read to you the law of the constitution and tell you what that means. I am sure you know that, but what we want to emphasize is that what the constitution envisages and what you are asked to do to give effect to that constitution is to bring about a new order for the country, a new order in terms of which old structures, old laws (while still current in terms of the provisions of the constitution) will be changed in order to make justice accessible to the people, to give substance to the high ideals of democracy in an open society and where there is a respect for, the advancement of and the protection of, by our courts of fundamental rights, fundamental human rights for which the constitution has gone out of its way to make binding on all levels of government.”
- (7) “... and the emphasis from which we approach the, our submissions to you which is designed to assist you, is to say divorce yourself, disabuse your mind of all those particular constraints of the past, one of which for example is the Supreme Court Act providing for the seat of the court. We will say to you disabuse your mind of that particular provision of the law.”
- (8) “On our model, Mr. Commissioner, on our model that we will propound it is not necessary to have a seat of the court.

LEON J: At all?

MR PILLAY: At all. It you do then we would make the clear submission to you, and do now that the seat should be in Bisho.”

- (9) “The other point Mr. Chairman, is that the constitutional principles I would like to refer you to is something that you should also bear in mind with the greatest of respect, and that is paragraph of clause 5 or schedule 4 of the constitutional principles, which reads as follows:

“The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.”

- (10) “It is not intended to touch on the sensibilities of anyone, but it is a reality that you cannot wish away and that is the fundamental conflict, might be a strong word to use, the fundamental problem that black people and black lawyers face with regard to practising law in this now consolidated province”
- (11) “In the process of restructuring and getting to what the courts have to administer, you must understand that what developed in Ciskei was a legal system which today boasts four black advocates. The jurisdictions of Port Elizabeth and Grahamstown cannot even boast that combined.”
- (12) “What you need to do, is to understand very clearly, with respect to you, that however compelling the argument may be to retain a court in Grahamstown - and we do not deny that - argument that the Bisho court must close down is so incredible as to invite utter suspicion on the part of the submissions made in support thereof.”
- (13) “The point is one must not confuse seat of the court. When you introduce the concept of seat of the court you then confuse the argument and the argument from NADEL Border Branch is simply this: Establish courts that will serve the people.
What those courts are, in our submission will be local divisions.”
- (14) “You are rationalising the courts with the view to administering justice, not giving somebody a seat from which he can pontificate about the rest of the province, but rather somebody who will administer the province, and that is of course the judge-president. It is our understanding, and I may be wrong, that the judge-president essentially is an administrator. So what are you saying? You are saying in effect administer the province in accordance with the laws, and we are saying divide the province which is a huge province, and that is acceptable, divide the province up into four components.”
- (15) “What are those components? First of all there is no problem about Port Elizabeth. We think Port Elizabeth is a well-established, well-functioning, well-run court. Let it run. Let it remain where it is, with its jurisdiction as it is. In fact encourage it if you can in your proposals. So too with the Transkei. Let us call it the Umtata court. We do not have a problem with regard to the two extremes. It is in the middle where there is this mad rush to grab and in the

process we have degenerated - sorry to use that word - we have engaged in a debate which in fact is unacceptable. Let us focus our attention on the centre portion. Now what is the centre portion? It is Grahamstown, Bisho and East London.”

- (16) “Leave Grahamstown in Grahamstown with a court. Do not even dream of closing down that court. What is its area of jurisdiction? At present it is of course the Eastern Cape provincial division with concurrent jurisdiction over the area of jurisdiction of the Eastern Cape local division. Excise that which belongs to the Eastern Cape local division from the jurisdiction, the remaining jurisdiction of the Eastern Cape division. The argument will be that if you do that Grahamstown will die. There is no intention, there is no submission made by NADEL Border Branch that Grahamstown must die, must go away. On the contrary, it should exist and serve the usual function that it exist. It may be that the area of jurisdiction would not justify the present complement of judges, advocates and so forth, but that has to be addressed. The remaining area of Ciskei, and let me call it the white border corridor because it is in fact a white corridor of all white towns and cities that have been taken into the Eastern Cape local division, Eastern Cape provincial division for political reasons of course.”
- (17) “So we have to rethink the territorial area and we say take out the white corridor which is the Queenstown TLC area. The TLC area of Queenstown encompasses Queenstown proper, part of Ezibeni which is presently in the Transkei, Cathcart, Stutterheim, Komga and those areas. They are clearly spelt out in many of the submissions, the specific areas. We are saying take that out, give that to the Ciskei division. Why give to the Ciskei division? There are many compelling reasons for that, and the most important of course I would believe and submit is the fact that it is in, contiguous to the jurisdiction of that court, it is there, it is right on your doorstep, it is right next to you.”
- (18) “Aliwal North which is the farthest most point of the province, just on the border with Free State and approximately between 300 and 350 or 400 kilometres away from Grahamstown is part of Grahamstown jurisdiction. Now that is a vestige of the past that you must clearly address and we are saying put that into the jurisdiction of the Bisho Supreme Court, enhance the jurisdiction of the Bisho Supreme Court. If nothing, if nothing else then simply to reward the Ciskei Supreme Court for having done that which no other court in the province, save possibly for Umtata, can claim to have done for the advancement of the black people.”
- (19) “We are saying, getting back to the jurisdiction, increase the jurisdiction of the

Ciskei provincial division as it exists at present, enlarge it to include the TLC, Queenstown TLC area. Let it also include King William's Town which is part and parcel of its capital. Let it also include the East London area. In other words if you envisage a jurisdiction for Ciskei you take the whole of the Border area, you take it right up to the coast, include ... (inaudible), include East London and on the way you include Mdantsane, which traditionally has always been part of the black homeland of Ciskei. Prior to that of course it was part of East London but when it became convenient it was excised a huge massive population of one million to 1 300 000."

- (20) "East London is as Pickard J pointed out, but the flip-side of Bisho.

CHAIRMAN: The what?

MR PILLAY: The flip-side. It is a component. I am sorry to have used that expression. It is a component as it were of Bisho. The number of people that move between the two centres in terms of residents, working, business, makes it impossible to separate the two. Many of the attorneys who belong to the East London Attorneys Association have offices and do in fact practise in the Bisho jurisdiction. There are, if I could use the expression that Bisho is the administrative capital where the work gets done, but come end of the day and come the time that you must go home to sleep there is a massive migration to East London. Everybody sleeps in East London, enjoys the pleasures of East London but the next day they get in their cars and they commute. I am guilty of the same thing, and that is simply because it is a reality that the two are one."

- (21) "So to now excise East London, and because they have to give it some credibility, give it some sustenance, some substance, they must take with them this black hog, black township, probably the second largest black township in the country, they must take it along with them as an accoutrement down to Grahamstown and there bolster the jurisdiction of that. Now if there is a logical argument for that I will be prepared to possibly, to reconsider our proposal. So far we have not heard any."
- (22) "What then is to be the position of the East London court? East London is an important metropolis, there is a vibrant economy, it has the potential to become even more vibrant. For 20 odd years I believe it stagnated because of the forefathers of this town not having the vision to make it a viable economy, but with the new transformation there are interesting signs of how this town is developing."

- (23) “Today the town is flourishing, the city I beg you pardon, the city is flourishing. Major projects are going up, developments of all nature, and those are important considerations. You cannot wish them away and the persons who practise in this town, this city, have a very good case for asking for a court. Have a court here.”
- (24) “How does the court operate? We say let it fall under the jurisdiction of Bisho. How does it function on a day to day basis? That is where we say, with respect to you, that it would be a decision of the Bisho court. Let the Bisho court decide whether the East London court will be as it presently constituted a permanent circuit local division, whether it will be the court sitting there permanently or whether it will be one from which the Bisho judges come on circuit, however frequent that circuit is, however frequent the sessions are, is a matter of practicality, is a matter of administration, but retain and in fact encourage the building of that particular court, change it, make it accessible because the number of people in East London and Mdantsane would be close to I would guess maybe two million people.”
- (25) “It is interesting to see in the letter written by Mr. Clark on behalf of the Attorneys Association, the use of the expression “*we have joined forces*”. One wonders why, when you have what is almost a glaring dichotomy between black-white in this province, where the dividing line is the Fish River, that all those down there beyond the western area are predominantly white. Those up here are predominantly black, the eastern side. Yet this enclave of white attorneys in East London, not King William’s Town, they do not side with them.”
- (26) “I have not heard any submissions made on behalf of, or read, I may be wrong, on behalf of attorneys in Queenstown, which is a fairly big town, maybe 30, 40 000 people, I am not too sure, but it is thereabouts, I have not heard any submissions made by them as to where they want to be, but the point of it is ... (intervenes)

CHAIRMAN: For that matter we have not heard much from Aliwal North.

MR PILLAY: Yes, it would seem so”

- (27) “The point then why then does this enclave of white attorneys join forces with the predominant white grouping in Port Elizabeth area, Grahamstown area, the Albany area? Why do they do that? What is the motivation behind that? It escapes me. Unless there was, as we say, a trade-off. You support to the seat in Grahamstown, you support us keeping the court in Grahamstown, but we will give you local division status or a permanent local court in East London. We

make that submission very carefully, we make it very mindful of the fact that it is not a nice thing to attribute improper motives to anyone, whether it be the attorneys or the judges, and we make it very clear and we place it on record that we have nothing but admiration for them as judges, as lawyers, but we have the difficulty with regard to the practical application of the administration of the laws and that is where the problem comes in.”

- (28) “We envisage one provincial division for the province. The four local divisions we style as Port Elizabeth local division, Grahamstown, Bisho and Umtata. We say that the local division must be self-contained, in the sense that it must have full appellate jurisdiction in its area of operation. So in other words appeals and reviews from the magistrate’s court; applications from magistrate’s courts in terms of section 103 of the constitution; motion court, that is unopposed and opposed applications; civil and criminal trials as well as applications and full bench appeals.”

