

TABLE OF CONTENTS

VOLUME III

EXTRACTS FROM ORAL REPRESENTATIONS HEARD AT DURBAN, CAPE TOWN, SPRINGBOK AND KIMBERLEY

EXTRACTS DURBAN

(I)	MR M.J.D. WALLIS, SC	102
(II)	MR ATTORNEY O.D. HART	116
(III)	ADV A.J. DICKSON, SC	118

EXTRACTS CAPE TOWN

(IV)	THE HON. MR. JUSTICE G. FRIEDMAN	120
(V)	THE HON. MR. JUSTICE I.G. FARLAM	124
(VI)	MR. ATTORNEY M.T STEYN	127
(VII)	MR S.J HOROWITZ	132

EXTRACTS SPRINGBOK

(VIII)	MR ATTORNEY A. VAN ZYL	136
(IX)	MR ATTORNEY A.N SCHREUDER	139
(X)	MR ATTORNEY A. HUISHAMEN	141
(XI)	MR N.A BAARTMAN	143
(XII)	MR M. VAN ROOYEN	145
(XIII)	MR ATTORNEY A. HUISHAMEN	146

EXTRACTS KIMBERLEY

(XIV)	THE HON MR JUSTICE J.J. KRIEK	148
(XV)	MR E.M. DIPICO	154
(XVI)	MR ATTORNEY T. HORN	155
(XVII)	ADV J.G. VAN NIEKERK	158
(XVIII)	MR C.F. DU PLESSIS, SC	159

FIRST INTERIM REPORT

VOLUME III

EXTRACTS FROM ORAL REPRESENTATIONS
HEARD AT DURBAN, CAPE TOWN, SPRINGBOK AND
KIMBERLEY

EXTRACTS DURBAN

(I) MR M.J.D. WALLIS, SC, CHAIRMAN OF THE GENERAL BAR COUNCIL OF SOUTH AFRICA

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

- (1) “Can I say at the outset, as I endeavoured to make clear in the written submissions, there are differences between some of the constituent bars of the General council of the Bar on various topics which are before you; most notably the proper division of the Courts in the Eastern Cape where there is a difference between principally the Eastern Cape Society of Advocates and the Ciskei Bar, revolving around the location of a Court in East London versus Bisho, principally in the role of Grahamstown. There are more notable differences in what is the former Transvaal between the Society of Advocates of Pretoria and the Witwatersrand Bar and the Bar in the North-West situated at Mmabatho. I must therefor say at the outset that where our submissions or anything which I say orally is construed as favouring one stance rather than the other, that is, please, not to be taken as an official standpoint of the General Council of the Bar.”
- (2) “We are very mindful of the fact that the establishment of additional facilities by way of additional Courts, additional judicial appointments, support staff, libraries and, one would hope, working recording machines ... is a very expensive project.”
- (3) “You have been given figures in regard to the cost of establishing Courts in various centres. The new Courts in Pretoria have cost in excess of R40 million ... R26 million was spent in establishing Courts in Mmabatho, according to the submissions from the North-West. So that is a general idea of what would have to be spent to establish new Courts in centres around the country.”
- (4) “We are mindful of the budgetary constraints which operate in South Africa, we would believe, in broad principle, that provided an acceptable level of legal services and access to Courts can be provided throughout the country without the need to resort to these expensive capital projects, it is desirable at this stage in our history that that be done. That that capital is more urgently needed as we see

it in the fields of education, housing, medical facilities: to spend R40 million on new Court room in a centre when the people who will go to that Court room do not have houses, running water and electricity, verges close upon obscenity frankly.”

- (5) “So we have endeavoured in our submissions to be relatively conservative and to seek to suggest ways in which existing facilities can most beneficially be used for all concerned.”
- (6) “If one looks at the statistics for the amount of litigation in the Courts of the Eastern Cape, that is the Eastern Cape Provincial Division, the South Eastern Cape Local Division, the Ciskei Division and the Transkei Division cumulatively, they are considerably, its considerably less than the volume of work in the Johannesburg Court, the Pretoria Court, I think the Cape Court and indeed the two Natal Courts put together. So looked at objectively, one would say the volume of work there does not justify having four separate Courts operating.”
- (7) “Clearly, there needs to be some kind of unification under one umbrella. The justification for the Courts continuing is, in a sense, that buildings have been put there, the money has been spent, there is an established infrastructure and therefore, in an area which is particularly vast, one should continue to use those facilities, even though from starting from a clean slate, one might not have constructed them in the first place.”
- (8) “So we support what we perceive to be the general thrust of submissions that certainly the Port Elizabeth Court, the South East Cape Local Division, which is the busiest Court, should largely stay as it is, subject to what we say about appellate and review jurisdiction and the question of concurrence, and the Court in Umtata which deals with a huge area, although not a huge volume of work, again should stay effectively as a local division of the overall Court for that area.”
- (9) “The dilemma, as we see it, really lies as between Bisho and East London; and here I must be careful not to tread on any corns from my constituents: But if we can summarise where we see the issue, the people broadly are in and around East London. If one takes the statistics which are given and you remove the two large areas outside East London from the Ciskei Division and you put them into East London, the balance of population is overwhelmingly towards East London.”

- (10) “So, from the point of view of convenience, in the ordinary course, one would have expected East London be the appropriate Court.”
- (11) “On the other hand, the money has been spent in establishing Courts in Bisho and it appears, though these things can change from time to time, it appears that Bisho is going to be the provincial capital, the seat of the provincial Government as at this stage.”
- (12) “It is a question of access to Courts. I think we would add this comment, that however desirable it is that everybody should be able to walk into a Supreme Court just down the road, that is simply not feasible - and all over the world, people in large countries like our own do have to travel to Courts. We are simply not in the position in which the English Courts are where, provided you have a Court sitting in some of the South coast towns in Reading, in Bristol, in Manchester, in Birmingham, Sheffield, in Leeds and Norwich you’ve covered much of the country...”
- (13) “...in large countries with small populations such as Australia, the Courts tend to be focussed in major cities.”
- (14) “The dilemma in South Africa is the large proportion of the population who have very little by way of financial means and for whom therefore, travelling to Court is a costly experience. But we believe that to a large extent most of the work which, or the experience of Courts, contact with Courts, with such people are likely to have, is likely to be dealt with at the level of the Magistrate’s Court, particularly in the light of the enhanced jurisdiction of the Magistrate’s Court to R100,000.00, the impact of that has not yet filtered through to the Supreme Court Rolls...”
- (15) “...at the time that increase was announced by the Minister, the General Council of the Bar asked all its constituent Bars to survey the position in their Courts as to the likely implications. And those least affected were in the four major centres as one would expect, Pretoria, Johannesburg, Durban and Cape Town - but even there the expectation was that at least a third to forty percent of Supreme Court work would move to the Magistrate’s Court.”
- (16) “When one goes to the smaller centres, one goes to Grahamstown, one goes to

Kimberley, one goes to Bloemfontein, the expectation was that the effect would be vastly more significant and in the smaller centres, Kimberley, Umtata and Mmabatho, predictions of up to eighty percent of the Supreme Court civil work disappearing, barring matrimonial work, were made.”

- (17) “That was the report I had, so that’s perhaps one other factor which points to one other factor which the Commission must bear in mind, that in the immediate future there is likely to be a decline in the civil, in the quality or work which needs to be dealt with at the civil level in the Supreme Court, that Magistrates’ Courts will be available for that purpose and that, because there are over five hundred Magistrates’ Courts spread around the country, that may serve to some extent the purpose of having Courts which are available and accessible.”
- (18) “It must also be borne in mind that a major source of concern and litigation for the bulk of the population is in the field of labour and employment disputes.”
- (19) “With the advent of the new Labour Relations Act which, to the best of my knowledge and understanding, will come into force on the 1st May, 1996, a symbolic and appropriate day, all disputes concerning the relationship of employer and employee, not simply the unfair labour practice dispute, but all disputes concerning employers and employees will move to be dealt with by the processes of mediation and arbitration established under that Act, with only a few cases going through a formal Court system by way of the newly established Labour Court;”
- (20) “Against that background and, bearing in mind that the bulk of the larger civil work which ...is likely to come before the Supreme Court, is likely to be generated in the immediate vicinity of the major urban areas. We would be very concerned about spending money on the establishment of new Supreme Court facilities.”
- (21) “Coming back then, if I may, to the Eastern Cape: The situation largely there, we would leave Grahamstown where it is, dealing with the area in its vicinity and the major problem there we would sort out would be the debate between Bisho and East London: That seems to us where we need to deal with it.”
- (22) “The drawback of course East London has, is the need to establish additional facilities, that is clear, and that is the major feature and you have to weigh up the

inconvenience to litigants and a very minor fact, I hasten to say, the inconvenience to lawyers of travelling to a Court which is reasonably close by against the costs of establishing proper Court facilities in East London.”

- (23) “There is a major difficulty as we see it in establishing a new Court in Mpumalanga.”
- (24) “The figures which have been placed before you show very very little work being generated. The suggestion, and I take these figures from the submissions by the Society of Advocates, the Eastern Transvaal Province which, when you peruse them, you discover the Society has three members...”
- (25) “If one looks at the number of cases they suggest exist conservatively, in paragraph 5.8, there is a total number of civil cases of two thousand seven hundred and eleven. There is no indication of the proportion of those which would exceed R100,000.00 in value if one were to say that a third exceeded R100,000.00 or even a half, we’re talking about thirteen hundred cases a year. That is really a trivial number in terms of the proposition that most of those would be the most elementary form of commercial dispute - what I’ve called commercial debt collecting, goods sold and delivered, monies lent and advanced, it will include people who’ve defaulted on their mortgage bonds to the ABSA Bank and the like; it will include a very high proportion of motor collision cases.”
- (26) “Experience tells us that in every Court around the country, that between 80 and 90 percent of those that are those cases that become opposed, I stress, become opposed, will settle. A large proportion of those will go by default in any event. They are the staple of the Motion Court, the default judgments, the provisional sentences and so on.”
- (27) “It is very difficult to see what would keep, if I may pick up on the figures given by Judge President Eloff in his report to you, a minimum sized bench of five people busy throughout the year.”
- (28) “And we would have sympathy at least with the view which Judge Eloff expressed, that to have an effective Court and to constitute it with two Judges,

one must start to question why you are doing that.”

- (29) “There is no interaction between the judiciary, it is a solitary and isolated existence and we do not believe that you get an effective and efficient system of justice on that basis.”
- (30) “We believe that you will have the gravest difficulty in attracting people of any calibre at all to go and sit all by themselves out in a - I don’t use it disparagingly, a provincial jurisdiction, country jurisdiction. It’s simply not an effective basis for running a Supreme Court in our view.”
- (31) In one...of the annexure to the submissions which more or less were made jointly by the Pretoria Bar and the Pretoria Attorneys, there are population density maps which the members of the Commission will be familiar with, and the one for Mpumalanga demonstrates very clearly that - and their analysis demonstrates that if you were to draw a line to the east of the Standerton, Bethal and Middelburg Magisterial Districts, there is very little of the population of Mpumalanga left to the east, certainly less than fifty percent I think...”
- (32) “...and even more to the point, from the point of view of a Supreme Court, the only real sources of Supreme Court work are likely to be some work from the Nelspruit area, some work involving basically judicial review of, and disputes with, the Provincial Government. ...”
- (33) “...but the bulk of the work which one would expect to find in the Supreme Court one will find Witbank, in Middelburg and Delmas, Bethal, that area, and those areas are within very easy striking district distance of the Johannesburg and Pretoria Courts.”
- (34) **JUDGE LEON:** “May I just interrupt to ask ... the argument has been advanced, either directly or inferentially, that because you have a province you must have a Supreme Court? Now is there anything in that argument?”
- (35) **MR WALLIS:** “There is, there is, there is some merit in it. I wouldn’t discount it entirely, ... and there may be some merit of convenience in having a Court and a province which overlap.”

