

# **FIRST INTERIM REPORT**

## **VOLUME IV**

***EXTRACTS FROM ORAL REPRESENTATIONS  
HEARD AT MIDRAND, MIDDELBURG,  
NELSPRUIT, PIETERSBURG AND SUN CITY***

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## ***EXTRACTS GAUTENG***

### **(I) THE HON. MR. JUSTICE C.F. ELOFF JUDGE PRESIDENT OF THE TRANSVAAL PROVINCIAL DIVISION**

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

- (1) “By way of introduction I should say that the Transvaal Supreme Court presently has 56 judges which includes a Judge President, two Deputy Judges President and 53 puisne Judges.”
- (2) “The memoranda submitted to the Commission, of which I have had sight, indicate a relation between two questions, namely (a) whether Provincial or Local Divisions should be established in the three provinces other than Gauteng and ... Secondly whether the present Witwatersrand Local Division should be accorded independent provincial status and the relationship between these two issues is possibly related to the following: if the Commission accepts the submission that in principle every one of the nine provinces now in South Africa should have a Superior Court, the question arises why should Gauteng have two separate independent Superior Courts, the one at Johannesburg and the other at Pretoria? The logical consequence for example urged by the Johannesburg Bar is that the Witwatersrand Local Division should be converted into an independent Provincial Division, severed from the Transvaal Provincial Division, presumably leaving what is left of the Transvaal Provincial Division as a Provincial Division. There will then be two Provincial Divisions in Gauteng alone. But more importantly Chairperson, would that be constitutional?”
- (3) “If the Commission accepts that the Transvaal Provincial Division should retain jurisdiction in the adjoining provinces, the role to be played by Johannesburg becomes important. Is Pretoria alone then to discharge the function of providing criminal circuits or of discharging other itinerant functions in the three provinces? Is Johannesburg to be given the character of being an urbanised provincial division with hardly any itinerant functions except possibly for the Springs or Vereeniging circuits? You have to visualise that what the one memorandum of the Johannesburg Bar amounts to is that Witwatersrand should become an independent Provincial Division with its borders being the area of jurisdiction of the Witwatersrand and no functions beyond. If Pretoria is to be saddled with the function of administering justice in the adjoining provinces, as

well as what is left of Gauteng, it is going to be saddled with an enormous burden in regard to circuits. At present the circuits that have to be arranged for the adjoining provinces amount to about 22 per year and that is a very substantial burden. The question is, is Pretoria alone to carry that burden?"

- (4) "I think that the word "provincial" should be scrapped. I have given thought to what other word can be used. That means of course that the Supreme Court Act may have to be amended because it creates certain jurisdictions to the Supreme Court, other Statutes may also have to be amended, for instance the Attorneys' Act provides that attorneys may be admitted only in a Provincial Division, not in a Local Division. So that may also have to be reconsidered but I want to suggest to the Commission that when it makes recommendations it should include one that in all Statutes dealing with these matters the word "provincial" should be dropped and another word used in its place."

- (5) "**CHAIRMAN:** I apologise for interrupting you but just before you take up the thread of your resumé, at the moment does Johannesburg do the Springs and Vereeniging circuits?"

**ELOFF JP:** Yes, those are the only circuits that it attends to.

**CHAIRMAN:** And is that exclusive, only Johannesburg provides the judges for those circuits?"

**ELOFF JP:** No, it is the Judge President who decides - but as a matter of convenience because Springs is close to Johannesburg it is normally convenient to assign that task to Johannesburg judges.

**CHAIRMAN:** So, in general Johannesburg judges are assigned to the Springs circuit and the Vereeniging circuit as a broad generalisation?"

**ELOFF JP:** Well, I should say that two out of three times Johannesburg judges are sent to Springs or Vereeniging, but certainly Pretoria judges do that as well. The Attorney General of Transvaal administers those circuits, it is not the jurisdiction of the Attorney General of WLD."

- (6) "I turn now to one of the major issues with which this Commission is saddled and that is the question of the desirability of creating Provincial or Local Divisions for the three provinces. Just before I discuss this I would like to emphasise something which should be self evident, but may I say it again and that is that the prime question is how is the administration of justice best to be served or the allied question, what is the most beneficial deployment of judicial

manpower and in summary what is in the best interests of justice? Not what will make Mpumalanga happy or what will serve the interests of the Sakekamer of Pietersburg or what will serve the interests of the local circle of lawyers from Klerksdorp. One has to look at what is best for justice.”

- (7) “...there is the question of criminal matters, criminal trials and I contend that there is no doubt that these can adequately be dealt with by circuits. That has taken place in the past and circuits have been sent off to all the corners of Transvaal, very often to small towns, very often to hear a single criminal case in a small place like - in small places like Nylstroom or...(intervenes)

**CHAIRMAN:** Christiana.

**ELOFF JP:** Christiana, yes indeed Christiana and that will continue to be the position. Normally there are five circuits, there is the Eastern circuit, two circuits go up per quarter to the Eastern Transvaal; there is the Northern circuit going right up to Messina; there is the Western circuit going right to Christiana and then of course the Springs and the Vereeniging circuits and very often when the need arises, an additional circuit is sent off. It has happened quite a number of times that the Attorney General finds that there is a backlog and I lay on another circuit. On average five circuits per quarter but very often more.”

- (8) “Then at the foot of page 3, I make the point which I would like to emphasize that it is unlikely that sufficient civil work is likely to be generated in any of the three provinces to justify the high cost of establishment of Superior Courts in any of the provinces. In my memorandum I deal with this but may I emphasize just a few factors? If you are going to establish a Superior Court, say in Mpumalanga there is no infrastructure at present, you have to build a Superior Court, you cannot just house this court in the Magistrates Court, it has to be seen as a Superior Court with rights of appeal from magistrates. Consequently, that has to be constructed. You have to provide - that has to be constructed at great cost, I have heard figures like R40 million and so on. The Supreme Court in Pretoria, the new Supreme Court cost R48 million. That is of course a bigger court than is likely to be established say for Mpumalanga but even so, you would probably think of something like R30 million. The cost of providing Law Libraries for the judges is enormous, that is also a figure of millions. You have to think of the infrastructure, the Registrar's office, you have to think of all that goes with it. You have the attendant cost then of establishing an Attorney General's office, a Master's office, you may have to establish a Deeds Registry, you have all of these difficulties which, and the question arises, is it and can it be justified?”

- (9) You have had the benefit of the memorandum of the Pretoria Bar, that has done

an analysis based on Professor Martins' research which indicates that in view of the various factors which have occurred of late, it is not likely that there will be more than I think 94 civil cases per year from North West and a figure of that sort for Northern province and a figure of that sort from Mpumalanga. What has happened, of course, is emphasized in my original memoranda - the civil jurisdiction of magistrates has been set up at R100 000,00. Professor Martins estimates that that will mean that about two-thirds of civil actions will now have to be in magistrates courts...(intervenes)

**CHAIRMAN:** Or may be?

**ELOFF JP:** May be, yes of course the litigant always has the right to sue in the Superior Court and run the risk of getting magistrate courts costs only. Time will tell what the impact of that is going to be.”

- (10) “Then there is of course the possibility that a Family Division will be established, which will take care of divorces and even if the increase in civil jurisdiction has not got the impact which one believes, even if that is so, then it is hardly likely that there will be sufficient civil work, because that is a determining factor, generated in those three provinces to justify the high cost of establishing the infrastructure of a Superior Court in any of those provinces.”
- (11) “There can be no doubt about it that there is a tremendous advantage in being associated with a big, strong bench to compare notes, to discuss matters, to have the exposure to the variety of work which occurs in a large division. Without sounding derogatory of smaller divisions, one knows that the type of litigation that occurs there is at present matrimonial matters, third party actions, debt collecting and the likes. None of the interesting review matters, matters like review matters, real rights, commercial matters, contractual matters, matters involving companies and the like...”
- (12) “At the time of the Hefer report, attorneys did not have rights of audience in the Supreme Courts. I say that it is unlikely that attorneys will exercise their new rights in all, but relatively simple uncomplicated matters. Advocates will still be in demand for important litigation in Superior Courts. The validity of the point made in the Hefer report that it is unlikely that talented advocates will be attracted to such decentralised divisions as might be established, remains. I would like to emphasize this that the men of talent at the bar, the attorneys of talent would prefer to practice in the centres where rewarding work and work of interest is likely to be dealt with.”

- (13) “If Superior Courts are established in one or more of the three adjoining provinces, litigants in those provinces, except for those coming from the seat of the court, will still have to employ correspondents.” Thus if you have a Superior Court at Nelspruit, a person from Middelburg or Belfast or Barberton or somewhere will have to employ a correspondent at Nelspruit to take care of his case. But more importantly is 2.3.2: “the cost of travelling is a relatively unimportant component in the cost of litigation.” Legal fees and the cost of expert witnesses make up the biggest element in the cost of litigation and, in any event, if decentralised divisions are established in any one of the three provinces, the cost of litigation may well be increased in certain circumstances. Counsel from Johannesburg or Pretoria might often be briefed and they are likely to charge more for appearing in Nelspruit or Pietersburg than they would for appearing in Pretoria.”
- (14) “A few words now about the court at Venda... When Venda was brought to an end, the Minister of Justice requested me to administer what was left of that court, but there was a problem in that the Premier of Northern Province was unwilling to accept any step which would recognise that that court should not have been brought about or served no need. I was, nevertheless, since 1994 involved in the running of that court in the sense that I looked at the duty roster, the work, the workload and arranged for judges to be sent there and it is my considered view that even one judge can cope very adequately with what is involved there, he can do all the criminal work and all the civil work...It is a pity that the high cost was involved in the establishment of the buildings, it might be wasted capital, but that is just one of the other elements of wasted capital which will have to be dealt with in the New South Africa. However, the court buildings might be used for criminal circuits or for other administrative purposes.”
- (15) “In regard to Bophuthatswana with which I deal now at the foot of page 6, here too this court and its headquarters would never have been established as it was had it not been for the creation of the State of Bophuthatswana. The jurisdictional area of this court is an odd one, I think you have diagrams and maps here, but the most dense population in Bophuthatswana is that which lies just north of Pretoria and is within 30, 40, 50 kilometres of Pretoria. If this court is to continue in some way or another it is going to mean that literally millions of people living in the area of jurisdiction of the one time court of Bophuthatswana will have to go to Mafikeng which is about 300 kilometres away rather than be served by Pretoria which is a mere 30, 40 kilometres away. The area of jurisdiction of that court was established of course to coincide with the borders of the State of Bophuthatswana, but I have to refer only to one or two of the memoranda which have been placed before you, to make it clear that never can the court of Bophuthatswana or its nerve centre at Mafikeng, serve as the nerve centre of any new division for the North Western Province. Particularly the memorandum from Klerksdorp, you may recall it is diagrammatically

demonstrated what large concentration of population, industries and so on occurs in the Klerksdorp/Potchefstroom area. It is enormous compared to the relatively small town appearance of Mafikeng and if of course serious consideration is given to the establishment of a Superior Court in North West, that is very closely related to the question, where the nerve centre should be?"

- (16) "I say a few words at 2.5.4 about the memorandum of the Judge President of Bophuthatswana. He does not appear to address the point made in my original memorandum and demonstrated in the Martins report that only approximately 103 civil actions are in the future likely to be generated in the North-West province. The statistics mentioned by the Judge President concerning the number of civil actions instituted in 1994 are likely to be drastically affected by the increase in civil jurisdiction of magistrates."
- (17) "I close off this part of my submissions, with great respect there is no case made out at all, no justification for any Superior Courts to be established in any of the three adjoining provinces. In time to come that may be possible, but not in the foreseeable future and that is what this Commission is concerned about."
- (18) "I turn then to the other major question and that is whether the present Witwatersrand Local Division should be separated and established as a Provincial Division?"
- (19) "The fact that the two courts were served by a single body of judges under the control of a single Judge President has great advantages: it permitted flexibility in the employment of the available judicial manpower - could I pause there for a moment? It sometimes happens that there is a log jam in Johannesburg, civil cases are piling up. It then so happens that a Pretoria judge who was going to deal with a criminal case but the case had to be postponed, is then sent over to Johannesburg on a few hours notice to go and help there."
- (20) "It is true that since I became Judge President I have not, to the same extent as my predecessors did, provided for interchange to and fro. I think that at the time of my predecessors on average five Pretoria judges served in Johannesburg and five Johannesburg judges in Pretoria or perhaps four each way. I decided to limit

that, to limit the travelling and to rather adopt a policy of enabling the more younger judges to be exposed to that sort of advantage. Over the years that I have been Judge President I have arranged things so that I think all the younger Johannesburg judges served for a term in Pretoria to get exposed to the work there and all younger Pretoria judges served for at least a term in Johannesburg. This may have meant that in certain periods only two Johannesburg judges came to Pretoria, but more Pretoria judges served in Johannesburg. In this term that we have just ended, I think five Pretoria judges served in Johannesburg and had the advantage of exposure to the Johannesburg work.”

- (21) “Over the 23 years that I have been on the bench, I have heard nothing but appreciation by Johannesburg judges at being afforded the opportunity of coming to Pretoria, they welcome it. Of course the travelling is burdensome, but I have yet to hear of a Johannesburg judge who did not end a stint in Pretoria which he did not think enriched him.”
- (22) “The establishment of a large pool of judges was of great value in the assignment of specific tasks. Thus when intellectual property matters had to be heard in Pretoria it was advisable to draw on judicial talent from Johannesburg. On another occasion there were conflicting decisions in the Witwatersrand Local Division on a point relating to drunken driving prosecutions.” Judge Streicher may remember that case, I set up a full bench consisting of myself, Judge Van Dijkhorst and Judge Du Plessis, two from the one and one from the other division and having a pool of 56 judges to draw from, that enables that sort of thing to be done very beneficially. You are hampered if you have a small division. If Pretoria were to be cut down, to say a single independent division of 20 judges, it is going to be difficult to set up this sort of tribunal on short notice and it happens quite often that you have to set up a tribunal.”
- (23) “Although the Johannesburg court is a local division it is in reality functioning as a provincial division. This started already with the Diemont Commission and I myself have I think now arranged things so that all work, starting off in Johannesburg or in the Witwatersrand, is heard in Johannesburg.”
- (24) “I also, in exercise of my powers in the Supreme Court act, directed that all appeals from all magisterial cases and civil cases are heard in Johannesburg and I did this advisedly so that mainly or absolutely for the convenience of litigants so that it can no longer be said that it is inconvenient when you have an appeal from a magistrate sitting in Germiston that counsel who are briefed from Johannesburg, have to travel to Pretoria, that no longer exists. So advocates may

be admitted there, in all, in practical terms Johannesburg functions as a fully fledged independent division.”

- (25) “As Judge President, I exercise overall control over the WLD. It is my practice to spend alternate weeks in Pretoria and in Johannesburg, although I at times begin my day in Pretoria and end off in Johannesburg. When I am not in Johannesburg I can usually be reached by telephone. The Deputy Judge President exercises control when I am in Johannesburg and certain specific tasks were delegated to him, amongst others to oversee the staff and also to deal for instance with preferential dates and other matters, there are numerous other matters and we are in constant communication. It is, to a large extent the administration of the division, is team work between the DJP and myself and, therefore, the system works I suggest reasonably well.”
- (26) “The most important function of the Judge President in a division such as this, is the planning of the rolls, this is an enormous task, assigning tasks to 53 judges or 55 judges for an entire term of nine or 10 weeks. Then when alterations have to be made because a judge falls ill or a case did not finish, that is the main task of the DJP, that very often occurs in consultation with the DJP. Smaller matters which require continuous attention are, for instance, the following: an increasing source of work is bail appeals, these come up as often I should imagine as one a week. A judge has to be assigned on short notice for that task. When I am in Johannesburg I do that, when I am not the DJP does that. But it is - what I am trying to say is that there is no difficulty with a single Judge President administering two divisions.”
- (27) “Whatever you, Commission, recommend about the WLD and the TPD I suggest that it is imperative that in some shape or form there should be reserved the concept of a unitary bench with the possibility of movements to and fro and that entails the retention of a system of a single controlling authority, a single Judge President.”
- (28) “Complete severance of the two divisions is likely to create short-term and long-term problems. In the short-term, where are the judges to come from? If you visualise the requirements of a new independent Johannesburg division, you will require at least 35 judges to man the Johannesburg division. I say that because at present I need, for the ordinary work in Johannesburg, I need 29 judges and even then the workload is very substantial. You then, if it is going to be independent, you have to make allowance for judges on long leave, illness and also taking care possibly of the two circuits of Springs and Vereeniging. Of the

present incumbent, Johannesburg judges a few are not likely to be serving much longer and it is unfortunately a fact that it is no longer possible to attract Johannesburg advocates of adequate standing to accept permanent judicial appointments.”

(29) “I mentioned earlier that the present complement is 56 judges, 29 then are Johannesburg based and the others are Pretoria based. It is frequently necessary to bring judges from Pretoria, simply because there are not sufficient Johannesburg judges to do the work. If you give effect to the suggestion of the Johannesburg Bar and create an independent judicial Superior Division for Johannesburg, Pretoria judges are not likely to accept appointment there so where are the judges going to come from?”

(30) “**CHAIRMAN:** Well pausing to consider that scenario, in that eventuality, in that theoretical eventuality, what complement of judges do you think Pretoria would require, roughly?”

**ELOFF JP:** On the basis that...(intervenes)

**CHAIRMAN:** That is serves the adjoining provinces, it and only it serves the adjoining provinces?

**ELOFF JP:** It requires a complement of 25 at least.”

(31) “**CHAIRMAN:** I know that you sit often in court, could you give the Commission some rough idea of the time which the planning of the rolls requires, it must be a matter of weeks and weeks and weeks?”

**ELOFF JP:** The planning of the rolls is about a fortnight, fulltime.

**CHAIRMAN:** A fortnight quarterly?

**ELOFF JP:** Every quarter is a fortnight’s work yes and it is a tremendous task for a big division like this, there are wheels within wheels, you have to think; it involves just studying the appeals that come up, full bench and magistrate appeals, to decide who should deal with what appeal. I do pursue the policy of horses for courses, for tax cases for instance I have to set up special benches, for intellectual property cases I have to set up special benches, for trade mark issues I have to take care of that too and every so often I have to set up a full bench where there are conflicting decisions and that again involves a *delectus personae* which is quite complicated.”

- (31a) “The middle of page 13, "the matter of Transvaal Provincial Division having concurrent jurisdiction as mentioned by some respondents." The advantage of retaining it is that it may overcome jurisdictional problems. It is, however, of little practical importance and if that troubles Johannesburg one can do away with that and give Johannesburg exclusive jurisdiction over the WLD.”
- (32) “On average one can say that Pretoria handles motion court matters, appeals and civil trials about two-thirds of what is managed in Johannesburg. Of course Pretoria has other burdens which Johannesburg does not have, for instance more patent cases, review matters and the like. It is unquestionably a fact that Johannesburg is the financial centre, not only of the Transvaal but of Southern Africa and it is the centre in which the most litigation in the country is initiated.”
- (33) “I contend the fact that Johannesburg is the financial centre of the Republic and of Southern Africa and that the volume of work dealt with exceeds that of other divisions, is of relative importance. It has not been my experience that it is necessary for me to spend more time in Johannesburg than Pretoria. The problems there do not increase proportionate to the number of cases, very often Pretoria has more exacting problems than Johannesburg. But more importantly, it is often seen that the nerve centre of an organisation is not situated where the greatest activity takes place.”
- (34) I suggest there should be a new division with a new name, it should be the Northern Division of the Supreme Court or the High Court of South Africa. Its headquarters should be in Pretoria ...”
- (35) “I suggest that you recommend that a statute be passed providing for this Northern Division, a unitary division within which recognition can be given to the position of Johannesburg which can be given, for all practical purposes, the status of a provincial division, but retention of a unitary bench with single control and, turning the page, the area of jurisdiction shall embrace the areas with boundaries of the three provinces.”
- (36) “**MR MALULEKE:** The Johannesburg Bar made the submission that the time has come to make the Johannesburg court or the WLD an independent division. If that was to be the recommendation say of this Commission and coupled with a recommendation that the three provinces should have their own courts, it would be a disaster for the Pretoria court would you not say?”

**ELOFF JP:** Well disaster, it would have the practical consequence that the workload in what is left would be substantially reduced. The Chairman asked me a little while ago what the complement should be if the three provinces are retained under the jurisdiction but if that is not to take place it will substantially reduce the workload. We then have to deal with the work which is generated in Gauteng outside of Johannesburg. I have given thought to this and I find it difficult to quantify in terms of how many judges are required but it will certainly be less, it will certainly be less and at a rough guess I should imagine that Pretoria will then be able to do with about 18 judges.”

- (37) “**MR MALULEKE:** Because I am quite worried ... you make a very good point that there is a reluctance for instance amongst eminent advocates say in Johannesburg in particular, to consider appointments to the bench and that difficulty would actually be multiplied if you were to create small courts in the outlying areas or adjoining provinces, that you would not find people keen to accept appointments?”

**ELOFF JP:** That is correct.

**MR MALULEKE:** But can I find out something, why would you say, I just want to get your opinion, that the advocates in Johannesburg in particular should show this type of reluctance of accepting appointments to the bench, even to Pretoria or Johannesburg?

**ELOFF JP:** It is mainly personal reasons, there are a variety of reasons, I can only best answer your question by giving you the reasons which have been given me by counsel whom I have approached. The many promising talented men find the cost of maintaining their children and putting them through schools and universities such that they cannot do that on a judge's salary. A second inhibiting factor is the creation of the Judicial Service Commission with the involvement that a man's name is put up and he has to be interrogated, answer questions in public and then may find at the end of the day that he is not accepted which may be interpreted to many as being found wanting. That sort of situation is not attractive and it is an inhibiting factor.

**CHAIRMAN:** Is your impression that that is a compelling inhibiting factor?

**ELOFF JP:** Indeed.”

- (38) “**MR MALULEKE:** One of the complaints ... I think from Advocate Wallis of the General Bar Council, and I think from other attorneys as well, is that because of the size of the court in Johannesburg and Pretoria it is really a problem for litigants to litigate there even for some advocates because of the congestion; and you yourself have mentioned that it is a mammoth task to administer 53 judges

and create their rolls. It takes you often two weeks to do that per quarter. You spend a lot of time, good judge as you are, you spend a lot of time on administration. Would you not say that to have a more streamlined court of say 20 to 25 judges for a Judge President it is a better administration hurdle than to run a very huge bench of 50 to 60 judges for one Judge President?

**ELOFF JP:** It means if the one Judge President has to plan a duty roster for 50 judges then he has simply to sit in court less than he would otherwise.”

- (39) “**CHAIRMAN:** A further... hypothetical question I put to you is the following: assume that the Commission were to recommend that the WLD be given complete judicial autonomy, what in your submission should be the workload of the WLD in such a situation, for example Vereeniging, Springs, what else? What, if that were to be the scenario, what in your considered judgment would be an equitable division of labour to put it thus?

**ELOFF JP:** I think that they may also give thought to establish circuits elsewhere. I have had an occasion in the past to set up a circuit at Roodepoort, there was a case where there were 35 accused and they could not be accommodated anywhere else so I set up a circuit court at Roodepoort where they could accommodate that sort of case. It could, the possibility could also be considered of perhaps a circuit in Soweto.”

- (40) “**CHAIRMAN:** If the recommendation should be that the WLD should be constituted an independent, autonomous court with its own Judge President then as between Johannesburg and the rest of Gauteng and the adjoining provinces, what in your judgment would represent a fair division of work?

**ELOFF JP:** Well what it should not be is that which is suggested in the memorandum of the GBC as a third alternative, they suggest that Johannesburg should now take in a sort of strip extending to Carletonville and Klerksdorp on the one hand and I think Bethal on the other hand. That, with respect, is not practicable and it solves no problems at all.”

- (41) If Johannesburg is to be completely severed and have its own Judge President, I suppose that one has to accept the reality, it will have to be a unique sort of division, mainly an urbanised, unlike any other, unlike Cape Town, unlike any other division, a completely urbanised division with very limited circuit functions, perhaps Springs, Vereeniging and I imagine Roodepoort. But even Roodeport is so much part of the WLD it does not add anything. So it will be a unique division with and frankly I am sitting thinking hard of how to answer your question, certainly it will not add to the equities or the judicial functioning

if it were to be given the two strips suggested by the General Bar Council, and with respect to the draughtsmen I do not think that is a well considered idea at all.”