(XIX) MR. W.J. JURGENS SC, ATTORNEY GENERAL OF THE CISKEI

In the course of his oral submission to the Commission some of the points made by Mr. Jurgens SC were the following:-

- (1) “The first submission we make on page 1, Sir, is that there should be a single provincial division for the whole of the province of the Eastern Cape.”
- (2) “Our second submission is that that provincial division should have more than one seat to serve the different areas.”
- (3) “Our third submission is that Bisho should remain as a seat of this provincial division of the Supreme court ...”
- (4) Then our fourth submission is that the jurisdictional area of the Bisho court should be extended, and first of all of course we refer here to the Bisho-King William’s Town area. Much debate has been made upon what is Bisho. It is just interesting to know that our provincial gazettes are published, or it is said to be published at Bisho-King William’s Town. So we already have such an entity appearing on our provincial gazettes as Bisho-King William’s Town. We say that obviously Bisho, the district of Zwelitsha and the district of King William’s Town should be served by the same Supreme Court. Obviously also the districts of Mdantsane and East London should be served by the same Supreme Court.”
- (5) “And then we ask the questions now which Supreme Court or where should that Supreme Court be situated, to our mind we submit that it is obvious that we should use the infrastructure that we have and that should be Bisho. Now much talk has been made that it should perhaps be East London. Now if there is a building available or if we get some money from home or if our ship comes in, Sir, then by all means let us spend a couple of million rand in building a Supreme Court in East London, but I do not think that is feasible whilst we have the building and facilities at Bisho.”
- (6) “**LEON J:** May I just interrupt you? Is that your only objection to East London, that there no adequate court facility? You do not object to it on other grounds or principles?”

MR JURGENS: I have no objection against East London as such. I just say that the Border area can best be served by Bisho, for the reason of one, of course the building and secondly that it is at least more central for the good people at Cathcart, Stutterheim and especially Queenstown, Ezibeleni, Whittlesea, that area, that it is not against the sea as it were.

CHAIRMAN: I notice you stopped short of Aliwal North.

MR JURGENS: I have stopped short.”

- (7) “**CHAIRMAN:** Is there a strong body, a feeling in Queenstown that desires to be absorbed in the jurisdiction of Bisho?”

MR JURGENS: I cannot speak on their behalf and I would be gilding the lily if I tried to say anything in that regard. I simply do not know.”

- (8) “The fifth submission I have made, after we have said now that there should be a court at Bisho, the court at Bisho should have increased area of jurisdiction, we make the fifth point that the court at Bisho should also have appeal and review jurisdiction, and by doing so, Sir, we do not wish to enter into the argument of where the seat of the Supreme Court should be, whether there should be a seat of the Supreme Court, etcetera.”

- (9) “... we say at this stage we are of the opinion that there should be one attorney-general for the Eastern Cape with his seat at one of the Supreme Courts. We are not trying to raise the fight that our office should be the office, but we say it should be decided on a matter of public policy which office should be the best situated.

LEON J: May I just ask you this, that if the seat of the court, if we should decide to go in favour of one seat of the court, wherever it may be, would you say that the attorney-generals office should be at the seat of the court?”

MR JURGENS: I would say so, Sir. I would say that that is not the only consideration, but that consideration should weigh for about 90% of the considerations.

(XX) ADV. R.D. CLAASSEN SC, ON BEHALF OF THE SOCIETY OF ADVOCATES OF CISKEI

In the course of his oral submissions to the Commission some of the points made by Adv. Claassen SC were the following:-

- (1) “... the basis of our memorandum is that justice must be taken to the people where they are, and in this regard the first issue I wish to address is the question of appeals in the various venues, let us call them that at this stage, and the Commission will no doubt keep in mind that we propose four different venues.”
- (2) “The submission was made in Grahamstown that people do not attend, appellants do not attend their appeals. Having come from the Transvaal provincial division myself previously, that was certainly my experience there. When I came to this province, what was then the Republic of Ciskei, as an acting judge for three and a half years as well as a practitioner here for almost two years now, my experience here was exactly the opposite. Appellants do attend appeals and the only conclusion I can draw from that is the fact that the court is close to them.”
- (3) “Practice experience is the most important learning school. Attorneys who are situated far away from courts cannot gain that experience. They will be and are entitled to, as anybody else, any other lawyer, to appointments on the bench etcetera. If they are far from appeal courts they cannot get exposure, they cannot get experience. It is important for us in our view that these people must have an opportunity to appear themselves in these courts, not only as courts of first instance but also in courts of appeal.”
- (4) “The arguments for the retention of Grahamstown we believe is to a large extent based on old let us call it Colonial perceptions. I do not want to delve into this or dwell on this very long, except to make this point that in Grahamstown the submission was made that the attorneys in East London and surrounding area all favour Grahamstown as a court and the submission was made no other contrary arguments were put forward by the attorneys. Not a single mention was made of NADEL.”
- (5) “... it is very interesting to note that Grahamstown, shall I call it the Grahamstown contingent, is willing to give East London a local division which includes Mdantsane, but King William’s Town and Bisho, Zwelitsha, that area

should go back to Grahamstown. First of all I find it extremely arrogant that the people of the King-Bisho area should travel 125 miles to Grahamstown when the court in their submission can be situated 60 miles closer on a double-lane highway which is within half an hour as opposed to an hour and quarter at least of dangerous, inconvenient travel. I find that most shocking.”

- (6) “The only logical thing will be if a court is created in this area and it must be East London then obviously this whole area, Border corridor area, must go to East London and not to Grahamstown.

CHAIRMAN: You say if a court is established in East London it should absorb obviously Bisho and King William’s Town? ...

MR CLAASSEN: Absolutely, absolutely. I mean as I say, it is half an hour’s travel on a double-lane highway as opposed to 125 kilometres on a very dangerous road, apart from any other cost factors.”

- (7) “**CHAIRMAN:** As between Bisho and East London, what do you concede to be the determining factors in the selection of a venue for the court? ...

MR CLAASSEN: ... First of all renovations must be made. It will be better to invest money in a situation such as Bisho court which has got all the opportunities for expansion, for parking facilities, everything else, it is a new building, it was designed with a view to expansion. The plans are there, from what I understand from Pickard J, and the same amount of money can be spent on extending that court rather to upgrading the old dilapidated inconvenient building with no parking facilities and all that sort of thing.”

- (8) “The other thing is one must not forget that the King William’s town TLC, as has been said, includes Zwelitsha, King-Bisho, all these areas, have something like over 40 practising attorneys and the remark by Mr. Van Schalkwyk was made very glibly on Monday there is no problem for these attorneys, he did not say the figure, to relocate to East London or to some other place. With all due respect, I think Grahamstown has something like 20 attorneys. Why cannot some of them, we are not propagating the closure of the Grahamstown court, we are saying it must serve its natural area. It will be a scaling down, but less attorneys will have to relocate from Grahamstown than will have to relocate from King William’s Town, Bisho, Zwelitsha and these areas if the court is removed from Bisho.”

- (9) “**CHAIRMAN:** If the court, if Bisho was to be the seat of an

enlarged jurisdiction, do you think the bulk of East London attorneys would be tempted to or would consider it essential to relocate, or would they continue practising from East London? What is your general impression?

MR CLAASSEN: Mr. Chairman, my impression, having talked to attorneys in East London is that they will continue practising where they are because that is where the client's base is and open up either a branch office or make use of correspondents."

- (10) "Again comment was made about four mini courts or the impression was gained some little courts way out in the bundu. That is not what we are talking about here. We are talking about fully fledged local divisions at least with full jurisdiction over all matters arising from that specific jurisdiction and any conflict of judgments have to be dealt with as they are dealt with in Natal, as they are in Transvaal, where there have been conflicting full bench and other judgments which have to be dealt with at a higher venue, at a higher court. So I fail to see the problem in granting all venues full appellate jurisdiction in all matters, such as I say, includes three-bench matters."
- (11) "Much has been said about the library in Grahamstown. No doubt it is an excellent library. All the facilities and all the venues do not have the same facilities, but in due course they can be built, extensive use can be made of telefaxes these days, Internet facilities on computer is available from many of

these different libraries overseas and elsewhere and my own experience in the last two years in practice here in Bisho has been that especially constitutional matters, a lot of learning was gleaned from overseas and by fax and other means, which does not necessarily entail going to sit in your own library, because all the libraries are not complete. So with all due respect I do not see that as a grave and big problem. The same with the university facility. The fact that Grahamstown court may scale down does not in any way detract from its ability to aid and assist in the teaching and educating of law students. We are not propagating the closure, we are simply trying to give justice to the people, to get justice to the people where it belongs.”

- (12) “Certain criticism was levelled at the submissions or the recommendations made by the Eastern Cape government premier. It was said that, and it was endeavoured to bring the court to the legislature rather than bringing the court to the people. Our submission is that exactly the opposite is strived for. By keeping the Bisho court it has become to be seen as the court of the people in this area, and by taking it away the court of the people will be taken away.”

(XXI) ADV. A.J. DICKSON SC ON BEHALF OF CIRCLE NO 12 OF THE KING WILLIAM'S TOWN ATTORNEYS ASSOCIATION

In the course of his oral representations to the Commission some of the points made by Adv. Dickson SC were the following:-

- (1) “I am making submissions on behalf of the King William’s Town Attorneys. They are organised in what is called Circle No. 12 and for the information of the Commission the circles are associations of attorneys who represent sectional interests, that is sectional geographical interests, and these circles are organised right throughout the Republic of South Africa and they are loosely associated with the associations of law societies around South Africa. They are not statutory bodies, they are voluntary associations.”
- (2) “**MR DICKSON:** The main aim behind the submissions that we present is to highlight the attractions and positive attributes of the King William’s Town, Bisho, Zwelitsha and Dimbasa area. Those are the main components of the Transitional Local Council.”
- (3) “It is further to recommend to the Commission an area of jurisdiction which has been referred to already as the Border area, and this is the former Ciskei and the corridor between the Ciskei and the Transkei from Queenstown to East London - Queenstown in the north to East London at the sea - and we are here to commend to the Commission to recognise that as a separate area of jurisdiction. It is proposed that Bisho be the main venue in this area for a Supreme Court, but that does not mean that it is not recognised that a Supreme Court circuit, even of a permanent nature, should not be run at East London ... Mainly for civil work but if it is necessary criminal work as well, Mr. Chairman.”
- (4) “Now the aim of the Commission is to rationalise the Supreme Courts and in specific these hearings are aimed at obtaining evidence on how to best rationalise the Supreme Courts in this area, with reference *inter alia* to firstly existing structures, secondly the desirability of creating divisions, local divisions and what their areas of jurisdiction should be and their bench strength, and thirdly the need for improved access to the people of the area.”
- (5) “We do not believe that sufficient emphasis has been placed in these hearings on the needs of the public. Obviously the interests of practitioners and judges ... are

relevant to the administration, the efficient administration of justice, but all is lost if the result does not serve the public of South Africa and in particular the people of the Eastern Cape and the people of the Border region in specific. The numbers of people living in the King William's Town, Bisho, East London, Mdantsane, Queenstown area, that is the Border area, we submit demand that they be given their own court."