- (36) “If South Africa were a truly federal state, then the, if I may call it, the federalism argument becomes almost overriding.”
- (37) “But historically, the debate over federalism versus a unitary state in South Africa has always ended up in a unitary state with some federal aspects, if I can call it that, as the via media or root of compromise, it was the compromise in 1910, it was the compromise in 1960 to the extent it was debated then, it was the compromise which was arrived at in the interim constitution and every indication from the Constitution of Assemblies that it is broadly the compromise that will become the final constitution.”
- (38) “We are not going to have a truly federal state; and that must weaken the argument considerably, because you then have to ask yourself, well, where in the structure we have arrived at this political compromise does the judicial power lie, and the judicial power lies at the national level, that is quite clear.”
- (39) “But the Mpumalanga situation is really the most difficult one. If you establish the, a new Court in any of the major towns and the thrust of the submissions appears to favour Middelburg as being the favourite, the people in Witbank say Middelburg and so on. One must really question having undoubtedly three Supreme Courts within a relatively narrow triangle.”
- (40) “I am not sure that’s a benefit to Counsel or the judiciary. The alternatives say no, leave those people and one goes out to the East. One can’t go down to the Piet Retief area, clearly that’s not a proposition. So one ends up going to Nelspruit, and not only is there then the huge cost factor involved, but one looks at the population of Mpumalanga ...”
- (41) “You are going to cause all those people the problem of now having to travel very substantial distances to an inconvenient centre which will necessarily be a very small Court: That seems to us to be the reality of the matter as far as the Mpumalanga is concerned, and the bulk of the population there do have reasonable access.”
- (42) **MR MALULEKE**: “...If at some stage the Supreme Court in a particular

province has the capacity to test certain legislation, be it provincial or local, is it the suggestion that the Court in Pretoria should then have that jurisdiction to hear an urgent matter, or attend to legislation in Mpumalanga.

MR WALLIS: “Yes, I, I think in effect, what I am saying is that we would be breaking to some extent with the past in arriving at the conclusion, but logistics and availability of resources suggest we should do so in saying it is unnecessary in the Constitutional dispensation we have in South Africa for the Courts to follow strict provincial boundaries, and that’s the clear cut choice before the Commission as we see it.”

- (43) “... and I think the sensible thing to say would be that matters against the Provincial Governments of those three provinces be dealt with in one Court and that would be the Northern Court, based in Pretoria.”
- (44) “That [regular civil circuits entrenched by statute] would also resolve the problem of having a small bench in a far off centre; five, three or five Judges sitting in a far off centre. You do get a rotation of Judges and the Judges remain in communication with, with their colleagues and the mainstream, so you don’t end up being isolated and that is an enormous advantage.”
- (45) “The concept of civil circuits, when one starts with it in principle, it ought to work in the same way as a criminal circuit. The major difficulties are the logistical ones which flow from the fact that civil, civil work involves the filing of pleadings and notices and so on and so forth, and far more record keeping and administration than the prosecution which is in effect managed by the Attorney General’s office in, in the relevant areas.”
- (46) “I have given thought to that problem and I think there would be grave difficulties in trying to constitute regional civil registries in South Africa. Put bluntly, I think all of us here today are probably aware of the ease with which files go astray in the Registrar’s office in Cape Town, Durban, Johannesburg and Pretoria. I rather suspect that going out to even reasonably large centres, going up to Empangeni or Richards Bay, or going out to Middelburg or Nelspruit or Pietersburg, I, I think the risks would be substantially enhanced of matters going astray.”
- (47) “Obviously in the long run, if you’re going to have a regular system of Civil

Circuits, one would hope to move towards the stage where the whole administration of that circuit could take place in the centre where the Circuit Court sat. That isn't feasible at present, but it would be feasible, for example, in regard to Mmabatho, which one would expect to be one of the busier centres, for such a Circuit Court, if that were the route the Commission were to adopt."

- (48) "Our impression here, and may we hasten to say, it's not because we think the people don't need legal services, but our impression is that broadly for the vast mass those services are going to have to be provided through the Magistrates' Courts and so on, and there the problems of the access to the Bar and more sophisticated firms of attorneys don't arise."
- (49) "We make the point in our submissions that R100,000.00 or more for 95%, if not more, of the population of South Africa is litigating about an awful lot of money;"
- (50) "In regard to the Northern Province: the overwhelming weight again of the submissions to you is that if there is to be a Court there, it would have to be in Pietersburg and clearly we would accept that that is so,"
- (51) "but perhaps the fact that it has to be in Pietersburg illustrates the dilemma with which you are placed in that there is a highway between Pietersburg and Pretoria which enables you to get up and down relatively expeditiously, and one has to weigh those relatively small additional cost and inconvenience factors against the very substantial costs of putting in place a formal Court structure in Pietersburg."
- (52) "So I think you reduce the costs by providing the Civil Circuits which I propose can address the costs as well as providing a Court there without incurring the drain on the public purse. And the other disadvantage is establishing a Court where there is none with its ongoing costs and its limitations insofar as being part of the mainstream."
- (53) "...frankly of the three provinces outside Gauteng the claim of the North-West is the strongest one in the sense that it has an established Court which has a reasonable body of work and it has built up a Bar, it has built up a Side-Bar, ..."

- (54) “But, if one comes to the critical problem of dealing with that Court and one simply looks again at the map of the North-West which is a place where sixty four of the Professor’s report, it is a telling map, because the eastern most area of the North-West is. Then you get OD1, then you get Brits, then you get OD2, then you get Rustenburg.”
- (55) “When you have got those five, all of which are infinitely close to Pretoria, which contain nearly 40% or 35% of the entire population of the North-West Province, where Rustenburg and Brits provide the heart of the substantial commercial litigation and where on the submissions of the North-West Bar the bulk of their Supreme Court work comes from OD and Moratele at present, one is compelled to ask the question why is it in the interests of the public who will use legal services in the North-West Province that this very large proportion of them providing the bulk of the work should be constrained to travel so far, undoubtedly at vastly greater costs, in order to provide a Court for the whole of the North-West Province.”

JUDGE LEON: “And that is a critical, if not the critical, question.”

- (56) “But the points made on the other side, and you will have seen those in the submissions of the North-West Bar, they make the point that they have substantial facilities, they make the point that they have been built at great cost and they make the point that legal services are readily available there and they make the point that there are very large portions of this enormous area of the North-West Province for whom it is undoubtedly convenient to go to in Mmabatho...”
- (57) “...and certainly whatever your conclusions, we would be utterly opposed to the notion of the abandonment of that facility in Mmabatho. One might well find that a virtually permanent Circuit Civil Court in time would be maintained there, which would be serviced by the Bar and the Side-Bar there. It might be a little less than that, particularly once the impact of the Magistrates’ Court jurisdiction increase start to bite...”
- (58) “I think I said a moment ago that it may well be that, in Mmabatho particularly, there may be sufficient work to justify virtually a permanent Civil Circuit Court, almost even a Local Division, it might be, one would have to look at the precise

status.”

- (59) “The real question is not whether we make use of the facilities there, it is precisely how we make use of them and whether it is necessary in order to make proper use of them to create a, ... or to preserve, because that is its present status, a Court which is a division of the Supreme Court of South Africa which operates entirely, independently and separately from the rest of...what I recall for convenience, the old Province of the Transvaal.”
- (60) “There are very serious cost implications involved. Lets just start at the top. If you are sitting at a Circuit Court, there is a difference between that and sitting as a Division of the Supreme Court which has a Judge President at its head.”
- (61) “There is an immediate difference in the salaries you pay to the judicial officers, just as a starter, and that works right the way down the system.”
- (62) “A suggestion which is made in a number of the submissions put up where it is seriously suggested that a Circuit Civil Court should sit down in Klerksdorp, is, you can end up in the Gauteng situation which is causing so much difficulty to this Commission anyway, of the tail wagging the dog, of the bulk of the important work being actually dumped on the Circuit down in Klerksdorp.”
- (63) “This is actually how all our Local Divisions have evolved. It was true of Durban, initially Durban was a Local Division, now Durban is vastly busier than Pietermaritzburg. Same as Port Elizabeth, it was unnecessary for Port Elizabeth people to travel to Grahamstown, that was found to be inconvenient. Port Elizabeth now does most of the work in the Eastern Cape. You will end up creating exactly the same situation, and what that ought to be telling us, I believe, is that this is an unrealistic approach to that.”
- (64) “I’ve been furnished with figures from the North-West Bar about what they have in their division: they have six Judges there, they have a Court costing R26 million, it’s close by the administrative buildings, and they say we have a Motion Court sitting every Thursday also during recess, there’s an average of forty cases on the Roll, including unopposed divorces, there are appeals from the Magistrate’s Court heard every Friday, three or four appeals are heard every

week, and there are about twenty civil trials set down for hearing every month during the term ...The problem is, it's very little work. I have sitting in my own division where they set down forty cases on a Monday and another forty on Wednesday every week throughout the year. Twenty cases a month during term is not vast."

- (65) "You have the same problem frankly as illustrated in the Eastern Cape Bar submissions to you about the Ciskei Court where they have given you an analysis of what happens to their Rolls. Virtually nothing going on."
- (66) "But equally, and in fairness, I must make the point because Mr Maluleke has rightly identified it. That is true also to some extent of the burden of work in the Kimberley Court."
- (67) "...the North-West Bar places more stress on those senses of community and identity - you've seen that in their submissions. The Pretoria Bar stresses practicality. Let's be quite blunt about it, both have a motivation of self interest. The Pretoria Bar would like the work in from the North-West and the North-West would like to keep itself going, and it is scared about its own existence."
- (68) "That is a relevant factor that however small, the volumes of work these, these outlying Courts do, they do remove some of the burden from Johannesburg and Pretoria."
- (69) "With the best will in the world, the Judge President [of the Transvaal Provincial Division]... is trying to balance the entire Provincial Division with two Courts in Pretoria and Johannesburg. There's got to be a difference in administration, a clearer cut approach to the allocation of resources when they function separately. In essence I think that is a point which is made in the memorandum submitted by Judge Streicher on behalf of I think, 17 Judges."
- (70) "I'm not excited about analogies from the world of commerce, because they're not wholly appropriate to the law. But it would be an extraordinary situation for a business to say, well, we have ten divisions across the country, but the two branches which do the bulk of our work, we run as one division, even though they are in different centres and between them they carry a third of the work for

the whole country.”