**LATER AND BY WAY OF REJOINDER, SOME OF THE POINTS MADE BY THE LEARNED JUDGE PRESIDENT WERE THE FOLLOWING:**

- (42) I myself have, over the past years, frequently sat in divorce matters in the WLD where children are involved or some problem of access or that sort is involved it has been invaluable to have had the professional assistance of the Family Advocate. Since that system has been invoked, numerous cases have been settled because parties respect the view of the Family Advocate and it has been of great importance in coming to an amicable settlement.”
- (43) “I now would like to make a few statements in regard to the possibility of Superior Courts being established in the three adjoining provinces. You have had the advantage of the submission by the Pretoria Bar and, with respect, it does seem quite manifest from that that there is no justification for Superior Courts, whether Provincial or Local, at this stage. But that is not to say that that may not take place in the future. Time will show that and I suggest there is some virtue in the suggestion that emanated from Judge Flemming that one should perhaps start off by channelling work to the provinces where there is a potential for the growth of a division by exercising the functions of the Judge President under section 7 of the Supreme Court Act and that is to provide for circuit local divisions to hear also civil cases.”
- (44) “I said earlier and that is, I think accepted all around, that as far as criminal cases are concerned that is being dealt with very adequately by the circuit courts which attend all the centres, all the small centres and it is really adequately dealt with by the Attorney General. I think that there has been no challenge of what we contend that the only real justification for the establishment of Provincial or Local Divisions in the adjoining provinces is if there is adequate civil litigation likely to be generated there.”
- (45) “We must think short-term and long-term. In the short-term I suggest that there is no justification whatsoever but Nelspruit might grow, it might attract sufficient industries, it might generate sufficient litigation and from a circuit local division could grow to possibly first of all a local division and a provincial division ultimately, but that is the way, putting it differently of testing the market, testing the needs is first of all if there is that call for a circuit local division and while I

am Judge President I shall make it my business if there is that need, to establish circuit local divisions.”

(46) “I should mention that it has been mentioned by Judge Flemming that judges going on circuit could hear divorces and proposed motions. With respect, that is just not on. In these days judges going on circuit have such full programmes they can hardly cope. They are loaded, they start the morning very often at 08:00 and sit through to 20:00 Judge Curlewis just recently finished the eastern circuits and he finished 70 cases in a short space of two months and to do that he had to start in the mornings at 08:00 and sometimes sit through it until 20:00.”

(47) “I return now to the question of the Witwatersand Local Division and whether it should be given complete autonomy. I suggest that if the Commission does recommend that the WLD should be given complete autonomy and severed from the TPD, it should also recommend a change to the law to facilitate the easy exchange of judges. At present the Supreme Court Act provides that judges may be seconded from one division to the other, I have had occasion to use this and you need the concurrence to the Minister ...(intervenes)

**CHAIRMAN:** You say the whole present procedure is far too cumbersome and time consuming?

**ELOFF JP:** I recommend that this Commission should recommend an alteration, amendment of the Supreme Court Act to provide that when two Judges President agree, the judge can be - and they can agree orally, it will vest the judge who is then seconded with jurisdiction to serve in another division. And that may overcome the difficulty I have mentioned earlier that very often the TPD has a log jam and you need a judge from the WLD and if that can be done by one JP ringing the other it will certainly go far to alleviate the position.”

(48) “I would like now to turn to one of the aspects mentioned by Judge Streicher about argument and support of Johannesburg being given complete autonomy and he mentioned that there are problems in regard to the Supreme Court, Johannesburg, it was mentioned that it is dirty, slovenly and that there are staff problems. With respect those problems are not going to fly away or become any easier if you have a Judge President solely for Johannesburg.”

(48a) “We are dealing with a real problem, a department that moves slowly, appointments not being made, the appointment of a Registrar was delayed for about a year, posts are not being filled. I myself wrote letters to the Minister of

Administration and it is just, I do not know whether even if you had three or four Judges President it would not have improved that situation in any way.”

- (49) “Again something else, a member of the Commission raised the question whether, if Johannesburg is to be given autonomy, it should not have added to its area of jurisdiction possibly Heidelberg on the one hand and Oberholzer on the other. With respect, for what? Is it going to serve the needs of the people living in Oberholzer or Heidelberg, is it going to make any difference to them whether they send their appeals to Pretoria or Johannesburg, one is as close or as far as the other.”
- (50) “**MR MALULEKE:** I just want to get a bit of clarity. I think Advocate Van der Linde this morning made references to the Supreme Court Act relating to the appointment of judges and made the point that in fact the notion that they are Johannesburg judges so to speak is not entirely correct because all the judges are appointed by the TPD. Would that be the correct ...(intervenes)

**ELOFF JP:** No, they are appointed by the State President as judges of the Transvaal Provincial Division and the Witwatersand Local Division. But what he meant I think, what he meant was that I myself I think am responsible for that or rather put it this way, when a judge is appointed he is appointed a judge of a particular division, in this case the TPD. He has, however for certain reasons to choose a *domicile* and the people coming from the Johannesburg Bar normally opt for a *domicile* in Johannesburg and other judges opt for a *domicile* in Pretoria. But I myself have, in order to limit travelling time to and fro, have largely kept the Johannesburg judges if I might term them as such, to serve in Johannesburg and that is I think what he meant.”

**(II) THE HON. MR. JUSTICE H.C.J. FLEMMING, DEPUTY JUDGE PRESIDENT OF THE WITWATERSRAND LOCAL DIVISION OF THE SUPREME COURT**

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

- (1) “Let me deal shortly with the different divisions. I want to preface it by saying that I talk on the basis of a firm belief that Pretoria will not be harmed at all by giving the WLD the status which the Judge President has conceded, that is a complete jurisdiction of its own.”
- (2) “The notion that judges in that smaller division have a lesser experience than in the larger division is, unfortunately, contrary to my experience. In the Free State for the five years that I was there I did the Income Tax court, locally I have sat on two or three Income Tax appeals but never done any Income Tax court. One did the intellectual property, infringement of trade rights, copyrights, whatever there was you did, farming disputes which I do not come across here.”
- (3) “I accept what the Judge President has said about his assessment in Pretoria because I have nothing better to go on but I believe that even if the other three provinces split off, this will be a division in view of the government's presence which will never be smaller than Cape Town or Natal.”
- (4) “...I think the bottom line is simply that you cannot expect those provinces to be otherwise than clamouring for their own division and their own universities. I do not think that is even debatable and I am not going to stand there, it is a reality of life, it is a question of time schedule.”
- (5) “Let me concentrate on Johannesburg. Apart from the fact that 35 plus 18 cannot humanly be adequately coped with, it simply does not work except at the price of a waste of time, delay and expense.”
- (6) “...the Judge President nowadays does the civil trials in Johannesburg, that is a section of the work which he does every second week and I am not criticising

him because his work is there and the Law Society is there, so often he has to leave early and go back to Pretoria so I find a judge coming to me and saying look I have been standing there for 10 minutes for the JP to come back, what is going on and I say I think he has probably left. Before I interfere I must run down and go and find out, it takes his time, it takes my time. You find the situation where a judge now wanted a part-heard matter to be postponed. I have not got the authority to arrange with him either that he goes through that week to Pretoria, he is only there for one week, he does circuit court, then it is recess, then he has got long leave so it is October. I have not got the authority to say sit there in Pretoria to complete that case that week.”

- (7) “In this past week I have made a note of the incidents, a Registrar wasting 25 minutes of his time, judges their time, taking my time, all things that can be avoided by more effective administration. The previous week I, not this week that is past, I had to give judgment on a Friday and because of that I could not take another criminal trial on the Wednesday and the Thursday. I hoped to be able to work on the specific judgment which I did not find particularly easy, in fact both those days I ran around until about 12:00 before I could attend to my own things and mostly to sort out things that go wrong which I believe could have been avoided if we had immediate administration. I prefer not to go into detail unnecessarily because you will realise this is an area where there are two perceptions, the Judge President whom I respect and with whom I have to work has certain views, my view is it is not effective.”
- (8) “If one takes the total population of, let us say Witbank, Middelburg and Nelspruit and you compare that with the total population of let us say the Free State, and I choose the Free State because that is the only one which is a small division and which is not like the Eastern Cape, split into three, then one can have a good idea of what litigation you may expect. One will obviously also have to count the corporate bodies registered in that area but I think if you look at that, it is a sustainable source of work.”
- (9) “Now I believe that if you have the prospect there that the work will come there, attorneys will go there, barristers will settle there and the growth will take place naturally as it has done, if you will remember there was a stage when it was announced with great importance that it has now been decided that there will always during the week be one judge available in Johannesburg. It started with one judge, Durban started with little, I believe but I may be corrected, George now also hears civil matters in circuit court but I am not quite certain.”

- (10) “Then lastly the Judicial Services Commission. The idea of such a commission was mooted with the previous Minister of Justice before Constitutional Courts began. ...I urged on the Minister not to introduce that for one reason *inter alia* if the Minister appoints a wrong person he must get different parliaments, he is accountable for it, he can be asked why did you appoint so and not so, he takes full responsibility. With this commission it becomes possible for the Minister to have a rigged commission if I could call it that, I am not saying that he did so, I am saying it is possible. That commission will take any politically convenient or desirable decisions and if the appointment comes through the Minister just puts up his hands and says I cannot do any better which means that instead of having increased responsibility for appointments, you have a decreased one. We have seen that from members of that commission a person applies for the post and despite his ability, the first question to him is where were you during the struggle - end of his appointment. As the JP has mentioned you get another man who is able and who is grilled to the extent that he leaves the meeting or that he, for his life long is blemished as somebody who applied for a post and was not seen fit. I do not think this is acceptable, I do not think it is just and I think it is counter-productive in the sense that it loses those able men who otherwise might, might just be persuaded to come to the bench.

**CHAIRMAN:** You share the views of the Judge President?

**FLEMMING DJP:** I do certainly.”

- (11) **MR MALULEKE:** On this very last point are you suggesting that this Commission must recommend that the JSC should be scrapped and possibly revert to the old system where the Minister of Justice just appointed whoever he pleased?

**FLEMMING DJP:** Yes I am suggesting the return to the stage where the Minister of Justice, who is a political appointee, exercises that prerogative by going to the State President and the State President makes the appointment on the recommendation of him and other people will go according to their knowledge of the people and of the needs. To put it shortly, if the JP needs a man on patents in Pretoria in the old system he would come and say look I suggest A he is able, B he has got special skills, C if I have requirements at the moment I recommend him, look at his qualities. The department do that, the security people do that, they look at his credentials, everybody investigates him, they can consult and the Minister of Justice goes to the State President and he takes the final decision.

**MR MALULEKE:** Well as you are aware it does not quite really fall within our Terms of Reference, that is my personal view in any event but nonetheless I would say that this is an issue which parties would have made very strong representations to the Constitutional Assembly on it because as I understand it, it was not a decision of lawyers or judges, it was a whole national issue and people debated this. Possibly it can be a wrong conclusion, I do not know but I

do not know whether the Commission can now come and recommend that?"

**(III) THE HON. MR. JUSTICE P.E. STREICHER OF THE TRANSVAAL PROVINCIAL DIVISION OF THE SUPREME COURT**

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

- (1) “In the memorandum submitted by us, we expressed the belief that the time has now arrived for the court in Johannesburg to be given the status of an Independent Division of the Supreme Court, implying that it should have its own Judge President who can devote all his time to the administration of this court.”
- (2) “The memorandum that was submitted by us contained the signatures of 17 of the, at that time 23 permanent judges of the Witwatersrand Local Division. Since the memorandum was submitted, three more judges have been appointed to the Witwatersrand Local Division. All three of those judges have signed and addendum to the memorandum indicating their agreement with the submissions set out in the memorandum. In addition three judges who had not previously signed the memorandum have now done so.”
- (3) “Judge Leveson submitted his own memorandum in which he proposed a single court for the whole of Transvaal seated at Midrand. He has now also signed the memorandum, the addendum to our memorandum as an alternative to his proposal.”
- (4) “Judge Flemming submitted his own memorandum in which he proposed that the Johannesburg court should be independent and should have its own Judge President and that is what he submitted today as well.”
- (5) “Judge Schabert has not signed the memorandum but has given me a copy of a note addressed to the Chairman of the Hoexter Commission, and the first paragraph thereof says:

*“I hereby wish to state that I support in principle the idea of an Independent Division of the Supreme Court with an own Judge President for the area presently constituting the Witwatersrand Local Division. It follows that, on the assumption that the Johannesburg court will remain in Johannesburg, all the permanent judges of the Witwatersrand Local*

*Division are in favour of the Johannesburg court being given the status of an Independent Division of the Supreme Court with its own Judge President.”*

- (6) “The Johannesburg judges who have signed for submissions to the Commission are in favour of an Independent Division with its own Judge President because they believe that the Johannesburg court requires the fulltime services of a Judge President and that the efficiency of the court can only benefit from such fulltime services. Their view in this regard is shared by the Johannesburg Bar. Furthermore, the interests of the Johannesburg court often differ from those of the Pretoria court. We believe that the judges of the Johannesburg court should have an effective voice on issues where the interests of Johannesburg and Pretoria may differ.”
- (7) “The administrative personnel of the Johannesburg court consist of a Chief Registrar, two Senior Registrars, 10 Registrars and 124 other employees. During each day of the second term of this year 27 to 32 judges will be doing duty in the Johannesburg court. Three Johannesburg judges will be on circuit during the term.”
- (8) “The headquarters of the Transvaal Provincial Division are at Pretoria. Every second week the Judge President commutes from Pretoria to Johannesburg. When he is in Johannesburg he is in charge of the Johannesburg court and makes decisions in respect of the Johannesburg court. Even when he is in Pretoria he makes decisions concerning the administration of the Johannesburg court. He deals direct with the Johannesburg judges, with the Registrar and his personnel, with the Attorney General, the advocates and the attorneys. As can be expected, the Judge President does not inform the Deputy Judge President of every decision that he makes. His predecessor did not do so and his successor will not do so. The result is that the Deputy Judge President often does not know what is happening in the division which he is supposed to control and that he does not know what the judges, whose work he is supposed to organise, are doing and the same would apply to his predecessor and will apply to his successor.”
- (9) “The division has in the past suffered as a result of not having had its own Judge President and will continue to suffer for as long as it does not have its own Judge President with its headquarters in Johannesburg. I doubt that any Judge who has had the experience of sitting in Johannesburg and Pretoria, will deny that the general administration of the courts in Pretoria is better than in Johannesburg; that the maintenance and cleaning services in Pretoria are better than in

Johannesburg, that the security arrangements in Pretoria are better than in Johannesburg and that the courts and the judge's chambers in Pretoria are better equipped than in Johannesburg.”

- (10) “The court needs a person who can, on a continuous basis and with the authority of a Judge President, deal with the Registrar of the court, the Attorney General, the Advocates and the attorneys in respect of problems concerning the administration of the court and who can add his voice and authority to that of the Registrar in the Registrar's dealing with the various state departments in order to get things done at the Court.”
- (11) “In his written submissions to the Commission, the Judge President advanced four arguments against the granting of the independent status to the Johannesburg court. The first argument is that the present system has the advantage of crosspollination, of exposure of Transvaal judges of the circumstances of work of both centres and of facility of collective wisdom of a large bench. I agree that these are advantages of the present system. However, the exchange of judges also has disadvantages. Many hours and nervous energy are lost on the road and inconvenience is caused by having to give up one's chambers for the use of another judge and having to use other chambers.”
- (12) “In any event, since appeals are being heard in Johannesburg the exchange of judges has diminished considerably. According to the Diemot Commission Report the system used to be that judges of the Transvaal Provincial Division were divided into two groups, each of which was required to do duty for approximately half a term or one month in each court. In the second term of this year only one Johannesburg judge will be doing duty in Pretoria for the full duration of the term and one other Johannesburg judge will be doing duty in the Pretoria court for five days. Four Pretoria judges will be doing duty in Johannesburg most of the time, two Pretoria judges will be doing civil appeals and full bench appeals during the first week of the terms and on four days of the terms one Pretoria judge will be doing labour appeals in Johannesburg.”
- (13) “The fourth argument is that the Johannesburg court will require the availability of approximately 35 judges and that it is not clear from which source these judges will be drawn. In 1989 there were 12 permanent Johannesburg judges. There are now, seven years later, 26 permanent Johannesburg judges. If nine more judges have to be found for the Johannesburg court they will be found, if not from amongst the ranks of the 551 advocates practising at the Johannesburg Bar the 2,084 practising in Johannesburg, the East Rand and the West Rand or

the academics at the two universities in Johannesburg, then from elsewhere in the country. In any event, if the Pretoria judges are prepared to work in the Johannesburg court while the Johannesburg Court forms part of the Transvaal Provincial Division they would presumably also be prepared to do so when the Johannesburg court has been granted the status of an independent court. The same would apply to Pretoria judges, if they are prepared - Pretoria advocates, if they are prepared to sit in Johannesburg if there are no vacancies in Pretoria.”

- (14) “The Judge President also mentioned the difficulty that may arise with circuits and he stated that there are 22 circuits that have to be manned per year. Of course at present the Springs circuit and the Vereeniging circuit are manned by Johannesburg judges most of the time and I believe in Springs there are three circuits per year and in Vereeniging four, so seven of those 22 are at present in the main manned by Johannesburg judges. In any event the Johannesburg judges, I doubt that the Johannesburg judges will have any objection to the addition of other circuits as their responsibility.”
- (15) “As the busiest division of the Supreme Court which is served by more judges than any other division in the country and whose administration is more demanding than any other court in the country, the Johannesburg is, more than any other court in the country, entitled to be granted independent status with its own Judge President. The granting of such independence to the Johannesburg court will merely recognise the *de facto* position, it will not affect the administration of justice adversely and will enhance the efficiency of the Johannesburg court.”
- (16) “In our view the law giver should hesitate not to give effect to the opinion of all the permanent judges of the Johannesburg court, even more so in the light of the fact that their opinion is shared by the Johannesburg Bar. We, therefore, urge the Commission to strongly recommend that the Johannesburg court be made an Independent Division with the status of a Provincial Division with its own Judge President.”

(IV) THE HON. MR. JUSTICE J.F. MYBURGH OF THE TRANSVAAL PROVINCIAL DIVISION OF THE SUPREME COURT

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

- (1) “ ... I would like to emphasize three points to the Commission. The first is an obvious point and that is that we speak on behalf of 26 judges, the whole Johannesburg Court and this is not a maverick group nor is it a coterie of malcontents. It is a unanimous view of the largest court in the country. It is a decision arrived at not lightly and after much debate.”
- (2) “The second point I would like to make is how did it come about that 26 judges have come to a unanimous view? You yourself have sat in the Appellate Division and will appreciate how difficult it is to get five people to agree. Johannesburg has a reputation for consisting of *prima donnas*, our Judge President will give evidence to that effect. I would like to suggest that the reason this came about is because of a deep rooted dissatisfaction with the present system. I can speak of that because I am there every day of my working life.”
- (3) “I am sure you have received the impression from the Judge President’s submissions, both his written and oral submissions, that the Johannesburg court functions effectively. I would not like you to leave today with that impression. This is a court that is not functioning properly, hence the dissatisfaction. We are badly served by the Department of Public Works ...”
- (4) “The Department of Public Works is responsible for our building. It is a building which was built in the late 1970's it has never been maintained, it has never been re-painted or re-wallpapered, it was left in the condition from the late 1970's until today when now, in this year they have started re-painting at our request some of the dirtier aspects of our court; no proper maintenance. The toilets which the public use do not function properly, that has been a matter of public debate in the newspapers as a result of a memorandum prepared by the Chairman of the Johannesburg Bar Council. We have doors on our floors which not only do not lock, they do not have door handles on them, the doors just swing open and shut. In other words there is no physical security to judges chambers whatsoever. Any member of the public can walk through a door, it is entirely open to him.”

(5) “In regard to the Department of Justice which of course administers the Registrar’s office we have an inefficient Registrar’s office and let us deal with one aspect just give you a concrete example that we deal with on a daily basis. The Department of Justice is responsible for security. I have told you about the lack of physical security but we have security officers, we are satisfied that at least one of their number was stealing from judges chambers, we eventually got the police in to investigate, they could not find the person. Eventually one of the number of security officers was arrested stealing from a hawker, arrested by his colleagues and the Department of Justice refused to suspend him so he remained on the roll.”

(6) “**CHAIRMAN:** ... last year we were told that of the 10 Registrars, nine were - in the words of the Senior Registrar, taken off the street \without any prior experience.

**MYBURGH J:** Yes he will also tell you that there are no formal facilities for the training of his staff so when he gets given an inexperienced person, there is no basis on which he gets sent away for a month to be trained, the training takes place while they have to run that busy office, in-house with over 100 people involved.”

(7) “Now I am not suggesting for the moment that our present Judge President or Deputy Judge President are to blame for this but that is the work environment, that is why you need somebody there fulltime to do all this work, to ensure that other people do their work properly. We in the end, after a great deal of debate amongst ourselves, have come to the conclusion that this is our solution, we need a fulltime Judge President. The last remark I would like to make is this that you will be aware that since 1946 to various Commission representations have been made that Johannesburg should get its own division. Here we are, 50 years later, making the same submissions that have been made in the past or similar submissions.”

(8) “**STREICHER J:** ... I do not think that Johannesburg will have any objection to take over some of the circuits that are presently being manned by Pretoria judges. But as it is, Johannesburg in the main serves the Springs circuit and the Vereeniging circuit and those are seven of the 22 circuits of the Transvaal Provincial Division.

**MR MALULEKE:** But then if the Commission may know, what is the Johannesburg judges’ independent view about the question of whether each province should have its division, particularly having regard to the former Transvaal provinces?

**STREICHER J:** The Johannesburg judges said in the memorandum which they signed that they support the Pretoria judges in this regard.”

(V) **ADV P.R. VAN ROOYEN SC, OF THE PRETORIA BAR ON BEHALF BOTH OF THE PRETORIA BAR AND THE PRETORIA ATTORNEYS ASSOCIATION**

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

- (1) “From the outset we decided, that is the Pretoria attorneys, more than 450 in amount and us of course more than 250 in number, decided that we would like to approach the Commission on an objective basis and for that we required scientific investigation and for that we jointly appointed the Bureau of Market Research of the University of South Africa, Professor Martins and his team. So, therefore, we have jointly incurred that expense, we have had numerous consultations and broadly speaking on all material points we are *ad idem* and, therefor, I have been requested by the Pretoria Attorneys Association, who are also present here, that I must mention that this is in reality a joint presentation.”
- (2) “As a basic point of departure access to justice is a prime consideration. The words of the Minister when he opened his budget speech in 1995 he said the key objective of the justice system in the new democratic South Africa is expressed in three words “access to justice”. But of course access to justice does not mean merely a question of proximity, it means vastly more. It means access to quality justice and it also means access to justice in an affordable manner. It also requires that there must be cost effectiveness throughout the system. When we talk about quality, it is the quality of the bench, the capability of having a wide spectrum of talent available to deal with all conceivable types of cases.”
- (3) “That is the first aspect but it is not only quality of the bench. It is the quality of the Bar and the Side Bar. Exactly the same spread of talent is required because to achieve successful access to justice there must be knowledgeable and expert assistance to the client who knows that he is in good hands.”
- (4) “Then of course there is also vital the whole questions of cost effectiveness and that question of cost effectiveness also had or has wide ramifications. It touches the aspect of capital costs, it costs many millions to build Supreme Courts with all the necessary support facilities. There is a vast amount of capital involved also in creating the necessary support departments.”
- (5) “...and we think of cost effectiveness obviously there is also the cost of the

litigant and in that regard the Judge President also referred to it that travelling costs as such, subsistence in transport is really negligible in comparison to the cost of representation and experts. It is much cheaper for a client and a few witnesses or a few interested parties to travel and maintain themselves than it is to pay for the transportation and subsistence and additional fees of people, experts and representatives who are being taken away from their home base.”