- (6) "... we submit that Bisho has the following attributes in satisfying that need: Firstly it has a modern, effective, fully equipped Supreme court. This building has two criminal courts, two civil courts, although one and a half civil courts would probably be more accurate; there are chambers for seven judges ... That was evidence from Mr. Justice Pickard's evidence yesterday. There are offices for an attorney-general's staff, which I saw myself."
- (7) "There is ample parking which, I have been told, is a very important factor in this area when one compares the other possible venues, there are consulting facilities for the public and for practitioners. There is a library, and we heard yesterday that the Fort Hare University would be moving their law faculty with its library to Bisho. The standard of the facilities I would say and I am speaking personally, Mr. Chairman, must be the best in Africa if not in the world."
- (8) "Secondly, on the point of access, there is easy access to East London which has a harbour. I am not too sure how many people arrive hereby ship, but there is an airport. There is easy access to all corners of the Border area from Bisho. The King William's Town-Bisho road to East London is a double highway of some 60 kilometres which has in my own experience over the last few days very little traffic on it. All of the people of this region would have easy and ready access to a central, visible court at Bisho."
- (9) "The attorneys in the region, and that is the immediate region of Bisho and King William's Town, number about 40 and I would present for the benefit of the Commission this profile. There are about five large firms who are predominantly white. There is at least one large predominantly black firm and there are approximately eight smaller firms focusing on litigation and about one quarter of the practitioners in all of those firms work largely in conveyancing. There is a bar of about ten people and details of the bar were given yesterday."
- (10) "The next point, Mr. Chairman, is to emphasize the metropolitan infrastructure of the business areas of King William's Town and Bisho as well as the townships of Zwelithsa and Dimbasa. Now there may be a perception that these places are

what are called one-horse towns, and I think that would be to demean those two centres. There is a great deal of business activity and one cannot ignore the fact that Bisho with its government offices for the entire province will obviously create expansion, certainly in the business community of Bisho. King William's Town itself has been an established town for many years."

- (11) "There is also a very large magistrate's court at Zwelithsa which has a regional and a district court and the building itself is large enough to deal with the business that is carried on there, but there are complaints about the way in which it is run.

CHAIRMAN: Very briefly, what is the burden of the complaints?

MR DICKSON: Mr. Chairman, it think it is probably a general, it is a general complaint about magistrate's courts around the country. The building is apparently of recent erection, I think of the last 15 years, but it has not been maintained and the facilities have fallen into disrepair."

- (12) "**CHAIRMAN:** Well apart from material aspects, perhaps it might be useful to the Commission if you would enlarge slightly on paragraph 2.1(d) of the written submissions 5 to the Commission, the subparagraph which says the following:

"No real appreciation of the state of the administration of justice in the former homelands in the Eastern Cape Province will be arrived at by the Commissioners without the benefit of 'unorchestrated' in loco inspections ..."

- (13) "I think the calling for an unorchestrated visit is really aimed at the Commission finding whether the [magistrate's] courts are running in the middle of the morning or not, running when they are supposed to or not. The main complaints are that there is no recording equipment. If there was recording equipment it does not function any more. The staff are often absent. Courts do not start running on time. There is a general breakdown in proper tight administration which should be evident in any office of the magistrate. There is a lack of motivation apparent in the members of staff and the courts themselves are dirty and rundown, and this is all in the context, Mr. Chairman, of a building of recent origin.

CHAIRMAN: The standard of competence of the presiding officers?

MR DICKSON: Very limited in civil matters in particular, Mr. Chairman.

That appears to be the main complaint. The standard of civil justice is very poor.”

- (14) “**LEON J:** ... Your case for this court in Bisho, or the Bisho area if I may more accurately describe it, is it a case you now make for a local division or some other division?

MR DICKSON: Mr. Commissioner, I think we would like to avoid making any specific recommendations to the Commission about what it should be and what its exact role would be. What we would like to rather do, is say that there is an identifiable area of jurisdiction which cannot be ignored.”

- (15) “**LEON J:** ...You are not making any representations about whether there should be a seat of the court in the Eastern Cape, whether there should be appellate jurisdiction as well as divisional jurisdiction?

MR DICKSON: No, Mr. Chairman.

LEON J: You merely say there is a case for a court in this area?

MR DICKSON: That is what, that is the case.”

- (16) “Mr. Chairman, we wish to also make a point about the empowerment of blacks in the immediate area. Historically South Africa has been divided by the Group Areas Act and by virtue of its role as the capital of the Ciskei the relationship between King William’s Town and Bisho has existed for approximately 13 years and it has by reason of that relationship 13 years’ start on the rest of South Africa in the eradication of discriminatory measures. The black attorneys and the white attorneys have shared an equal professional life and this I am instructed has resulted in black firms being present in the smart part of town rather than being forced to be across the tracks, as we find in so many other cities in South Africa.”

- (17) “Mr. Chairman, the position of the legislative and administrative branch of government in the Eastern Cape being in Bisho is with submission a further factor favouring Bisho as the centre of jurisdiction. We say that this is by no means decisive but we believe it is a very persuasive factor of convenience to have a Supreme Court venue at the heart of the government.

CHAIRMAN: Convenience to whom in your submission?

MR DICKSON: Well almost everybody, Mr. Chairman. First of all may I say that we reject, without giving any reasons because we do not believe reasons are necessary, we reject the insinuations of an unhealthy relationship or the familiarity which may arise between the executive, the judiciary and the legislature. The same position occurs in just about every other centre in South Africa without that being raised. So we reject that point, but the convenience, Mr. Chairman, must be evident to the positioning of the administration of government, which obviously become embroiled in litigation from time to time.”

(18) “**CHAIRMAN:** Well, is it fair to say that the resulting convenience would chiefly be convenience to government?”

MR DICKSON: It would be fair to say that, Mr. Chairman.”

(19) “... we then turn to East London and its position within the Border region. We recognise the justification for East London being given extended facilities. This would be especially so in the civil business of this large business centre and we make no rigid suggestions about this but we would support the extension of the East London Supreme Court into say a permanent civil circuit court run from Bisho which would enable it to hear all matters of the first instance on a continuous basis. Of course alterations would have to be done and other problems like parking would have to be addressed, but those matters could I am sure be solved.”

(20) “Then in closing, Mr. Chairman and members of the Commission, we say that the submissions made we believe justify the continued use of Bisho as a Supreme Court venue. Not only are all the facilities there, the practitioners are available and the local government functionary is in place, but if our proposals are accepted the interest of the public would also have been served. The business community of East London and elsewhere and the sophisticated citizens that live in these business centres will have access to a convenient court and the common man will have easy access to a highly visible and prestigious court and government will as well.”

(21) “**LEON J:** Mr. Dickson, just one question without requesting a lengthy reply. The other argument is that you cater for the same people by doing the thing in reverse, by having Bisho as a court, like East London, but instead of the court operating from Bisho it operates from East London. Now what do you say about that? I am not suggesting it is a good argument, I am merely saying that that argument has been put up.”

(22) “... what we say about Bisho ... is that its physical location, its geographical location and the facilities that it has puts it far above the main seat being at East London.”

(23) “**LEON J** : And it will serve the interests of the community better in effect?

MR DICKSON: It will with submission, Mr. Commissioner. There may be visibly many people living in East London but there are perhaps not visibly but certainly away from the roads I am instructed in the region of almost a million people living in the immediate vicinity of Bisho.”

(24) “**MR MALULEKE**: Mr. Dickson, I understood you to say that you are in substantial agreement with what was presented yesterday on behalf of NADEL and I understood NADEL amongst other things to have indicated that if this Commission should decide to recommend a seat for a provincial division, they would rather then have Bisho for that seat for a provincial division and the gist of your region’s submissions that were made by your clients seem to suggest that you, I think in answer to a question by Leon J, you seemed to have changed your stance in that?

MR DICKSON: Well, Mr. Commissioner, may I put it in this way, that was certainly the original stance that was set out in the memorandum that Bisho should be the seat of the provincial division and the main venue and main seat for the entire Eastern Province. What we are saying now is that having listened to arguments put forward we have great sympathy, empathy and support for what NADEL said about it being the centre of the Eastern Province. All we say is that we do not think it is critical for it to be so.”

(XXII)

ADV. G.D VAN SCHLAKWYK SC BY WAY OF REJOINER BUT ALSO ON BEHALF OF THE EAST LONDON ATTORNEYS ASSOCIATION

In the course of his further oral representations to the Commission some of the points made by Adv. Van Schalkwyk SC were the following:-

- (1) “As far as the government memorandum is concerned, so-called government memorandum, I see in the press this morning it has taken on another colour once again, a short answer to my reply is that I do not intend replying. The memorandum in so far as it accords with Mr. Justice Pickard’s proposals are almost to the letter ...”

- (2) “... turning then to the East London Attorneys Association I thought the best way of presenting their information to the Commission is I have on my left Mr. Clark who is the Chairman of the Association, on my right Mr. Watson the architect who is advising the department of public works on the renovation of the court building and who has also conducted a study of the feasibility of converting part of that building to a Supreme Court. Now to that end Mr. Watson in conjunction with the Attorneys Association has prepared a short memorandum and annexed some plans. I have four copies for the Commission here and there are some copies available for interested parties also.

CHAIRMAN: This will be EXHIBIT D.”

- (3) “Then over the page Mr. Watson describes the accommodation. There are basically in his view three alternatives and the most attractive one he suggests is the one at the foot of the page which would involve the creation of two magisterial courts on the lower ground floor level and the incorporation of the existing so-called regional court 1 into the Supreme Court complex, and he estimates that would come to a figure of some R 350million. The costing estimates were done by a firm of quantity surveyors, Rens & Associates. Over the page he suggests two more alternatives and then he summarises what the accommodation, his alternative, would present. Three court rooms with judges’ chambers all the ancillary accommodation.

CHAIRMAN: Then he expresses a preference for alternative A.

MR VAN SCHALKWYK: Yes. The happy thing about this, Mr. Chairman, is that the R3,5 million alterations are about to commence and that this could be integrated very conveniently with that.”