- (71) “May be the time has come simply to cut the Gordian knot of a, which ties Johannesburg and Pretoria together, if I may mix my metaphor some time. It is not a satisfactory situation.”
- (72) “If you were to follow the one suggestion of two Courts in the Transvaal divided by a line running roughly West to East, you would be bringing a reasonable amount of additional work into that Court, which it does not at present, as I understand it, have the facilities to cope with. And that is a significant issue. If you separate it from Pretoria, even with its existing area of jurisdiction, you’ve got to add, I think it is seven or eight, we identify it in our submissions to you, Magisterial Districts for criminal appeal work, which are at present sent to Pretoria, but it would now have to be done in Johannesburg. That’s an additional burden of work. And Johannesburg is, as I understand it, stretched.”
- (73) “The concern about separation would be the additional burden of work in Johannesburg, the practical problems of which Judges you are going to send to or allocate to the Johannesburg Court; there are 23 who are Johannesburg based out of 53 in the entire Division. That is clearly an inappropriate division, so you would need to have 10 of your Pretoria Judges, roughly speaking I would have thought, to go and be based in Johannesburg. I’m not sure whether they have Chambers for them. You could presumably move their libraries from their Chambers in Pretoria to Chambers in Johannesburg if there were such Chambers.”
- (74) “I’m inclined to think the result would be that Johannesburg would get the concentration of specialist skills to the detriment of Pretoria. There are, as you see, even in fields such as patents, trademarks, the Judge President finds it necessary to take people from Johannesburg to Pretoria to sit as Judges in that field, even though the bulk of the Attorneys who practice in that field are based in Pretoria.”
- (75) “I confess to being sceptical about the suggestion by the Johannesburg Judges that don’t worry about this, by co-operative arrangement between the Judge President in Pretoria and Johannesburg, we’ll nonetheless nip into our cars and dash up and down the road and help each other out. I don’t think that happens that readily. My own experience in a division where that is feasible is it doesn’t

happen that easily, one knows that the Durban Court can be under pressure when the Roll in Maritzburg has collapsed, you don't necessarily find a Maritzburg Judge being hustled down here to sit an extra Court. In fact it's very rare for that to happen and I think the same is true in Johannesburg."

- (76) "So I'm not very impressed with that suggestion, if you're going to establish them as separate Courts you must recognise them as separate Courts. If there's a deficiency in particular skills then the answer is we must remedy that deficiency by an appropriate appointment to the Bench, from whatever source."

(II) MR ATTORNEY O.D. HART OF PIETERMARITZBURG

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

- (1) “I represent the firm of Venn Nemeth and Hart Inc, who are a firm of attorneys practising in Pietermaritzburg. They have eleven directors and I believe it to be the largest firm practising in Pietermaritzburg. I am also the senior director of that firm. Mr Commissioner, I am also authorised today by the Pietermaritzburg Legal Circle to say that that Legal Circle associates itself with the submissions which I am to make to you today.”
- (2) “We believe, in principle, that each province should have its own court structure in its own provincial division. We, however, do not presume to have the knowledge as to whether that is economically feasible or practical, and are mindful of the serious economic constraints which exist.”
- (3) “In particular, Mr Commissioner, we wish to make submissions that Pietermaritzburg should remain as the seat of the Natal Provincial Division and in this regard we will associate ourselves with the submissions which will be made by the Pietermaritzburg Bar later today.”
- (4) “I purpose that the ... concurrent jurisdiction of the Natal Provincial Division and the Durban and Coast Local Division should remain as it is. Once again, I submit that it works and, as it works, it should not be lightly interfered with.”
- (5) “We believe it would be correct and proper that the Durban and Coast Local Division should also have appellate jurisdiction.”
- (6) “I do not see the necessity for Civil Circuit Courts in Natal, particularly as I do not believe there is any place which is more than three hours’ travel from either Maritzburg or Durban.”
- (7) “Mr Commissioner, finally, it seems to us ... that there should be a move towards

- by the Department of Justice - towards computerisation in the Supreme Courts and that the Courts should all have proper up-to-date law retrieval systems, as are being done elsewhere in the world.”

- (8) “**CHAIRMAN:** Thank you. You persist in the suggestion that the name of the Natal Provincial Division should be changed to the KwaZulu/Natal Provincial Division?

MR HART: We believe so, yes.”

- (9) “**CHAIRMAN:** Mr Hart, may we have the benefit of your views in the following connection? We’ve heard differing views and assessments as to the probable impact of the increase of the jurisdiction of the Magistrate’s Court on the workload of the Supreme Court. In a nutshell, how does it seem to you - has the increase in the Magistrate’s Court civil jurisdiction had a noticeable effect in decreasing the Supreme Court workload or, mindful of the possibility of a further appeal, have attorneys been a little diffident about using the Magistrate’s Court for very large claims?

MR HART: Yes, I think that is so, but it’s very difficult to tell at the moment.”

(III) ADV A.J. DICKSON, SC, LEADER OF THE PIETERMARTIZBURG BAR

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

- (1) “Perhaps if I could just introduce myself by saying that I’m the leader of the Pietermaritzburg Bar, which is an *ad hoc* chapter of the Natal Society of Advocates. That is set out in paragraph 4.1 of page 3. The Pietermaritzburg Bar has a domestic constitution in terms of which it operates and elects office bearers and I’m their current chairman.”
- (2) “Now, the Pietermaritzburg Bar and the Durban Bar collaborated in making submissions to this Commission in October last year and these are the Pietermaritzburg submissions. They were debated in Durban - the same considerations were debated in Durban and I understand that there was a set of Durban submissions drawn up as well. The secretary of the Commission tells me that these were not, in fact, forwarded on to the Commission. I don’t know why that was and I apologise for only having these presented to you this morning, but as you see they were dated in October 1995, when they were first prepared.”
- (3) “...one of the main reasons why Pietermaritzburg made a decision to mandate me to present this information to the Commission is that we felt in Pietermaritzburg that the attributes of Pietermaritzburg should be placed before you as a matter of record and that is why I have set out the facilities and the legal infrastructure of Pietermaritzburg in some detail...”
- (4) “...it may be interesting to members of the Commission that the on-going newspaper reports of continuously making reference to the inability of Durban to host a big trial like the Malan trial - well, it’s significant that in Pietermaritzburg we have at least two courts which could have comfortably accommodated a trial as big as the Malan trial, with plenty of room for the press people, who are continuously complaining,....”
- (5) “**CHAIRMAN:** Do I understand the Bar to support the proposed name change to the KwaZulu/Natal Provincial Division?”

MR DICKSON: Yes, we do, Mr Chairman, to bring it in line with all the other

provincial changes...”

- (6) “...we in Pietermaritzburg have no objection to there being an appellate jurisdiction formed in the Durban and Coast Local Division, subject to the practical changes that would have to be made to the Durban structures, and why we say that is that the Durban Court runs as a Trial Court, and as long as it is appreciated that all the Judges are hearing trials and, of course, appellate jurisdiction means two or three Judges out of the trial roll...”

- (7) “...we support concurrent jurisdiction over the whole of KwaZulu/Natal and the reason for that is that, practically, it makes it easier for the litigants and, just by way of one example, if one has litigants in Newcastle, Ladysmith and parts of Northern Natal and the cause of the action wasn't clearly within the Durban Court's jurisdiction or the Pietermaritzburg Court's jurisdiction - like, for example, one would have in a contract made over the telephone where it's difficult to know whether it was, in fact, concluded in Newcastle or in Durban, those people can use Pietermaritzburg as a court, which is closer for them, which may have an easier roll pressure than Durban, which has a convenience to them in the form of not having to go to a very big city like Durban. They can move into a medium-size city like Pietermaritzburg, get parking easily and be accommodated in the same way as they could in Durban and know that they don't have a jurisdictional problem.”

EXTRACTS CAPE TOWN

(IV) THE HON. MR. JUSTICE G. FRIEDMAN, JUDGE PRESIDENT OF THE CAPE OF GOOD HOPE PROVINCIAL DIVISION

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

- (1) “The first question which we think is not controversial is the question of the boundaries and the jurisdiction of the Cape Provincial Division. The Commission which fixed the territorial, geographical boundaries of the country and divided it into nine Provinces or Regions, had the following effect, as far as the Cape Provincial Division is concerned. It cut off from our area of jurisdiction the magisterial area of Namaqualand and it included, on the eastern side, the magisterial area of Murraysburg. It also took away from the geographical area of jurisdiction of this Court the magisterial districts of Calvinia, Sutherland, Fraserbrug and Williston.”
- (2) “But effectively, because of the population structure and the volume of litigation, the jurisdiction of this Court has largely been unaffected - or rather it will be - because at the moment the Cape Provincial Division still exercises jurisdiction over the old territory.”
- (3) “What we suggest is that the jurisdiction of the Cape Provincial Division should be now made co-extensive with its geographical area.”
- (4) “What remains then is the name of this Division and we strongly urge that the name Cape Provincial Division remain.

CHAIRMAN: Cape of Good Hope Provincial Division?

FRIEDMAN J : Cape of Good Hope Provincial Division.”

- (5) “At the moment the magistrate’s court jurisdiction has been increased from R20

000 to R100 000 and that I think was intended to coincide with the establishment of these senior magistrates' courts which have not come into existence yet, I think, because of the lack of personnel qualified to deal with these matters. I think that the authorities will have to make strenuous efforts to obtain people from the profession to man these courts, because at the moment the magistrate's court jurisdiction has been increased and these cases are being heard by district court magistrates."

(5a) "My own view is that the Family Court should be a division of the Supreme Court. I think that there are improvements that can be brought about to the procedures which it follows. When I say that what I mean is that I do not believe that it is necessary for a Judge in the Family Division or a presiding officer, if it is a magistrate, to sit and hear unopposed divorce cases unless there are complications, for example, with regard to the children. In this Division we hear approximately 250 unopposed divorce cases per week, about 1 000 per month, and it is really a matter of putting a rubber stamp on the procedure and it is totally, in my view, unnecessary for a judicial officer to preside at a hearing like that. It can be done, as it is in England, on affidavit."

(6) "**LEON J:** Judge Friedman, may I just ask you a question before we adjourn? If you would be kind enough to give us the benefit of your wisdom on this point ... It would be helpful to me if you could give us the benefit of your opinion on whether you think that there ought to be a Supreme Court wherever there is a province. Whether that is something which ought to follow automatically or whether that is not necessarily so.

FRIEDMAN J: Could I answer that after tea?

LEON J: Yes, ..."

(7) "**FRIEDMAN JP:** With regard to the question which Judge Leon put to me before the adjournment, I was hoping that this was a question that I would not have to deal with because fortunately, as far as the Cape is concerned, it is academic ... But if I am called upon to answer that question, my answer is that, in my view, there should be a Division of the Supreme Court in each of the provincial geographic areas."

(8) "Basically my reason for saying that is, that the Constitution envisages that provincial legislatures would ask the Provincial Division concerned for advisory opinions in regard to legislation which they are contemplating introducing. If

you had on overlapping of jurisdictions which Provincial Division must they go to? That is the one point.”