- (6) “But especially also thinking of the disadvantaged communities, we say that the contact point is in the fields of criminal law, magistrates court, regional court, very seldom in the Supreme Court but then in the outlying areas before a circuit which is held locally...”
- (7) “The second contact point in civil matters, especially for the disadvantaged communities will also be at magistrates Court level where jurisdiction now runs up to R100 000,00.”
- (8) “Then there is a third major contact point and that is, that goes for all communities, and that is in the field of matrimonial matters, divorces just simply are extremely high in number and as far as matrimonial matters, where my learned friend Mr Bertelsman will elaborate on a bit, it seems to be that we are satisfied, also showing our objectivity that matrimonial matters should be taken to the people. They should not be forced to travel long distances to come to, for example, Pretoria in order to attain an unopposed divorce.”
- (9) “...basically speaking it boils down to this that these family matters, which also include maintenance, should be adjudicated upon in an expert forum as a division of the Supreme Court or with the same status as the Supreme Court being brought closer to the people but where time and attention can be given to quality and to make use of a multi-disciplinary approach and I feel I have said more than enough now, my learned friend will expand on it.”
- (10) “As far as motions are concerned, it is not necessary, it is on affidavit, you do not need immediate access distance wise. As far as appeals are concerned, that is all on the record, the witnesses are not there, they are not called, you do not require immediate proximity and then we come to the points which deal directly with your Terms of Reference and that is, let us think of access to the Supreme Court or the High Court. There we once again have the two facets, criminal trials and civil trials. Now the criminal trials have, for many years, been dealt with on a

circuit basis and the circuit goes to where the need is and the Judge President has said that it has worked well and we can only endorse it that as far as criminal circuits are concerned, being brought to the towns where they are required, has worked well and is working well and certainly there is no need to create any new divisions of the Supreme Court in order to deal effectively and satisfactorily with criminal matters.”

- (11) “Then we come to the question of the civil trials in the Supreme Court. That is really the crux of the matter, the brunt of the matter as to whether the present system works efficaciously or whether there are problems or where there is a need for new divisions, etcetera. That is really where the crux is, what is the need as far as civil trials are concerned, what is the quality, what will the cost effectiveness be, present system, possible alternatives and that is immediately where the Professor Martin’s investigation becomes vitally important.”
- (12) “In Pretoria roughly 35,4% of the cases involved sums of R100 000,00 or more and 64,6% of the cases involved sums below R100 000,00. The number of cases with plaintiff and defendant resident in the same province is expected to decline to 44 in the North West; 58 in the Eastern Transvaal and 40 in the Northern Province. That is now in table 7 on the next page.”
- (13) “That then leads us to the submissions which we made on the next page of our representations, page 9 -5.6 “Based on these figures it is our respectful submission that the demand for access to the Supreme Court in matters where the amount in dispute is more than R100 000,00 does not justify the creation of new Supreme Courts at all.” Then we carry on with the next point: “As will be demonstrated herein below, the geographical and demographic realities of the old jurisdiction actually indicate that the creation of new Supreme Courts will be done to the detriment of the public rather than making the Supreme Court more accessible.” Then we say: “The small number of cases would, in our respectful submission, justify neither the creation of a local nor a provincial division of the Supreme Court in any other province other than Gauteng at all.”
- (14) “We say: Mmabatho is poorly located, close to the Botswana border, far removed from the main population concentrations and centres of economic activity in the province. Twenty six percent of the total population of the North West province live in the districts of Odi and Moretele.”

- (15) “...We must also bear in mind that there is a very considerable industrial component and manufacturing component in Garankuwa. In fact, when Rosslyn, which was in the Republic, Rosslyn 2 was proclaimed and attempted to be marketed by the developers, Gencor, there were no takers, why? Because everybody was going to the Garankuwa industrial area which was in Bophuthatswana and where there were very considerable tax and other concessions available. So Rosslyn 2 died a total natural death, in fact it was bought thereafter for conversion to residential development due to the Garankuwa industrial development. It not only has the highest concentration of people in the north West province, it also has a very substantial industrial base. That is around the corner from Pretoria, 300 kilometres away from Mmabatho but between 30 and 50 kilometres from Pretoria.”
- (16) “Now under the system which was, where Bophuthatswana, where the court in Mmabatho and exclusive jurisdiction over the entire Bophuthatswana wherever situate, these people, as far as access to court was concerned, were deprived of access to the courts in Pretoria, around the corner, the Supreme Court and they were forced to access the court at Mmabatho and I am informed that it led to very considerable hardship as far as access to court is concerned for those people because, it is not only the question of distance, it is also the question of transportation routes. If you start thinking of this entire Garankuwa/Mabopane area, they have rail links, they have bus services, they have taxis, the commuting distance and time to Pretoria is peanuts, it is done every day by millions of people but the entire transport system is so organised that how do you get from there to Mmabatho, that is not so easy.”
- (17) “Another 15,8% of the North West province population lives in the Klerksdorp and Potchefstroom districts, once again far removed from Mmabatho. The Rustenburg, Klerksdorp and Potchefstroom districts are undoubtedly the prime districts in which economic activity takes place and gross geographich product is created and are consequently also the principal source of litigation in contested civil actions involving claims in excess of R100 000,00. We again say that we respectfully submit that by creating provincial divisions with exclusive jurisdiction in the new provinces, parties and witnesses from the main population concentrations and the main districts of economic activities will be forced to litigate in a Supreme Court which would be far removed from these centres while Supreme Court structures in Pretoria and Johannesburg are much closer and offer every imaginable facility for the conduct of trials.”
- (18) “...if we think of the Mmabatho Court as it exists today, we are led to the inevitable conclusion that it should not have exclusive jurisdiction in the North West province. People should not be forced to go to Mmabatho. That means

that a Provincial Division with exclusive jurisdiction is out, it just cannot work, it is directly in conflict with the basic principle of access to quality justice as close as possible.”

- (19) “That means that one will be forced to the next question and that is what about concurrent jurisdiction and the moment you think about concurrent jurisdiction then you say to yourself now what is going to happen? The main population concentrations and the main generators of economic activities and of possibly disputes of claims in excess of R100 000,00 are very far removed from Mmabatho, they are much closer to Pretoria and Johannesburg. The moment there is a concurrent jurisdiction the gravitation of the quality of justice to be found and the quality of the Bar and the Side Bar and all the support services is to be found and all the transportation routes which are centred on the major centres, is going to pull these cases on a basis of concurrent jurisdiction to, for example, Pretoria end of story.”
- (20) “So there is only one solution and that is that the political justification for that court being created having disappeared, that court will also have to be phased out.”
- (21) “If there are cases there which emanate from close to Mmabatho, for example it is the capital of a province, if there are cases there which could best be heard and the request is made that a civil circuit should sit there, then obviously it will be arranged but, therefore, we suggest that those judges should be seconded back and that the departments should be integrated with Pretoria...”
- (22) “Places such as Rustenburg, they have just over 100 kilometres to Pretoria and they have more than 200 kilometres to Mmabatho. Brits 48 kilometres to Pretoria, 263 kilometres to Mmabatho and then of course Garankuwa, Mabopane, the Odi and Moretele districts are between 30 and 50 kilometres from Pretoria and between 290 and 320 kilometres from Mmabatho.”
- (23) “When we come to Mpumalanga...we say a similar position prevails there. The number of contested cases involving more than R100 000,00 is expected to be extremely low. The centres of economic activity, population density and creation of gross geographic product are in Witbank, Middelburg, Highveld Ridge and Bethal. The Witbank, Middelburg, and Bethal districts have a combined gross geographic product of more than ten thousand million rands per annum compared to one thousand eight hundred million for Nelspruit and these centres of economic activities are much closer to Pretoria and Johannesburg than they are

to Nelspruit and the suggestion that litigation from these centres should be forced to go to Nelspruit whereas immediate and direct access to Pretoria would be available, would clearly be unfair and inimical. Again the creation of a Provincial Division of the Supreme Court with exclusive jurisdiction over the whole of Mpumalanga would be to the detriment of the public, exactly the same as on the old exclusive jurisdiction of Mmabatho. So we say exclusive jurisdiction is out, you cannot force the people who are much closer to Pretoria to go to Nelspruit to a brand new court with no support infrastructure, with no Bar, no Side Bar who have the necessary expertise, etcetera.”

- (24) “Then we come to Witbank, Witbank is 99 kilometres from Pretoria and 201 from Nelspruit. You cannot force Witbank people to go to an at present non-existent centre with no facilities or quality available and which would take many years to build up, whereas they have within 100 kilometres from them, the Pretoria situation. The Middelburg one, 128 kilometres to Pretoria, 177 to Nelspruit and the one is a freeway and the other one not so much of a freeway.”
- (25) “Then we come to Bethal, Bethal 178 kilometres from Pretoria and 247 from Nelspruit so Bethal is also clearly within the Pretoria sphere of influence. Let us make it even worse, Standerton 197 from Pretoria and 317 from Nelspruit. The routes are just such that they also do not travel straight, not even to talk about the absence of public transport in the sense of rail or bus services.”
- (26) “...so the dividing line distance wise runs through Ermelo and Piet Retief and everything to the south and to the west thereof falls within the Pretoria sphere of influence. Delmas 74 to Pretoria, 264 to Nelspruit; Secunda 154 to Pretoria, 277 to Nelspruit; Balfour 138 to Pretoria, 320 to Nelspruit along very indirect routes.”
- (27) “The moment you think of concurrent jurisdiction of the very few number of cases which can be expected above R100 000,00 much more than half will be drawn to Pretoria in any case on the basis of concurrent jurisdiction. There just simply is no basis whatsoever on which one can consider the creation of new courts at many millions of rands.”
- (28) “In the Northern Province Pietersburg, for example Thohoyandou is out, it is obvious that Thohoyandou cannot live, it is completely off centre, there is nothing going on there. If you were to consider Pietersburg yes it would be better located geographically but once again the same would apply. For example thinking of a place like Thabazimbi, Thabazimbi is much closer to Pretoria than

it is to Pietersburg due to the transportation routes, in fact it is 185 kilometres from Pretoria and 284 - 100 kilometres further from Thabazimbi to Pietersburg.”

- (29) “Then of course we made the point and we need not elaborate on it, the very important point of quality that also for the Bar and the Side Bar it is of vital importance to have your colleagues, to do interesting work, to do complex work, to be able to consult thereon with your colleagues.”
- (30) “That intellectual and collegial stimulation is of absolutely vital importance and you have a vicious circle with a small Bar and a small inexperienced Side Bar. After all work is drawn only, complex interesting work, important work, is drawn only to the most able. It is a terribly individualistic profession, the practice of law. Clients seek the best attorneys, attorneys seek the best advocates and there is a vicious circle involved where the moment you give a concurrent jurisdiction the work is just simply drawn away by the large and the competent groups and drawn away to the bench.”
- (31) “What these adjoining provinces require from a Supreme Court point of view is that they require the maintenance of the criminal circuit system which goes to various towns, it does not sit in a particular spot far away from people. It requires matrimonial matters to be dealt with on the same sort of basis as your criminal circuit. The matrimonial matters, your family law, your maintenance must be brought to the people on a circuit basis. Not to a provincial or local division far removed from the people, but on a circuit basis and as far as civil trials are concerned there may be those of the few which will be generated where it could be advisable or desirable to have the court sit as a circuit civil court. Under those circumstances it would be for the parties to approach the Judge President and say could we please have a civil circuit for this case or for these cases.”
- (32) “**MR JAPPIE:** Well what concerns me is the principle, for example a court in Gauteng having jurisdiction over an Administrative Government of say North West or Northern Province?”

**MR VAN ROOYEN:** It does not worry us Mr Chairman for the simple reason that the administration of justice is a national matter, not a provincial matter.

**MR JAPPIE:** So your suggestion then is that one must look at the

administration of justice as a broader question rather than a separate provincial or regional matter?

**MR VAN ROOYEN:** Oh yes, it certainly is a national matter also in terms of the Constitution.

**MR JAPPIE:** Thank you.”

- (33) “...if I may now hand over to my learned friend, Mr Bertelsmann, who will deal with Johannesburg and with the additional questions which were asked by the Commission.”

(VI) **ADV E. BERTELSMANN SC OF THE PRETORIA BAR ON BEHALF BOTH OF THE PRETORIA BAR AND THE PRETORIA ATTORNEYS ASSOCIATION**

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

- (1) “As far as the balance of our submissions are concerned I first wish to deal with the issue of Johannesburg. May I say in advance that in general we would respectfully associate ourselves with what the Honourable Judge President of the Transvaal said yesterday, there are one or two issues where we have perhaps a slight difference, notably on the area of concurrent jurisdiction.”
- (2) “But we argue, and we argue strenuously that one Judge President and one bench should be retained in Johannesburg and in Pretoria. We agree wholeheartedly with the fact that the present system certainly delivers the optimal justice and quality of justice and accessibility of justice to the people of Gauteng. I think the statistics which the Honourable Judge President provided yesterday speak for themselves.”
- (3) “To change it into two hermetically sealed divisions we believe would create administrative problems, it would create delays, it would necessitate the appointment of additional judges and it would generally speaking work to the detriment of the public in the sense that the delivery of justice, the speed thereof would probably be less and the accessibility of judges, both as far as the pool of knowledge is concerned and the availability on both sides of the Jukskei River is concerned, would be less.”
- (4) “While we have sympathy and appreciation for what Johannesburg is going to present to you, if one analyses what Johannesburg says it basically amounts to one thing: “we want a separate division with our own JP because we are the largest commercial centre and we are the largest centre of forensic activity.”

**CHAIRMAN:** Well was the thrust of the argument yesterday not that it would be better administered?”

- (5) “Johannesburg also argues that the concurrent jurisdiction which exists at the

moment in the 17 magisterial districts in which Pretoria enjoys concurrent jurisdiction, should be abolished. Now the argument which Johannesburg presents in that regard is also premised on the basis that we are the biggest and the largest and, consequently, we should have sole jurisdiction. They do not say that they are dependent upon the income which that would produce from the forensic point of view, nor do they say that the litigants in those 17 magisterial districts have expressed a need or a desire for exclusive jurisdiction in Johannesburg. The fact of the matter is that as far as we have been able to establish from enquiring from our colleagues, and that has not been done on a strictly scientific basis, so it is a guesstimate rather than a scientific fact, that approximately 20% of the work which is done, the civil litigation which is done in Pretoria emanates from the concurrent jurisdiction and we believe that there are various reasons why these 17 magisterial districts have approximately 20% of our litigating public or provide 20% of our litigating public which is a comparatively sizeable proportion and which of course accounts for our self interest in this argument as well. We believe that litigants come to Pretoria for reasons of *inter alia* the fact that Johannesburg, both in the attorneys profession and in the advocates profession, has a higher fee structure and it is, consequently, more expensive.”

- (6) “The statistic which we present now we obtained from the South African police’s National Crime Information Management Centre and they present a frightening picture. Only for the central business district which is centred around the Supreme Court in Johannesburg ordinary robberies 529 in the period from 1 January 1995 to 31 December 1995; armed robberies 7,073 and the other figures speak for themselves; car highjackings, murder, rape, drugs and child abuse. Now certainly, with the possible exception of the last, all of these impact upon the quality of the service which can be delivered after hours, I think it is a fact of life. We have said this in our written submissions as well that our colleagues both in the attorneys profession and the advocates prefer not to consult in the CBD after 16:00. Their clients certainly do, if at all possible, prefer to litigate somewhere else and under those circumstances that may also account for some of the pull to Pretoria.”
- (7) “But at the root of the argument of retention of concurrent jurisdiction lies, in our respectful submission, eventually again the question of access. The question of access to justice also involves the question of choice, of forum if it is available, the question of choice of litigator and in this case a fee structure which is approximately 30% lower in Pretoria than it is across the board in Johannesburg. If the two divisions were to be created, we believe that the service to the public would suffer, Pretoria would suffer obviously, also if the concurrent jurisdiction were to be abolished in a certain measure as far as income is concerned, but I think the public and we believe that the public would be less well served because its access to the very privileged situation which we have at the moment in

Gauteng of a very large pool of judges, a very efficient bench, a very efficient administration, a very effective Bar in Johannesburg and we like to believe also in Pretoria, an excellent attorneys profession in Johannesburg and we know also in Pretoria, all of these combine to provide access to justice in Gauteng of a nature which should not be tinkered with if it is not absolutely essential.”

- (8) “**CHAIRMAN:** Before you get there just help the Commission, historically or logically what considerations dictate, for example jurisdiction in criminal matters that Vanderbijlpark, Vereeniging, Heidelberg should fall under Pretoria's criminal jurisdiction?”

**MR BERTELSMANN:** Well Mr Chairman I believe that historically it developed because of the fact that Pretoria at that stage was probably better situated to provide the circuit justice at that stage.”

- (9) “**CHAIRMAN:** As far as civil jurisdiction is concerned it does, on the face of things, appear curious that Heidelberg falls under Pretoria and Oberholzer under Pretoria?”

**MR BERTELSMANN:** Well these are matters of particular historical development, exactly why they occurred I would not be able to say but what we can say is that there are quite a number of litigants in Heidelberg who, if they have the choice, come to Pretoria and if that is the kind of access to justice which the public desires, why take it away and we believe that the quality of justice which Pretoria delivers is the same as that of Johannesburg and we would like to keep it that way. That is why we say please allow the mix of judges from both sides of the Jukskei River to continue and the mix of colleagues on both levels of the profession.”

- (10) “As far as the third question is concerned, the question of the Family Court, in our written submission we envisaged or we accepted, as a given fact, that a Family Court would be instituted and more or less along the lines of the suggested amendment to the Magistrates Court Act on a Magistrates Court level. Having had the opportunity of reconsidering, we are in favour of the establishment of a Family Court but as a division of the Supreme Court on a circuit basis and into which court should be integrated the existing Black Divorce Courts.”

- (11) “**MR MALULEKE:** You dealt with what I think is a very interesting

observation relating to the differences in fee structure, that generally it costs you more to litigate in Johannesburg than in Pretoria and personally I share that view but I would like to imagine that it must cost more to litigate in Pretoria than in Mmabatho, by the same token and let us say for the sake of argument, it must?

**MR BERTELSMANN:** ...the ordinary run of the mill case in Mmabatho would probably, if members of the local Bar were involved, be litigated at marginally lower costs than in Pretoria and I say marginally lower costs advisedly, I do not think that the fee structures are very different.”

- (12) “...however, the cost on the public purse to provide that kind of service in Mmabatho is vastly in excess than the cost of maintaining the existing services in Pretoria and Johannesburg and depending on where the litigant comes from, I in my answer to you have assumed that the litigant is living in or around Mmabatho. If the litigant is living in Odi and he is forced to go to Mmabatho the costs just of accessing justice there will be prohibitive and if I could hand over to Mr Van Rooyen who wants to follow on this point?

**MR VAN ROOYEN:** My colleague mentioned the cost to the State which is a considerable drain. I just referred to the Martins report and in the summary, also on the same page where I did the correction right at the start, (ii) middle of the page the comparison of the cost to the State process issued by the Supreme Court divisions in Johannesburg, Pretoria, Mmabatho and Thohoyondou reveals the following ratio: 1 Johannesburg; 1,1 in Pretoria; 5 in Mmabatho and 33,7 in Thohoyondou. The cost of hearing a Supreme Court case in Thohoyondou would, therefore, be about 32,7 times more expensive than in Johannesburg; four times more expensive in Mmabatho and about equally expensive in Pretoria and Johannesburg. The small divisions do cost much more per case.”

(VII) **MR ATTORNEY C.P. FOURIE, SPEAKING ON BEHALF OF THE PRETORIA ATTORNEYS ASSOCIATION**

- (1) “**MR FOURIE**: Mr Maluleke if I understood you correctly you asked as to the cost structure of unopposed divorces?”

**MR MALULEKE**: On average of unopposed divorce cases in the Supreme Court?

**MR FOURIE**: I personally do not practice in the area of family law but my colleague, Mr Ehlers does and he advises me that the average cost of an unopposed divorce in the Supreme Court in Pretoria at the moment would be between R1 500,00 and R2 500,00 for an unopposed divorce, depending on the amount of work to be done and he also advises me that although an unopposed divorce takes two or three minutes I think the Judge President said yesterday, there is obviously behind the scenes a lot of work to be done, especially where children are involved, assets are to be divided, the family advocate that is involved and the drawing of whatever settlement agreement is then reached. So that in Pretoria is the situation and that would include disbursements, that would include counsel's fees.”

- (2) “There was a question earlier as to the functioning of the Maintenance Court in the magistrates court. We are of the opinion that it is in fact totally inadequate and we are also of the opinion that that should be incorporated or integrated in the whole new Family Court structure.

**CHAIRMAN**: Just in a nutshell what are the main criticisms you would level against the Maintenance Court at the moment?

**MR FOURIE**: I think they are burdened to a very large extent, I think the matters do not get any or very little attention and I think at the end of the day it is really a situation where the things are just run through without being properly considered. Mr Ehlers adds that the fact that there are also no cost orders being made in the Maintenance Court also has a very serious affect on the whole situation.

**MR MALULEKE**: Do I understand this correctly, does Mr Ehlers say that it would improve the situation if cost orders were made, particularly where one of the parties is represented by an attorney?

**MR FOURIE:** Yes, it would improve the representation.

**(VIII) ADV W.H.G. VAN DER LINDE ON BEHALF OF THE JOHANNESBURG BAR**

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

- (1) “The first is the question of a Family Court. In principle the Johannesburg Bar is in favour of the notion of specialisation, it does not adhere to the traditionally supported notion that an appointed judge is automatically qualified best to adjudicate in all matters that society brings before him. That being the principle, the question arises as to whether family matters ought to be addressed as an adjunct of the Magistrates Court or whether there ought to be a separate Family Court and if so, what the relationship ought to be between the separate Family Court and the Supreme Court. We are opposed to a Family Court being an adjunct to the Magistrates Court for the very reason that we have advanced, that is that we believe in specialisation of courts. If for the reason of specialisation of courts there ought to be created a Family Court, because not all judges are qualified also to hear or best qualified to hear family matters, the same would apply to the magistrates. So for the same reason that the notion disqualifies the magistrates court as being the appropriate court within which to hear family matters.”
  
- (2) “...on the question of the autonomy of the WLD...The argument is simply this, firstly the present status of the WLD is a function of a history of more than a century born in a then very unique and certainly not to be repeated political milieu. So that what confronts the Commission at this time is what I submit is an historical oddity and secondly an historical oddity which is even more incongruous to defend when regard is had to the fact that the largest court of the land is not autonomous and the principle notion which I am advancing is the autonomy of the WLD and everything else, with respect, flows from that, also the question of concurrent jurisdiction and that is the third point that I make and it is that concurrent jurisdiction by another autonomous division in respect of the area of jurisdiction of an autonomous division, is in principle unsound and unless reasons can be advanced why that should be so, you would not permit it.”
  
- (3) “...the Commission is probably aware of the judgment of His Lordship GA Coetzee J in Trade Fairs and Promotions v Thompson 1984 (4) 177 in which his lordship set out at pages 180G to 183A the history of the two divisions in the old Transvaal. The statutory result or statutory subordination which has resulted from that history is as we speak the following: firstly there are no judges of the WLD, the judges that are appointed are appointed in the Provincial Divisions as I read section 3(4) of the Act provides that:

*“Any court of the Durban and coast or of the Witwatersrand or the South Eastern Cape Local Division shall be presided over by a judge of the Provincial Division”*

- (4) “The second statutory subordination is the concurrent jurisdiction referred to in section 6(2) of the Act. The third is the fact that it has no Judge President, that is section 3(2) of the Act; the fourth is that it can only hear its own appeals if a Judge President from another division, in this case the Transvaal Provincial Division, so directs and that is section 20(3)(c)(ii) of the Act; the fifth is that it only has appeal and review jurisdiction to the extent permitted by the Judge President of another division, that is section 19(2)(b) of the Act; the sixth is that it is the Judge President of another division, the Transvaal Provincial Division, which makes the rules for the local division, that is section 43 of the Act and finally it has no Master's office.”
- (5) “Of course *de facto* today we know that the WLD does its own appeals and reviews from the lower courts in its 17 magisterial districts; it does its own judges appeals; its judges are sourced on the whole from the community which it serves, certainly from a geographical point of view and it has its own Deputy Judge President. Now those are all measure that, by their very nature tell us that they were taken in order to support the autonomy of that division. That being so it is inconsistent, unless some argument is raised, it is inconsistent why the autonomy should not be complete.”
- (6) “Johannesburg and the WLD has grown exponentially in terms of three important things, population firstly, secondly economic growth and thirdly a demand for legal services. That is despite just the argument raised that there is a need for concurrent jurisdiction in Pretoria because it is cheaper to go there. Well the proof of the pudding is in the eating, the demand for legal services in Johannesburg has grown exponentially in relation to Pretoria.”
- (7) “If I may conclude on this part, one is confronted with what I termed an historical oddity and the question is whether it should be retained and I articulate the question that a way because the submission is that you ought to approach it from the point of view as to whether you have been persuaded that it ought to be retained, not the other way around. Now the case that has been put up for its retention is the access to justice argument articulated by Mr Bertelsmann this morning. Now I want to proffer answers to it if I may, firstly I say on the facts the argument is doubtful, on the facts we have submitted that there is no meaningful demand for concurrent jurisdiction in Pretoria but the response was

that 20% of the work comes from there and that it is cheaper to go to Pretoria. We say that the statistics do not bear that out, we say the fact that the demand for legal services in Johannesburg has grown exponentially in relation to Pretoria is destructive of that argument on the facts.”