- (4) “Mr. Chairman, turning then to my submissions, I am instructed that by far the bulk of East London attorneys who do Supreme court work through the Ciskei court draw their clients from Mdantsane. This is where the people of Mdantsane work, where they spend their money, is East London. They come to see their attorney in East London who takes the instructions here and contrary to a remark made yesterday that there are only two East London attorneys who dabble in Supreme Court work my instructions are that there are roughly 50 East London attorneys who are actively involved in Supreme Court work.”
- (5) “The next point I wish to touch upon is expert witnesses. Bisho may be known for many things but not for the number of orthopaedic surgeons and other who practise there. They practise in East London, as do architects, accountants, plastic surgeons, engineers, neurosurgeons. They all live, work and practice in East London, not in Bisho. By litigating in Bisho, and that problem is one that practitioners in this area have experienced and are experiencing because of the fact that Mdantsane is the biggest source of MVA litigation by far. In fact, I saw a minute of meeting which my clients had with the African National Congress where someone said they had heard Mr. Justice Pickard say that 90% of the MVA work in his court comes from Mdantsane, but let us make it 70%.”
- (6) “The point is that all your experts must travel from East London to Bisho to go and give evidence. Now this has a far-reaching effect. Obviously the cost of employing that expert escalates. He has to travel there and spend time there, as against the situation where he can sit in his offices or consulting rooms in East London and be telephoned and be told you will be heard at two o’ clock or just after lunch. There is of course the further cost to the community that that expert is now out of his practice, he is not available for his patient for a far longer time.”
- (7) “Mr. Chairman, what I have said about expert witnesses obviously applies equally well to police witnesses and personnel. The greater concentration of people and crime in the East London area has a result that most of your investigating officers, forensic experts and the more are situated here and would have to go and spend hours travelling up to Bisho, waiting to give evidence there while crime makes hay in the East London area.”
- (8) “Another factor, Mr. Chairman, that we would suggest is that with the inevitable increase of the magistrate’s court jurisdiction to R100 000 throughout the Eastern Cape, the amount of work which would emanate from the King William’s Town-Bisho areas would obviously be drastically reduced, because if one for the moment stands back and looks at what type of litigation one sees in the courts

where you would have claims in excess of R100 000 your first category are obviously commercial disputes of sorts, that is big business having a go at each other or the sale of expensive properties, movable or immovable. That is one category where one would have in excess of R100 000. Another category is motor car accidents, but an MVA claim in excess of R100 000 you have either have to have as far as general damage is concerned a virtual paraplegic or a large earnings claim ...”

- (9) “... one of the points that was made against East London was the fact that there is no Bar here, and that admittedly arises from the fact that the Grahamstown Bar Council saw fit not to allow its members to keep chambers here. So a trade-off was done whereby Grahamstown advocates appearing here are not allowed to charge either travelling or accommodation expenses. All that will obviously change should a fully-fledged local division be created here and you have heard already of the Bisho advocates five of them live in East London in any event.”
- (10) “Then just one further point as regards the circuit court in East London. The position there is that the civil court commenced sessions on 30 January and in the 38-week period to 22 September the court had sat 26 weeks. So as at 22 September this year the civil circuit had sat for 26 weeks.”
- (11) “**LEON J:** Would there be any merit having a court both in Bisho and in East London?”

MR VAN SCHALKWYK: Mr. Chairman, our answer to that is that the local division must be in East London and that Bisho can be served by a circuit court of ... (intervenes)

CHAIRMAN: Can be served by?

MR VAN SCHALKWYK: A circuit court of the local division as and when the need arises. I say this confidently, because an analysis of the work done in Bisho, once one accepts the compelling principle that the heart of this border area is Mdantsane-East London and once one excises from Bisho Mdantsane’s litigation it will require no more than an occasional circuit.

LEON J: So Mdantsane is the key to the problem?

MR VAN SCHALKWYK: It is by far the largest population, yes ...

LEON J: If you regard it as being part of Bisho then that strengthens Bisho’s

case?

MR VAN SCHALKWYK: Yes.

LEON J: If on the other hand you put it as part as East London that strengthens your case?

MR VAN SCHALKWYK: Yes.

LEON J: It that what you are saying?

MR VAN SCHALKWYK: Yes, but I go further and say that, I make the further submission that it is part of East London, it is part of its TLC, it is, the lines of communication to East London are more direct, its people work, they spend their money in East London. it is far closer to being a suburb of East London than it is of King William's Town.

LEON J: It is closer to East London?

MR VAN SCHALKWYK: Oh, yes!

- (12) As far as the jurisdiction of the local division is concerned, wearing two hats here we would suggest that that would include the districts, I will go clockwise from Komga, East London, Mdantsane, King William's Town and Zwelitsha, which includes Bisho."
- (13) "In the third term ... the criminal court sat for four weeks and the civil court for nine weeks. So there were two judges here for a period of four weeks and thereafter the one doing civil work. And in the fourth term it is anticipated that there will be three weeks of the criminal roll and at this stage four weeks of the civil roll."

(XXIII)

ADV. L.S KALIMASHE, SENIOR LEGAL ADVISER TO THE PREMIER OF THE EASTERN CAPE PROVINCE

In the course of his oral representations to the Commission some of the points made by Adv. Kalimashe were the following:-

- (1) “I will highlight only two issues. The first one which is very important is that the fundamental motivation, the foundation behind the premier’s submission is the existence in the province of four urban population concentration points. I am sorry, not four, three. This is significant if one bears in mind that the premier is talking about four courts, but there are three of such areas. There are three plus Grahamstown that has installations, fiscal installations, that should not be allowed to go to waste, but these are verifiable facts. One can see that the P.E.-Dispatch-Uitenhage area is a high concentration point. One can see that the East London, King William’s Town or what has been called the Border metropolitan area is in fact a concentration point, population concentration point. One can see Umtata that very many people are in Umtata. One does not have to repeat anyone’s previous statement in making these statements. So the foundations of the submissions on behalf of the premier are based on fact.”
- (2) “The second matter I would like to abstract and highlight is that of a strong and unfragmented court in a single localised provincial division so as to avoid conflicting and confusing decisions. There is always a single provincial division. The Supreme Court is a unified structure according to the Supreme Court Act. It is not possible to fragment the court, it is an impossible notion. It does not matter where you call upon the judges to serve, where they are required to serve and where their habitual residence is, the Supreme Court as a Supreme Court remains one.”
- (3) “Lastly I make reference to page 4 of the written submissions on behalf of the premier. Page 4, there are paragraphs there numbered 1 to 6. What is really meant there by four courts is that a single provincial division should sit permanently in four towns, that the judges of each place, each place of the habitual residence of the judges, such judges should do all the work emanating from each one of those places.”
- (4) “**MR MALULEKE:** You might be able to assist us, Mr. Kalimashe, on this point. The representative for the case for East London, Mr. Van Schalkwyk,

makes the point that Mdantsane is the key issue in deciding the population densities and offers this as justification for East London to have, to become a local division, because of the numbers, and indeed if you remove Mdantsane from the East London statistic you remain with a very small population in East London and the proponent of the Bisho-King William's Town case argued that in fact Mdantsane has always been part of that area. And also, what from your case should this Commission make out of the role that Mdantsane would play? We have no way of knowing what the people of Mdantsane want, whether they want to litigate in East London or whether they want to litigate in Bisho. We have no way of knowing. We only know lawyers who might have a lot of selfinterest playing Mdantsane as a political football. What is the role of Mdantsane? It is part of East London, do the people want to litigate in East London, or is it part of Bisho-King William's Town?"

- (5) "It is true that Mdantsane plays a key role. Indeed it is the second largest black township in the country ... but in as far as your question is concerned as to how the people of Mdantsane would wish to litigate at least to East London and Bisho, that has not been determined by me as I sit here. Whatever I would say as the wish of the people of Mdantsane would simply be the kind of speculation that would probably represent only the circle in which I personally move and the circle in which I personally communicate."

- (6) "**CHAIRMAN:** Mr. Kalimashe, the Commission wishes to thank you for your presence here and for representations advanced by you today.

MR KALIMASHE: Thank you, Mr. Chairman, Perhaps with the permission of the Commission ...(intervenes)

CHAIRMAN: Certainly.

MR KALIMASHE: There have been reports on Tuesday, yesterday and today in the press of what is called government position..."

- (7) "**CHAIRMAN:** Yes. At the end of the day the Commission is still faced with this problem, must it view these submissions as the views of the government of the Eastern Cape or must it regard them only and exclusively as the views of the premier? And it is an important question because if you look at the title page it is headed: "*Submissions of the government of the province of the Eastern Cape*", and either these submissions are or they are not the submission of the government. Would you like to indicate, give a clear answer one way or the other?"

MR KALIMASHE: These are the views of the premier made on behalf of the premier of the province by virtue of his, I mean in his capacity as the premier of the province, by virtue of his membership to the Judicial Service Commission. That was the invitation extended to him. He is part of a government. There is not any harm in loosely, broadly and unspecifically referring to him as that block within the submission in this Commission, that block that comes from the state. I could have said state, government or anything. There are views from judges, there are views from attorneys, there are views from the public, there are views from various broad quarters is that of the government. The specific pinpointed view of the government as the premier in council, or the premier executively or the premier in the wider government, that is a non-issue before this Commission. The invitation of this Commission is a very clear one and its reasons are perfectly clear.

CHAIRMAN: Thank you very much.”