- (9) “The second point is that the Supreme Court is given jurisdiction to declare invalid provincial legislation. Does that mean, for example, if we have an overlapping jurisdiction, that the Legislature of the Western Cape would pass an Act and they would have an option as to whether they come to this Court to have it declared invalid or whether they go to the Court of the Northern Cape Division? It is not logical. It does not fit into the scheme of the Constitution if there is not a Provincial Division in each geographical area.”
- (10) “Another pointer which indicates that that was the intention of the framers of the Constitution is this. That under the section dealing with the appointment of Judges, the Judicial Service Commission is entitled to have as an *ad hoc* member, the Premier of the province in which the appointment is to be made.”
- (11) “As far as the second aspect of the terms of reference of the Commission is concerned, namely the question of civil circuit courts ... We have such a system in the CPD. At least twice a year a Judge is sent down to the Southern Cape Circuit Division, where approximately 30 cases are disposed of over a period of two to three weeks. Most of them are settled there, but those which have to be heard are heard and witnesses are in the area, they do not have to come to Cape Town. We do it regularly there because that is where the bulk of the work is.”
- (12) “But if there is a civil case in any other Circuit Division we will send a Judge to that Division. We do it on an *ad hoc* basis and it ... works well. We do not need to change the rules for that. And of course the Judge on circuit, to whatever circuit town he goes, does the unopposed divorces. I do not know whether that happens in the other Divisions.”
- (13) “**MR MALULEKE:** Judge Friedman, ... there is one point I wanted to hear your views on. The question of the smaller benches like you get in Kimberley. A lot has been submitted to us that it is quite undesirable to create courts, particularly in those provinces where you will end up with a very small Division ...”

- (14) “**FRIEDMAN JP:** I do not think Mr Maluleke that the quality of justice suffers necessarily. But my own view is, and I am talking now without reference to any of my colleagues, that it is not desirable to have too small a Division. But, having said that, I still feel that each geographical province should have its own Supreme Court, however small that Division might be.”
- (15) “In other words, when I say I do not think it is a good idea to have too small a Division, I am basically opposed to the fragmentation of divisions. I think that it was a mistake to establish a separate Division in Kimberley, whenever it happened, because I do not think it was warranted, but having said that we have that court there know ... It is no longer part of the old Cape Province, and therefore I think there should be a court there, however small it might be.”
- (16) “**LEON J:** ... We have a problem in the Eastern Cape of which you no doubt were aware.

FRIEDMAN JP: I believe you.

LEON J: Do you feel that you would like to make any comments about that, Judge?

FRIEDMAN JP: No. But Judge Leon, if you do not mind, I would rather keep out of that one.”

(V) **THE HON. MR. JUSTICE I.G. FARLAM OF THE CAPE OF GOOD HOPE
PROVINCIAL DIVISION**

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

- (1) “The point that we are making is that it is unhelpful to look into the future with the aid of past statistics and try to extrapolate into the future what is likely to happen because of the substantial change which has been wrought by Act 120 of 1993, which has not yet been brought into operation. The Judge President has already dealt with that.”
- (2) “It proposes in essence two things ... firstly, it provides for the establishment of a senior civil magistrate’s court which could loosely be described, I suppose, as the civil equivalent of the Regional Court. This is to be staffed by people called senior civil magistrates. The jurisdiction of this court is not spelt out in the Act - it is subject to ministerial regulation. The Minister has the power to prescribe and change from time to time the upper limits from a monetary point of view of the jurisdiction of this senior civil court as of course he has at the moment in the case of the district court. It is impossible to predict with any degree of certainty, even probability, where those limits will be placed.”
- (3) “If the senior civil court provisions are to be brought into operation, as I take it they will, then clearly the upper limit of that Court will be in excess of R100 000.”
- (4) “There is no doubt that, if you take the point step by step, even if one looks at the R100 000 figure, which is the one we have at the moment, which came into force on 1 May 1995, that will substantially affect the volume of civil cases coming before the Provincial Division.”
- (5) We understand, although this information is more anecdotal than anything else, that the present increase to R100 000 is likely to have drastic effects on the civil work of a number of the smaller Provincial Divisions. I see from one of the memoranda which was put before this Commission that it was deemed advisable in Ciskei to retain the existing limit of R20 000 for various reasons, and one does not know how many cases would have been left to be heard in Ciskei if the limit

had been increased to R100 000 if that had come into operation in the Ciskei as well.”

- (6) “As I say, if one adds to that the coming into operation of the provisions providing for the establishment of a senior civil court, then I think one can say with a fair degree of accuracy that an overwhelming proportion of civil trials which will be heard before the Provincial Divisions will now be heard in either the ordinary civil court with a jurisdiction of up to R100 000 or the senior civil court with an as yet unknown upper limit of jurisdiction.”
- (7) “Then there is a further factor which has to be borne in mind in looking into the future and deciding what was to be done by way of altering the Supreme Court structures in order to make the system more rational and make justice more accessible, and that is the Magistrates’ Court Amendment Act in 1993 also provides for the establishment of a Family Court.”
- (8) “Act 120 of 1993 provides that a family magistrate will have the power, acting *mero motu* or on the application of one of the parties, or on the application of the family advocate, to refer a divorce case which is pending in the Family Court to the Supreme Court, and he or she will be obliged to refer such a matter to the Supreme Court if both parties request it. But certainly all unopposed divorces will, I take it, be heard by the Family Court.”
- (9) “Take away then from the existing workload of the Provincial Divisions not only the vast bulk of civil trials for the reasons I have mentioned, but also the vast bulk of the divorce work, then there will not be very much trial work left at all. But the point that we make is that therefore in devising adjustments and improvements for the existing system, one must bear in mind that the existing system is shortly to be fundamentally changed if and when the provisions of Act 120 of 1993 are brought into operation.”
- (10) “The further point that has to be made, and it is a point that the Judge President touched on, and that is the question of whether it is responsible - whether it was or is or will be responsible - to set up an intermediate trial court with fairly extensive jurisdiction unless one can be certain that that tribunal will be able to do its work properly and that depends upon a reservoir of competent people, experienced in litigation and in trial work, to handle a jurisdiction of that kind adequately. The Act does provide for *ad hoc* appointments and it is possible

that such a court could be set up on the lines of the English Crown Court, which of course at the moment only sits, as I understand it, in criminal matters, but the same principle could apply in civil matters, where the bulk of the work is done by part-time judicial officers, senior practitioners who are appointed as Recorders - or some other title ...”

- (11) “The final point we make at the foot of page 3 and that is that if the qualifications which we have expressed regarding the availability of the necessary skilled personnel to staff the senior civil magistrate’s court can be met, then there is no reason why the Act should not be fully implemented in the whole of the area of jurisdiction of the Cape Provincial Division.”
- (12) “**MR MALULEKE:** Judge Farlam, I am very interested to get your categorical view. Would it be the recommendation of the Judges in this area or your personal view that the provisions relating to the establishment of the senior civil magistrate’s court are no longer valid, should in fact not be promulgated or should not be established, in view of the reasons that you have given.?”
- (13) “**FARLAM J:** It is our view that at the moment, in terms of present monetary values, there is not really a case for even a senior civil magistrate to have jurisdiction in excess of R100 000, certainly not in illiquid matters.”
- (14) “But beyond R100 000, we do not think that at this stage, regard being had to available person-power to staff the courts, that it would be appropriate for an amount in excess of R100 000 to be the upper limits of jurisdiction of the civil courts. The reasoning for that is very largely the point we made already. It is our perception that it will not be possible to find a sufficiently large reservoir of people to staff those courts properly. It is no good creating a court with extensive jurisdiction if, in fact, the result is not going to be a satisfactory one.”
- (15) “But the answer we give you is we are not opposed to a senior civil magistrate’s court provided its jurisdiction, as presently constituted, does not exceed R100 000.”

(VI) MR. ATTORNEY M.T STEYN ON BEHALF OF THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

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

- (1) “I appear before you in my capacity as the Vice President of the Law Society of the Cape of Good Hope, to which I shall refer, for the sake of brevity, simply as the Law Society ... The Law Society was established in 1883 and is in terms of the Attorneys Act of 1979 the governing and disciplinary body of all the practising attorneys within the geographical area of what used to be the Province of the Cape of Good Hope, that is to say, the present provinces of the Western Cape, Eastern Cape and Northern Cape.”
- (2) “The nearly 3 000 members of the Law Society have expressed the democratic wish to remain constituted as the Law Society of the Cape of Good Hope and not to split into three separate provincial bodies. The Law Society is a fully democratic and representative body which gives due recognition to and makes provision on an affirmative basis for participation in its affairs by the non-statutory Black Lawyers’ Association, the BLA, and the National Association of Democratic Lawyers, NADEL. In general, therefore, I speak for all the practising attorneys in all three of the Cape Provinces.”
- (3) “As far as the subject matter of this enquiry is concerned, our members do, however, not have similar interests. The Council of the Law Society is cognisant of the fact that there is a conflict of interests amongst its Eastern Cape members with regard to the Supreme Court structure in that province.”
- (4) “We submit that one of the more urgent and pressing questions on which we, the attorneys’ profession, look forward to receiving your Commission’s report and recommendation, is what should be done about the Supreme Court situation in the Eastern Cape. Our council has specifically refrained from putting to you written submissions with regard to the Eastern Cape as we do not wish to be seen to be taking sides in this conflict, in particular, as you will have heard no doubt, as far as the seat of the Court is concerned.”
- (5) “What we would, however, like to say is that we, as a Society, are of the firm view that each province should be served in its own geographical area by its own

Provincial Division of the Supreme Court, for the reasons, *inter alia*, so well put to you yesterday by Judge President Friedman.”

- (6) “We do not see the need for maintaining a multitude of local seated Provincial Divisions in the Eastern Cape. In fact, we regard it as undesirable. We would, however, not like to see the closure of existing court facilities as that would be prejudicial to access to justice. The solution, in our submission, is to have one Provincial Division and a number of Local Divisions. In other words, maintain the structures, but rationalise the hierarchy.”
- (7) “... it is our Society’s view that the whole of the geographical area of the Northern Cape should be served by its own Provincial Division. The conflict in the Northern Cape is that certain of our members in Namaqualand, the North-Western Cape, wish to remain under the jurisdiction of the Cape of Good Hope Provincial Division, the Court seated in the Western Cape. Their cry, as we see it, is a cry from the heart. Due to vast distances and sparse population they have over the years formed a closer tie with the Western Cape than with Kimberly, and they do not wish to jettison that.”
- (8) “The difference between the Northern Cape and the Eastern Cape is that whereas the Eastern Cape seems to be over-served in certain respects with Supreme Courts, the converse applies in the Northern Cape. It is definitely not over-served and the population is far removed from the Supreme Court.”
- (9) “In the Eastern Cape there is a power struggle. Access to Supreme Court facilities is not the main problem, rather which of a multitude of courts should be the provincial seat, in other words, the top dog.”
- (10) “In the Northern Cape there is a dire need for improved access to the Supreme Court. We believe that this can be satisfactorily addressed by taking the Court to the people. Consideration will have to be given to a Local Division, whether it sits on a permanent or a temporary basis, in a place such as, for example, Upington and aslo for Namaqualand and the North Western Cape to be served by an improved Circuit Court system, in particular for civil matters.”
- (11) “That brings me to the Western Cape. In this regard our written submissions really say it all. It should have its own Provincial Division for the whole of its geographical area, as it does at present. But that Provincial Division should not exercise jurisdiction beyond the borders of the Western Cape which is the case

at present.”