- (8) “But more importantly in principle the moment that one accepts that there ought to be an autonomous division as I understood Mr Bertelsmann to accept, it is incongruous and inconsistent with that notion that there be an imposition into that autonomy by way of concurrent jurisdiction.”
- (9) “**MR MALULEKE:** If I go back to the matter which I will put very colloquially about the tale of two cities, Pretoria and Johannesburg, to me it sounds more like a pleading for emancipation from this colonial master and the master using every excuse to refuse. I would like to know if Johannesburg were to get its independence and this Commission recommended that the three adjoining provinces would have no courts of their own and we were involved in the exercise of re-drawing boundaries, given the numbers and the statistics would Johannesburg be able to take on Potchefstroom or Klerksdorp as part of its jurisdictional areas or any other area which, for instance, may not geographically be conveniently served by Pretoria?”

**MR VAN DER LINDE:** Mr Chairman with respect it is really how long is a piece of string because one does not really know how much extra will be coming Johannesburg's way by way of legal services but may I put it this way, if there is one centre of infrastructure which is able to provide it, it must be Johannesburg because it has all of the legal practitioners both on the East and West Rand, it has the vast numbers of legal practitioners who now all appear in the Supreme Court or are able to appear in the Supreme Court, it has a Bar which is by far the largest Bar in the country so it has the manpower and infrastructure if compared with any of the other potential candidates for increase in jurisdiction.”

- (10) “**MR MALULEKE:** Then lastly on page 14 of I think your submissions, paragraph 15.4 I think you made the point that the magisterial districts that are served by Johannesburg roughly would be populations of about 6 million people and that which was served by Pretoria for Gauteng purposes only, is just about 1½ million and I am trying to make out what value to attach to that? If this Commission were to recommend that the three provinces must have their courts, Pretoria would remain with about roughly 1½ million people and of course Central Government. Would it be your view that in that event Pretoria would be over served by having too big, too large a bench, too large a Bar, too large a Side Bar?”

**MR VAN DER LINDE**: That might very well be the consequence.”

**(IX) ADV. K.P.C.O. VON LIERES und WILKAU SC, SUBPOENAED BY THE COMMISSION, DULY SWORN**

In the course of his oral evidence before the Commission some of the points made by Adv. von Lieres SC were the following:-

- (1) “My area of specialisation is broadly speaking that of criminal law and matters complementary thereto. And I have had some 33 years of experience in this field, the last 14½ years as the First Attorney General of the Witwatersrand Local Division which was established on 1 November 1983 and I have continued in that position until I relinquished my appointment as attorney general on 25 May of 1995. Now these experiences, these 33 years of experience Mr Chairman and gentlemen commissioners, also included the management of the allotted professional and administrative staff in order to perform the task and frequent interaction with the justice department head office in connection with the administration of the criminal justice system in my area of jurisdiction both in my capacity as the senior public prosecutor of Johannesburg where I had some, in those days some 90 at the present moment about 129 staff and some 60 to 66 courts which were operating there daily. And later from 1 November 83 as the attorney general for the ten districts for which the Witwatersrand Local Division exercised criminal jurisdiction.”
- (2) “The Commission will see that the Witwatersrand Local Division comprised of ten magisterial districts namely Alberton, Boksburg, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort and Westonaria.”
- (3) “Now there is Mr Chairman a difference between the Witwatersrand Local Division's civil jurisdiction and criminal jurisdiction. The civil jurisdiction is substantially wider and it includes a number of other districts which I will refer to later which can be found in the schedule to the Supreme Court Act No, 59 of 1959. These would include Springs, Heidelberg, Vereeniging, Vanderbijl, Brakpan if remember correctly, Nigel and I think Benoni.”
- (4) “In the ten districts over which the Attorney General Witwatersrand exercised criminal jurisdiction we had some 92 district courts in session daily and some 40 regional courts in session daily, that is within these ten districts.”
- (5) “And at the same time in the Supreme Court we ran ten Supreme Court criminal

courts in Johannesburg per day with another five courts sitting as courts of appeal during the week. That Mr Chairman and gentlemen gave you a number of courts for the Witwatersrand daily session of 142 to 143 which includes the five Appeal Courts that sit weekly.”

- (6) “**MR MALULEKE:** ... Was there any particular reason why the criminal jurisdiction was small in number at least than the civil section? -- I believe that if the Johannesburg office had taken all the civil jurisdiction districts in Pretoria would not have had any criminal work to do or it would have been substantially reduced because in Springs and in Vereeniging, Vanderbijl there are circuit courts sitting virtually on a full-time basis. So it was in order to balance the work load between Pretoria and Johannesburg that the criminal jurisdiction of the Witwatersrand was smaller than the civil jurisdiction.”
- (7) “**ADV VON LIERES:** Now Chairman and gentlemen if we have regard to the personnel, the authorised establishment tables, that is the staff that was made available to the attorney general, and this staff is substantially the same today, to do his task of administering the criminal law you will see that the attorney general himself had a staff of authorised establishment of 62 professionals, that is 62 advocates and an administrative staff of 22. When the attorney general's office was originally established as a full blown office with effect 1 November 1983 he had 22 professional staff members and they increased from 1983 to 1995 when I left to 62. So that is virtually a 300% increase in 10/11 years which reflects the enormous amount of work, of criminal work which is in fact being generated in the Witwatersrand Local Division from 22 advocates in 1983 to 62 in 1994/1995.”
- (8) “ In the districts Mr Chairman and gentlemen I have set out per district exactly what we had. You will see that there are three very small districts. There is Westonaria which only has a staff of three prosecutors but they run two courts per day and they get regional court assistance from Randfontein. Then there is Randfontein which has a staff of five and Alberton a staff of eight. All other districts exceed 10 prosecutors with the largest being Johannesburg which at present has a staff of 128 prosecutors and is managed by a deputy-attorney general. The total staff complement Mr Chairman including administrative staff for the Witwatersrand Local Division amounted to some 313 which were directly the responsibility of the attorney general. If you take the administrative staff away it is about 289 or so. During 1984 the average experience excluding the senior prosecutors was about two years per prosecutor. Now obviously Mr Chairman you will appreciate that for involved and intricate regional court cases this experience is sadly lacking and it does not allow justice to be done to involved criminal prosecutions.”

- (9) “Also Mr Chairman because you lack experience the prosecutor is sometimes averse to taking up the cudgels in an involved case because he does not quite know how to deal with it. And once your experience level in your attorney general's office has decreased significantly not much help can be expected from those quarters either. Because the attorney general himself he has got to run 10 criminal courts a day and he has got to read all the other dockets and the - and everything that comes in.”
- (10) “At the time when I joined the Department of Justice in 1962 and after I gained my LLB in 1996 I had four years of experience which I was transferred to the attorney general's office. That was an enormous shock in those days because the going rate was a minimum of seven years experience before you would even be considered to go to the attorney general's office.”
- (11) “The level of experience has shown a steady drop over the years to the detriment of the proper application of the criminal law, and that is regrettably a fact.”
- (12) “... we had the problem that the Public Service Commission and I think the Department of Justice to a certain extent both were perceived to fail to understand the importance of having efficient professional people within the department. There have been continuous problem with regards to the proper payment of professional people.”
- (13) “... but up until today there is no enduring or lasting or efficient professional staffing policy, not under the old regime and not by the new regime. And that is your fundamental problem I would contend why you suffer staff inadequacies in the prosecutorial section.”
- (14) “...the prosecution because ... does not get the efficient service it should get from the supporting institutions. The quality of investigation is poor. The experience level of the prosecution is generally poor. At least I can talk authoritatively of the Witwatersrand and to a lesser degree of Pretoria. I am not committing myself on Cape Town and the other areas because I am not quite sure what their position is. You will please read my remarks as restricted to my geographical field of experience. But if the prosecutor has not got the skills he cannot train and advise the investigator to investigate properly and what he requires. And often only by

losing a case in court he realises what he never foresaw. And that annoys people. If I am a complainant in a case I want to see efficient justice, I do not want to see the criminal get away because of some technical blue the prosecutor made. That discredits the criminal justice system.”

- (15) “It is obviously from a political point of view desirable that a provincial government has all its tools of government available to it. It needs its state attorney. It needs its Supreme Court registrar, its Master of the Supreme Court, it needs its attorney general from a practical point of view. It is an impossible position to expect of an attorney general to service three or four provincial premiers with advice. The provincial interests might be totally different and one attorney general simply cannot be expected to service three or four different provincial premiers with advice on criminal matters. The emphasis of crime in the various provinces can differ markedly from one another. If we take Johannesburg you have got a completely different type of crime to for example North-West or the Northern Province or Mpumalanga. So firstly there is a question of policy. A premier wants to know that criminal justice is administered in each district in the same way. Secondly, we sit with this practical example that in the Witwatersrand the attorney general say I make the docket available if the accused asks for it. In Pretoria the regulation is you have got to apply to court to get the docket.”
- (16) “At this stage everybody expects the people to come to justice. But if we look at the practical situation Mr Chairman the public transport system has just about collapsed. People now have to pay through their noses to travel in a taxi from wherever he may sit in a squatter camp to the nearest court. Provision is made in the magistrate's court for the establishment of detached magistrate's courts. There is no reason why we should not take justice to the people. Why can we not have detached magistrate's courts in large squatter communities for example? And why can we not have satellite police stations where there are large concentrations of people who are not being serviced by the existing structures? People just do not come to court because many of them cannot afford to come to court and that has an effect of discrediting the criminal justice system. We cannot allow the criminal justice system to be discredited any further. Self-help is becoming the order of the day.”
- (17) “I believe that each province if it has its own attorney general and its own Supreme Court will in fact be adequate equipped with the local provincial judge president to take the initiative to extend the criminal justice services to the furthest outreaches of that particular province. I know the argument which is made against my suggestion is that we are going to lose skills, we are not going to have the highest quality of justice because people do not want to go this place

or that place or the next place. That may be so Mr Chairman, but the fact is that even if the quality of justice takes a dip for the first two or three years, after that a satellite will form around the provincial capital and will ensure as development comes and goes on that the quality of justice increases and it will bring justice to the people.”

(18) “I believe there is not a single prosecutorial advocate or experienced prosecutor advocate who has ever served in Justice Head Office over the last 30 years. I also do not think there is a single state attorney with practical experience who has served in Justice Head Office except for one who is involved in indemnities I think. That is a specialised job. But the practical experience of the chief magistrate with a middle level advocate who has got skill and knows what goes on in practice in the courts of the state attorney who knows what the practice in civil work is, is missing in Justice Head Office because these people are not drawn in to strengthen Justice Head Office therefore the knowledge of what goes on is really not there. I think these are professional people, bugger them sort of attitude which is a perception which I have heard from various sources.”

(19) “**CHAIRMAN:** What does a public prosecutor who starts today get in round figures?”

**ADV VON LIERES:** I suppose about 33 to 36 a year. I am not 100% sure but that is what sticks in my mind, is that about right? The secretary confirms sir. That is what he gets. In other words, he is going to get about what a police constable after six months training at the Police College is going to get from 1 July. I grant you Mr Chairman that a prosecutor only needs experience, but he also needs to live. And we cannot succeed in creating the environment and the work condition in which this man can concentrate on his work and not worry where he is going to buy the next bread tomorrow, we are not going to keep him, they are going to go out. They are going to leave us and we cannot afford this. Our society will go to ruin if we do that.”

(20) “So I would in conclusion Mr Chairman I would say that I would urge the Commission to consider that we take the political realities of this country as we know them, that is there are these various provinces, that each province should have its own Supreme Court, its own attorney general and other supporting staff and that the professional personnel staffing policy now becomes a reality, that it becomes an enduring one with strategic qualities which will enable the state in its various provinces to have sufficient manpower to ensure the peace and tranquillity society is entitled to. I think it is counter-productive to have overlapping jurisdictions as between attorney general in various provinces, I think there should be one for one if I can put it that way.”

(X) **MR ATTORNEY C.K. PETTY OF PRETORIA, A COUNCIL MEMBER OF THE TRANSVAAL LAW SOCIETY**

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

- (1) “I am a council member of the Law Society of the Transvaal and what I say today I have been mandated to say on behalf of that council. There are also certain aspects which I will deal with later where I have been mandated to speak on behalf of the Association of Law Societies who have not been represented here previously.”
- (2) “Because of the new dispensation which came into being when the old Transvaal was divided into four provinces it was decided that the circles as they existed then were really not representative of the areas which they served, and the Transvaal Law Society with the concurrence of the attorneys in the four provinces disbanded the circles and created what is in effect four provincial law societies that operate in the area that was Transvaal. And those areas represent Gauteng, North West, Northern Province and what is now known as Mpumalanga.”
- (3) “The Transvaal Law Society has a statutory function which it is obliged to fulfil in regard to all attorneys that practice in the old Transvaal and that is the questions of discipline, the questions of registration and various other matters. And what has been delegated at this stage because none of those statutory powers can be delegated to the provincial law societies are the so-called trade union functions. In other words, the functions of looking after the interests of the members in those provinces. And at the moment the provincial law societies, if one can call them that, whilst not statutory bodies have been given recognition by the Transvaal Law Society and have been encouraged by the Transvaal Law Society to in fact look after the interests of their members.”
- (4) “It is perhaps interesting to note that in what was the old Transvaal there were at the end of March this year just over 5 000 attorneys. And that these are made up as follows, there are 4 179 in Gauteng, 331 in Mpumalanga, 236 in the Northern Province and 272 in the North West Province which makes a total of 5 018. So it is easy to see that there is a large body of attorneys that practice in Gauteng and that the rest of the attorneys are fairly evenly spread amongst the smaller provinces.”

(5) “Now it is clear from the written representations that have been made to you that there is a great divergence of opinion between the attorneys practising in Gauteng on the one side and the attorneys practising in the smaller provinces on the other side as to where the seats of the court should be, if there is going to be any change. And it is quite clear that everybody who has made submissions to you has actually got a self-interest in this matter.”

(6) “And for all of these reasons the Transvaal Law Society felt that it would not be right for us to come as body and to make representations with regard to where the seats are.

**CHAIRMAN:** To pick sides.

**MR PETTY:** To pick sides because we represent nationally everybody and that therefore precludes us from making any real input.”

(7) “... it is my council's view that it is most important that the Supreme Court especially as it practises in the area which is served by the Transvaal Provincial Division and the Witwatersrand Local Division should not be fragmented to such an extent that its efficiency is adversely affected. Now there are other considerations which the Transvaal Law Society feels should be taken into account when making the decisions as to whether each province should have its own court or whether some of the provinces should have courts, and those are the questions of cost. And it is not only the question of cost to litigants, but it is also the question of the cost to the state. That it is our submission that any material change which is made should be cost effective on an over all basis looked at from the interests of the public, the litigants and from the interests of the state.”

(8) “And then depending on the decision or the recommendations that your Commission makes or what flows there from we feel that if there are going to be courts at seats other than in Pretoria and Johannesburg in ...the adjoining provinces, that provision should be made for concurrent jurisdiction in certain instances. The purpose of this is to ensure that the courts are as freely available to people near to the seat of the court as possible. One only has to think of the question of Brits and ...(intervenes)

**CHAIRMAN:** North West is the obvious example.

**MR PETTY:** Is the obvious example and that provision should be made for concurrent jurisdiction so that people can then have an election of litigating in the

court which is most convenient to them and this obviously has a cost implication.”

- (9) “... it is the view of both the ALS and the Law Society of the Transvaal that matrimonial matters should be simplified and that they should as far as is possible be brought close to the people. You will have seen from the figures that were submitted by the Pretoria Attorneys Association and the Pretoria Bar that a substantial number of matters which come before the Supreme Courts both in Pretoria and Johannesburg are matrimonial matters and that of that substantial number a very small proportion is actually opposed. Now inasmuch as the vast majority of matrimonial matters are undefended or become undefended because the parties arrive at a settlement, the Transvaal Law Society and the ALS feel that it is not possible to justify the enormous cost and inconvenience of forcing people who are in the process of getting divorced to travel great distances to get to the seats of the courts in Pretoria and Johannesburg and also to incur enormous cost in doing this. And the cost relates not only to the question of the fact that they in most cases have to use two attorneys, obviously is an expensive matter, but also that there are enormous travelling costs.”
- (10) “It is our view Mr Chairman that a special family court structure should be established and if that structure cannot be established at the moment, that an office of the Registrar of the Supreme Court should be instituted at each and every magistrate's court in the country and that that registrar be allowed only to deal with matrimonial matters. The idea would be to have a family court established and that that family court would then have a registrar's office at each and every magistrate's court. And that that registrar would then be mandated to issue summonses, to exchange pleadings and where necessary to assist litigants in the preparation of documentation. We think that it is important that in the new dispensation that that should be allowed. As you will see from what I am going to say later, it is our view that the black divorce court should be dissolved and that the black divorce court should be incorporated into these structures. We feel that this family court with its registrars at each and every magistrate's court should have simplified rules, that these rules should be written in language which is easily understood and that the rules should be easy to comply with.”

**(XI) THE HON. MR. JUSTICE K. VAN DIJKHORST OF THE TRANSVAAL PROVINCIAL DIVISION**

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

- (1) “Ek is regter van die Transvaalse Provinsiale Afdeling sedert 1980. Voorheen het ek 20 jaar lank as advokaat gepraktiseer in Pretoria, waarvan drie jaar voorsitter van die Pretoriase Balie en voor dit was ek vir ‘n kort tyd prokureur. Ek het ook in Pretoria my leerklerkskap geloop. Miskien moet ek net daar byvoeg dat ek tans die voorsitter is, die eerste en tans nog die voorsitter van die Landdrostekommissie, maar dat ek nie hier kom praat in daardie hoedanigheid nie.”
- (2) “Ek begin dan met die eerste punt, 'n paar opmerkings oor die vraag of 'n hooggeregshof provinsiaal moet wees. Voor die Uniewording in 1910 was dit koloniaal. Ons het nou 'n geregshof gehad in elke kolonie voor 1910 en dit was histories. Maar dit het daarna provinsiaal geword om historiese redes, maar dit het nie provinsiaal gebly nie. Daar was 'n Oos-Kaapse Afdeling vanaf 1957. Voor dit was dit die Oos-Kaapse Plaaslike Afdeling, maar dit was 'n volwaardige afdeling vanaf 1957. Daar was 'n Noord-Kaapse Afdeling vanaf 1969. Voor dit was dit 'n plaaslike afdeling.”
- (3) “Ons het dus inderdaad 'n geskiedenis van howe wat volle afdelings is wie se jurisdiksie nie begrens is deur die besondere provinsie waarin hy funksioneer nie. Daarbenewens het ons natuurlik die onafhanklike state gehad wat elkeen ook 'n hof gehad het wat 'n volle onafhanklike hof was.”
- (4) “Dus, met ander woorde, die tema is dit: Ons het nie 'n tradisie van slegs een afdeling van die hooggeregshof per provinsie nie.”
- (5) “Nou histories is afdelings met volle status vir volle geregshowe geskep om twee redes. Die eerste rede was staatkundig, staatkundig deur oornome van bestaande hoogste howe van voormalige onafhanklike state. Die ZA Republiek was een daarvan. Die Oranje-Vrystaat is 'n ander.”

- (6) “Die tweede rede waarom hooggeregshowe met volle status geskep is, is om praktiese redes en dit is die Ooskaap en die Noordkaap. Ek dink albei is waarskynlik geskep as gevolg van afstand. Die rede van die afstand vanaf Kaapstad - Ooskaap is net te ver en Noordkaap is net te ver. Ek dink nie daar is, veral in die geval van Noordkaap, enigsins ingegaan op of daar werklik 'n behoefte is behalwe vir die afstand nie, want as 'n mens prakties daarvoor dink kan die Noordkaap, Kimberley, maklik vanuit Bloemfontein bedien word, maar nie maklik vanuit Kaapstad nie, maar hy lê toe binne die provinsie van die Kaap en hy kan dus nie aangesny word by Bloemfontein nie.”
- (7) “Dit is die denkwysie van provinsialisme wat daar deurslag gegee het, maar dit is myns insiens nie 'n deurslaggewende faktor by u nie. Met ander woorde, die tema is dus: Ons het nie 'n tradisie van een provinsiale afdeling, een provinsiale hof wat ons in 'n sekere rigting dwing nie”
- (8) “Ons sit met 'n nuwe situasie, ons sit met heeltemal 'n nuwe samestelling, ons sit met 'n amalgamasie van voormalige onafhanklike state wat nou ingekom het, wat voorheen deel was, wat uitgegaan het, wat weer ingekom het; ons sit met geweldige bevolkingverskuiwings in die land.”
- (9) “As 'n mens die standpunt huldig dat 'n provinsie net 'n provinsie, 'n hooggeregshof moet hê dan kan 'n mens daardie standpunt regverdig om politieke redes, want 'n hooggeregshof is 'n belangrike ding en 'n politieke mag in 'n provinsie wil graag hê dat as 'n provinsie langs hom 'n hooggeregshof het hy ook een moet hê. Mpumalanga is 'n goeie voorbeeld. Hoe gaan 'n mens nou vir hulle sê: Julle mag nie 'n hooggeregshof hê nie as ons vir die Noordkaap 'n hooggeregshof gee? Hulle het dan 'n hooggeregshof. Dus ons moet wegkom van die gedagte dat hooggeregshowe beperk is deur territoriale provinsiale grense. Die oomblik wat jy dit nie doen nie sit jy met 'n anomalie tussen byvoorbeeld Noordkaap en Noordwes, wat nou trouens 'n hooggeregshof het vir 'n stukkie van hom, en Mpumalanga, en dit voel nie polities regverdigbaar nie.”
- (10) “Daarom sê ek, kom ons kom weg van provinsiale gedagtes en provinsiale grense. Wat ek sê is uit die aard van die saak nie gewild nie, want dit tas miskien aan die Vrystaat; dit tas definitief die Ooskaap aan en Ciskei en Transkei; dit tas aan veral die Noordkaap wat almal in die gedrang kom as 'n mens nou net na 'n praktiese norm begin kyk en kyk waar wil ons hooggeregshowe inpas.”

- (11) “Dit is die laaste kans wat ons het. As ons alles gaan vasknoop aan provinsies gaan ons vorentoe vir nog 100 jaar aan daardie situasie vassit.”
- (12) “Ek sê ons moet bloot op behoefte - en behoefte is openbare belang - bloot op behoefte as enigste faktor bepaal of 'n plek, en ek praat nie van 'n provinsie nie, of 'n plek 'n hooggeregshof moet hê. Met ander woorde 'n gebied, nie 'n provinsie nie. Dit sal dan beteken dat daar in een provinsie miskien drie of vier geregshowe kan wees, teoreties, en in 'n ander provinsie miskien glad nie een kan wees nie, teoreties.”
- (13) “Behoeftes vereis dat daar regters moet wees en dat hulle bekwaam moet wees om die werk te doen wanneer daar werk is. Behoeftes vereis nie dat daar regters moet sit wat bekwaam is maar nie werk het in die lyn van hulle bekwaamheid nie. Behoeftes vereis ook nie dat jy regters laat werk doen wat nie regters werd is nie. 'n Mens moet in gedagte hou, nie omdat regters belangrik is nie, maar omdat regters van die hoogsbetaalde regsprekende amptenare is. Dit kos geld, en omdat hulle so duur is moet jy hulle funksioneel korrek aanwend.”
- (14) “Kom ons gee 'n maklike voorbeeld. Dit is onbestrede egskeidings... Dit is duur mannekrag wat jy onproduktief aanwend. Dit kan baie goedkoper gedoen word deur baie goedkoper maar bekwame regsprekende beamptes.”
- (15) “As u 'n hooggeregshof gaan plaas in Mpumalanga in Nelspruit, dan weet ons uit ons ondervinding omdat ons byna deurlopend 'n rondgang het in die oostelike provinsie, Mpumalanga, dat ons een strafregter daar sal kan dra, want ons sal hom op rondgang kan stuur. Maar ons weet ook, as ons hulle nou nie meer onbestrede egskeidings laat doen nie en in ag neem die verhoogde jurisdiksie van die landdroshof na R100 000, dan weet ons dat daar geen siviele werk gaan wees nie, in ieder geval, nie siviele hooggeregshofwerk wat gaan uitkom by die hooggeregshof waar die regter op gaan sit nie.”
- (16) “Moet jy nou 'n hooggeregshof gaan stig? Kom ons kyk dan: Stel ons nou iemand aan in, sê nou maar, in Mpumalanga as 'n hoogs bekwame regter wat patente kan doen, inkomstebelasting, waterreg, onteieningsreg en dan natuurlik ook strafreg. Dan gebruik ons daardie hoogs bekwame man om onbestrede egskeidings te doen, die hersienings- en die strafwerk. Nou dit is mos onsinnig.”