(XXIV) ADV. L. MPATI ON BEHALF OF THE PORT ELIZABETH REGION OF NADEL

In the course of his oral representations to the Commission some of the points made by Adv. Mpati were the following:-

- (1) “I am here to make submissions on behalf of the Port Elizabeth and districts branch of the National Association of Democratic Lawyers. The area that that organisation covers includes, other than Port Elizabeth, Grahamstown, up to Somerset East and Graaff-Reinet where we have members. We also operate offices in Port Alfred, Middelburg (Cape) and another one at Hanover just west of Colesberg. That is the area that we cover. In that organisation I am Chairman of the committee entrusted with the question of law reform in general and the rationalisation of the Supreme Court in our province. I am based in Grahamstown, attached to the Legal Resources Centre as their in-house counsel. Prior to joining the LRC in March 1993 I was in private practice at the Grahamstown bar. The Port Elizabeth and districts branch of NADEL has more than 40 active members, of which five are white, the majority is black.”
- (2) “... you will have noted that our proposals regarding the rationalisation of the Supreme Court in this province are virtually the same as those of the Advocates and Attorneys Liaison Committee...”
- (3) “... having regard to the membership of my organisation and the position we take, *vis-à-vis* the location of the court venues in the province I think the myth, misleading as it is, that the Commission is faced with a white man’s proposal on the one side and a black man’s proposal on the other has been dealt with effectively having regard to our membership.”
- (4) “**MR MALULEKE:** Many or nearly all the submissions that we have heard, you know, over the last few days, no one seems any more to be advocating for the removal of the court from Grahamstown. What may very well be advocated for might be that Grahamstown should not be the seat of a provincial division, or would be scaled down. So we do not have arguments about the total removal of the court. I think it might help if you were to express your view on what the scaling down of the court in Grahamstown might result in or the removal of the seat of the actual provincial division and it becoming a local division.”
- (5) “ We believe for example as we say in our memorandum, if Bisho were to be a

seat of a court, whether it be the seat of the provincial division or simply a seat of the court, it follows that East London, Mdantsane, Komga, King William's Town will fall under the jurisdiction of the court in Bisho, which will have an effect upon the workload of the Grahamstown court. So what I am saying, is that that will in effect, although it is not argued that that is closing down Grahamstown, but it will lead in our respectful view to the closure of that court because in due course it might be said that there is not sufficient a workload to justify a court in Grahamstown, let alone the seat of the court. Insofar as the removal is concerned, because ultimately it will end up as the removal of the court from Grahamstown, the economic situation of the town I think has already been placed before the Commission."

- (6) "Firstly, it was pleasing to read in the newspapers and confirmed by my learned colleague, Mr. Kalimashe, before me that the document headed "*submissions of the government of the province of the Eastern Cape*" in fact does not contain the position taken by the government of the province, and I will leave that there."
- (7) "In our respectful view, to have four courts all with equal status will result in an untenable situation where the laws of the province are interpreted and applied differently in the one province, depending on where one happens to be at a particular time."
- (8) "The ordinary man in the street will know no independence of the judiciary where there is a possibility, and there is a very real one in the case of Bisho, of members of the judiciary rubbing shoulders with members of the government. For him, that is the man in the street, there will always be a suspicion of the judiciary lending itself to some sort of flexibility. There may be accusations of members of the bench being flexible in their dispensing of justice when government is one of the litigants. It is safer in our view that the court be completely removed from the place where the government is situated."
- (9) "I think I might as well deal with even the accessibility of the courts to the people. Our view is that even the best arrangements therefore will never please everybody, and we submit that the best that can be done to ensure maximum accessibility is by way of a circuit court system, which applies in the area of jurisdiction of the Eastern Cape division presently."
- (10) "And talking about the circuit system of the Eastern Cape division I may add that

this needs to be extended to more centres than it goes to presently and it could also be extended ...I speak under correction here, at present the court sits for instance at Graaff-Reinet, it sits at Aliwal North, it sits at Queenstown, it sits - I once appeared in King William's Town, so I believe that it does sit in King William's Town, and also East London. We believe that towns such as Cradock, and it may well be that it has sat in Cradock, I am not hundred percent sure here ...(intervenes)

CHAIRMAN: It has in fact sat in Cradock.

MR MPATI: Yes, Cradock, Middelburg.

CHAIRMAN: There again it has sat.

MR MPATI: Colesberg.

CHAIRMAN: I believe it has also sat there, but any way.

MR MPATI: Yes, and maybe closer to the hinterland, places like between Steynsburg, which is something like one and a quarter hour's drive from Queenstown, so in those smaller towns it could also be extended to cover the area. And we believe that the circuit court should also be extended so as to also hear civil matters in those places where criminal matters are presently heard."

(11) "A large majority of black practitioners in the Border region are in Mdantsane and East London rather than the Bisho-King William's Town area."

(12) "So then the development of black practitioners in the area will, we believe, be well served if the court is moved from Bisho to East London, as Mdantsane will fall within that East London court's area of jurisdiction.

LEON J: In that regard you adopt the same approach as Mr. van Schalkwyk?

MR MPATI: Yes. Except of course that we also with regard to the area of jurisdiction which the East London, proposed East London court will cover, we believe that King William's Town-Bisho should fall under Grahamstown rather than East London circuit court."

(13) "Lastly, Mr. Chairman and learned Commissioners, we stress the point that our submission is not based on self-interest but rather on the devastating effect the removal of the Supreme Court will have on the community of Grahamstown.

LEON J: May I just ask you a question in that regard? Supposing we were to recommend that there be a local division set up in say there was one for Port Elizabeth, East London, Bisho and Umtata, but that Grahamstown would retain its appellate jurisdiction. Let us say we added one local division to what presently exists, to what extent would Grahamstown suffer in those circumstances?

MR MPATI: It will suffer with regard to the volume of work that it will have to do, because it will be left with virtually the hinterland upwards in the Karoo area.

LEON J: Now if we try to strike a fair balance between all the various considerations, one of the matters we must bear in mind I think, speaking for myself, *prima facie* is the interests of the local inhabitants and if original jurisdiction is where they are mainly litigating or charged with crimes, should one not have some regard to that as a circumstance and one perhaps balances that, I do not know, I am just sort of thinking aloud at the moment, by saying right we will do that, but Grahamstown then retains its appellate jurisdiction, do you think that would result in a slow death of Grahamstown?

MR MPATI: I think it will”

- (14) “**MR MALULEKE:** On that last point you made, which was very adequately made when we held hearings at Grahamstown. If you closed the court in Bisho you do not envisage that people will lose jobs, if you closed the court in Bisho because apparently it is necessary that the court be closed in Bisho in your submission, so that the court in Grahamstown can be viable. That is your submission as I understand it?”

MR MPATI: Yes.

MR MALULEKE: Right. Now if you closed the courts in Bisho what happens to the people who are working there in the courts?

MR MPATI: Well firstly our submission is that the court should close and move to East London, and I speak under correction here, but quite a number of people who are attached to that Supreme Court live in East London. Secondly, and those people who live in East London commute every day. The position would be the same, with respect, *vice versa*. East London is only 60 or less, 60 kilometres away from Bisho and there is a regular commuting service between the two towns. So the effect of closing down Bisho can never be compared with the effect upon Grahamstown, never.”

(XXV)

THE HON. MR. JUSTICE W.H. HEATH OF THE CISKEI SUPREME COURT

In the course of his oral representations to the Commission some of the points made by Mr. Justice Heath were the following:-

- (1) “Let me then first of all deal with the possible transport that is or is not available to people, and particularly black people in this area, and if I could use the same excuse that policemen so often use, it is not according to scale. So the lines drawn by me are only rough lines. You will see that right in the middle of the map is Bisho and then towards the west is a town Dimbasa, ... Now Dimbasa is a first of all the industrial township where there are quite a large number of factories and then also residential township. To the left of west of it is the town Middeldrift which has, apart from its free residence also the central prison of the old Ciskei area and then to the left of it Alice which is the town where Fort Hare University is. Towards the north of Dimbasa is Keiskammahoek and then north-west from that, Seymour. If you look south-west from Bisho you will see there is a purple line and also a broken orange line. On the way, and unfortunately I missed it when I drew the lines, is the town Peddie, it is somewhat south of the line, but it is supposed to be on that route to Grahamstown... Immediately towards the south of King William’s Town-Bisho is Zwelithsa and then east of that Mdantsane and south-east East London.”

- (2) “**LEON J:** May I just interrupt to ask you this, Judge: Do you agree with the point made by Mr. Van Schalkwyk that Mdantsane is far closer to East London than it is to Bisho? Is there any doubt about that?”

HEATH J: Yes, and no. It is a relative concept. From Bisho the closest point of Mdantsane is probably about 25 kilometres, the closest point to Mdantsane from East London is approximately 15 kilometres. So it is a very relative concept. Yes, it is closer from that point of view.

LEON J: Do you also agree that it is part of the Transitional Council, it has become to attached to East London, as the last representative made?

HEATH J: Well yes, it forms part of the TLC.

LEON J: It is part of East London?

HEATH J: Yes.”

- (3) “Now anybody who lives in this area would know of the high traffic factor of the taxis, first of all between Mdantsane and Zwelitsha and Zwelitsha and Bisho-King William’s Town and on the other hand from Mdantsane to East London on both routes. What it is probably worth is the number of taxis travelling per day on the route from King William’s Town to Alice, and the reason for that is not only the residential reason but also the number of people employed at Dimbasa. I was told that the most recent estimate of the number of factories in Dimbasa is about 49 factories.”
- (4) “I have also attached to the papers the schedule of those buses, and that is very important. I am not going to deal with it detailed but in general it amounts to the following. To get to Grahamstown with anyone of those buses from King William’s Town you will either get the bus at about three o’ clock in the afternoon or about five o’ clock in the afternoon, in order to get back from Grahamstown the bus leaves at approximately eight o’clock in the morning. What is the effect of this? If a person would like to use that bus to go from the Bisho area, or for that matter East London, to Grahamstown he would leave in the afternoon, he would have to find accommodation. He cannot come back the next morning because that is the day when he needs to go to court. He will have to find, if it is only a one-day case, find accommodation for the second night and then come back the next morning. If it is a one-day case it means he will be away from work for three days. That is the one factor which disqualifies it actually as a means of transport. The other one is the cost factor, if you look at the majority of the population.”
- (5) “There is no regular taxi service from Bisho and King William’s Town to Grahamstown. There are taxis commuting from King William’s Town to Port Elizabeth, but they wait until it is a taxi which is full, they do not leave with half a taxi, and you will see from the statements here that on average if a taxi intends going to Port Elizabeth it takes on average about four hours to fill it with people. Secondly, people wishing to go to Grahamstown are obliged to pay the full fare to Port Elizabeth because the taxi owners or drivers are not prepared to have a halfway passenger. Again a litigant going to Grahamstown will be dependent on first of all the question whether there will be a taxi going to Port Elizabeth and secondly the time factor and then of course you will see the amounts involved again.”
- (6) “If a court is established, and that is the question that has been debated so often, in either East London or King William’s Town there is a very regular taxi service and that is not a problem from that point of view. The question however is, is that enough to make East London a suitable venue from the point of view of the people living in that area? And there I take you back to the population figures

which I have given you. On the opposite side of Bisho, whether it is north or north-west, east or west, we have a population of almost 300 000 people. They would first have to travel to King William's Town-Bisho and then travel to East London..."