- (12) “Secondly, the Court should continue to have its seat at Cape Town. Thirdly, the Court should continue to be known as the Cape of Good Hope Provincial Division. It is an historical name and it is dear to the people involved in the legal profession in the Western Cape.”
- (13) “Fourthly, we believe that more Judges should be made available to serve the Cape of Good Hope Provincial Division.”
- (14) “In the fifth instance, the Local Circuit Court system in the south-western districts, that is to say George and Oudtshoorn should be maintained and improved in due course to be developed into a temporary or permanent Local Division.”
- (15) “In the sixth instance, the Court should be taken on a circuit basis to the outlying areas of the Province in order to improve access to justice, in particular in civil matters.”
- (16) “**CHAIRMAN:** The Judge President yesterday advanced the argument that really unopposed divorces were a waste of time and money and he made a plea for the adoption of the English system for which there is much to be said, perhaps.

MR STEYN: Mr. Chairman, I respectfully submit that he is correct. I personally support that and so does the Law Society of the Cape of Good Hope. Unopposed divorces can be done on a motion basis, with papers, with affidavits - “File for Divorce” as they say on TV.”

- (17) “What has, however, occurred to me this morning is that with the abolition of the death sentence do we still need to have criminal jurisdiction in what we know as the Supreme Court nowadays. Why do we not follow the route followed in England, for example, and have a separate court such as the Old Bailey? Develop the Regional Court or establish another court to deal with criminal

matters.”

- (18) “I have often walked through the halls of this court and wondered why do we throw together oil and water here? You have criminals and gangsters rubbing shoulders with heads of big corporations who come here for civil matters. It just seems to me to be an unhappy putting together of matters that do not belong together. We have 10 Judges tied up on a daily basis with criminal matters here. Looking at the persons concerned, knowing their backgrounds, virtually none of them were ever criminal lawyers but they sit on criminal cases all the time. They were civil lawyers who came here as senior counsel from the Bar, from successful civil practice. It just seems to be a silly way of going about dealing with the problem. We have specialist criminal courts in the Regional Courts. Those can be developed and expanded.

LEON J: They already have very extensive jurisdiction.

MR STEYN: Certainly, Mr Chairman. What is the difference, for example, in giving somebody a 10 year sentence or a 20 year sentence? The principle is the same. It is just the severity of the sentence.”

- (19) “Do we need to still stick to the manner in which we have been doing things? Should we not have criminal jurisdiction to one side and have these courts deal with civil matters only.”
- (20) “The number of members of the Bench. A call has been made by the Judges for more appointments to a Bench. By the same token, however, they are a bit concerned, it seems to me, that they may not have enough work if all of these proposals come about, if we have a senior civil court, if we have an increase of criminal jurisdiction in the magistrates’ courts, if we have a Family Court. That may be so, but we have to improve access to justice in the structure, and I think the number of Judges will be dependent in *due course* on how the system works. At the moment we do not have enough Judges.”
- (21) “The Judge President here has a problem in getting the consent of capable senior practitioners, counsel and attorneys, to act as Judges in the division simply because most of them do not want to leave their practices for three months at an end, do not feel comfortable in many instances in dealing with reviews, dealing with motion court work and dealing with criminal work. If, on the other hand, one should approach a senior practitioner and say Mr or Mrs X you are divorce or Family Court practitioner, are you available to do a divorce court matter for one or two days next week or the week after that, you would find that the

practitioner would willingly agree to that and that would improve access to justice.”

- (22) “The question then is: how does one approach that? We believe that there should be a pool of *ad hoc* Judges to be constituted by the Judicial Service Commission because in our view acting Judges and *ad hoc* Judges are Judges of the Supreme Court. They should be tested by the same measures, according to which permanent Judges are appointed and it would be a good thing to have a pool from which they could be appointed. For example, litigants could agree on the appointment or nomination of a certain Judge. If they disagree it will simply be left to the Judge President to appoint a person from that pool who is suitably qualified to do the type of work concerned.”
- (23) “In my view it will not be that expensive in the total context of the cost of litigation and the claims concerned to appoint an *ad hoc* Judge and I think that we will find that many parties would prefer to follow that route in order to get to court quicker and to have a matter sorted out, in particular in divorce matters, for example, under the present dispensation.”
- (24) “**CHAIRMAN:** Reverting to your suggestion that the time has now come that criminal work should be removed from the provincial divisions and be given to an extended regional court. At the moment, I am not sure, I think there are probably about 140 regional court magistrates in the country. If the regional court was to be saddled with the criminal work presently done by the Supreme Court then of course what we now know as the regional court would have to be vastly extended. What do you foresee in this connection? Where would the extra workforce come from? In the attorneys and advocates?”

MR STEYN: Mr Chairman, yes. The regional court would have to be restructured in my view to give it improved status, to make it the criminal court of the Republic of South Africa. There are many practitioners who are suitably skilled in criminal work and who, I believe, would welcome an appointment to such a position.”

(VII) MR S.J HOROWITZ, SENIOR TAXING MASTER

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

- (1) “I am currently an employee of the Department of Justice as Registrar of Second Leg and Senior Taxing Master of this Division ...”
- (2) “Firstly, I wish to deal with the position of the Registrar under the current system. The Registrar is appointed in terms of section 34 of the Supreme Court Act and in recent years the Department of Justice altered their policy in respect of Registrar’s qualifications in that today the Registrar is required to have legal qualifications. After almost four years of employment with this Division as Registrar in my humble submission I cannot to this day understand how a qualified prostragraduate is expected to be lured to the Registrar’s office when, with exception of a Taxing Master, with all due respect, the Registrar’s office is purely clerical and bureaucratic in nature.”
- (3) “And therefore I say that I do not believe that you require seven or eight Registrars with legal qualifications and make the following proposals from my personal experience. That the senior Registrar, and possibly two assistants, depending on the size of the Division, should be people with legal qualifications and then the next structured level or substructure of senior and junior Registrars will be people who would not be requiring legal qualifications. That is my submission in respect of the Registrars.”
- (4) “Now we turn to the question of the Taxing Master. Currently the structure is that the Rules make provision that the Taxing Master is - in fact in the Appellate Division decision of **BILLS OF COSTS v THE REGISTRAR** it is clearly stated there that the Taxing Master is appointed from the ranks of the Registrar and is an integral part of the judicial process.”
- (5) “Accordingly, mr Chairman, it is my proposal that the Taxing Master, because of the nature and function of the extension of the judicial process that he has to enact, the discretion that he has in terms of Rule 75, and the very important discretion in my opinion, that the Taxing Master should be somebody that comes

from the ranks of the legal profession and somebody that would have to be better remunerated.”

- (6) “**MR MALULEKE:** On the question of the Taxing Masters, you make the very point that the conditions of employment and promotions etc. in the available system are not conducive to retaining the best material. Do you think it could work if one was to semi-privatise it? I will tell you why I say this. Quite a lot of attorneys are very unhappy at the fact that they are just about the only profession who have their fees determined by people who are not from their profession. Attorneys feel very bitter that they have th attorney and client costs taxed by a Taxing Master who quite often has no knowledge of what goes on in an attorney’s office and you make that very point. What I want to know from you is, would you want to make a recommendation that maybe it is a post which needs to be semi-privatised and that the Taxing Master be remunerated by the parties.”

- (6a) “**MR HOROWITZ:** When you say semi-privatised, do you mean will it still fall under ... (intervention).

MR MALULEKE: It must be taken out of the Registrar’s office and a Taxing Master like you have a sheriff, but would have either to be an ex-attorney or something like that.

MR HOROWITZ: I strongly recommend that, but I still feel that the Taxing Master would still have to be answerable to a Judge in terms of any decision that he makes which an irate attorney or client might feel was a wrong decision. He still should have that recourse.

CHAIRMAN: Oh yes. But that should be possible within the system of semi-privatisation.”

- (7) “**CHAIRMAN:** In your experience, what do you consider to be the minimum period of proper training to qualify a Taxing Master?

MR HOROWITZ: He would definitely have to have a legal qualification. He would have to have a minimum of, say, two years wit a law firm. Whether he would have to admitted or not is a moot point.

CHAIRMAN: Articled perhaps.

MR HOROWITZ: Yes, he would have to have at least two years’ experience with a firm of attorneys. There are a lot of people who leave firms of attorneys

after their two years and who cannot find jobs and who are competent people and who would fall for this type of position, then of course that would be subject to a long term position and subject to restraint in the sense that they cannot take their skills and go and be cost consultants.”

(8) “**CHAIRMAN:** Is any examination required at the moment?”

MR HOROWITZ: Yes, there is. The department sets up a course of three weeks in duration and there is an examination.

CHAIRMAN: Courses are given from time to time in Pretoria to members of the Registrar’s office.

MR HOROWITZ: Correct.

CHAIRMAN: In your estimation, are those courses sufficient?”

MR HOROWITZ: No. Not pertaining to Taxing Masters in particular. As I said the Taxing Master is the one area where you are forming a *quasi* judicial

(9) “**CHAIRMAN:** What sort of better training would you like to see in store?”

MR HOROWITZ: I would like to see him with a legal qualification, coming out of a law office, at least two years’ experience, doing a much more intensive course with the Department of Justice in respect of the Law of Costs, which is a whole field of its own, the law of Costs and the taxation thereof. And then writing an exam or possibly doing a period of pupillage with a senior Taxing Master and then writing an exam and if he has passed that exam signing some form of contract with the department or with whoever. I do not know if you want to semi-privatise it, but signing some form of contract and taking on a full-time position such as is the case with a Family Advocate, for example.”

(10) “But, Mr Chairman, with deep respect, the current situation is untenable. It is just not workable. What they do is they say to you, come to the Department of Justice, if you have a law degree, come and be a Registrar. They then put you as a Taxing Master for a year or two. They then want to shift you - I am not minimising this - but they then want to shift you to be a 3rd Division Registrar and sit here and write out the orders. I mean with all due respect these people leave. They are either over-qualified or they get so disillusioned they leave and again the taxpayer suffers and the department suffers because it is losing people of worth.”

911) “I would rather see those people with law degrees going in and assisting the magistrates’ courts. You don’t need a man with a law degree to run - it is purely administrative.

LEON J: What sort of salaries are involved here with regard to Registrars?

MR HOROWITZ: A Registrar second leg gets a gross salary of - you see what happens is, they give you a legal allowance, they call it a legal allowance, and built into that a Registrar second leg will get a gross salary of R5 165.

LEON J: I must say I am rather shocked to hear that. It seems a very poor salary for a position like that.

MR HOROWITZ: And one must take into account that is a chape with a legal qualification.

LEON J: I understand that. Are these salaries determined by the Department of Justice?

MR HOROWITZ: I believe so, yes.”