- (17) “ Ons het baie bekwame manne wat in die strafreg hul bekwaam het wat jy daar kan sit, maar omdat jy wil hê jy moet 'n regter hê wat alles doen, kan jy hom nie daar sit nie, want hy kan die werk nie doen nie - die veronderstelde werk kan hy nie doen nie.”
- (18) “Daarom sê ek, kom ons kyk weer na die struktuur. Ons haal die siviele- en strafkomponente van ons hele regterlike sisteem uitmekaar uit. Ons skei dit vertikaal. Met ander woorde, ons het strafhowe op landdrosvlak, hooggeregshof strafhowe met strafregters en dan bo dit alles 'n appèlhof waaroor ons nou kan gesels oor hoe dit saamgestel moet word.”
- (19) “By die hooggeregshof het ons nou ook die situasie, en miskien moet 'n mens dit maar sê dat nie al die regters al die werk kan doen nie. Daar is min regters vir wie jy 'n patentszaak kan gee; daar is min regters vir wie jy 'n waterhofszaak kan gee; daar is min regters vir wie jy 'n inkomstebelastingszaak kan gee; daar is min regters vir wie jy 'n onteieningszaak kan gee. Ons is nou al op die situasie dat ons "horses for courses" het... Dus, as jy nou al klaar 'n situasie het dat sekere regters aangestel word as regters vir alle werk maar in effek doen hulle miskien onbestrede egskeidings en verdere strafwerk, wat is daar dan anders as dat jy in effek 'n strafbank geskep het met af en toe die een en af en toe die ander op hom?”
- (20) “Ek sê *de facto* situasie is nog nie so sterk dat ek kan praat van 'n strafbank nie. Ek sê dit sou beter wees om 'n *de iure* te skep en ons lyn deur te trek en te sê: Hier het ons 'n strafafdeling. Van onder tot bo is dit 'n strafafdeling en ook promosie geskied binne daardie strafafdeling.”
- (21) “Dus, jy het jou deskundige, teen die tyd dat hy op die streekhof is, is hy lankal 'n deskundige in die strafreg. Waarom promoveer jy hom nie na die hooggeregshof strafbank nie en maak heeltemal 'n strafbank? Tans kan jy hom nie promoveer nie want hy kan nie die siviele werk doen nie; dit is nie sy *forté* nie; hy sal dit nie doen nie, hy stel nie daarin belang nie. Maar die siviele werk is moeilik en dit vat baie agtergrond van die privaat praktyk.”
- (22) “Dan beteken dit, as hierdie lyn nou deurgetrek word - kom ons vat Mpumalanga as voorbeeld - dat jy in Mpumalanga 'n strafregter kan plaas want daar is werk vir 'n strafregter. As jy daar 'n strafhooggeregshof wil sit, sit 'n strafhooggeregshof daar, maar dat jy 'n hooggeregshof wat siviele werk betref nie in Mpumalanga sit

nie, jy moet 'n baie groter area hê vir jou siviele hooggeregshof en dit is die ou Transvaal of die ou Transvaal sonder Johannesburg. Dit maak nie saak hoe jy dit insny nie.”

- (23) “Dit beteken dus ook, jy kyk na die behoefte en aan die hand van die behoefte stel jy saam die bank, die grootte van die bank en die samestelling van die bank.”
- (24) “Hoe lyk my struktuur dan? Vir elke landdrosdistrik is daar 'n straflanddros en daardie straflanddros is kantoorhoof, want 'n landdrosdistrik moet 'n kantoorhoof hê en daardie straflanddros het moontlik nog 'n aantal addisionele straflanddroste. Dus daar is een of meer straflanddroste per landdrosdistrik en ons bly by die bestaande sisteem. Vir 'n groter aantal landdrosdistrikte is daar 'n streekhof vir strafsake met 'n streekhofpresident en streeklanddros. Dit kan gemaklik 'n provinsiale hof wees.”
- (25) “Dan die derde komponent is dan die hoër strafhof. Ek sou sê dat daardie hoër strafhof die ingewikkeldste strafsake moet hoor, maar by uitsondering, waarom moet 'n mens daardie hof belas met verhoorsake. Daardie hof moet ... primêr appèlhof van strafsake met as uitsondering die hoë profiel verhoorsake en die baie moeilike verhoorsake, as daar so iets is, maar daar is min baie moeilike verhoorsake wat ek nie met gemak aan die streekhof kan toevertrou nie.”
- (26) “Wat is die voordeel dan van hierdie uitskakeling van provinsiale grense en die saamtrek op verskillende punte? Die voordeel is spesialisasie, daar is 'n veel groter poel kandidate vir aanstelling op die hooggeregshofbank, want ons het 'n baie groot poel kandidate wat strafondervinding het en baie goed onderleg is in strafondervinding van die privaat sektor en uit ons eie streekhof, en ons sal verhoed die vermorsing van siviele talent op die strafbank en met strafappèlle. Ons kan nie die enkele paar mense wat opgelei is in patentsake op strafappèlle sit maand na maand nie. Dit is 'n vermorsing van mannekrag.”
- (27) “ Aan die siviele kant het 'n mens dan... vir 'n groep landdrosdistrikte 'n siviele landdros; ons het vir 'n streek, 'n groot streek wat baie groter is as die streekhof se streek, het ons 'n senior siviël wat nie belas is met administrasie nie en ons het dan 'n hoër siviele hof, 'n hoër siviele hof wat 'n groter jurisdiksie dek as jou hoër strafhof uit die aard van die saak, en wat funksioneer op die vlak van ons hooggeregshof wat nie provinsiaal gebonde is nie.”

- (28) “Nou wat is dan die voordele van my sisteem? 'n Behoorlike benutting van mannekrag, 'n sentralisasie van deskundigheid. Die gebied en die benaming en die gebou waarin hulle sit maak nie saak nie. U kan die howe noem wat u wil, maar ons gebruik dan die mense wat ons het, ons gebruik hulle behoorlik en ons het nie hierdie provinsiale afguns van die een provinsie teen die ander nie en dit hoort ook nie so nie.”
- (29) “Nouja, die eenheid van Pretoria/Johannesburg - eintlik moet ek dit die Pretoria/Johannesburg paleisrewolusie noem, is dit nie? Maar ek noem dit die Pretoria/Johannesburg debat.”
- (30) “Die eenheid van die Pretoria/Johannesburg het 'n voordeel van skaal. Daar is 'n groot bron van deskundigheid wat ons oor en weer gebruik. 'n Mens moet dit nooit miskyk nie. Ons kry Johannesburgse regters wat meer onderleg is in belastingsake, en gevalle kry ons wat in Pretoria kom sit. In sommige gevalle kry ons kêrels wat in patente veel weet om in Pretoria te kom sit. So, ons het die voordeel van skaal, deskundigheid word uitgeruil.”
- (31) “Jy het 'n groter bron en die bron word benut en ons regter-president doen dit wel deeglik.”
- (32) “Waarom is daar dan 'n betoog van die kant van Johannesburg, want die idee van 'n regter-president en die idee van twee adjunkte wat daargestel is na 'n kommissie wat die saak behoorlik ondersoek het, behoort op papier behoortlik te werk, want jy het administratief 'n man in beheer by elke punt en jy het oorhoofs 'n man in beheer wat regters kan skuif indien nodig en waarom werk dit nie? Of waarom word gesê dit werk nie?”
- (33) “Ek dink dat ons probleem het van die begin gelê in die bestuurstyl en in bestuursaanleg. Dit help nie om teoreties 'n sisteem te skep waar jy 'n beherende amptenaar het in elke punt en 'n oorhoofse beheer het as jy nie kyk na die aard van die persone wat jy aanstel nie. En laat ek nou begin deur te sê dat al die mense is my kollegas en al die mense is bekwame regters, maar almal van u wat hier sit sal weet dat een persoon 'n oor vir musiek het en 'n ander een nie. Een persoon het administratiewe aanleg en 'n ander persoon het dit nie.”

- (34) “Dit gaan vir my om die beginsel en die beginsel het gemanifesteer in die praktyk. Ek kan nie sien waarom 'n adjunk regter-president nie aangewys kan word in meerderheidstem van sy kollegas nie. Hy is per slot van rekening daar om hulle te dien, om te sorg dat die administrasie behoorlik loop, en ons administrasie het nie behoorlik geloop in Pretoria nie en ook nie in Johannesburg nie.”
- (35) “'n Mens moet nie die regter-president daarvoor blameer of die adjunk regter-presidente daarvoor blameer alleen nie, daar is 'n geweldige moeilike situasie met die Departement en met Openbare Werke.”
- (36) “U moet tog net mooi verstaan oor die vorige onderwerp dat ek die dinge noem, nie uit kritiek teen persone nie. Dit is nie so bedoel nie en dit moet onder geen omstandighede so opgevat word nie.

**VOORSITTER:** Dit word nie so vertolk nie.

**REGTER VAN DIJKHORST:** Want die manne wat hier betrokke is, is uitstaande persone. Dit moet beklemtoon word, maar nie elkeen van ons kan die viool speel nie.”

- (37) “Ek wil 'n paar woorde sê oor die gesinshof. My uitgangspunt is dat egskedingsake hoort net by hoë uitsondering in die hooggeregshof, by hoë uitsondering, en 'n hoë uitsondering is nie omdat daar kinders betrokke is nie. 'n Hoë uitsondering kan wees as dit ingewikkelde regspunte is of 'n verskriklike boedel waar hierdie magnate van Johannesburg nou graag in die hooggeregshof wil baklei.”
- (38) “'n Onbestrede egskeding, as 'n landdros persone in die eg kan verbind, kan 'n landdros egskedings behartig.”
- (39) “Bestrede egskedings kan ons op 'n bietjie hoër vlak hanteer. Ons kan dit in 'n gesinshof inbou. Normaalweg is 'n bestrede egskeding baie keer oor kinders, soms oor die bates. Maar in elk geval hoort dit nie in die hooggeregshof nie, op daardie vlak nie. Ons het die hulp van die gesinsadvokaat wat goeie diens lewer en veral waar betwiste toesig en beheer is, en in byna 90% van die gevalle of meer word die verslag van die gesinsadvokaat gevolg, met ander woorde, het jy nie meer 'n betwiste egskeding nie wanneer daardie gesinsadvokaat-verslag uit is.

Dus dit behoort dus nie moeilik te wees nie, dit kan maklik afgehandel word in die gesinshof.”

(40) “**VOORSITTER:** Sien u die gesinshof as 'n selfstandige, eie hof?

**REGTER VAN DIJKHORST:** Ek sou dit kombineer met 'n senior landdroshof om mannekrag te bespaar. Daardie landdros het die bekwaamheid en hy kan dit net so goed ook hanteer - as jy nie van die gesinshof gaan maak wat sekere voorstanders van die gesinshof van hom wil maak nie, dit wil sê alles wat op die gesin betrekking het, daar insleep nie.”

(41) “Ek is nou by die landdroste en die landdrostekommissie. U moet vir my daar sê wat u wil weet. Ek sal vir u sê wat die knelpunte is.”

(42) “Mnr die Voorsitter, ons weet die landdroste is onderbetaal, absoluut onderbetaal... Dit is die grootste grief wat die landdroste het en dit maak die landdroste ongemaklik en wanneer 'n mens ongemaklik is oor jou eie beroep dan het jy allerhande klagtes en griewe en proteste en dinge maar die basiese probleem met die landdroste is onderbetaling van landdroste. As daar nie gou na gekyk word en behoorlik na gekyk word nie dan gaan daar al meer en meer mense die diens verlaat. In Durban het ons in twee maande ses landdroste verloor, manne wat bekwame manne was.”

(43) “Nou om by die tweede knelpunt te kom, dit is onafhanklikheid.”

(44) “Die onafhanklikheid is aangespreek deur die Hoexter-Kommissie van 1983 wat aanbeveel het dat daar 'n kommissie gestig word, die Landdrostekommissie, waar die probleme van landdroste hanteer word deur hulle gelykes, deur landdroste.”

(45) “Die Landdrostekommissie, soos dit tans daar uitsien, voldoen aan daardie beginsel. Die Landdrostekommissie het besluit dat ons samestelling nie heeltemal na wense is nie, want ons is 'n bietjie topswaar in die sin van dat ons streekhofpresidente en hooflanddroste en 'n regter en 'n paar amptenare het, maar ons het nie behoorlike verteenwoordiging van die laer range nie.”

- (46) “Ons het die Departement, die minister eintlik gevra om die Wet te wysig en te kyk na 'n nuwe samestelling van die Kommissie. Die eerste konsep wat voor ons gelê was, was heeltemal bevredigend, onderhewig aan debat, maar die parlement het in sy wysheid die ding beetgepak soos 'n hond 'n vars been en heeltemal in 'n ander rigting gehardloop. Die jongste is dat die Kommissie nou 22 lede moet hê waarop twee advokate en twee prokureurs, klaarblyklik omdat hulle nie kan besluit op een nie.”
- (47) “Die groot probleem is dat die aanstellings nou gemaak word, behalwe vir drie landdroste, deur die uitvoerende gesag, nie meer deur die regsprekers self nie, en dit is die kern van die probleem wat ons nou in die gesig staar.”
- (48) “Dit is die tweede probleem wat die landdroste nou het. Waar hulle gedink het dat hulle tot 'n groot mate onafhanklik is van die Departement en van die staat, word hulle onafhanklikheid nou op daardie manier bedreig. Nouja, dit word voor ons kop gegooi en gesê die Regterlike Dienskommissie lyk ook so. Die antwoord is: Geld dieselfde nie vir die Regterlike Dienskommissie nie? Maar daaroor hoef ek u nie toe te spreek nie.”

**(XII) DR J.A. VAN S d'OLIVEIRA, SC, ATTORNEY GENERAL OF THE TRANSVAAL PROVINCIAL DIVISION**

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

- (1) “Our primary submission is that the primary consideration must be that of effective service to the community. In terms of the criminal justice system that means that the fact that the lower courts handle more than 90% of the criminal litigation it cannot fail to be of major significance. Those courts are also closer to grass-roots. It is in that realm that improvements and expansion must take place as a matter of priority.”
- (2) “Before dealing with the Supreme Court I wish to make some background observations. In the first place - and I think this is pretty uncontentious - the separate Supreme Courts of Bophuthatswana and Venda, which merely exist by virtue of the transitional provision over their creational existence, solely to the technical independence of those areas. Their creation was not justified in terms of work, volume and service as the areas in question were adequately served by the Transvaal Provincial Division and the lower courts. There is no justification for their further separate existence.”
- (3) “...the present Pretoria division adequately handles all the work in our present adjoining divisions, that is absent Bophuthatswana, Venda and Witwatersrand, although in the past it was responsible for those areas. The Pretoria division also handles all the work in the largest geographical part of Gauteng, for example centres such as Vereeniging and Springs, and of course the work in its own Pretoria and adjacent magisterial districts. The question therefore arises if there is any convincing reason to change the existing practical position.”
- (4) “Two additional factors which must throughout be weighed in the equation are the following: The first is: What is the expected volume of Supreme Court civil work from the three adjoining areas. Indications are that not much more than at present will be forthcoming. Secondly, it is understood that senior civil magistrates’ courts are on the cards. Surely this will mean that even less work will find its way to the Supreme Court.”
- (5) “Mr Chairman, gentleman, you have probably heard many arguments for and

against the establishment of separate full divisions. We ask you to advert to such factors as the requirement that each division will have its own Judge President and complement of judges, it will require a suitable building, a registrar and staff, a full attorney-general staff and so forth. I think summarily stated it is clear that when the factor of costs alone is considered the implications for the public purse will be staggering.”

- (6) “The we pose the question: Are full divisions for Gauteng and the adjoining provinces really necessary? We believe that no significant benefit or improved service to the community will result or will necessitate the establishment of full divisions. Why we say that is that the substantial criminal jurisdiction of the regional courts means that murder cases can be heard in that forum.”
- (7) “The establishment of Supreme Court divisions in the adjoining provinces will not be an improvement on the flexibility of the regional court. Referrals by the attorney-general to the regional court will take place wherever the seat of the division is. There is no advantage in having additional attorney-general offices.”
- (8) “But there will always be...Supreme Court criminal cases, and we believe that the present system of circuit courts answers to the needs and requirements and administration of justice. Traditionally the creation of circuit courts was an endeavour to bring the process of justice to the community. We believe it has largely succeeded in doing this. There is of course room for improvement.”
- (9) “Full-time circuits will reduce the outstanding work to acceptable proportions. Now why I use the words “Full-time circuits”, is that at present the circuits are sent out as programmed by the Judge President. Ordinarily there are five circuits sitting in the various corners of the jurisdiction. They are the North, the East, the West, Springs, that is East-Rand, and the South, that is at Vereeniging, but they sit for periods and then come back to Pretoria. We envisage the courts will be there more permanently, of course, with the judges changing.”
- (10) “Such circuit local divisions, besides becoming more Full-time, could also be given civil jurisdiction and from experience in the Eastern Cape I am aware that that is indeed what has happened in areas such as Graaff-Reinet and East London where circuit district courts were created by the Judge President.”

- (11) "...our view is that the complement of Transvaal judges that is at the seat of the court in Pretoria and at the Local Division in Johannesburg, are basically in a position to serve the needs of the newly created provinces."
- (12) "It is our view and our submission that the immediate priority for all the regions of the former Transvaal is the expansion and/or the improvement of the lower courts. The regional courts must be expanded and each new province should be allocated a regional court president, as I have already stated. The magistrates' courts must be improved from the point of view of facilities, training and productivity."
- (13) "From all the attorney-general's point of view,...the state of the prosecution component must receive immediate attention. Our office depends on senior public prosecutors who constitute the middle management in the area of jurisdiction..."
- (14) "We sit with the problem that if one looks at the whole of Transvaal, there are still 13 senior public prosecutor posts not suitably filled."

**CHAIRMAN:** How long have they been vacant?

**DR D'OLIVEIRA:** When I come here in 1992 to this division they were not filled. In fact there was a great fight to get any move towards the posts. There was a concession made that they use new first leg and second leg prosecutors temporarily to be in those positions, but we simply do not have experienced senior public prosecutors in thirteen posts."

- (15) "...the conditions of service and the career prospects of local prosecutors who have become the Cinderellas in the administration of justice must be improved as a matter of utmost urgency."
- (16) "It does not appear to be appreciated that the prosecution component is indeed the nursery of the justice system, at least in the lower courts or in the public service. From them come the magistrates, the prosecutors, the masters of the Supreme Court, the state attorneys, and with the present state of salaries, it is a national disgrace."

- (17) “The average experience of regional court prosecutors in the province is 9.8 months, and the magistrates’ court prosecutors 8.8 months...Now there is a tremendous turnover there and why? It is when my advocates who do the cases in the regional court see that attorneys or counsel appointed by the Legal Aid Society receive or are paid R3 800 or R4 000 a day, whereas those prosecutors get that out at the end of the month.”
- (18) “I must, however, return to my initial recognition that there is a strong lobby for full divisions in each adjoining province. We submit that there is a way to reconcile the realities of the situation with the ideals and in so doing consideration should be given to the following options.”
- (19) “Firstly whereas the establishment of full divisions in the three adjoining provinces may be accepted as long-term projects, the realities of the situation dictate that the immediate establishment thereof is not feasible. We believe that one should set the stage for future developments and let circumstances and real need dictate changes by commencing with an expanded system. That step could demonstrate, secondly, that a system of local divisions is called for in time. Where there is such a system of local divisions an attorney-general will allocate a deputy attorney-general to each of the adjoining provinces along the lines of the original development of the Witwatersrand Local Division, and I may add, the Durban Local Division and the Port Elizabeth Local Division.”
- (20) “...the next step could be the establishment of an autonomous attorney-general in the particular province which shows that that is called for at the time being. That is the position in Johannesburg where you have an attorney-general attached to a local division.”
- (21) “And then in time, thirdly, the final step could then be the creation of a full division when such is warranted. We believe that such a gradual process would be wise and within the financial constraints of the country. We also say this programme makes provision for piecemeal development in the sense that one province could become a local division before another. It is our belief that such a development will have to take place under the aegis of an existing full division with its Judge President and an attorney-general.”
- (22) “Because of the obvious changes in the country one would have to rename

divisions. We see the present Transvaal Division as fulfilling the function of guiding the process of development but we would say it would be appropriate to give it a new name, such as the Northern Areas Division of the Supreme Court with its seat at Pretoria.”

- (23) “I think we must face facts that one could not refer to the present divisions of the so-called independent areas as first-class divisions. The present Transvaal and the Witwatersrand divisions have a wealth of experience and expertise to contribute. Full separation at this stage will not be beneficial to the standards of an integrated administration of justice. At the same time, and having regard to the quality control, the Supreme Court has by way of appeals and reviews, a further advantage would be the essential development and expansion of the lower courts under the guardianship of a strong Supreme Court.”

## ***EXTRACTS MIDDELBURG***

### **(XIII) MR ATTORNEY A.P. BRANDMULLER ON BEHALF OF THE MIDDELBURG ATTORNEYS ASSOCIATION**

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

- (1) “There are two aspects which have to be taken into account when this Commission looks into the rationalisation of the court. The first aspect is firstly is it justifiable that a Supreme Court be allocated to Mpumalanga and then once that hurdle has been passed the second aspect is where should it be? Now the majority of all these submissions in the province which I have read have actually not really dealt with the first aspect.”
  
- (2) “...it is our submission that clearly all the other provinces have, in some form or manner, whether it be of the old Bophuthatswana Supreme Court or whether it be the old Venda Supreme Court, they have got those facilities. The only province that does not have that is Mpumalanga. What it has is facilities similar to these where the circuit court has been sitting and criminal matters have been heard, no civil matters. We believe that it would be good for the province if the judicial system and specifically the judicial system in so far as it relates to Supreme Court jurisdiction, can be brought closer to the people.”
  
- (3) “Firstly one must look at the economic and industrial activity in each region and the province can really be divided into three main regions.”
  
- (4) “Now it is quite clear the Middelburg/Witbank area and also to an extent the Secunda area, are the economic, they are the economic hub of this province. If one looks at the number of mines, the number of power stations, there is Columbus Joint Venture, there is Sasol II and III in this area, Highveld Steel, they are all major players and should a jurisdiction be granted to the province for a Supreme Court, those are the players that are going to really be making use of it. There are very few such high economic level industries in the Lowveld.”

- (5) “Now a good idea which shows a good indication as to how economically active the population is in each area is to go and have a look at the income of the old Regional Services Councils, the current District Councils because they have levies which are either based on the salaries which they are paying out or on the turnover of business. Now the three regions are Highveld, East Vaal where Secunda is situated and then the Lowveld escarpment. Now the service levy which is based on the gross salaries of members or people who pay, in 1994/1995 was about R13.2 million in the Highveld; it was more or less a similar number in the East Vaal whereas the Lowveld had a figure of about R7.9 million.”
- (6) “Now this shows that Highveld, the Middelburg/Witbank area which we believe should be dealt with as a complex because you cannot, one of these days you are not going to be able to show the difference between the two, generates approximately 44% of the total regional services income for the province; East Vaal about 37% and Lowveld about 20%.”
- (7) “...the question which has to be asked is who will make use of a Supreme Court? It will be people who are economically active who will have claims in excess of R100 000,00 and those are the type of people who are paying the salaries which are paying the regional services council’s levies and it is quite clear when you put 44% of them in the Highveld, that the majority of the people who have the potential of making use of a Supreme Court are situated in the Highveld and then a close second would be the East Vaal region.”
- (8) “...the Highveld District Council’s area of jurisdiction is Middelburg, Witbank, Groblersdal, Belfast up to about Machadadorp.”
- (9) “The East Vaal Regional Services Council is Secunda, Evander, Trichardt, Leslie, Ermelo, Piet Retief, Standerton...”
- (10) “...and then the Lowveld is Nelspruit, Barberton, White River and that area.”
- (11) “...the Highveld Ridge Attorneys Association refers to the income of the fidelity fund from trust funds and when one looks at those figures which were the 1994 figures the Highveld area, the circle 6 of the Law Society which is the Middelburg,

Witbank, Belfast, Groblersdal area, brought in an income, a total income of nearly R1 million in interest generated from trust funds, that is more than double or that is approximately double, I would not say it is more than double, it is approximately double what the other area or other circles, Law Society circles in the province have brought in which shows that there is a high degree of economic activity.”