- (7) **“MR MALULEKE:** So you are saying in your own submission that if East London gets a local division and Grahamstown stays as the provincial division and the court in Bisho is closed, at worst you would rather have Bisho, King William's Town fall under East London for the practical and cost effective point of view for the litigants than Grahamstown?

HEATH J: Yes, no doubt that.

MR MALULEKE: How would you reply to the proposition that if you do that you will be killing Grahamstown slowly?

HEATH J: Obviously that would be the effect. It would probably wither down, if I can use the same word, to a small court, if any. I accept that as a possibility, but what is the other option? Just for the sake of Grahamstown with a population which is the equivalent of any one of those small towns, be financially severely affected. You force a population litigating in that court of, I have indicated to you, about 500 000 people must now battle to get to Grahamstown. So yes, surely on the one hand you have the serious effect on Grahamstown but what are we interested in? Are we looking at the number of people employed in Grahamstown in the field of the court, or are we looking at the people involved in litigation?

- (8) “I was amazed on various occasions to hear that Bisho should not have a court because of a close contact between the judges of the court staff with the politicians ... But what I find amazing in the particular set-up of Bisho is the following: It was established as an apartheid's town and a court was established under those circumstances. Everybody who has practised there, judges, advocates and attorneys, know how necessary it was, how important it was to remain independent for the very reason that this was a new government. To a large extent they had the tendency to be corrupt and all sorts of nasty things one can say about them, but the one comment that I have heard over and over again, not only from local counsel and attorneys, but particularly from Grahamstown and East London is a praise for the independence of that court. They have had many cases over the years. Mr. Mpati had, various of the other people had, but it is not even necessary to pick up the opinion of people. If you look at the judgments of that court over the years it will prove the point without exception. Apart from that, since 1990 already that court had been dealing with the bill of rights. The judgments of that court are not only nationally recognised but internationally.”

- (9) “Another feature of the court in Bisho is that we have in fact a strong Bar, not large in number, but they make a lot of money, but the Bar is actually too small for the work at the court and that is why over the years we had Grahamstown advocates practising there probably as much as they do in Grahamstown, and very often we are very privileged to have silks, senior counsel from other centres.”
- (10) “Then I would like to come to a sensitive matter and that is the magistrate’s courts ... If we take the civil courts we have a serious problem in the Ciskei area. As a result of the problems I have had a meeting, and again a recent meeting, with the magistrates, civil court magistrates. They say the problem is the following: The majority of them are not trained or experienced to do civil work. In fact more than one has said to me that if there is a postponement they are so grateful that they would never ask any questions. The only court where civil cases do go on, and apparently on quite a good level, is at Mdantsane court. Their facilities of course are also poor in the sense of accommodation, but on the other hand I believe that they have been supplied with machines and they just do not use them. The main complaint of the attorneys is that a civil court magistrate would just do everything possible not to hear the cases. I am not pointing fingers at the magistrates but that is probably the reason why they do not hear them.”
- (11) “As far as criminal courts are concerned I think that they are operating relatively well, but we do have problems with reviews. We do not at this stage and we have not had for the past year or so the number of reviews that we have had before that. An investigation was conducted by the department of justice into this problem and I have had my own inquiries made and there are various reasons for that. The one is that the magistrates have some hesitation in sending their reviews to the Supreme Court. They are afraid of being criticised and various other reasons. That you must see against the background of people not as experienced as magistrates in other areas and it is understandable that they will be sensitive. They see it as an enormous problem if a judgment of theirs is upset and in fact I was told by the department of justice that one of the reasons for that is that it gets onto their record or their file and it affects their promotion.”
- (12) “I would like to deal with two of the comments made by Mr. Van Schalkwyk this morning, and I think he also made them before. His one argument was that East London should be the seat of the Court, whatever you want to call it, because that is where the business people are, that is where the majority of the attorneys are and that is where all the professional people are and therefore it becomes a heavy or impossible burden for those people to move to King William’s Town or Bisho.

Let us take the professional people, and I presume that he refers to people who would be acting as experts in court, otherwise I do not see the relevance of that. I think we all know from experience that the majority of cases heard as cases of first instance do not require and do not have experts. Secondly, many of those cases, or let me rather say civil cases are cases where eventually judgment is granted by default. The practice in this Court and in Bisho court, as in other courts, is in that case to accept affidavits. So they are not required in motion court unless the judge is not satisfied with the affidavit.”

- (13) “Mr. Chairman, finally I have been in this area and I have been serving the Bisho court for 8 years and I have got to know the people very well. I am referring now to the black people. In fact, I do not only know them on court level but I have lots of contact with them on other levels, community work and other work, and the one thing that is important to them is that they must have a court first of all, obviously, but they have always found attendance at court a very important thing in their life, obviously when they are involved in a case. That is why when Advocate Claassen said to you yesterday that we have appellants attending appeals that is very true, they do. Even motion court where they are not required to be, I am not talking about divorces, we very often have a very full Court, and of course where there are relatives involved in criminal or civil cases they try to be there.”
- (14) “Mr. Chairman, in view of those submissions I would submit that first of all the Bisho court should be retained in the interest of the majority of the population in this jurisdictional area and obviously I accept that there must be four divisions or seats, whatever you want to call it, of the court, primarily for the reason of accessibility of the court to the people...”

(XXVI)

PROF. MOOSA, VICE-DEAN OF THE LAW FACULTY AT THE UNIVERSITY OF FORT HARE AND CONVENOR OF ITS TRANSFORMATION WORKING GROUP

In the course of his oral representations to the Commission some to the points made by Prof.. Moosa were the following:-

- (1) “A document is before you which is before the Fort Hare Senate, it is part of the strategic plan for the new University of Fort Hare... but Fort Hare also has a satellite campus called the department of external studies which is in Bisho. As part of its strategic plan some faculties were isolated where the commercial and industrial hub of the Eastern Cape is located and it was thought necessary for these faculties to relocate. In the first instance we are looking at the faculty of economic sciences, also the faculty of education and the law faculty.”
- (2) “We have managed to restrict our student numbers and with both campuses at this point we serve some 1 500. However, there is a demand that the LL.B. be reintroduced in Bisho and indeed this coincides with our plans for transformation of the faculty.”
- (3) The law faculty then had decided as part of its plan to contact the Supreme Court at Bisho, and it seems the Supreme Court at Bisho also had the same plans, to see how we could work together in the transformative process because we were looking at transformation of legal education and we still are, on the basis of something analogous to the medical profession where during the final year particularly but also during the years of legal education students interact with the practical arena”
- (4) “As I said, the library which Fort Hare has would also relocate to Bisho together with the move to Bisho and part of the library plans is the fact the United Nations has decided that ... (intervenes)

CHAIRMAN: You are referring to the law library?

PROF. MOOSA: The law library. The United Nations has decided that Fort Hare will be the university thought the Oliver Tambo Chair to have the documentation centre for the entire country on human rights. By the same token the Historical Liberation Movement, the African National Congress, Pan African Congress, Black Consciousness Movement and Unity Movement have all agreed that Fort Hare will be the university to store their archives. These archives will

be stored at the Alice campus, but even now there is a close link between the Alice campus and the Bisho campus. Indeed, members of staff travel from Alice to Bisho every day and some of our members of staff are in fact based in Bisho.”

- (5) “We are also working with the Black Lawyers’ Association legal education centre which has a copyright on the idea of trial advocacy, which they have done sterling work in promoting in this country, at their strategic planning workshop this month looked at the future of trial advocacy and we are prepared to do that at Fort Hare, possibly also at other universities.”
- (6) “These then are the broad ideas that are being discussed that are very much on the cards. When we talk about a teaching court, and this I am sure is what particularly interests this Commission, we are talking about a living court, a court which does all the work, hearing of appeals and hearing of cases in the first instance, trial work, and we are talking about students having integrated skills participating in real cases under the tutelage of both academics and members of the profession. This obviously in the context of South Africa is very much an idea in its experimental stages and we found that the Bisho court is very receptive to this particular idea. Indeed, we believe the ministry of justice will also be receptive to this idea. I was struck by the fact from all the evidence I have heard this morning that we are dealing with a historical accident obviously, living with a historical accident that Bisho is where it is and that Fort Hare has a campus at Bisho, but we believe because government is there, because we have the institute of government there it is only logical that Bisho be the key court in this region. That is all I wanted to say. Thank you.”

(XVII)

**THE HON. MR. JUSTICE C.E.L. BECK, JUDGE PRESIDENT OF THE
TRANSKEI SUPREME COURT**

In the course of his oral representations to the Commission some of the points made by the learned Judge President were the following:-

- (1) “With regard to the facilities, the physical facilities offered by the court buildings ... There are as you know six courts, three criminal, three civil. There are chambers which are fairly well equipped for six judges and there is room for extending those chambers. There is adequate accommodation for the Attorney General’s staff and for the Registrar’s staff and we have an adequate library or a reasonably adequate library. There is considerable vacant space adjacent to the building for the building to be extended if necessary in future years.”
- (2) “... all six of the judges are in court today much as they would like personally to be here and to participate in the hearing of the submissions today. That is impossible because everyone is committed to their court tasks.”
- (3) “Tomorrow’s motion roll, at the moment there are 101 cases on the roll and it inevitably happens that there are always late enrolments as well so that number will be exceeded. Last term, that is the third term when I was not here, 117 civil trials were enrolled and this term, this fourth term 109 civil trials have been enrolled. Last term there were 70 criminal trials enrolled, that includes trials heard by the circuit courts. And this term once again there are approximately 70 on the roll both here in Umtata and before the circuit court centres.”
- (4) “At the moment we have Judge Pillay from Port Elizabeth acting here. He has been very surprised to find that the level of judicial work is, according to him, higher here than in Port Elizabeth. The same experience and the same sentiments was had and were voiced by Moodley AJ who comes from Pietermaritzburg and Naidoo AJ who came from Durban. The first submission therefore gentlemen that we make is that the workload, the number of judges required, the distances involved from other possible court venues in this region, all make it necessary that there should be a permanent court venue in Umtata with resident judges here. I notice gentlemen from the other written submissions ...that there is unanimity on this point. It seems that everybody has accepted that so I will not labour it any further.”