EXTRACTS SPRINGBOK

(VIII) MR ATTORNEY A. VAN ZYL OF SPRINGBOK, NAMAQUALAND

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

- (1) “Ek is in 1981 toegelaat en sedertdien is ek prokureur te Springbok. Tot Augustus 1987 was ek by ‘n vennootskap en sedert September 1987 is ek ‘n eenmanspraktyk in Springbok.”
- (2) “Tot op datum, soos u wel bewus was, was Kaapstad die setel van die hooggeregshof, wat dit dan ook tans is. Die vraag is nou of dit geskuif kan word of moet word na Kimberley, en andersins, of dit in Kaapstad moet bly. My persoonlike mening, dan, is dat die hooggeregshof se setel in Kaapstad bly.”
- (3) “Die rede is baie eenvoudig, eerstens, as ons kyk na die afstande. Kimberley is ongeveer 775 kilometer van Springbok en Kaapstad is 560 kilometer ongeveer. Ons lê op ‘n hoofroete tussen Namibië en Kaapstad. Verder word ons bedien met ‘n daaglikse busdiens tussen Springbok en Kaapstad. Daar is verskeie taxidienste tussen Springbok en Kaapstad en daar is ook die lugdiens wat daaglik tussen Kaapstad en Springbok opereer, wat dit dan dadelik laat dat Kaapstad makliker bereikbaar is dan Kimberley. Dit is die groot argument.”
- (4) “Ons Namakwalanders of die mense in Namakwaland, ons stad is Kaapstad. Ons gaan kyk ons voetbal daar; ons kinders studeer daar; die meeste van ons familie woon daar en is dit so dat wanneer ons dikwels vir hooggeregshofwerk Kaapstad toe moet gaan dan reël ons so dat dit saamval met ‘n “sport outing” soos die Engelsman sê of iets van die aard.”
- (5) “**ADV. JAPPIE:** Mnr. Van Zyl, hoe ver is Upington van Springbok?
MNR. VAN ZYL: As ek reg het is dit 376 kilometer.

ADV. JAPPIE: Hoeveel prokureurs is daar in Springbok?

MNR. VAN ZYL: In Springbok is daar drie firmas. Daar is sewe prokureurs, maar drie firmas.

VOORSITTER: En die getal prokureurs op Upington, plus/minus, rofweg geskat?

MNR. VAN ZYL: Ek dink hulle is so vyf, ses firmas en ek glo nie hulle sal meer as twintig wees nie.”

- (6) **MR MALULEKE:** Mr Van Zyl, Calvinia, if you look at the small map, Calvinia and Wellington and Sutherland all do their Supreme Court work in Cape Town. Is that correct?

MNR. VAN ZYL: Dit is korrek, ook natuurlik Carnarvon en Fraserburg, volgens my submitisie, gebruik hulle ook vir Kaapstad.

MR MALULEKE: Would you agree that the logic of your submission would mean that even these other magisterial districts would have to remain in the Cape Town Supreme Court?

MNR. VAN ZYL: As hierdie Kommissie sou insien dat Kaapstad die setel van Springbok vir Namakwaland moet wees, dan is dit my respekvolle mening dat dit ook die setel van Calvinia, Williston, Fraserburg en Sutherland, ten minste, sal bly, want dieselfde argumente geld hier.”

- (7) **MNR. O’CONNELL:** Kan u dalk vir ons sê hoeveel hooggeregshofsake vind hulle oorsprong plaaslik, wat wel Kaapstad toe moet gaan. As u ook die getal egskedings kan aandui wat Kaapstad toe moet gaan vanaf Springbok.

MNR. VAN ZYL: Met respek, dit is ‘n baie moeilike vraag vir my om op die stadium te antwoord. Ek moet hier meld dat die jurisdiksieperk van die landdroshof nou uitgebrei is na R100 000 toe, en gevolglik is daar, wat siviele eise aanbetref, ‘n redelike afname,...

- (8) “**ADV. JAPPIE:** Sê nou ‘n mens het ‘n dringende aansoek wat in die hooggergshof verhoor moet word. Wat doen ‘n mens nou in Springbok? Hoe kry ‘n mens dit nou eintlike voor die hof?”

MNR. VAN ZYL: Tussen Springbok en Kaapstad is ‘n koerierdiens wat baie stiptelik en baie vinnig is.”

- (9) “**MR MALULEKE:** ...how many would you say, black lawyers practice in Namakwaland; if possible in the Northern Province?”

MNR. VAN ZYL: My opinie is dat daar in Namakwaland nie ‘n swart prokureur is nie, maar daar is nie ‘n swart prokureur nodig nie. Ons swart populasie is baie beperk en dit is hoofsaaklik beperk tot kontrakwerkers wat tydelik hier is en al hulle besigheid, hulle ekonomiese bedrywighede vind plaas by die plekke waarvandaan hulle kom.”

(IX) MR ATTORNEY A.N SCHREUDER OF SPRINGBOK, NAMAQUALAND

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

- (1) “Ek kan net vooraf sê ek praktiseer hier in Springbok sedert 1970. Die gebied Springbok/Calvinia, die twee gebiede, Namakwaland/Calvinia val binne die sirkel, die Wetsgenootskap van die Kaap die Goeie Hoop is opgedeel in sirkels - Sirkel 18 wat dan hiervandaan suidwaarts strek so ver soos Citrusdal in en ‘n oostelike rigting so ver soos Williston.”
- (2) “Ekself het vir iets soos 23 jaar gedien as voorsitter van die sirkelkomitee. So ek wil beweer dat ek redelik vertrouwd is met die omstandighede binne die gebied. Die gebied is, soos u bewus is, baie yl bevolk en ‘n baie groot gebied.”
- (3) “**VOORSITTER:** Mnr. Schreuder, u het dit baie duidelik gestel in u voorlegging aan die Kommissie, dat u eerste prys is om die Kaap as setel te behou. Ek wil net u alternatief aansny, die gedagte dat as Namakwaland vir jurisdiksie nou onder Kimberley moet skakel, skat u is die tweede prys die daarstelling van ‘n plaaslike afdeling met Upington as setel. Ek wil u vra om hierdie alternatief net ‘n bietjie toe te lig en te motiveer, watter voordele dit sou inhou, soos u die saak sien.

MNR. SCHREUDER: Die voordeel is maar die voordeel van die korter afstand. Ons het baie beter verbindings met Kaapstad per pad, per bus, deur die lug en beter paaie ook moet ek bysê as na Kimberley. Kimberley is, soos u gehoor het, baie ver van ons af en dit gaan op die einde van die dag maar oor die kwessie van die afstand.”

- (4) “**ADV. JAPPIE:** Mnr. Schreuder, die vervoerdienste tussen Springbok en Upington, hoe goed is dit?

MNR. SCHREUDER: Na die beste van my wete is dit maar hierdie sogenaamde taxidienste. Daar is nie ‘n gereelde diens nie. Kyk, ons het ‘n daaglikse busdiens tussen ons en Kaapstad, ‘n bus wat elke oggend gaan en ‘n bus wat elke oggend daarvandaan hierheen kom, maar daar is nie so iets in die

oostelike rigting nie.”

- (5) “**MR. MALULEKE:** ...If you take the highly developed legal systems and practice that you have in Cape Town and the court’s practice of attorneys and advocates in Cape Town, will you agree that you will generally find it more costly to litigate in Cape Town than in Kimberley, from a purely cost point of view?”

MNR. SCHREUDER: The only experience I have of Kimberley is colleagues appearing before the Road Transportation Board and I must admit that is much cheaper than Cape Town. But I think it will be cheaper in Kimberley, providing they do not jump at the opportunity and increase their fees.”

(X) MR ATTORNEY A. HUISHAMEN OF SPRINGBOK, NAMAQUALAND

- (1) “Ek is gebore op Vredendal, het my hoërskoolloopbaan voltooi in Stellenbosch en het ook my universiteitsopleiding voltooi op Stellenbosch waarna ek by ‘n bekende firma in Kaapstad gepraktiseer het, hoofsaaklik siviele litigasie en is ek van 1987 permanent hier in Springbok en praktiseer ek sederdien saam met mnr. Schreuder in vennootskap hier in Springbok.”
- (2) “As ek vertoë tot u rig oor die samestelling van die howe dan is dit belangrik ... om die hooggeregshof nie in isolasie te sien nie, maar te besef dit is baie nou verbonde aan die Meesterskantoor, aan die Akteskantoor, aan die Kantoor van die Ontvanger van Inkomste of die Departement van Finansies of die senior vennoot. As ons praat van die Akteskantoor dan praat ons natuurlik ook van die Kantoor van die Landmeter-generaal wat ontsettend belangrik is.”
- (3) “My betoog is dan, wat die behoefte van die mense en die gerief aanbetref, wat inskakel met die ekonomie, is die neiging al die jare maar suidwaarts en dit is Kaapstad toe. ‘n Baie ander belangrike punt is ook die skole, universiteite of kolleges wat te Kaapstad geleë is dat die meeste van die mense in Namakwaland hulle kinders hoofsaaklik stuur na kolleges toe in Kaapstad. As dit na universiteite toe is dan is dit die drie bekende universiteite, Universiteit Kaapstad, Universiteit Weskaap, Universiteit van Stellenbosch.”
- (4) “As ons na die samestelling van die howe kyk, dan is dit so, u het dit aangeraak, die landdroshof se jurisdiksie is verhoog na R100 000 en is dit so dat, as u by die landdroskantoor sal gaan navraag doen, sal u sien dat die hoeveelheid saaknommers wat toegeken is aan siviele sake ‘n baie duidelike bewys is dat die siviele werk drasties toegeneem het - die siviele dagvaardings, siviele vonnisse het drasties toegeneem. Dit het natuurlik meestal daarmee te doen dat die meeste groot eise is likiede eise waarmee ons te doen het en dit is nie bestrede sake nie. Dit is meestal likiede eise van R50 000 of R60 000 of R100 000 wat op kredietooreenkomste of op verbande of op sodanige dokumente geskoei is.”
- (5) “Wat ons in ons streekhoeve en landdroshoeve sien is dat al hoe meer gekleurdes deurkom as staatsaanklaers en landdroste, voorsittende beamptes, en dit is ‘n baie goeie ding, want ons kan baie duidelik agterkom, die plaaslike bevolking, die kliënte vir wie ‘n mens optree, hulle voel hulle is beter af met, as ek dit nou so kan noem, as dit ‘n kleurlingkliënt is, met ‘n kleurling-staatsaanklaer en ‘n voorsittende beampte. Ons het dit hierdie week ook gehad, verlede week, dat van die streekhof ons ook al ‘n voorsittende beampte en staatsaanklaer gekry en ons

kom werklik fantasties met die mense oor die weg en dit is baie goed om dit te sien. Ons weet net nie hoe Kimberley aan daardie behoefte sal kan voldoen as Kimberley hierso die streekhof moet verskaf nie.”

- (6) “**VOORSITTER:** Hoe gereeld sit die streekhof hier?

MNR. HUISHAMEN: Die streekhof sit ten minste eenmaal per maand hier vir ‘n week lank, na die einde van die jaar se kant toe. Dan het ons al gevalle gehad waar dit twee weke in ‘n maand hierso sit, dan is dit twee verskillende spanne wat kom, die een in die een week en die ander in die ander week. Dit wys nou, ons het verlede week datums gereël vir Juniemaand se hofsitting, dat die streekhof het ‘n baie groot werkslading wat dit hier het, en weens die feit dat die werkslading so groot is word daar Maandaeoggende vroeg aan die werk gesprong en daar word partykeer tot 20:00 saans gesit net om die sake afgehandel te kry.”

- (7) “**ADV. JAPPIE:** Soos ek u betoog verstaan is die historiese bande sterker met Kaapstad as met Kimberley. Geld dit ook vir Calvinia, Sutherland en Fraserburg?