- (12) “We have referred to the question of accessibility. Now in this regard I must agree with what Witbank said is that when one looks at accessibility to legal services and need it can only be evaluated by the number of attorneys who are actually surviving in an area, it cannot - you know you have got to look at the number of people who are making a living out of the legal profession rather than in general the concept of or not only the concept of how economically active the society is or the number of people in that area or the size of the population, especially in view of the jurisdiction of the Magistrate’s courts now.”
- (13) “Now I have had a look at the Hortors and on the basis of the Hortors I made the following comparison: in the Middelburg, Witbank, Groblersdal area there are 53 firms, legal firms with 93 attorneys, practising attorneys; Secunda, Evander, Leslie, Trichardt, Kinross and Bethal which falls more or less within the Highveld Ridge Association area, there are 19 firms with 33 practising attorneys and then Nelspruit, Barberton, Malelane according to the Hortors, 24 firms with 69 practising attorneys...”
- (14) “**CHAIRMAN:** I suppose that the bulk of civil trials originating in this area of Mpumalanga which are heard in Pretoria would be undefended divorces?”

**MR BRANDMULLER:** That I could not give you that breakdown, I am afraid I cannot but what I can tell you is that there is quite a number of civil matters and if one looks at the figures given by the Nelspruit Advocates’ Society certainly the largest number are divorces but there is a substantial number of criminal matters and then also civil matters, other than that also quite a few applications, insolvencies, that type of thing and I believe a substantial number.”

- (15) “If I can then proceed to the roads? Firstly one of the most important roads that is here which must be taken into consideration is the one between Johannesburg/Pretoria and here which is a decent double road...”

- (16) “The road to Nelspruit, however, between Middelburg and Nelspruit and this applies both ways, is not known for its safety. In fact in certain circles it has been dubbed the road of death because of the number of accidents.”
- (17) “...I understand that if the route to Muputu is opened possibly something will be done about the road all the way to Nelspruit but we do not know when that will happen and how long it will take and it relates to the question of accessibility.”
- (18) “...on our initial submission there is a little schedule which shows those relative distances which shows that if one takes into consideration Pretoria and Johannesburg and Nelspruit and all the main centres where summonses would be issued, the average distance from Middelburg to there is about 130 kilometres, whereas from Nelspruit to there it is about 180 kilometres. The Secunda distances are more or less the same as the Middelburg distances.

**CHAIRMAN:** I gather from what you have said that you consider the claims of Middelburg to be rather stronger than those to Nelspruit?

**MR BRANDMULLER:** Substantially so. As far as that is concerned, when one takes the question of the road a little bit further and the accessibility to Johannesburg and Pretoria, Middelburg is immanently accessible to bring in expertise which is not currently here.”

- (19) “...use could be made of the advocates in the Pretoria and Johannesburg Bar as they could drive here and drive back on a daily basis if it is a one day trial. The cost of having to drive to Nelspruit and a three hour trip and then having to stay over makes the cost of litigation for the litigants extremely expensive and that should be considered.”
- (20) “There are things like medical specialists which are closer, actuarial services, in some instances use is made of the CSIR, that is closer, universities are closer when you need experts...”

- (21) "...and then one of the other aspects is the question of judges. At the moment we have got a Transvaal Bench and a Bench in the Witwatersrand. If a court is situated in Middelburg then the judges could also travel on a daily basis to come and work here, they could be rotated easily, fairly easily, they would not be out or off the beaten track so to speak as if they were in Nelspruit where they would be sitting alone for a long period of time..."
- (22) "**CHAIRMAN:** So what you envisage is that Middelburg would use the pool of judges in Pretoria and Johannesburg?"

**MR BRANDMULLER:** The suggestion which I would like to make is that especially initially when one does not need a large number of judges, it is not the type of situation where you have Pretoria and Johannesburg fully utilised now because if the provinces are each to get their own Supreme Court, certainly some of the work in the Transvaal division would then not be dealt with there and those judges would become available."

- (23) "It would, therefore, not be necessary to appoint new judges, you could use those judges, bring them here and be able to rotate them so that they would still have input in the Transvaal Bench and be used there, they could still be utilised and then it would not be necessary to appoint one person or two persons which we believe initially no more than two people would be used in a division like this."
- (24) "**CHAIRMAN:** ...I know it is not your main submission but I suppose *de facto* that would make a local division of Middelburg and its surrounding areas, in effect Middelburg and its environs would then become a local division of say Pretoria?"

**MR BRANDMULLER:** That is correct, that would be the effect of it ..."

- (25) "**JUDGE LEON:** May I just take you back to your first submission, I was not altogether clear about it, is it your case that because there is a province *ipso facto* there must be a seat of the court or a court under the Constitution?"

**MR BRANDMULLER:** What I said is this that there must be provincial divisions as prescribed by law and when I submitted it previously I said on the basis of that it is clear that the intention is that eventually each province should have a provincial division and I believe that is correct.

**JUDGE LEON:** Do you say that is an implied term of the Constitution or must be implied into the Constitution that each one of the provinces must have a Supreme Court”

- (27) **MR BRANDMULLER:** Yes I believe it is an inference that must be read in and it must be implied, that is the proper way.

**JUDGE LEON:** It is a necessary inference?

**MR BRANDMULLER:** Yes.

**JUDGE LEON:** I understand.”

- (28) “Then as far as the facilities are concerned I do not want to say too much because you have got ready access to the Chambers, the only thing that I can add to the question of the facilities is that currently, this building was built with a view to the future and with a view to expansion and there are a large number of offices which are not being used currently by the Department of Justice.

**CHAIRMAN:** Could you give us a broad indication of how many?

**MR BRANDMULLER:** At the moment it is the whole top floor which is approximately 15 offices I would say and then half of the first floor which is approximately another seven or eight offices. There is also the possibility, currently we have two regional courts sitting here so it would not be too difficult to convert one of the courts to an additional Supreme Court should it be

necessary.”

- (29) “Now the figure of Supreme Court services, now I only have a figure of services which I could get from our local sheriffs who were prepared to be of assistance, for 1994 and working backwards on the basis of Nelspruit submission was 3,278 in the Middelburg, Witbank, Groblersdal, Belfast area which refers again to this specific area, that is services, not matters heard or matters settled I have not been able to obtain figures from any of the other sheriffs so I could make no comparison. On the basis of that figure and the figure of the Nelspruit Advocate’s Association, Middelburg brings in 40% of the work to the Supreme Court on the basis of services.

**MR MALULEKE:** Even that statistic would not be helpful if you take into account the fact that many of the larger corporations which operate in Mpumalanga would have their head offices in Johannesburg and if you are suing them out of that court you would tend to serve the pleadings in that court or the summon in the court?

**MR BRANDMULLER:** You would serve it out of that court but in this instance these services are all...(intervenes)

**CHAIRMAN:** Are services on local defendants.

**MR BRANDMULLER:** On local defendants.

- (30) “Then there is just one aspect, it seems that everybody believes that the capital is the right place for a Supreme Court to be and I think that needs to be dealt with, especially in this case because Middelburg is not the capital. The capital, and the submissions which I read did not give any motivation other than purely a statement that the capital must be the place for the seat of the court. Now we believe that the capital is not the place necessarily, we must look at where people are going to make use of the court.”

- (31) “**JUDGE LEON:** Does it not also depend on the size of the place and the number of people living there and that sort of thing as well? You see we have this problem, I do not say it is a problem but it is a matter that arises for the Eastern Cape where Bisho is the capital but it is a very small place compared say with East London or Port Elizabeth or Grahamstown. Now is there anything in the Constitution which suggests that because a province has a capital that, therefore, that capital must be the seat of the court?”

**MR BRANDMULLER:** Not that I know of, not that I could find at any rate. I just, perhaps in comment, I do not think - again it goes back to the point that one must not look at the population, one must look at attorneys and who makes use of the legal services within the jurisdiction of the court.

**JUDGE LEON:** You must look at the legal profession in other words?

**MR BRANDMULLER:** Yes...”

- (32) “**MR MALULEKE:** One of the matters we have heard as a Commission was that the State, even the provincial government is more likely to become a very busy litigator in a Supreme Court in a particular province and the capital being in Nelspruit and if the government was to become a major litigator, how would you propose to accommodate that eventually in your submission?”

**MR BRANDMULLER:** Well I think that has not been dealt with specifically, I would just like to - I think in this province has a specific, a very interesting situation where the Premier decided to go for a decentralised government. He has his seat in Nelspruit but he has, for example, allocated the office of the Department of Trade and Industry to Witbank; of Education to Middelburg; Law and Order is currently in Middelburg; some of the offices are in Secunda, Housing for example...”

- (33) “**MR JAPPIE:** Now Middelburg is presently served by a circuit is that not so of the Supreme Court?”

**MR BRANDMULLER:** Yes that is correct.

**MR JAPPIE:** How often does the circuit sit over here and for how long?

**MR BRANDMULLER:** At the moment it has been sitting here for the past three or four months on a single matter but typically it comes around every month and a half, every six weeks, month to six weeks for approximately a week, two weeks.

**MR JAPPIE:** And it is largely criminal matter?

**MR BRANDMULLER:** And it is largely criminal matters yes, the civil matters are all dealt with in Pretoria.

**JUDGE LEON:** Are there any civil matters dealt with by the circuit court, not even unopposed divorces?

**MR BRANDMULLER:** Nothing, we travel in to Pretoria for unopposed divorces.”

- (34) **CHAIRMAN:** Just to help the Commission, in your experience I gather to travel not infrequently to Pretoria for divorces...if a man from Middelburg or Witbank or take an area close to you, Secunda, Hendrina, Carolina comes to you in Middelburg and you handle the whole thing, at the end of the day what does it cost that man or woman?

**MR BRANDMULLER:** It would cost him on an unopposed basis approximately R2 500,00.

**JUDGE LEON:** Now supposing that that same case were heard in Middelburg by a Family Court or a Circuit Court, what do you think the costs would be?

**CHAIRMAN:** Without using counsel?

**JUDGE LEON:** Without using counsel?

**MR BRANDMULLER:** Well we could reduce the costs by R1 000,00 easily.”

**(XIV) MR ATTORNEY D VAN DER MERWE ON BEHALF OF THE HIGHVELD RIDGE ATTORNEYS ASSOCIATION**

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

- (1) “Ek is Deon van der Merwe, ek is ‘n lid van die Hoëveldrif se Prokureursvereniging, ek verskyn in hulle opdrag. Ons Voorsitter, Meneer De Swart, is ook teenwoordig vir vrae as dit nodig is. Ek wil vir u sê dat ons vereniging is ‘n vrywillige vereniging van prokureurs wat praktiseer in ons distrik maar hoofsaaklik in drie dorpie, die setel is in Evander en dan in Secunda en dan in Leslie, ook in Kinross en dan het ons ‘n swart woongebied daar naby Mbalenlie waar ons ook lede het wat nou nie vandag teenwoordig is nie.”
- (2) “...ek het eers in Bloemfontein gepraktiseer vir drie of vier jaar en sedert 1988 praktiseer ek in Secunda.”
- (3) “...die prokureurs in Secunda omgewing in Middelburg/Witbank se omgewing se submitisie dat ‘n Rondgaandehof is die laaste alternatief.

**VOORSITTER:** Is dit nou met die oog op siviele werk?

**MNR. VAN DER MERWE:** Korrek, dit is die laaste alternatief en vinnig vir u hoekom ons van mening is dit is die laaste alternatief is dat ons ervaring van kollegas in ander provinsies is dit werk nie prakties baie lekker nie, daar is baie administratiewe rompslomp...”

- (4) “Dit kan werk, maar dit is die laaste alternatief.”
- (31) “Die tweede alternatief is dat ons moet in ons provinsie ‘n setel kry wat ten minste konkurrente juisdiksie met die TPA het.

**VOORSITTER:** En te meer so indien die setel van die hof Nelspruit sou wees?

**MNR VAN DER MERWE:** Ek gaan nou vir jou sê hoekom ek so sê want my kollega het dit klaar vir u beantwoord en dit is 'n wetenskaplike antwoord. Kom ek sal vir jou sê, die ekonomiese bedrywighede is in hierdie omgewing, dit is nie daar nie, dit is die enigste antwoord.”

- (32) “Die prokureurs is hierso omdat hier dinge gebeur, die mense is hier omdat dinge gebeur en dinge gebeur en dan gebeur regspraak daaruit, dit is in die kort en lang die antwoord daarop.”
- (33) “...as jy gaan kyk na ons afstande wat ons gegee het, die vergelyking is dit huidige vir Nelspruit nie 'n verskil of ek gaan Pretoria toe ry of byvoorbeeld Secunda of Middelburg toe ry nie, hy is ver. Vir my mense in Secunda en ek neem aan my kollega se mense ook, as ons moet ry is ons nou 'n uur en 'n half vanaf Pretoria...”
- (34) “**VOORSITTER:** Johannesburg en Pretoria is omtrent ewe ver vir julle?”

**MNR. VAN DER MERWE:** Nee, Johannesburg is 'n bietjie nader, Johannesburg is so 'n uur en 10 minute, Pretoria 'n uur en 'n half. Maar as ons moet Nelspruit toe gaan dan moet ons drie ure ry. So as 'n mens daardie vergelyking tref dan oor toeganklikheid, dan moet daardie faktor in berekening gebring word, dit moet baie tel want die meeste ekonomiese bedrywige mense is in hierdie omgewing.”

- (35) “Dan my eerste argument sal dan wees of voorstel is dan dat ons 'n permanente setel moet kry, 'n onafhanklike setel.”
- (36) “Ek wil nie op my kollega se rug ry nie maar hy het al baie daarvoor gesê, kortliks die volgende: ons is een van die nege provinsies en ek wil toegee en saamstem met hom dit is 'n redelike noodsaaklike of 'n redelike noodwendige afleiding uit die Grondwet dat elke provinsie sy eie Hooggeregshof moet hê. 'n Voorhandliggende rede is ons reg ontwikkel, binnekort gaan van ons plaaslike wetgewing in hierdie provinsie getoets moet word. 'n Vraag in die lug, dink u dit is billik as Gauteng se howe ons provinsie se wetgewing moet toets? Ek dink

dit is billik en redelik dat ons eie mense ons eie wetgewing toets.”

- (37) “Daar is vir my geen twyfel dat ons provinsie ‘n behoefte het aan ‘n eie hof nie. Twee basisse daarvoor, daar is genoegsame ekonomiese bedrywighede in ons provinsie en daar is genoegsame bevolking volgens digtheid daarvoor.”
- (38) “**VOORSITTER:** Gaan u akkoord met dit wat meneer Brandmuller ter oorweging gegee het naamlik dat in die begin stadium altans Middelburg sou hy ‘n hof kry, gebruik maak van die Johannesburg en Pretoria regters?

**MNR. VAN DER MERWE:** Ek gee hom gelyk, dit is goed, dit is baie goed vir die onmiddelijke - my voorstel sal wees aanvanklik drie regters met ‘n maksimum van vyf regters en dit sal goed wees deur die kruisbestuiwing om hulle te trek of uit Johannesburg of uit Pretoria.”

- (39) “‘n Ander baie belangrike punt en ek is seker Meneer Phosa gaan hierdie punt vir u uitlig, dit is as geld hier geginereer word, inkomste hier gegineer word as gevolg van litigasie en andersins, hoekom moet dit gespandeer word in Gauteng, hoekom nie in ons eie provinsie nie? Ek dink hy sal vir u daarvan meer vertel en dit is belangrik want dan kan die massas opgehef word as daardie geld hier gespandeer word.

**VOORSITTER:** Ja dit is seker ‘n geldige punt maar mens moet nie uit die oog verloor nie dat, seersekerlik in die begin stadium, dit waarskynlik is dat gebruik gemaak sal word van Pretoria en Johannesburg se advokate en dan word daardie geldjies daar uitgegee?

**MNR. VANDER MERWE:** Korrek maar daar moet iewers ‘n beginpunt wees so dit gaan ‘n geleidelike ding wees volgens my, dit kan tog nie een klaps in werking gestel word nie.”

- (40) “Nou as ‘n laaste submitisie onder submitisie aan u dat daar wel moet ‘n setel wees, is dit so as daar ‘n permanent setel kom, en ek dink dit staan vas deur al die verhoë wat ek gelees het waar die mense agiteer vir ‘n permanente setel in ‘n

provinsie, is dat gehalte regspleging gaan uiteindelik gedien word as daar 'n permanente setel is.”

- (41) “As ek dan meer in “detail” kan handel oor Secunda as 'n voorstel vir so 'n setel?”
- (42) “As Groblersdal gaan wegval by daardie eerste bladsy van my geografiese opset, dan gaan die gemiddelde afstand tussen die gemelde sentras en Pretoria 216 kilometer wees, dit is nie wesentlik nie, ek noem dit net vir u en dan by die nuwe bedeling by die eerste punt daarso sal die gemiddelde afstand na Witbank 156 kilometer wees en by Nelspuit as setel sal die afstand wees 269 kilometer en dan die laaste maar nie die minste nie sal die gemiddelde afstand na Secunda wees 126 kilometer.”
- (43) “Die beginsel staan nog steeds vas dat volgens ons berekeninge Secunda die mees sentrale punt is as 'n mens ekonomiese bedrywighede en bedrywige sentras in berekeninge bring, nie alle sentras nie.”
- (44) “Kortliks wil ek vir u sê mens moet kyk na, soos my geleerde vriend gesê het, wat sê die prokureurs, hulle is die toepassers van die regspleging; tweede moet 'n mens kyk wat sê die ekonomie daarvan maar daardie twee goed moet saamwerk anderste kan jy nie 'n gelukkige oplossing kry nie.”
- (45) “Wat die ekonomiese opset betref verskil ek so 'n bietjie van my geleerde vriend maar verskille is ook reg in ons beroep. Dit is so, volgens my kennisname, is die “Texset” area, en dit is 'n kort opsomming vir die volgende dorpie soos Trichardt, dit is net na Secunda, Evander, Kinross en Secunda,... Volgens die 1991 sensus was daardie area het dit meer as 10% van die totale bevolking in die Oos-Transvaal gehad. Daardie klein areatjie, die is vier dorpie en dit was die digstbevolkte ekonomies bedrywige bevolking in die provinsie gewees.”
- (46) “Huidiglik het die Hoëveldrif distrik soos op 30 Junie 1995 'n bevolkingsgetal van 538,073 mense. 'n Verder belangrike punt is dat die Texset area, en dit is weer 'n gedeelte net van Hoëveldrif, dit is 'n klein gedeeltetjie, lewer die grootste bruto geografiese produk, BGP tot hierdie provinsie, teweete 52,2%.”

- (47) “Nou wat betref toegangsroetes dit is so, Middelburg beskik oor ‘n N4, ‘n pragtige pad tot hierso, daarna ‘n doodspad...(tussenbei)

**VOORSITTER:** Van Secunda is Johannesburg en Pretoria ewe ver?

**MNR. VAN DER MERWE:** Nee ek kan vir u sê dit is amper ewe ver maar Pretoria is ‘n bietjie verder, kom ons sê 20 kilometer as dit wesenlik is...”

- (48) “Ek wil vir u submiteer dat ons, Secunda is ‘n baie nuwe dorp, dit is ‘n moderne infrastruktuur en uitleg en ek kan vir u verseker dat die stadsvaders my belowe het sal ons enige verder uitbreiding maklik kan akkommodeer. Ons het ‘n nuwe hofgebou, dit is ‘n afsonderlike hofgebou, hy is totaal onderbenut en hierdie hofgebou is van meetaf ingerig om gebruik te word deur die Rondgaande hof. Inderwaarheid het Regter Van Dijkhorst, u ampsbroeder of een van u ampsbroeders gereël dat in 1993 hierdie hof sou ingerig moet word. My kollega kan my reghelp, ek dink daar is drie hofsale, nie heeltemal so groot soos hierdie ene nie, ek sou sê drie-kwart die grootte van hierdie hofsaaal.

**VOORSITTER:** Sit die Rondgaandehof inderdaad op Secunda?

**MNR. VAN DER MERWE:** Korrek.

**VOORSITTER:** Hoe gereeld?

**MNR. VAN DER MERWE:** Een keer in twee maande vir ‘n week omtrent.”

- (49) “‘n Verdere submitisie aan u en ek sal verduidelik hoekom sê ek so is dat die meeste van die litigasie in ons provinsie ontstaan binne ‘n radius van 120 kilometer af vanaf Secunda, met Secunda in die middel, Middelburg, Witbank ten noorde, Bethal, Ermelo, Piet Retief ten ooste, Standerton en Volksrust ten suide en Delmas ten die weste.”

- (50) “’n Verdere belangrike punt, veral vir Secunda en my Prokureurs Vereniging is dat ons die steun geniet van Bethal, Standerton, Delmas - toegegee hy steun ook vir my kollega, en Ermelo en skrywes in daardie verband is ook in my skriftelike versoë aangerig vir u kennisname.”
- (51) “My verdere belangrike submissie aan u is dat ons setel, Evander, is volgens ons Senior Landdros daar die tweede grootste landdroshof kantoor in die provinsie. Slegs Witbank is groter maar die senioriteitsvlak is dieselfde van die Landdros daar, hulle albei het Senior Landdroste.”
- (52) “Ek wil vir u afsluit om te sê dat die keuse van die hoofstad van die provinsie was ’n politieke besluit, daar is geen kwessie daaroor nie.

**VOORSITTER:** Wel wat ook al die beweegredes daaragter, op die meriete is dit relevant eenkant toe of die ander of dit is ’n neutrale feit?

**MNR. VAN DER MERWE:** Wat ek net vir u wou sê is die keuse van of ’n setel vir ons provinsie of waar die setel moet kom moet in die eerste plek deur die mense, prokureurs en die mense wat hier bly geneem word, hulle kan daarvoor besluit en dan moet dit gekoppel wees aan die ekonomie en as dit by die ekonomie kom is daar geen twyfel dat dit tussen Hoëveldrif of Middelburg gaan wees nie en ek submitteer aan u dat dit moet Hoëveldrif wees.”

- (53) “**VOORSITTER:** Voor ek vergeet, ek neem aan die grootste gross onbestrede verhore van u fima en dié van u kollegas in Secunda wat in Pretoria verhoor word, is onbestrede egskeidings?

**MNR. VAN DER MERWE:** Heeltemal korrek.”

- (54) “**MR MALULEKE:** The question of having the Attorney General placed in Pretoria from the criminal lawyers point of view, is that an inconvenience? Would it assist if you had an Attorney General in your own province?

**MR VAN DER MERWE:** I have read the submission by Dr d'Oliviera, I have not heard what he said orally before the Commission in that regard. According to my colleague it would mean a duplication of costs obviously. He is of the opinion that I do not think that would be necessary, I think we can stay with one Attorney General in Pretoria or Johannesburg.

**MR MALULEKE:** Because one of the points he made was that there is usually a lot of need for greater interaction between the Premier for instance, like in a local government or in the provincial government, and the Attorney General. If we were to have a court in say this Commission was to recommend a Supreme Court for this province and we should have the court in Secunda for instance, we would have the Attorney General in Secunda. You do not see that as creating problems for the functioning of the Attorney General's office and the police and the government?

**MR VAN DER MERWE:** I think we must just distinguish between one thing or two things is that the Attorney General, according to me, is not a political appointment so he is an Officer of the Court and he is also an Officer of the Government, it is not a political appointment in that regard so I do not think, if he is not with the seat of the Government that that will be a practical problem. We have come by until now with Pretoria so what is the difference if he is in Secunda and the seat is in Nelspruit, the provincial seat, government seat? I do not think that will be a problem."

#### **MR BRANDMULLER BY WAY OF REJOINDER**

- (55) "The argument as far as settling an office of the Attorney General and/or the State Attorney, I agree with my colleague with regard to the Attorney General. As far as the State Attorney is concerned...(intervenes)

**CHAIRMAN:** Your agreement is that?

**MR BRANDMULLER:** It could remain in Pretoria and give access, that is the way it is currently worked and especially in the initial stages. I mean the same applies to the question of judges, once the court becomes big enough to become self sustained, obviously all those sort of thing would be brought down to the court. The State Attorney's office again the same applies as far as that is

concerned.”