- (5) “I would only add this gentlemen that this division, this court badly needs at least one more judge. There is no slack whatsoever at the moment. If a judge were to fall ill or for any reason get involved in a long trial it immediately imposes real difficulties upon the administration of the courts.”
- (6) “Now I move on to the matter of jurisdiction. The first question is the area of jurisdiction. It would seem to us, although we are not looking for additional work by any means, but it would seem to us that logic may indicate that the area between the Sterkspruit portion of the old Transkei and the rest of Transkei should perhaps be included in this court’s area of jurisdiction. That would indicate that the districts of Indwe, Elliot, Maclear, Barclay East and Lady Grey should perhaps fall into this court’s territorial area of jurisdiction.”
- (7) “**MR MALULEKE:** ... The submissions that we heard in relation to appeals was, one, that hearing appeals say in Grahamstown or at another seat of the provincial division, be it Grahamstown or Bisho or whatever it is, will not necessarily increase the costs of litigants from the Transkei greatly ... Two, it was also submitted that at any event people show such little interest in attending court to hear appeals that even if appeals are heard at a great distance from where the people are, people do not attend court at any event ...”
- (8) “**BECK JP:** To turn to the second of the two questions first, whatever the situation might be in other parts, I can tell you that from our experience here it is by no means infrequent that the litigants themselves do come to court and do attend the hearing of the appeal. This is particularly true of the rural community when a litigant from the rural community is involved in a matter it is the exception for him not to be at the court, he usually is at the court. The first question I think that the normal tendency would always be for the litigant to stay with the legal advisers who represented him at the trial. And that would mean that he would then have to send those legal representatives to wherever the appeal is to be heard, or else - and it may also involve the question of two sets of attorneys, a set of attorneys locally and then another one at the seat of the court where the appeal is to be heard. So I think the likelihood is that costs will be increased ...”
- (9) “Gentlemen, provided all appeals which arise locally, whether they arise from the magistrates court or from the local Supreme Court, provided all those appeals are disposed of in Umtata, we really have no particular objection to another court venue being styled the seat of the court or the judicial capital or the provincial

division and we also, with some reservation, we also have no objection to such a court having concurrent jurisdiction over this territory provided that that concurrent jurisdiction is only resorted to with the consent of the parties, because we do not want the situation to be available where a litigant with a deep purse can put a litigant with a less deep purse to the additional expense of having to go to a distant jurisdiction in order to have their dispute settled.”

(10) “... we do feel that it probably is necessary for the region to be represented by a judge president who will be accountable in the broad sense and be a link with the Minister of Justice and we feel that having such a mother court as it were with a judge president for the region would assist in promoting cohesion and to some extent it would help in cross-pollination and in enhancing perhaps the status of the court.”

(11) “I indicated in my submission that we do not wish to be drawn into the dispute as to where the other court venues should be. It is a matter really of indifference to us. I would only add that now that we have seen the various written submissions that have been made, those that have been sent to us, we are struck by the economic disaster that would apparently befall Grahamstown if the court were to be removed, and we do think that that is an important consideration to be borne in mind by the Commission, but we sa no more about it than just that.”

(12) “**CHAIRMAN:** One further question Judge Beck, you mentioned that it was quite essential for this court to have another permanent judge. In your estimation ideally how many full time judges should be on the bench here?”

BECK JP: Ideally in my opinion gentlemen eight.

CHAIRMAN: One last question, how long have you been judge president of this division?

BECK JP: Nine years.

(13) “**MR MALULEKE:** ... you say you consider that a complement of eight judges would be suitable for this area. What we have heard so far is that because the jurisdiction of the magistrate’s court has been kept at R5 000, is that a correct position, and not increased to R100 000 that in fact if it was increased there would be such little work, civil work in the Supreme Court that the picture would completely change from what you are saying. Is that correct , would you agree

with that?”

- (14) “**BECK JP:** That is a problematical question. I personally, and the other judges also are of this view, doubt very much whether an increase even up to as much as R100 000 in the magistrate’s court jurisdiction would make any significant difference to our civil load in the foreseeable future. I say that because with due respect to the magistrates in the Transkei, and I measure my words when I say this, they themselves will endorse what I say when I make the statement that they lack civil experience and they would not really be able to cope with the complexities of the work that they could be expected to get if they had to handle cases of that magnitude.”
- (15) “I think that litigants would still tend to come to the Supreme Court in spite of the increased jurisdiction and those that do go to the magistrate’s court. I think as things stand at the present would very probably end up before the Supreme Court in an appeal situation. So I think that the appeal load would increase if the trial load were to decrease.”
- (16) “**CHAIRMAN:** Just for the record what is the jurisdictional limit, the monetary limit which is current in the Transkei for magistrates?”

BECK JP: At the present moment it is R5 000 for illiquid claims and R10 000 for liquid claims.”

(XVIII) ADV. N.K. DUKADA OF THE UMTATA BAR ON BEHALF OF THE SOCIETY OF ADVOCATES OF UMTATA AND ALSO ON BEHALF OF THE TRANSKEI BRANCH OF NADEL.

In the course of his oral representations to the Commission some of the points made by Adv. Dukada were the following:-

- (1) “... what is contained in my submissions has been debated with the local branch - sorry, the Transkei Branch of CONTRALESA, the Congress of Traditional Leaders of South Africa. We also had a meeting that conferred with the local branch of Black Lawyers’ Association for the Transkei regional as well as the local branch of Lawyers for Human Rights. I do not have specific instructions from these three bodies but we have discussed the matter at length and they are agreeable to all the submissions contained in the paper.”
- (2) “... I am an advocate of the local Bar and I have been at this Bar for six and a half years and prior to joining the Bar I was a clerk in the Department of Justice in Umtata and I worked in the attorney general’s office as an administrative clerk and the registrar of companies. I also worked as a court interpreter and a prosecutor as well as a magistrate in a number of districts of Transkei.”
- (3) “I grew up in Transkei and I know all the conditions of the area as well as the conditions of living of the various different tribes as well as other people occupying the area.”
- (4) “Firstly Mr. Chairman and honourable members, we are completely opposed to the notion of the judicial capital in the Eastern Cape. And if honourable members and the Chairman consider that there is a need, absolute need for a judicial capital in the Eastern Cape our alternative argument is that that judicial capital should have a seat in Umtata.”
- (5) “... the other areas which should be included under the jurisdiction of the local Supreme Court is Elliot, Ugie, Maclear, Barclay and Kokstad which the judge president did not mention.”
- (6) “...we ... make reference to a very important Constitutional principle, I hope it is already mentioned by other people in other areas, clause 5 of schedule 4 of the

Constitution which reads as follows:

“That the legal system shall ensure the equality of all before that law and an equitable legal process. The equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged including those disadvantaged on the grounds of race, colour or gender.”

- (7) “Now the point I am trying to put forward is that we have in the context of rationalisation a society which has been disadvantaged for years and it is not the question of imposing rationalisation on a normal society and the Commission should also take that into serious consideration. Now at page 5 of my submissions I mentioned briefly the situation in Transkei that the court here is serving 29 districts and 65% of the entire population of Eastern Cape is composed of people from Transkei and the areas are basically rural and under-developed.”
- (8) “**MR MALULEKE:** I thought you might want to enlighten us more about what you have referred to about access to justice which to me seems to be one of the most telling points of your argument ... How does keeping a full Supreme Court here with full bench status and appeal status assist in the development of necessary services to 60% of the population? I thought you might want to expand on that.”
- (9) **MR DUKADA:** Thank you. Firstly in Transkei as I pointed out already it is under-developed, poorly developed area. The roads are very bad, communication system is very bad, it is very difficult for example for even the Registrar of the Supreme Court to phone a magistrate in Maloto or Sterkspruit, the telephonic system is still primitive. And if now the Court is relocated from Umtata, if I can also mention that the question of deputy sheriffs here are proved to be inefficient because some of the areas are inaccessible to them. Buses and other public transport are also inaccessible to the people. People have got to travel approximately 40 Kilometres to reach the public road where the public bus is supposed to pick up them. Now if now the court is removed in Umtata, Umtata which already has its own problems in securing accessibility of the court and placed for instance in Grahamstown or anywhere else that will exacerbate the existing problems faced in the administration of justice.”

(XXIX) ADV. C.D.H.O. NEL SC, ATTORNEY GENERAL OF THE TRANSKEI

In the course of his oral representations to the commissions some of the points made by the Attorney General were the following:-

- (1) “I would agree with the honourable Judge President that the ideal number to suit the needs of this division, this part of the country, would be about eight judges.”
- (2) “If the Commission has a look at the roster for example between the week of the 13 to 17 November it will note that the number of judges engaged in criminal work the number is five and from a complement of six it means immediately on the Friday where there are appeals set down that at least one of the judges would have to double as a judge of the appellate court or the appeal court there, and I do not think that this is advisable at all.”
- (3) “If a full bench could be speedily constituted then that would dispense with the problem Mr. Commissioner that we have experienced where we could simply not constitute a full bench here at short notice. And if we are promised that this type of problem will not manifest and present itself then I would not have any problem with having judges exchanged from the rest of the Eastern Cape.”
- (4) “My present office statistic for murder dockets received after nine and a half months for the present year stands at 700. We are expecting (intervenes)

CHAIRMAN: Just murder?

MR NEL: Murder, murder decisions, murder cases stands at 700. That means that by the end of this year it will be in the vicinity of 1 000. This represents an increase.”

- (5) “I was recently informed by the Parliamentary Committee of the Portfolio of Justice that my staff complement stands at 17 in terms of the Department of Justice determination. We are 10 at present. If we are to be given all 17 it means that there will be three deputy attorneys general in the Transkei instead of one at present ... I gather from Mr. Roberts, my counterpart, his submissions before yourselves that they have possibly abandoned, this might be too strong a word, but they have relinquished the idea of this office being run from their side.

CHAIRMAN: He concedes I think that proper administration requires an independent attorney general in Transkei.”

- (6) “**MR MALULEKE:** ... I just want to find out from you the jurisdiction of the regional court in the Transkei is it now identical with the jurisdictions of the regional courts in what was formerly greater RSA if I may call it that?”

MR NEL: No sir, these have not been equalised as yet.

MR MALULEKE: You will know of course that because of the increased jurisdiction criminally in the regional courts in the RSA a lot of the work which was done by the Supreme Court is now being done by the regional court. I take it you would agree that if the Transkei courts were streamlined to the same extent the workload would be reduced in the Transkei in the Supreme Court? Criminal workload I am talking about.”