MNR. HUISHAMEN: Ek het nou nie baie ondervinding van Sutherland en Fraserburg nie, maar van Calvinia en daardie distrik definitief, wat meer gebruik maak van Kaapstad. Ek sê dit omdat Calvinia deel uitmaak van Sirkel 18, en ons op ‘n baie deurlopende grondslag met die prokureurs, met die regsverteenvoerders in verbinding is en die meeste van hulle, by uitsondering, maak almal gebruik van Kaapstad.”

- (8) “**MR MALULEKE:** ... The provincial division in a particular province has the capacity to possibly also test local legislation for that province. Now you do not see any problems with the Western Cape Supreme Court, giving an interpretation over legislation here, which might be different from the local division or the provincial division here gives. Do you see any problem with that?

MNR. HUISHAMEN: Well, that is difficult to answer. There might be problems, yes. I will have to agree.”

(XI) **MR N.A BAARTMAN, CHAIRMAN OF THE NAMAQUALAND LOCAL DISTRICT COURT**

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

- (1) “Ek is vir die afgelope vier jaar permanent in Namakwaland en sedert begin Januarie 1995 as die voorsitter van die distriksraad in Namakwaland. Laat my toe om eerstens vir u te sê dat ek vandag hier sit met ‘n beswaarde hart as sulks oor die vertoë wat vandag hier gerig is deur ons verskeie firmas.”
- (2) “Eerstens wil ek dit baie duidelik stel dat vir die Noordkaap Provinsie wat sy bestaan gekry het op 27 April 1994 dit belangrik is dat die hooggeregshof-afdeling van Noordkaap uitgebrei moet word en juis na Namakwaland toe...”
- (3) “My versoek sal dan wees en my betoog sal dan wees en my betoog sal dan ook wees dat die afdeling van die hooggeregshof selfs hier plaaslik geplaas moet word in Springbok.”
- (4) “...ek dink ek wil ‘n paar korreksies maak wat deur die vorige sprekers gesê is. Daar is ‘n daaglikse vervoerdiens vanaf Port Nolloth/Springbok na Kimberley. Daar is huidiglik drie taxis van dieselfde eienaar wat daaglik opereer tussen Kimberley en Namakwaland.”
- (5) “Now if you are coming up with an argument of kilometres, the legal costs in Cape Town will even make up for the 200 kilometres difference, while presently the legal costs for our communities, it will be cheaper to go to Kimberley as to Cape Town, because on the legal point of view.”
- (6) “**VOORSITTER:** Verstaan ek u reg dat die gelde van advokate en prokureurs in Kimberley is billiker as die gelde van die prokureurs en advokate in die Kaap? Is dit u betoog?”

MNR. BAARTMAN: Dit is op die huidige oomblik my persoonlike

ondervinding en baie van ons se ondervinding, ja.”

(XII) MR M. VAN ROOYEN, A REPORTER ON “DIE NOORDKAAP KOERANT”

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

- (1) “Ek wil net graag as lid van die publiek praat. Ek is baie gelukkig met die feit dat Namakwaland deel is van Noordkaap. Ek voel die omstandighede in Namakwaland is meer dié van die groter Karoogebied, selfs die Kalahari en Gordonia, en ek stem met die vorige spreker saam dat ons daarna moet kyk dat ‘n plaaslike afdeling van die hooggeregshof miskien op Upington gevestig word. Upington is 400 kilometer van Springbok, 400 kilometer van Kimberley en van Calvinia, met ander woorde, dit is min of meer reg in die middel van die provinsie.”
- (2) “Dan net ‘n paar punte wat die ander sprekers genoem het wat ek graag wil korrigeer is: Namakwaland staan in der waarheid onder Noordkaapse SAPD. Dit val nie onder die Weskaap nie. Dit is reeds ‘n hele rukkie.”
- (3) “Ek werk hier van Springbok, ja, en ek voel hoe meer die behoefte as’t ware geskep word om dinge vir die Noordkaap op Upington en/of Kimberley te doen, hoe meer sal in die behoefte voorsien word. Met ander woorde, ons praat van busdienste, taxidienste ensovoorts. Daardie moontlikhede bestaan en Upington is eenvoudig baie nader aan Springbok as Kaapstad, en Upington is ‘n groot dorp van seker al maklik 80 000 mense.”

(XIII) MR ATTORNEY A. HUISHAMEN, BY WAY OF REJOINER

In the course of his rejoinder some of the points made by Mr Huishamen were the following :-

- (1) “Op die ou einde van die dag, soos ek die politici ken, sal dit ‘n politieke besluit wees wat hier geneem sal word. Wat ons as prokureurs of regsverteenwoordigers vanoggend vir u kom sê het is wat ons ondervinding in Springbok is en ek wil dit baie duidelik stel dat meer as 80% van my persoonlike kliënte is nie-blankes en meer as 80% van my firma waar ek betrokke is, se kliënte is ook nie-blankes, overgeset synde, ongeveer 80% tot meer is ander-kleuriges en dit geld ook vir die ander firmas.”
- (2) “‘n Ander aspek wat ek wil aanraak is dat ons as prokureurs wat hier praktiseer is ten volle ten gunste, en ons dring daarop aan dat die regsberoep in Springbok en Namakwaland meer verteenwoordigend moet wees van die demografie van hierdie provinsie en dit is nie net my persoonlike firma nie, maar ook van die ander firmas is op rekord dat ons verwelkom wat in die howe plaasvind en dat dit vir ons verblydend is om te sien dat dit wel plaasvind dat die verteenwoordigende meer die bevolkingsamestelling reflekteer.”
- (3) “Die koste-aspek wat mnr. Baartman van getuig, ek kan nie heeltemal met hom saamstem nie, want die meeste kostes is voorskriftelik. Dit word deur die Regshulpraad bepaal en of jy nou in Kaapstad optree en of jy in Kimberley optree, of as advokaat optree of as prokureur, dit is vasgestelde fooie - in die landdroshof, in die distrikshof en in die streekhof. Die reiskoste is vasgestel. My ondervinding met egskeidings wat in Kimberley gedoen is en egskeidings wat in Kaapstad gedoen het, is dat Kaapstad goedkoper is. Ek sê net wat my ondervinding is. Die rede hoekom Kaapstad goedkoper is, is omdat daar, as ek dit so kan noem, ‘n oor-aanbod van advokate in Kaapstad is.”
- (4) “**MR MALULEKE**: ...I thought the point which Mr Baartman was making was that advocates in Cape Town would cost you more than advocates in Kimberley and that even attorneys, for a number of reasons - attorneys in Johannesburg would cost you more than attorneys in Springbok, for whatever reason.

MR HUISHAMEN: My experience is just the opposite, but I can only talk about my experience, not about other peoples’ experience, and the reason is by

far the cost of advocates. That is the reason, and the cost of advocates in Cape Town is not necessarily far greater than in Kimberley. My experience with various divorce cases is that Cape Town is cheaper than Kimberley, but that is my experience. That is if you make use of junior counsel.”

EXTRACTS KIMBERLEY

(XIV) THE HON MR JUSTICE J.J. KRIEK, JUDGE PRESIDENT OF THE NORTHERN CAPE DIVISION

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

- (1) “I note the submission by the Judge-President of the Cape Provincial Division, that “the territorial jurisdiction of the Cape Provincial Division should be co-extensive with the boundaries of the Western Cape.” He has my support, obviously.”
- (2) “I think that ought to be a general principle, especially in view of the Legislatures which each province will have and which will make their own laws. It is only proper, I think, that one court should administer those laws, and not as is presently the case. Part of the Northern Cape is catered for by the CPD. So the CPD must in fact must apply Northern Cape laws in some cases and then their own laws in other cases.”
- (3) “**JUDGE LEON:** So you say it should be co-extensive with provincial boundaries and I suppose part of the same point is that each province should have its own seat of the court.

JUDGE KRIEK: With respect, yes.”

- (4) “It has been reported that the name of this province is not to be changed. If that is so, then the name of the division need also not be changed.”
- (5) “...I have seen written submissions by an attorney in Springbok written on behalf of the attorneys in Namaqualand, Calvinia and Williston, and I see that this gentleman had also made representations before this Commission in Springbok, and in it the view is expressed that the *status quo* should be maintained in relation to the districts in which they practise. That is the districts of Namaqualand, Calvinia and Williston, that these should continue to fall under the jurisdiction of the CPD.”
- (6) “But considerations such as “bestaande gevestigde verbintenisse en kennis” have undergone such drastic changes in the country as a whole for the past two or

three years that these attorneys will face nothing more than a slight breeze of change if they have to form new relationships with attorneys in Kimberley.”

- (7) “I ought perhaps to mention that the submissions made in the Springbok document are supported by Messrs De Klerk & Van Gend of Cape Town and Mr Arno van Zyl of Springbok. On the other hand, Mr Coetzee of Carnarvon who practises in Carnarvon and Calvinia and has branch offices in Fraserburg, Williston and Sutherland makes a strong plea for the territorial jurisdiction of the Northern-Cape division being co-extensive with the provincial boundaries.”
- (8) “Politicians will now have to explain to the Calvinia people why they must travel 650 kilometres to the Supreme Court seat while at the moment they are only 450 kilometres from the Supreme Court in Cape Town. I suppose they will have to get used to it. Mr Chairman, I think that is it in a nutshell. I firmly remain of the view that it will be quite illogical and unpractical for about a third of the Northern-Cape Province to fall under the jurisdiction of the CPD.”
- (9) “In my written submissions last year I mentioned the problems inhibiting the institution of a circuit court system for hearing of civil matters. I will skip a bit there because I have rather changed my views about that. But then I do say on page 4 of my summary: If notwithstanding the problems I have mentioned, this Commission feels that a civil circuit ought to be instituted, then I am prepared to amend the rules regulating the conduct of proceedings in this division in the following respect - and these rules are an annexure to this document which is in your file.”
- (10) “Firstly, to extend the criminal circuit in Upington, that is one in each term, by one week for the hearing of civil trials with one day for motion court. This ought to cater for the trials emanating from the Gordonia, Namaqualand and Calvinia districts. If one week proves to be inadequate, the session can always be extended. To cater for the latter eventuality the safest course would be to merely provide inner rules that the period in question shall be such as may be determined by the Judge-President from time to time. I may mention that during 1995 not more than ten of the civil trials set down for hearing in Kimberley emanated from the Gordonia district and I got this figure from an attorney, the chairman of the Attorney Circle in Upington.”
- (11) “**JUDGE LEON:** ...What considerations ought to persuade us to go for a local division rather than a civil circuit, or *vice versa*?”

JUDGE KRIEK: With respect, Mr Chairman, gentleman, the main factor which would dictate whether it should be a civil circuit or a local division, is the volume of work.”

- (12) “...I have no problems about local divisions. I grew up in a province which had a local division and if and when the time arrives - if it is still in my time - I would be the first to ask for a local division in Upington. I have no objection in principle to a local division.

CHAIRMAN: You say it is not justified in terms of the volume of work.

JUDGE KRIEK: It is not justified in terms of the volume of work. That is the point at this stage.”