## ***EXTRACTS MIDDELBURG & NELSPRUIT***

### **(XV) ADV D.D.J. ROSSOUW OF NELSPRUIT ON BEHALF OF THE PREMIER OF MPUMALANGA AND ALSO ON BEHALF OF THE SOCIETY OF ADVOCATES OF NELSPRUIT**

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

(1) “...vir 1996, dit is nou die jaar waarin ons staan het die rondgaandehof vir strafsittings in Mpumalanga gesit vanaf 15 Januarie tot 4 April deurlopend op Bethal, Middelburg, Nelspruit, Graskop en vanaf 15 April hierdie jaar tot 17 Mei is die sitting, Sy Edele Regter Weyers, sal op Witbank, Lydenburg en Nelspruit sit vir daardie periode. Dit is net aantoonend daarvan dat wat die Strafhof aanbetref, daar feitlik permanent ‘n rondgaandehof deurlopend is.”

(2) “In so ver as ons of wat ons die voorleggings kan sien, as die stem van die bevolking, dan wil dit voorkom uit al die voorleggings dat daar by verre die meeste, is daar ‘n dringende behoefte aan ‘n eie provinsiale afdeling en in sommige gevalle plaaslike afdeling van die Hooggeregshof van Suid-Afrika. Waar die mense na traag en kyk is na ‘n permanente setel in die provinsie. Nou hierdie situasie is nie nuut nie.”

(3) “Sy Edele Regter Hefer het sekere voorstelle gemaak met betrekking tot aanpassing, verbetering en uitbreiding van die bestaande rondgaandehowe stelsel nadat hy bevind het dit is nie nou tyd vir permanente setels nie en in paragraaf 19.9 handel hy daarmee en sê:

*“Die Kommissaris glo egter dat dit grootliks verminder kan word, hierdie probleme, deur die aanpassing, verbetering en uitbreiding van die bestaande stelsel van die rondgaandehowe of deur wysiging van die hof reëls ten einde dit moontlik te maak om sittings op ander plekke te hou.”*

Nou daarvan het niks gekom nie, ons is 10 jaar later.”

(4) “Sy Edele Regter Eloff, saam met die Pretoria Balie, saam met die Pretoria se Prokureurs Vereniging kon, in my submissie as ‘n mens hierdie voorleggings van hulle lees, net so wel een voorlegging gedoen het want die een praat die ander een net na, dit is al wat hulle doen en hulle skerm vir die eie en die eie voordeel

wat daaraan verbonde is.”

- (5) “Die voorleggings val duidelik in twee kategorieë naamlik dié wat veg om behoud van die *status quo* en dié wat wil wegbeweeg na ‘n nuwe bedeling, dit is dus sentralisasie teenoor desentralisasie.”
- (6) “‘n Spreekende voorbeeld van die gees van vernuwing is onder andere die voorlegging van sy Edele Regter Flemming, wat duidelik in gedagte het die medium en langtermyn belange van die inwoners van die provinsies en daarby ook die voorlegging van die Potchefstroom se Universiteit, by monde van Professor Kruger, ek het die verwysings daar vir u gegee. Almal kyk op die medium tot langtermyn en dit is ons submitisie dat dit is waarna gekyk moet word, nie wat die posisie vandag is nie, maar wat gaan hy wees in die nabye toekoms en vorentoe.”
- (7) “...ek praktiseer nou bykans 18 maande in Nelspruit, ons het nog twee kollegas hier.”
- (8) “...maar my praktyk is ‘n Hooggeregshof praktyk so ek kom dikwels in die TPA en by geleentheid ook in die WLD maar hierdie gaan oor die TPA.

**VOORSITTER:** Geld dit ook u twee ...(tussenbei).

**MNR. ROSSOUW:** Ook my kollega Visser, my kollega Eric Mabusa nie soseer nie, hy het wel sake gehad vir die Hooggeregshof, maar hy praktiseer meer en hy het meer besigheid ook, so ek wil nie eers oor hom baie praat nie maar Visser wel, Visser doen heelwat werk.

**VOORSITTER:** Hoe lank is meneer Visser aan die Balie hier?

**MNR. ROSSOUW:** Ook net so lank soos ek.”

- (9) “...ek het 14 jaar in Pretoria gepraktiseer, ek was 15 jaar ‘n prokureur voor dit in die platteland, ek is lief vir die platteland en ons het gevoel, en my voorlegging

sê dit ook, ek is diensgeorieerd, ek wou kom en soos ek vir die prokureurs gesê het, vooraf ons kom om indien moontlik vir hulle in staat te stel om 'n nog beter diens aan hulle gemeenskap te lewer en ons het goeie ondersteuning van die prokureurs gekry.”

- (10) “Nou in al my jare as praktyk, nie een keer nie, dikwels is kliënte geadviseer om ten spyte daarvan dat sy eis binne die jurisdiksie van die landdroshof sou val, eerder Hooggeregshof toe te gaan daarmee as gevolg van hetsy kompleksiteit van die gereg, hetsy kompleksiteit van die feite, omdat daar 'n gevoel is van 'n basiese gevoel dat in die landdroshof afdeling as gevolg van tekort aan personeel, as gevolg van die feit dat die siviele deel van die landdroshof bietjie afgeskeep word, die stiefkind is, daar nie altyd behoorlik gekwalifiseerde, behoorlike ervare manne op die bank is om siviele verhore te doen nie, dan land baie van hierdie verhore in die Hooggeregshof.”
- (11) “...die Familiehof - ons vereenselwig ons ten volle met die voorleggings van die Vereniging van Prokureursordes in die Republiek van Suid-Afrika en die Assosiasie van Familiepraktisyns, wat die kwessie van die voorgestelde Familiehof aanbetref en wel vir die volgende redes: u sal onthou dat daardie voorleggings lees dat die Familiehof moet 'n spesialis afdeling van die Hooggeregshof wees en nie die Landdroshof nie, tewens dit word baie sterk uitgedruk deur die Prokureurs Vereniging dat die wysiging in die Landdroshof 1993 om voorsiening te maak vir hierdie Familiehof moet so gou as moontlik omgekeer word.”
- (12) “Nou nadat ek dan gesê het dat die landdros afdeling gaan gebuk onder die tekorte, om net nog meer en daarby gespesialiseerde werk na die landdroshof afdeling af te wentel, is om die resplesing willings en wetens op 'n rampspoedige weg te plaas wat niks goeds inhou nie. Dit sou baie sinvoller wees om die Familiehof as 'n spesialis afdeling van die Hooggeregshof in te stel met spesiale reëls van toepassing op onverdedigde sake en wat formele verskynings onnodig sou maak.”
- (13) “...dit is alombekend dat in die algemeen daar by die breë bevolking 'n vraagteken geplaas word op die siviele regspraak in landdroshofe in die lig van tekorte aan goed gekwalifiseerde en ervare siviele landdroste, ek gaan daardie punt nie verder mee handel nie behalwe dat daar is 'n baie belangrike aspek en dit is dat ek sê dat met die klem op regstellendeaksie moet verwag word dat die reeds gebrekkige vertroue in die landdroshof afdeling nie op die kort tot medium termyn gaan verbeter nie maar selfs verder mag versleg voordat dit hopelik gaan verbeter.”

- (14) “Sy Edele Regter Hefer het spesifiek melding gemaak van die feit dat sonder advokate op ‘n plek geen Hooggeregshof daar kan funksioneer nie, die posisie het nou verander want jy het jou prokureurs wat kan verskyn. Dit is my submissie dat verre daarvan dat die regspleging ‘n insinking sal toon, sal jou prokureurs, ek het genoeg vertrouwe in hulle, dat hulle hulle self sal opskerp om daardie nuwe vereistes of eise wat aan hulle gestel gaan word, daarby aan te pas...”
- (15) “Ek maak die punt van Wallis SC se aanmerking met betrekking tot die Nelspruit Advokate, ek moet namens my...(tussenbei)

**VOORSITTER:** Wel u hoef nie aan te haal nie, verfris net ons geheue, wat het hy daar gesê, net in ‘n sin of twee?

**MNR. ROSSOUW:** Ek gaan vir u dit net sê, hy sê dat die - hy verwys net na die Nelspruit Advokate en dan sê hy dat hierdie advokate, bladsy 614 ek sal dit vir u lees:

*“Pietersburg does not have a Bar and Nelspruit has two practising advocates neither of whom is a member of any established Bar.”*

Ek wil die posisie daar net regstel. Toe ons Nelspruit toe gekom het, voor ons bedank het in Pretoria het ons vir hulle gesê ons gaan bedank, gee ons geassosieerde lidmaatskap tot tyd en wyl ons ‘n Balie het en dit is ons geweier.

**VOORSITTER:** Is dit ‘n versoek aan die Algemene Balieraad?

**MNR. ROSSOUW:** Nee, Pretoria se Balie, ons was lede daar, ek en Visser.”

- (16) “So ek wou dit net onder die Kommissie se aandag bring dat verre daarvan dat ons maar net, dit is ongelukkig dat dit tot ‘n mens se ore gekom het dat na ons verwys word a plakkers in Nelspruit, dit is nie so nie, die ware feite is totaal iets anderste.”
- (17) “As dienste van ‘n minderwaardige kwaliteit gelewer word sal sodanige praktisyn tot medium tot lang termyn dit nêrens maak nie, nie in Pretoria nie, nie in Nelspruit nie, nie in Middelburg nie, dit maak nie saak waar hy gaan sit nie, hy sal dit nie maak nie. Nou u sal u herinner ook dat in die Hefer-verslag was daar eintlik nie getuienis oor situasies nie, daar was bloot ‘n aanmerking op bladsy 43

dat gevalle waar advokate na die platteland toe uitgewyk het, het hulle dit eintlik nie gemaak nie maar dan so sydelings sê hy daar is darem twee advokate in George en na alle aanduiding gaan dit goed met hulle. Al wat ek wil daarmee sê is daar was nie getuienis dat advokate dit nie maak nie...”

- (18) “**VOORSITTER:** Net ‘n paar vrae. Die eerste een wat opduik is wat is u betoog, waar in Mpumalanga is die aangewese setel van ‘n nuwe provinsiale afdeling?

**MNR. ROSSOUW:** Nou sit ek my hoed op van die Vereniging van Advokate en u sou gesien het in my voorlegging het ek gesê so ver oos as moontlik omdat die grootste konsentrasie van die bevolking van Mpumalanga in die laeveld lê en...(tussenbei)

**VOORSITTER:** Nou gee u ter oorweging dat bevolkingsdigtheid in dié opsig lotsbepalend is? Wat is die faktore wat moet bepaal waar die hof moet sit, hierdie setel geleë moet wees?

**MNR. ROSSOUW:** Wel bevolkingsdigtheid uit die aard van die saak saamgeneem met die bemagtigingsproses tans aan die gang vir die agtergeblewe gemeenskappe. Soos wat hulle bemagtig word, ekonomies en finansieël gaan die werkklas net groter en groter word.”

- (19) “...u sou gesien het in my voorlegging en ek sê weer daar praat ek namens die Vereniging van Advokate, my gedagte was dat daar ‘n konkurrense jurisdiksie moes wees van sê Pretoria met ‘n radius van sê 80 kilometer of 100 kilometer.”

- (20) “Die gedagte synde dat as die persone of die partye, as hulle al twee nader is aan Pretoria as wat hulle aan Nelspruit is, dat hulle die keuse sou hê om of Nelspruit toe te kom of te besluit hulle gaan Pretoria toe. My motivering daarvoor was en dit is ‘n sterk punt by my is dat daar moet toegang tot die howe wees vir die mense. Om in ‘n hof te gaan sit net op Middelburg gaan nie die antwoord wees nie, want daar is ‘n hof naby van Pretoria of sit hom op Secunda, Witbank, waar ook al, dit is nie die antwoord nie. Om die mense toegang tot die hof te gee, sit hom so ver moontlik weg van die bestaande howe en sit hom in Nelspruit, dit is wat my voorstel daar was.”

- (21) “Met my hoed op van die Premier het hulle hulle nie verbind een of anderkant

toe nie, dit is - twee name is genoem, Middelburg en Nelspruit en ons weet dat wat ook al gesê word omtrent hierdie aspek uiteindelik sal dit na alle waarskynlikheid 'n politieke besluit wees waar hy kom maar namens die advokate is die houding dat dit is in die beste belang van die gemeenskap van Mpumalanga dat die hof so ver as moontlik oos geplaas word.”

- (22) “**VOORSITTER:** Die feit dat daar die konsentrasie van prokureurs op bepaalde punte, is dit relevant by die ondersoek?

**MNR. ROSSOUW:** Nie deurslaggewend nie want as waar die setel ook al kom gaan bestaande prokureursfirmas verseker uitbrei as gevolg van die korrespondente aspek en daar gaan nuwe firmas open.

**VOORSITTER:** Ja nee dit kan ek begryp, maar wat gee u ter oorweging, hoekom is daar op bepaalde plekke in Oos-Transvaal, in Mpumalanga meer prokureurs as op ander plekke?

**MNR. ROSSOUW:** Dit hang van - wel daar is 'n behoefte daaraan kom laat ek dit so stel, behoefte bepaal die teenwoordigheid van prokureurs, die getalle daarvan al dan nie”

- (23) “**VOORSITTER:** Wat dink u van die moontlikheid van 'n Rondgaandehof vir siviele sake op 'n redelike deurlopende basis? Is dit prakties uitvoerbaar, ja of nee?

**MNR. ROSSOUW:** Ek dink dit is nie prakties uitvoerbaar nie.”

- (24) “**MNR. ROSSOUW:** Praktiese oorwegings wat 'n mens daarteen instel is dat daar moet nou dokumentasie, lêers, dit moet geskryf word, waar gaan die administratiewe funksies vervul word, gaan dit in Pretoria wees, gaan dit op Middelburg, Nelspruit, waar die hof ookal gaan sit, hoe gaan dit werk? Lêers raak weg, dokumentasie raak weg, ek persoonlik voorsien baie probleme wat dit aanbetref en op die lang duur met alle respek, gaan dit nie goedkoper wees nie, dit gaan duurder wees, want daardie regters wat kom en kom sit daar is die S en T wat aan hom betaal moet word bo en behalwe sy salaris en sy klerk, almal, dit is 'n hoër uitgawe.”

- (25) “Maar in Mpumalanga het ons, dit is die enigste provinsie wat nie een of ander struktuur reeds het soos wat die ander mense het nie. Wat se verskriklike koste

kan daaraan verbonde wees? Ons sit hier met ‘n hofgebou wat opgerig is vir die Kommissaris, Kommissarishof wat nou in 1984 weggedoen is met twee pragtige groot hofsale, al die fasiliteite vir regters kamers, fasiliteite vir die griffier, alles is daar, ‘n lieflike wit steengebou woos wat u ingekom het in Nelspruit aan die linkerkant, die Premier beset tans die gebou, maar ons weet hulle gaan hulle eie gebou bou vir die regering, ‘n pragtige wit siersteengebou, hy is daar met al die fasiliteite.”

- (26) “**VOORSITTER:** Nou staan dit vas dat daardie gebou beskikbaar sal wees in die nabye toekoms?

**MNR. ROSSOUW:** Ek wil nie die Kommissie mislei nie, al wat ek vir die Kommissie kan sê is dat die regeringsgebou word beplan en beoog en dat daardie gebou, wanneer die regering uittrek uit daardie gebou uit, is dit die aangewese geskikte gebou vir ‘n Hooggeregshof.”

- (27) “**MR MALULEKE:** ...are you able to indicate whether you find this situation which exists in the TPD and possibly the WLD relating to waiting for the courts and judges, does it work a greater hardship for litigants coming from outside Gauteng than for litigants living in Pretoria or Johannesburg?

**MR ROSSOUW:** Of necessity it has to because litigants coming from outside Gauteng come many as far as Nelspruit which is 300 kilometres away from Pretoria whereas with Gauteng it is a small province.

**CHAIRMAN:** They sleep in their own beds.”

- (28) “**MR MALULEKE:** ...so you would go along with the view that like the ALS, we have one Family Court which would possibly hear undefended divorces and if the matter becomes defended you would submit it to a higher court or in this instance to a judge?

**MR ROSSOUW:** Well my stand is on behalf of the Association of Advocates, we should have a Family Court which is a specialist court, branch of the Supreme court and should deal only with family matters and on the basis as far as undefended matters are concerned that you do not even have an appearance unless the judge concerned on the papers put before him that he would rather refer this matter for evidence and then it gets referred to evidence and evidence is led.”

**(XVI) MR ATTORNEY P.L. DU TOIT ON BEHALF OF THE NELSPRUIT ATTORNEYS ASSOCIATION**

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

- (1) “Ek dink dit is algemene kennis dat ek verteenwoordig die Nelspruit se Prokureurs Vereniging en noodwendig is dit ons gevoel en ondersteun ons die gedagte op die eerste plek dat daar desentralisasie moet plaasvind en in besonder dat ‘n setel van die Hooggeregshof in die provinsie Mpumalanga moet gestel word en tweedens ondersteun ons die gedagte dat sodanige setel moet wel in die dorp Nelspruit wees.”
  
- (2) “Dit is ons respekvolle submissie dat Nelspruit is die hoofstad of die hoofsetel van die provinsie, Mpumalanga en noodwendig as gevolg daarvan is die wetgewer gerieflik naby indien die setel in Nelspruit sou wees. Dit is ook erkende feit dat daar baie staatsdepartemente huidiglik gevestig word en dit is ons respekvolle submissie dat daar in die toekoms nog meer staatsdepartemente hier gevestig sal word en dat die mees sinvolle lokasie sal wees die dorp Nelspruit as hoofsetel.”
  
- (3) “**VOORSITTER:** Nou ons weet Mpumalanga is ‘n groot provinsie, watter toetse moet aangewend word, watter hulpmiddels bestaan daar om te besluit gestel nou in beginsel dat daar aanbeveel gaan word Mpumalanga moet sy provinsiale afdeling kry, watter hulpmiddels moet die Kommissie aanwend om te probeer besluit waar die aangewese plek is?

**MNR. DU TOIT:** Dit is ons gevoel dat daar drie faktore is wat in ag geneem moet word. Die eerste is die kwessie van waar die hoeveelheid van die bevolking hulleself gevestig het en waar hulle inderdaad woon. Die tweede aspek is die ligging van sodanige sentrum, met anderwoorde hoe sentraal is sodanige sentrum die ligging daarvan en die derde daarvan is ...(tussenbei)

**VOORSITTER:** Hoe sentraal binne die raamwerk van die provinsie?

**MNR. DU TOIT:** Dit is korrek.

**VOORSITTER:** Nou hoe sentraal is Nelspruit?

**MNR. DU TOIT:** Wat nie vergeet moet word nie is die kwessie van Bosbokrand wat in alle waarskynlikheid deel van Mpumalanga gaan word en

daar word gedurig verwys na ander setels naby aan die hoofsetra, maar as ons Bosbokrand en die omliggende omgewings in ag gaan neem dan is Nelspruit inderdaat baie sentraal in die provinsie Mpumalanga en baie maar gerieflik beskikbaar en toeganklik vir die mense op die straat en die meeste van die bevolking vir wie dit brood noodsaaklik is.”

- (4) “**MR MALULEKE:** Sorry Mr Du Toit can I interrupt you for a moment? The very point you have just referred to now, one of the matters we have heard as a Commission has been that attorneys in the so called platteland, who practise far from the present Supreme Court, generally have not got as much capacity and expertise to handle complex Supreme Court litigations compared to their brothers and sisters in the bigger cities. What is your comment on that?

**MR DU TOIT:** With respect I disagree with the statement, it is my respectful submission that we are qualified, we get the same experience, the same learning academy as any of our colleagues in the cities. The fact that they are situated in the cities as such does not take away our experience that we also litigate, we also have practice in Magistrate’s courts which is also part of our courts as well.”

- (5) “**JUDGE LEON:** And do they not have greater exposure to complicated commercial cases than you would have say in Nelspruit?

**MR DU TOIT:** I would have to agree that I assume they will have greater exposure to commercial matters but with due respect, this is a question which will only be short term because we will obviously, if we do have a Supreme Court, we will get the expertise if needed and it will only be short term of nature, that is why we also support a Bar in Nelspruit which we feel can accommodate should there be any shortcomings in our expertise.”

- (6) “Dit is verder ons submissie dat en my geleerde vriend het dit ook aangehaal, dat die kwessie van konkurrente jurisdiksie moet ook daar oorweging geniet en dit is bloot om ons kollegas wat in die hoëveld is miskien te akkommodeer om namens hulle kliënte of tot hulle kliënte se gerief miskien te dink aan ‘n hof wat nader geleë is. Maar dit is my respektvolle submissie dat ek en my kollegas, hetsy in die laeveld of hetsy in die hoëveld, se gerief nie oorweging moet geskied nie, ons moet kyk na die gerief van die bevolking in geheel, dit gaan nie oor ons ...(tussenbei)

**VOORSITTER:** Dit mag wees maar die Kommissie moet kyk na die volume van siviele gedingvoering wat hier ontstaan het in Mpumalanga. Nou as daar

heelwat werk uit die hoëveldstreek afkomstig is dan op 'n oorwig van waarskynlikhede is die kans goed dat daardie werk nog Pretoria of Johannesburg toe sal gaan, nie waar nie?

**MNR. DU TOIT:** Dit is so 'n waarskynlikheid as daar konkurrente sou wees.”

- (7) “Maar die kwessie van konkurrente jurisdiksie is bloot 'n voorstel in die alternatief. Ek voer, met respek aan, dat 'n argument gevoer word dat die aanbevele of die voorstel is dat daar inderdaat een setel moet wees ...(tussenbei)

**VOORSITTER:** Is dit die hoof betoog?

**MNR. DU TOIT:** Die hoof betoog is ...(tussenbei)

**VOORSITTER:** Een setel met uitsluitende jurisdiksie oor die hele gebied van Mpumalanga?

**MNR. DU TOIT:** Dit is inderdaat die hoof betoog meneer die Voorsitter.”

- (8) “Dit is ons ondervinding en ek glo my kollegas sal dit onderskraag dat die gehalte van dienslewering en regs kennis wat ons van ons advokate plaaslik gekry het, is onberispelik en ek kan werklik, met alle respek, sê ons gebruik heelwat van ons kollegas of advokate in die stad.”

(XVII) **BY WAY OF REJOINER MR ATTORNEY BRANDMULLER WHO HAD ALREADY ADDRESSED THE COMMISSION EARLIER ON THE SAME DAY AT MIDDELBURG MADE CERTAIN FURTHER POINTS IN NELSPRUIT :-**

- (1) **VOORSITTER:** Meneer Brandmuller wou u iets gesê het aan die hand van die vertoë wat tot die Kommissie gerig is vanmiddag?

**MNR. BRANDMULLER:** As ek mag meneer die Voorsitter?

**VOORSITTER :** Ja met plesier.

**MNR. BRANDMULLER:** Ek het nie vreeslik baie om by te voeg nie. Die eerste kwessie wat ek net wil aanraak is - wel hoofsaaklik wil ek net praat oor die kwessie van die setel en waar dit behoort te wees, want ek stem ten volle saam met die argumente gevoer dat daar inderdaat 'n hof in die provinsie behoort te wees. Soos u vanoggend ons aangehoor het is daar 'n klem vir skuiwing ten opsigte van konkurrensie al dan nie en ek gaan nie werklik daarop enigsins repriseer nie. Ek dink die eerste kwessie is wat ek net in antwoord wil sê is dat die Middelburg Prokureurs Vereniging glo dat bevolkingsgrotes nie die faktor is wat in ag geneem moet word nie. Population does not tell you who is going to use the court, the court has a jurisdiction which says currently in excess of R100 000,00 unless that changes, one must look at where the need for legal services arise and as has already been argued before this Commission, legal services are where the attorneys are.”

- (2) **JUDGE LEON:** Now the other argument seems to be that Middelburg is too close to Pretoria and Johannesburg and, therefor, does not really justify being a seat of the court as I understand the argument.”

- (3) **MR BRANDMULLER:** ...When one says that the province justifies a provincial seat one must look within the province, where is the most efficient and accessible place for the people who will make use of the court and as has been argued, when one looks at the relative distances, the infrastructure and those sort of things, the industrial capacity, the economic activity of the area, the place where that would be dealt with and where that would be most efficient would be Middelburg plus it would have a cost benefit, especially in the initial stages to have it closer to the advocates in Pretoria and Johannesburg who are currently being used.”

- (4) **MR MALULEKE**: Can I interrupt you here, you might help to clear me here, I am possibly a little bit behind? I understood your submissions really to be that for Middelburg you need something more like a type of a local division possibly run from Pretoria?