- (7) “**MR NEL:** To a certain extent it would ... It would be difficult to anticipate to what degree exactly. We send *culpable homicide* cases basically to the regional court.”

- (8) “But the serious murder cases would still come to the Supreme Court in droves and in numbers. And the point I wish to make is that Transkei exhibits some of the most serious murder cases that I have ever seen and exhibits them in numbers and continuously. Contract murders abound. Witchcraft murders abound. All matters that would normally be dealt with by the Supreme Court itself as well as multiple accused involvement in murders, those abound.”

- (9) “I agree with the honourable Judge President that people take a keen interest in what happens to their appeals ... I have seen it on many occasions that the interested parties do attend the hearing of their appeal.”

(XXX)

MR. S.G. POYSER OF THE TRANSKEI ATTORNEYS ASSOCIATION

In the course of his oral representations to the Commission some of the points made by Mr. Poyser were the following:-

- (1) “I am an executive member of the Transkei Attorneys Association which is circle 15 and which falls under the Cape Law Society established under Act No. 53 of 1979.”
- (2) “Now as an attorney and a practitioner in the courts I endorse the sentiments of our Judge President in that if the jurisdiction of our magistrate’s court is increased I do not envisage the numbers of matters going to the Supreme Court being dramatically reduced.”
- (3) “My motivation for this is firstly our magistrates have not had any training since Transkei has been independent from 1976. There has been no Civil School of Justice as they had in the former South Africa where the magistrates are sent on these courses to upgrade themselves with civil litigation and the majority of magistrates have merely evolved from criminal courts or prosecutors and there been elevated to do civil work.”
- (4) “There are certain magistrate’s courts that do not even have the Magistrate’s Court Act or rules where you have to go to supply these to the magistrates there. And conducting civil matters is extremely difficult. And I believe that the practitioners would strongly recommend to their clients in more complex matters to consent to the jurisdiction or having the matters heard in the Supreme Court.”
- (5) “We have in Umtata ... the University of the Transkei which has a law school and should there be a reduction in the jurisdiction of our Supreme Court you may well find that the number of attorneys operating in Umtata may decrease because of the amount of work going around. Already the problem with reincorporation with the capital moving to Bisho there is a lesser demand for the work going around as such and you may find offices closing.”
- (6) “The Bar here as well I think it is the only Bar in the country where there is a majority of the disadvantaged groups and I think there are two white practitioners

and the rest are from the disadvantaged community. And that may also be adversely affected by any change in the status of our Supreme Court.”

- (7) “A further problem as mentioned by some of the former speakers is that the problem of Transkei I think is unique to the region from a point of view now dealing more specifically with appeals in that our telephonic services are archaic. Most of our rural centres deal with party lines. Half the time you cannot get through on the telephone. Our postal services are extremely slow. I am forever being phoned by correspondents from the bigger centres you know wanting to know how come it takes so long to serve a summons and it is a question of our postal service being slow.”
- (8) “**MR MALULEKE:** ... if you isolate the Transkei like it has been done historically from the greater or the traditional Eastern Cape both in the form of its bench virtually having nothing to do with their colleagues in P.E. or Grahamstown *et cetera* and in the form of the profession as such, the bar, the side bar, then are you not running the risk that the quality of services, legal services might suffer because of the isolation?”
- (9) “**MR POYSER:** As far as the standards go we do have dealings with our colleagues both from the Bar and the Side Bar from the rest of the country. We have numerous advocates that come in on a weekly basis for cases where they are briefed from outside and participate in our courts in the Supreme Court and as such dealing with those counsel coming in will obviously bring with them their expertise and their perceptions of the law as dealt with in their areas and this has been going on for quite some time. As far as our judiciary goes, most of our judges do come in from outside Transkei and obviously with appeals going to Bloemfontein that would uniform - eventually they would fall in line with the rest of the country ...”

(XXXI)

**THE HON. MR. JUSTICE F. KROON OF THE EASTERN CAPE
DIVISION OF THE SUPREME COURT**

In the course of his oral representations to the Commission some of the points made by Kroon J were the following:-

- (1) “The first aspect which I would take up is the matter mentioned by Beck JP earlier this morning. If in fact there is to be no fully-fledged independent provincial division in the Transkei then there is merit in the proposal that there be one single Judge President for the whole division.”

- (2) “The other aspect which I wish to touch on relates to the workload of the Umtata Court. Advocate Nel referred to the fact that my Commission is investigating some 200 deaths. In fact, the figure is 285 deaths and it may even be more in that there may be incidents which the members of my staff have not been able to identify. The period which my Commission is investigating stretches from 1 January 1993 to the middle of July 1995.”

- (3) “Of those 285 plus deaths only one or two have to date been disposed of by way of inquest proceedings. It is a very sad commentary that apart from preliminary hearings in the magistrate’s court, not a single one of the other deaths has been the subject of a prosecution either in the Supreme Court or in the regional court or possibly even in the district court.”

- (4) “The reasons for that state of affairs will be covered fully in the report which I am to submit but I wish to bring to the attention of this Commission is that it is hoped that the recommendations which I will make in my report will in the foreseeable

future have the result of making a great many of those incidents of deaths, and I may say attempted murders as well, ripe for hearing in the appropriate forums.”

- (5) “In the near future therefore it is to be anticipated that the work of the Umtata Court, the criminal work, will substantially increase until those cases have been disposed of.”
- (6) “I have unfortunately had occasion to go through hundreds of dockets in the course of my Commission. A very sad picture emerges from those dockets relating to the standard of investigation done. This touches on the question of logistics which other speakers have mentioned.”
- (7) “A clear picture emerges that there are serious logistical problems not only in the investigation of the case but I would apprehend as well in regard to the prosecution of the cases in Umtata, the gather of witnesses *et cetera*.”

(XXXII) MR. H.M. LUSU ON BEHALF OF THE BLACK LAWYERS ASSOCIATION

In the course of his oral representations to the Commission some of the points made by Mr. Lusu were the following:-

- (1) “... I speak on behalf of the Black Lawyers’ Association and I am authorised to do so and that I come from the national office as deputy secretary and also the Eastern Cape Branch as Chairman. I have stated that I served on the council of the Law Society of the Cape as a representative of that body.”
- (2) “.... I worked in the public service in the administration offices for 13 years before I became attorney and I have been an attorney for 17 years ... “
- (3) “I saw the days of self-government in Transkei and Ciskei. I saw the days of independence in Transkei and Ciskei and I have seen the new order come in.”
- (4) “We have started from humble beginnings of a single judge and two advocates. They have increased over the years up to a point when we have seven judges in Umtata and we have got about 20 counsel servicing this court from locally.”
- (5) “Now these courts have existed for in Transkei for instance for 20 years. I think that in Ciskei the Bisho Court was slightly less than that. We cannot therefore see a reason that a people who have been used and given the convenience of this kind of service for 20 years can silently watch that convenience being withdrawn, nor do we believe that any withdrawal of that kind of convenience can be correct. To us it runs, flies in the face of logic.”
- (6) “I have said that the very expectation of the people that any service, any convenience afforded this far must continue. That expectation is logical and is legitimate and finds support in the new Constitution in a number of sections and in a number of interpretations that are given to the Constitution, bearing in mind that that Constitution seeks to treat all people in all areas alike and to deliver justice to the people and to the extent that this is possible to deliver justice at the doors of the people.”

- (7) “Now insofar as there has been talk, argument that Grahamstown should be judicial capital we associate ourself with the views that were expressed by Advocate Dukada ...”
- (8) “From the point of view of the Black Lawyers’ Association we attach emphasis on the existence of the court with full status. If administration says we will provide on judge president we may be compelled to take it, but we do not know how that need arises because there have been Judge Presidents in all these courts. So that maintaining Judge Presidents does not make an additional cost to government.”
- (9) “**MR MALULEKE**: Mr Lusu, I would like you maybe to shed some light if you can in your suggestions you talk about retaining the three courts of the three divisions as you call them, Umtata, Grahamstown and Bisho. From what we have heard is that Bisho would not become viable unless Mdantsane is included there and that Mdantsane is part of East London and that in fact you should have a local division in East London and close the court in Bisho. How would that affect Transkei and would you have any views on that point, on that type of restructuring of the courts?”

MR LUSU: ... Mr Chairman, perhaps I should have highlighted this. My position becomes unique from that of the other testifiers here because I said to you I speak for Black Lawyers Eastern Cape and so I do have a duty to talk about this question, that is why about Bisho as well. It would not affect Umtata. But I want to know the reason, put it this way, I am not posing question to you, it becomes a curious situation why if Bisho was created, existed and developed because of Mdantsane and other places, it becomes curious why you should now - why one should now so wish to kill Bisho that you must cut part of the Bisho constituent to bring another child up, to bring East London up? Because Bisho is already there. You would be seeking to impoverish Bisho to create East London. There is to me a great deal of unfairness in assessing that type of situation because it is already there and those people have a very big service there.”

(XXXIII) MR ATTORNEY M. MAJEKE OF UMTATA

In the course of his oral representations to the Commission some of the points made by Mr Majeke were the following:-

- (1) “The people from this area mainly are rural people. They normally take a very keen interest in their cases. They want to be present when their appeals are being held and they also want their attorneys to be present when their appeal is being prosecuted. So now if Grahamstown is say for example designated as the appellate seat what is going to happen is that they would have to travel with their attorneys from Umtata as far as Grahamstown and it is going to be highly expensive for them to do that because they normally insist that their attorneys should be there.”

- (2) “**MR MALULEKE**: One of the arguments we had in favour of Grahamstown becoming the provincial division and also the seat of the appellate court was that if you remove the court from Grahamstown it is one of the major economic factors is the university and the court and that if you destroy the court in Grahamstown a lot of people would suffer, the town would suffer. Now I want to know are you able to draw any comparable parallels whether a scaled down court in Umtata will have any serious effect on the economic livelihood of the people in Umtata and surrounding places if you scaled down the Supreme Court in Umtata?”

MR MAJEKE: If that suggestion were to happen in fact it will mean that there will a less number of advocates in this area. And that will have an effect on the economy in this area in that it will mean some people will have to actually go and try and set up their practices in Grahamstown and that that will obviously have an effect in the economy of this area.