- (13) “Now in this document which I have just handed up, I say this: I still hold the same views with regard to the Upington circuit, but as far as the proposed Rule 4(14) (b) is concerned, an alternative suggestion has occurred to me. It may be preferable to provide that the Judge-President may establish such other permanent or *ad hoc* circuits for the hearing of civil cases at such venues in the Northern Cape as may appear to him to be necessary and/or convenient.

CHAIRMAN: That puts it at its widest.

JUDGE KRIEK: Yes, then if there are three trials to be heard from Springbok, they can approach me and I will arrange a civil circuit in Springbok for the hearing of those three trials. That makes it as flexible as it possibly can be.”

- (14) “When the variation of the variation of the proposed Rule 4(14) (b), which I have suggested above, is adopted, some pattern will develop over the next few years and further civil circuits can be introduced if and when they become necessary. The rule will be flexible enough to cater for the future need of the outlying areas of this province.”

- (15) “Even if for the foreseeable future there is only one permanent civil circuit at Upington but with the possibility of *ad hoc* circuits being arranged when it is convenient to do so, the arguments based on distance which feature prominently in the representations which I have referred to, will lose most of their significance.”
- (16) “In this division a conference for the setting down of civil trials is held once in every term in relation to the two ensuing terms and all matters are on the waiting trial list are accommodated at this conference.”
- (17) “The delay between the request for the trial date and the trial itself can therefore be less than three months but not more than six months in this division.”
- (18) “In relation to the proposed Upington circuit I do not anticipate that the delay will be more than four months, probably less, because in the main document which I handed up and which is before you, in the rule which I propose there is also provided that such a conference for the setting down of matters will also be held in Upington in relation to civil matters in Upington.”
- (19) “...there is a suggestion mainly by the Namaqualand attorneys, that a local division be established in Upington. There is no merit in that suggestion. There would never be work for more than one judge, in fact, not enough work for one judge and the expense involved in obtaining suitable premises and in appointing the necessary staff cannot be justified on any basis.”
- (20) “In a letter dated 2 April 1996 the secretary of this Commission mentioned the possibility of the Commission visiting Upington “om die hofgeriewe aldaar te besigtig”. In an endeavour to try and spare the Commission the inconvenience of travelling to Upington I obtained the following information from the magistrate of the Gordonia District, Mr N.J. Nel.”
- (21) Firstly, the magistrate’s court in Upington is a very old building, has only two court rooms, one intended for criminal cases and one for civil cases. Secondly, at present both these court rooms and an “mobiele hofsaal” are used for criminal trials, while civil trials are conducted in the magistrate’s personal office.

Thirdly, when the circuit court sits in Upington criminal cases which would have been heard in the courtroom then occupied by the circuit court, are heard in the tearoom. Fourthly, the regional court is housed in a separate building which has one court room and one office for the magistrate; and fifthly, plans for a new magistrate's office building which will be completed during the second half of 1998 have been approved and in this building provision is made for a circuit court suite consisting of one courtroom and rooms for the judge, his secretary, prosecutor, counsel and the family advocate."

(22) "I think it is long overdue that judges should not be appointed to a particular division, especially in this division. It has happened perhaps not often, but it has happened more than two or three times a year that I have had to import a judge from the Free State or that one of my judges had gone to the Free State. Van der Walt J is going to Bloemfontein the whole of next week and all this involved correspondence with the minister, to get him appointed. Judges should be appointed for the country."

(23) "**CHAIRMAN:** Then just to clarify another thing for me, when you were dealing with the matter of provincial and jurisdictional boundaries being co-extensive, Judge Leon put to you, does that mean you are also in favour of an own seat of the court for every province?"

JUDGE KRIEK: Yes.

CHAIRMAN: Do I interpret that remark as signifying that you support the notion that there should be a provincial division of the Supreme Court in every one of the nine provinces?"

JUDGE KRIEK: Yes."

(24) "**MR MALULEKE:** Finally from me, the increased jurisdiction of the magistrate's court in civil matters to R100 000, coupled with, say a possible creation of family courts, would this reduce greatly the civil work of your division to an extent that it may warrant the reduction of the number of judges, say for instance?"

JUDGE KRIEK: I doubt whether it would reduce it to such an extent. It will significantly the amount of work, but not substantially, not to a great extent, because one must also bear in mind that the more cases which are heard before the magistrates' courts the more civil appeals there are.”

(XV) MR E.M. DIPICO, PREMIER OF THE NORTHERN CAPE PROVINCE

In the course of his oral representations to the Commission some of the points made by the Premier of the Northern Cape Province were the following :-

- (1) “...it is of crucial importance that each province established in terms of section 1-4 of the Constitution Act 200 of 1993, should have its own division of the Supreme Court so that each division should exercise its territorial jurisdiction within the boundaries of the province between which a provincial division of the Supreme Court is located.”

- (2) “This will also facilitate fair and effective governing in our country as a whole. It will be an inconvenience for a division of the Supreme Court in a particular province to apply and enforce laws in a territory that does not fall within the same provincial borders as such division of the Supreme Court. It is not only an inconvenience to the courts but also to lawyers and the public at large.

- (3) “**CHAIRMAN:** Civil circuit courts?”

MR DIPICO: Yes. Our division has been applying this system in respect of criminal matters as well as unopposed divorce matters and this has proved to be more than efficient.”

(XVI) MR ATTORNEY T. HORN ON BEHALF OF CIRCLE 16 OF THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

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

- (1) “I have practised as an attorney in Kimberley since 1954. I am chairman of Circle 16 of the Law Society of the Cape of Good Hope and as you are no doubt aware, the whole of the old Cape Province, as we knew it, is divided into a whole number of circles, and I represent Circle 16. I am also an alternate councillor of the Law Society of the Cape of Good Hope and I was appointed to represent the Northern Cape Province on that Council. Circle 16 represents the magisterial areas of Kimberley, Herbert, which is in the area of the town of Douglas, Hay, which is in the vicinity of the town of Griquatown, Barkley West, Olifantshoek, Postmasburg and Warrenton. There are approximately 75 attorneys practising within Circle 16 and 33 firms.”
- (2) “...the whole of the Northern Cape as a province has approximately 170 practising attorneys. So my circle is almost halfway there in the number of attorneys practising within the province.”
- (3) “The first question is the area of jurisdiction of the Northern-Cape Division and we agree totally with the submissions made by the Judge-President and our premier, that the boundaries of the Supreme Court should be co-extensive with the boundaries of the province.”
- (4) “... if at all practicable , every province should have its own provincial division with local divisions where necessary.”
- (5) “If these areas to the far west of Kimberley up to the Atlantic Ocean are to be incorporated, those communities are very, very far from Kimberley and we must address their problems. We accept that totally.”
- (6) “Kimberley is situate, as you know, on the extreme eastern part of the province and litigants have to travel considerable distances to get here. We have sympathy for them but we cannot support the idea of the establishment of a local division

at this stage. I must emphasise “at this stage”. Sometime in the future it may become necessary to look at the situation again, but as we see the position at present there is no justification to establish a local division.

JUDGE LEON: So you agree with the Judge-President?

MR HORN: Absolutely.”

- (7) “The Judge-President did mention that he has established that ten civil matters had emanated from Gordonia, the Upington area, and he wondered whether 30% of those had ever got to trial. I doubt whether 10%, in view of my experience, had got to trial, which would mean two matters emanating from Upington.”
- (8) “The Judge-President has put forward his plans for circuits, which I believe will more than adequately meet the needs of the people in those far areas.”
- (9) “The question of the jurisdiction of the magistrate’s court has been touched on. This was increased from 1 May last year and I do not think we have as yet felt the effect of this in the Supreme Court.”
- (10) “In my own practice I can see that fewer summonses, fewer actions are being instituted in the Supreme Court and more being instituted in the magistrate’s court. This is going to even more reduce the work in the western areas.”
- (11) “If I may just touch on the question of costs for a moment, if a local division were to be established at a place like Upington, attorneys now have rights of appearance, but experience has already showed that in civil trials and opposed matters attorneys are not appearing. They still continue to brief counsel and my information is that this is also happening in the other divisions. Attorneys will generally, if they do appear, deal with unopposed matters in the motion court.”
- (12) “Now I cannot see a bar developing at a place like Upington. There will not be a resident bar, and if a local division were established there counsel would have to be imported from places like Cape Town, Kimberley, Bloemfontein, and

wherever, which is going to involve considerable expense on an attorney and client basis for the litigant, not recoverable on a party and party basis. So the one cancels out the other at the end of the day. It is our submission that at this stage we must *festina lente*;"

(XVII)

**ADV J.G. VAN NIEKERK OF THE KIMBERLEY BAR ON BEHALF OF
THE NORTHERN CAPE SOCIETY OF ADVOCATES**

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

- (1) “...die plaaslike balie ondersteun heelhartig die gedagte en die algemene uitgangspunt dat die jurisdiksionele grense van die Noordkaapse Afdeling van die Hooggeregshof behoort dieselfde te wees as die provinsiale grense op dieselfde gronde en motivering as voorgehou deur die Regter-President.”
- (2) “Mnr. die Voorsitter, wat betref die kwessie van die plaaslike afdeling al dan nie, ondersteun die plaaslike balie ook heelhartig die opmerkings van die Regter-President en die submissies wat hy gemaak het op die doodeenvoudige feit dat daar nie voldoende werk is om so ‘n plaaslike afdeling te regverdig nie.”
- (3) “Mnr. Horn het myns insiens, met respek, ‘n baie belangrike punt geopper en dit is dat daar nie, soos hy dit beskryf het, ‘n “resident bar” sal ontwikkel in Upington of waar so ‘n voorgestelde plaaslike afdeling dan nou ook al gesetel sal wees, sal ontstaan nie, en in my submissie is dit net ondenkbaar, ‘n plaaslike afdeling sonder ‘n plaaslike balie by daardie afdeling gesetel.”

(XVIII) MR C.F. DU PLESSIS, SC, ATTORNEY GENERAL OF THE NORTHERN CAPE DIVISION

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

- (1) “Mr Chairman, I fully support the views expressed by the Judge-President here this morning, both concerning the boundaries of the jurisdiction of the Northern-Cape Provincial Division.”

- (2) “Perhaps I should just emphasise a few points which are of special importance to the prosecution side. The first one, of course, is a matter of principle, and that is that provincial legislation should be subject to uniform judicial interpretation. The Judge-President has already discussed that, but perhaps it should be stressed that there is not only one other jurisdiction involved here, that is the Cape Supreme Court, the Cape Provincial Division, but in fact also the Eastern Cape Division because there are three magisterial districts falling within the Eastern Cape Division, namely Hanover, Noupoort and Colesberg. The other border areas, the districts in contention here, of course, fall within the Cape of Good Hope Provincial Division.”

- (3) “So these support services are therefore subject to different prosecutorial policies, namely apart from the Northern Cape, my own authority, also to those of the Cape, Mr Frank Kahn, and the Eastern Cape, Les Roberts. And it is not merely a hypothetical matter.”

- (4) “For certain reasons the North West does not prosecute for illicit liquor trade. It is an historical thing. It comes from the Bophuthatswana days. I do not want to go into that, it is not relevant, but I do. I prosecute for illicit liquor trade and if I fall in with the policy of the North West then I will have the situation where the offence will have to be countenanced in Vryburg, but nowhere else in the Northern Cape, which is quite unacceptable.”