**MR BRANDMULLER**: No what, yes ...(intervenes)

**MR MALULEKE**: Something akin to that and I understand from Nelspruit that here we are talking about a fully fledged provincial division. This seems to be a great difference between the two and I think we would benefit a lot if you were to tell us more why you in your own submission, feel that a local division is more workable than the provincial division which is proposed from here?

**MR BRANDMULLER**: I think just to take one step back, what we said was that it would be something akin to a local division. We still believe it must be a division for the province.

**JUDGE LEON**: Long term?

**MR BRANDMULLER**: Long term.

**JUDGE LEON**: But this is a sort of hybrid short term?

**MR BRANDMULLER**: This is a short term hybrid to get us into a position to have a fully fledged provincial division.

**CHAIRMAN**: A transitional phase?

**MR BRANDMULLER**: It will be a transitional phase. ...what I was saying this morning is the following: that for the initial stage this division would sit in Middelburg but that the access to judges, especially initially from the Johannesburg and Pretoria-divisions, would be easier and that they would then be able to be used.”

- (5) “Further than that I believe that the Nelspruit submission as far as the fact that Nelspruit is the capital, that has been dealt with substantially, the answer to that is that the capital is not necessarily the place where the people who need the court is and it should be put there where they are. Thank you.”

# EXTRACTS PIETERSBURG

(XVIII) MR. S.P. MOTHLE, LEGAL ADVISER TO THE PREMIER OF THE NORTHERN PROVINCE

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

- (1) “The democratic dispensation that came into being in April 1994 has resulted in fundamental changes in the governance of South Africa. It has introduced a geographic structure of nine provinces as opposed to the previous four, a decentralised structure of governance with both legislative and executive competencies for the provincial and local government. This development brought about the promotion of the concept of participatory democracy by bringing democracy closer to the people.”
- (2) “ We submit that the present structure of the Supreme Court is out of step with these developments and needs adaptation. The courts must be brought nearer to the people as institutions promoting and sustaining democracy.” (10)
- (3) “Along with the changes aforesaid, the question of appointment of judges has also received attention. Judges can now be appointed from the ranks of advocates and attorneys and not only from the ranks of senior counsel. The Judicial Service Commission took the matter further by appointing judges from the black community which was an unprecedented step. The pool or reservoir from which judges can be appointed has significantly broadened.”
- (4) “Reference has been made in our written submission to the need for adjudication of urgent applications as well as continued services of the Master and the Registrar of the Supreme Court. These services require the permanent residence of judicial personnel and cannot be adequately served on *ad hoc* arrangements such as is presently the case with the circuit court.”
- (5) “...the seat of the envisaged court should be in Pietersburg which is the seat of the provincial government and other sub-regions be serviced by the court on circuit.” (20)
- (6) “The Supreme Court in Venda was established for political expediency and not

necessarily that the volume of Supreme Court work in the area was out of proportion with other sub-regions in the north. There is no longer an independent state of Venda and a new dispensation calls for review of the situation. The ideal position would be that we have local divisions in each of the other sub-regions but because of limited resources, we would urge for establishment of a provincial division as a matter of priority with the understanding that local divisions could develop in the long term on availability of resources and increase in volume of Supreme Court workload in a particular area. “

- (7) “The Northern Province is underdeveloped and has been an area of neglect in so far as infrastructural development is concerned.”
- (8) “The erection of court buildings, equipment, furniture and staff will have to evolve and be financed by the national Government. This, we submit, is an unavoidable expenditure which must be seen as part of the reconstruction and development process necessary to usher in and sustain this new democracy. The Provincial Government would be willing to assist to the extent possible in facilitating the acquisition of the infrastructure and staff.”
- (9) “**JUDGE LEON:** May I put some questions to you, just in order to get some clarity in my own mind? Is it your contention that because there are now nine provinces *ipso facto* there ought to be nine provincial divisions or is it your contention that these circumstances, together with the Bill of Rights, carries with it the implication that under the National Constitution it is implied that there should be a provincial division in each of the nine provinces or is it your contention that that may or may not be so, but in any event it is desirable that there should be a provincial division in this province?”
- (10) We are of the view firstly that the new dispensation creates a decentralised form of democracy, that the organs of government, in this case the South African model has followed the division of the three organs of government, the legislature, the executive and the judiciary, that the other two organs of government, the legislature and the executive has been sufficiently decentralised so as to bring governance nearer to the people in terms of the provincial governments as well as the local governments, there is sufficient involvement and participation in the executive and legislative authority and also that those structures are located within the areas as geographically laid out in terms of the Constitution.”

(11) “But now when one looks at the third organ of government which is the judicial structure, we have now other provinces which, unfortunately because of historical imbalances, have not inherited those structures within their borders and it is for that reason that we are saying that flowing from our reading and understanding of the democratic concept within the Constitution, we read in it participatory democracy that could only be enhanced by the presence of those structures within all the areas.”

(12) “**JUDGE LEON**: On the question raised by Mr Maluleke if I may just follow that up, as a transitional measure would you have any objection to a local division being established here as a start with judges supplied from Pretoria to begin with as a sort of hybrid situation until the position develops and the need for a full building and a proper court arises which is the suggestion which was put by Mr Maluleke which we had from Mpumalanga, whether you would be against that kind of proposal or not?”

**MR MOTHLE**: If I may respond to that? While Mr Rammutla was addressing the Commission I quickly conferred with my colleagues here. Just to emphasize and make the point that this is an issue that we never really considered and it is not even part of our submission.

**JUDGE LEON**: Well it only came up to us yesterday so it is new to us as well, that is why we want to ask you about it?”

(13) **MR MOTHLE**: Yes, after conferring with my colleagues here while we concede that the whole question of developing and administering the court as we have stated in our submission is a matter for the Department of Justice and given that they are the people who actually control and are in charge of the resources and would know what could be available as of now. It may well be that that could be the route to follow but we would have preferred that from the outset we have a provincial division ...”

(14) “**MR MOTHLE**: If I may proceed, with a background of what Mr Cachalia has just said, our concern is that a local division would have a limited jurisdiction that may not cover all those areas and our starting point would have been to have first a provincial division that will then later decentralise its services.

**JUDGE LEON**: Yes I saw a local division as encompassing the entire province.”

- (15) “**MR MOTHLE**: Well again as I have pointed out, it is a matter which I believe if the Department of Justice, given its resources considers that that would be a starting point, we would appreciate to have the presence of a Supreme Court here.

**JUDGE LEON**: Yes it is not your ideal choice or your number one choice but if need be, you would settle for it as second best?

**MR MOTHLE**: That is right, yes.

**CHAIRMAN**: The emphasis falls on the necessity of some judicial presence here from 1 January to 31 December readily available?

**MR MOTHLE**: Yes that would be welcome.”

- (16) “**MR MALULEKE**: ... I would like to know about what the feeling is from your government point of view about having your own Attorney General in the province from the law and order point of view? Can you conveniently be controlled from Pretoria on the Attorney General side or is that a great inconvenience?”

- (17) “**MR MOTHLE**: ... we are saying that consistent with the structures of governance so far in place, we believe that some amount of decentralization should take place so as to have effective services being provided to the people.

**MR MALULEKE**: So if you have a local division, say we opt for the number two suggestion and we have a type of a local division you would insist that it should have a Master's office and, if possible an Attorney General's office also attached to it?

**MR MOTHLE**: Yes those are the offices that we really would like to have establishing a presence in the province, definitely.”

**(XIX) MR. T. VAN DER HOVEN ON BEHALF OF THE TRANSITIONAL LOCAL COUNCIL AND PROFESSOR J.A. MANCKTELOW OF THE UNIVERSITY OF THE NORTH INTERVENING**

In the course of their oral representations to the Commission some of the points made by Mr. Van der Hoven and Prof. Mancktelow were the following:-

- (1) “**JUDGE LEON:** The question that I ...and Mr Maluleke raised about a possible local division as a starting point, while that is not the first prize as far as the Provincial Government is concerned, do you have any reaction to it as a second prize, as a starting transitional point until the thing can develop properly, fully appreciating the need to bring the Supreme Court to the people?”

**MR VAN DER HOVEN:** I think as has been said beforehand is that the first prize would have been a fully fledged but I think if one looks at it from a sensible point of view, economically, etcetera, yes I think that would be a possible or an acceptable solution to it, to start it off on a local basis.”

- (2) “**PROF MANCKTELOW:** Mr Chairman excuse me, I actually represent the Law Faculty of the University of the North ... We have at this point the old Magistrate's court just opposite here which is really being totally under utilised, I think the police use it for odds and ends and I would estimate 100 000 or 200 000 that you would have a find up and going building which would certainly last for the next couple of years until this new building programme that we hear of is completed and there is nothing, it was a court structure so it has got everything which is needed.”

- (3) “**MR MALULEKE:** Professor could I just interrupt you ...you will notice that the court in Venda as the court in Bophuthatswana has, in spite of its history, managed to develop capacity and skills amongst disadvantaged communities, people like court registrars who never existed in some of these communities have been produced in these courts. To avoid that being a total loss, the system, I mean if you have to move the court to Pretoria for instance and some of them may not be able to move to Pretoria, what would your suggestions be, how should we rationalise that situation into the new dispensation which this Commission should recommend in terms of the existing infrastructure which is there now?”

**PROF MANCKTELOW:** Well as you will note I am actually here in a dual capacity, I am wearing two hats because I am also a signatory to the document which comes from the practitioners who practice in Venda and my belief is very

firmly that in fact it does not need to be dismantled, that it is viable as a local division as it is currently operating...”

- (4) “...Just to get back to the skills point which is a very strong one, my colleague here, Advocate Ramaite who is the Acting Attorney General from there, is a prime example of a skilled resource which is the result of that courts existence.”
- (5) “ ... there are all manner of other like judges, clerks and then as I say there is the Master's office, those were all skills which under the old regime were totally closed to the disadvantaged communities and which have now been opened up and which provide an ongoing pool of resources about which I actually feel very strongly and that that is also why a local division or provincial division, which is definitely first prize here, will perform exactly the same functions because it is not only the Supreme Court and its trial, it is the spin off of the Master's office and the Deeds office and all these other offices ...”
- (6) “Just speaking from the University point of view we have, last week we capped 97 LLB's and 145 B.Proc's, we have 2,500 students which makes us I think the third largest law school in the country other than UNISA if I have my figures right.”
- (7) “...there is in these rural areas definitely a crisis of legitimacy to the man on the ground relating to the legal system and that justice at a distance really amounts to justice being denied to many of them.

**JUDGE LEON:** May I just interrupt to ask you whether you would regard justice in Pietersburg as justice at a distance?

**PROF MANCKTELOW:** No, I mean if we talk now about if there is a Supreme Court here?

**JUDGE LEON:** Yes.

**PROF MANCKTELOW:** No, that is not justice at a distance.”

- (8) “**JUDGE LEON:** So are you saying then that you do not oppose Pietersburg provided that Venda continues?”

**PROF MANCKTELOW**: Oh no I have always support Pietersburg, I support the - we are all here of one voice basically except that I mean some of us pump Venda a little more...”

- (9) “**PROF MANCKTELOW**: Well if Venda had to be dismantled and could not function as a local division, which I would submit it could, then I would believe that one would have to run a fairly semi-permanent circuit there as I believe has happened in other cities in other parts of the country.”
- (10) “**PROF MANCKTELOW**: There are just a couple of other points that I would like to make that we do have four fulltime advocates in Venda and five part-time legal academics; four fulltime advocates in Pietersburg and 10 part-time legal academics with differing degrees of time spent on practice ...”
- (11) “I would just like to also emphasize matters such as, for instance something that I have been involved in in the last few years, I have been in Pretoria four times in three weeks with bail appeals. Now that is something where distance significantly affects the rights to justice if one may put it that way because not every client can afford for counsel to go the distance and the cost that it involves doing a bail appeal from the Pietersburg Magistrate's court to the Pretoria Supreme court as opposed to a local Magistrate's court to a local Supreme court which would be a great deal cheaper, particularly given the fact that for instance a number of our attorneys have now got the right of appearance and are exercising it.”
- (12) “A question was asked as to the number of judges which one would anticipate being here. Now if I take the amount of work which there is in Venda which would occupy a judge and look at the amount of work remaining in the rest of the region, I would say that an exceedingly pessimistic view is that we would keep four judges working very hard because there are, one must not forget the volume of reviews which inevitably there are going to be and the other things, ...”
- (13) “**CHAIRMAN**: How often does the circuit court sit here in Pietersburg generally speaking?”

**PROF MANCKTELOW:** I think it is about six times a year but the rolls are always totally crowded because this particular case that I am talking about where I was involved in a bail appeal and where we were refused bail and one of the issues is the length of time that it is going to take to get on the roll and the AG's office cannot even think at this point of giving us a date on a circuit roll.”

- (14) “Now these are the type of things that a Supreme Court administered from here and again I leave open, I think the advantages apply to both systems. I think that if a local division is created it will prove its viability in such a short time that its status will be exceedingly short lived...”
- (15) “So I strongly, as I say I strongly both from the Law Faculty and practitioner point of view, support the creation of a court structure, preferably a provincial division but most definitely then as a start a local division encompassing the entire province and if that were to be the case we would have to look, to get back to my thing of justice at long distance, not only Venda as a circuit but of course the maintaining of circuits to the rest of the sub-regions and building up perhaps as one can then assess the needs, building up those into possibly semi-permanent structure as well ...”

#### **POSTEA BY WAY OF REJOINDER**

- (16) **PROF MANCKTELOW:** Just to say that on the recollection of the possibility thrown out of second place, which is the local division, it does seem that it is perhaps a fairly practical place to start if we cannot have, obviously first prize is the provincial division but that given that the Venda infrastructure can be utilized as a permanent or semi-permanent circuit because the other thing is that operating as a circuit it would not need a judge in residence necessarily all the time but services could be provided by the current infrastructure on a permanent basis ...”

**(XX) MR ADV M.S RAMAITE, ACTING ATTORNEY-GENERAL OF VENDA**

- (1) “**MR RAMAITE**: ... I just want to thank the Commission, Mr Chairman and the other Commissioners for the opportunity granted to us to make oral representations. We have already made written representations, they were made by my predecessor and I just want to inform the Commission that I endorse the submissions and basically I endorse the submissions made by the Provincial Government that there should be a provincial division for the province and local divisions, depending on the need.”

**(XXI) MR ATTORNEY F GELDENHUYS ON BEHALF OF THE NORTHERN REGION OF THE TRANSVAAL SOCIETY OF ATTORNEYS**

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

- (1) “... ek is toegelaat in die Transvaalse Provinsiale Afdeling en ook in die Venda Hooggeregshof, ek praktiseer op Pietersburg by die firma Geldenhuys, Van Zyl Prokureurs, ek was 'n lid van die Johannesburgse Balie hoewel kortstondig, ek is 'n Oos-Rander gebore en getoë, maar met my toelating as 'n prokureur in 1981 was ek reeds op Pietersburg gesetel.”
- (2) My kollega, Ephraim Magoba het ons genooi om saam met my te kom - he is the former partner of the Mpumalanga Premier, Mathews Posa and Phineas Mojapelo, presently a member of the Judicial Service Commission, he is also a member of the Black Lawyers' Association...”
- (3) “**MNR GELDENHUYS:** ...Ons praat vandag op versoek van die Sirkelraad van die streek. Die streek is 'n sirkel wat ingestel is ingevolge die reëls van die Prokureurs Orde van Transvaal uit hoofde van sy statutêre bevoegdhede. Ons gaan vir u in algemene terme toespreek, want om hierdie onderwerp uit ons beroep se oogpunt in die fynste besonderhede te behandel is haas onmoontlik, maar ons sal baie graag en so ver ons in die vermoë is vrae beantwoord aan die einde van ons vertoë, as dit die Kommissie mag behaag. Die regsgebied van ons streek is dieselfde as die geografiese regsgebied van die Noordelike Provinsie van tyd tot tyd.

**VOORSITTER:** Die hele Noordelike Provinsie?

**MNR GELDENHUYS:** Die hele Noordelike Provinsie ja. Op 18 Maart 1995, 'n jaar of wat gelede was daar 226 toegelate prokureurs in die provinsie, 'n getal wat vinnig groei.”

- (4) “Nou wil ek by die bevolking kom. Die agbare Kommissie is sekerlik bekend met die feit dat die provinsie nagenoeg 12% van die totale bevolking van Suid-Afrika verteenwoordig, maar nie eers 4% tot die bruto volksproduk bydra nie en dat die hooflike produksie die tweede laagste in die land is. In 1985 was die *de facto* bevolking 3,9 miljoen waarvan 96,5% swartes; 3,2% of nagenoeg net

126,000 blankes; 0,14% of 5,600 kleurlinge en 0,1% of 3,300 Asiërs.”

- (5) “Nou die ekonomiese aktiwiteit kan ingedeel word in landbou wat jag, bosbou en visvang insluit; dan mynbou - ek dink dit is belangrik vir die Kommissie om te weet, want mynbou is baie tegnies en weet ons die reg dien aangaande verbonde; vervaardiging en toerisme. Die ander drie ekonomiese aktiwiteite dink ek is meer algemeen en ons almal het daarmee te doen, maar mynbou het gespesialiseerde mense nodig.”
- (6) “Van die groter ondernemings daarby ingesluit nou, is natuurlik die depots van die Suid-Afrikaanse Brouery wat in Pietersburg gevestig is, so ongeveer 1989 het ek die kontrakte gefinaliseer met 'n tienmalige kapitale investering van R270 miljoen. Ek dink hulle is op die oomblik die grootste kapitaal investering gewys. Maar uit die ander vervaardiging sektore het ons baie staal bedrywe hierso, maar dit is hoofsaaklik natuurlik sekondêre staal bedrywe, dit is mense wat uit staal boere implemente vervaardig en uit staal ook baie bakke bou, om een of ander rede is die bakbouers, is hier heelwat bakbouers gekonsentreerd, ek dink dit gaan oor arbeid wat waarskynlik goedkoper is en die manne kan mededingend vervaardig met ander provinsies in die land.”
- (7) “**VOORSITTER:** En die vertakkings van die mynbou?
- MNR GELDENHUYS:** Die vertakkings van die mynbou is veelvuldig. Baie min mense weet dit, maar in 'n stadium was die Pietersburg se Myn Kommissaris gebied naas Johannesburg die grootste, ek dink dit rangeer gelyk met Klerksdorp, behalwe dat by Klerksdorp is daar nou baie met diamante uit te make, maar hier by ons is dit hoofsaaklik asbes, sillikon, kroom, selfs goud, koper, platinum ...”
- (8) “Nou wil ek kom by die hofstrukture met die verlov van die agbare Kommissie. Daar is in die provinsie, soos u sekerlik weet, die een Hooggeregshof gesetel, dit is Ibaso, boonop is die regsgebied van hierdie Hooggeregshof beperk tot die vier landdrosdistrikte van die voormalige Republiek van Venda. Die ander 24 landdrosdistrikte het geen Hooggeregshof nie, hulle moet tipies van die agtergeblewenheid van die gebied maar na Pretoria toe ry met die hoed in die hand om hulle regspleging op hoërvlak te gaan soek.”

- (9) “... die streekhof hierso is oorlaai, ek sê vir u later hoe oorlaai hy is. Hy sit voltyds en hy sit minstens een keer - minstens een van die voorsittende beamptes per week sit afgeleë, met anderwoorde hy sit nie op Pietersburg nie, hy sit of op Potgietersrus vir die week of hy sit op Louis Trichardt vir die week of hy sit op Tzaneen vir die week ...”
- (10) “Daar was in 1989 in die streekhof op Pietersburg 10,389 sake...deur hierdie streekhof verhoor in 1989, dit is ongelooflik.”
- (11) “**VOORSITTER:** Nou daardie feit dat hy [die strafverhoorsaak] vou na die eerste staatsgetuie, waaraan sou dit hoofsaaklik toegeskryf wees?”

**MNR GELDENHUYS:** Ek skryf dit toe in die eerste plek aan die ondersoek werk. Daar is en dit gaan my later by die Prokureur Generaal bring, daar is vir die polisiebeamptes, ek wil nie oor die polisie se probleme praat nie, maar die polisie is die houe vooruit met hulle streek indeling gewees, maar daar is vir die polisiebeamptes uit die hofgebou uit geen leiding wat ondersoek werk betref nie, afgesien van die polisie se eiesoortige probleme, ons praat oor die hof se perspektief en die rede hoekom daar geen leiding is nie is ons aanklaers, die wisseling onder aanklaers en die rotasie onder aanklaers...(tussenbei)

**VOORSITTER:** Die ervaringsvlak?

**MNR GELDENHUYS:** Uit die ervaringsvlak is net, dit is net nie haalbaar nie. Ek het, elke verskyning die afgelope jaar in die streekhof in Pietersburg het ek 'n ander aanklaer teenoor my gehad en dit syfer af na die distrikshowe toe, want daardie mannetjies kom net so uit die distrikshowe uit op. Hier is manne wat ses maande in die distrikshof aangekla het, dan trek hulle hom streekhof toe.”

- (12) “...die prokureurs is uit hulle oogpunt verheug oor die verhoging van die jurisdiksie van die landdroshof, maar dit is nie die prokureurs se belang wat geneem moet word in die eerste plek nie. Dit is ongelukkig so dat huidiglik die voorsittendebeamptes in die 28 landdrosdistrikte wat siviele aangeleenthede kan behartig, eintlik glad nie geskoold is in siviele gedingvoering nie.”
- (13) “**MR MALULEKE:** Can I just interrupt you? The Justice College on this training of magistrates made us understand that more recently up to say the end of last year, efforts are being made to extend facilities and training to magistrates

in the former homelands. Is this your experience that this has been done here as well?

**MR GELDENHUYS:** It has not been done but what I can tell you Commissioner Maluleke is that my personal perception is that great efforts have been put into the Justice College and there is a vast improvement in what that college has produced in the last 18 months or longer. We even find that Pietersburg magistrates who have attended there are far better groomed for the work than they used to be.”

(14) “The second thing that I want to mention is that you find that there is a rotation system so a magistrate sits for four months on the civil bench and he is taken away and he goes to the criminal bench for eight months and a year later he comes back to do another four months on the civil bench and apart from that you find that there is some tooting and froing going on between them as to which three of them should accept those civil appointments and then you get transfers and there is a vacuum again and another one has to be drawn with no experience and it just escalates in the end.”

(15) “Coming to the Supreme Court it is our submission that the area of jurisdiction of the Venda Supreme Court should be extended to cover the whole of the province.

**JUDGE LEON:** Does that mean you think the seat of the court should be in Venda?

**MR GELDENHUYS:** Not necessarily, we think it should be in Pietersburg because when we come to arguing the seat of the court we will suggest that it should be relocated to Pietersburg.”

(16) “Now we come to the numerical strength of the bench. Bearing the cultural diversity of our people in mind the fact that expertise is required of the judicial officers, it is our submission that what we need is a bench of seven judges.”

(17) “May we say that in this regard we have found the findings of Mr Justice Hefer, with all due respect, offensive when he found that the ability of attorneys in the country areas and other officers of the court are not sufficient to support the decentralised Supreme Court system.

**JUDGE LEON:** Well that was 10 years ago, I think that one must take into account, speaking for myself, that there has been in general a much greater sophistication developed among the profession in general in the last 10 years.”

(18) “The name of the division - it is going to be the High Court of the Northern Province eventually. In the interim and to make it as short as possible, we would suggest that it be called the Northern Provincial Division of the Supreme Court of South Africa.”

(19) “**JUDGE LEON:** May I just go back to one matter that is not entirely clear to me? You raised the question of the Constitution and in particular the latest draft which you have got which we have not yet seen. Is it your case that it is implied in the Constitution by necessary implication that each province should have a seat in the court or is it your case that underlying the general principles in the Constitution it is very appropriate, if not essential that each province should have a seat of the court?”

**MR GELDENHUYS:** The latter is the more correct answer...”

(20) “We think that a Family Court should not be introduced for this province at this point in time. We can understand the need, the dire need for that in Gauteng and to alleviate the Supreme Court bench there but the fact of the matter is our divorces among the whites have been dealt with, and the Asians and the coloureds, have been dealt with in Pretoria for long so that can just be transferred to our own Supreme Court...”

(21) “**JUDGE LEON:** Well one of the matters that was raised in Mpumalanga was a suggestion that as a temporary or transitional measure a local division be established pending the establishment of a provincial division. This was raised yesterday by us with representatives of the government and I think the general view as I understood it was that it was not the first prize but that if need be they would settle for it as a second prize. Now I do not know whether you know about this discussion or whether you have any reaction to it?”

(22) “**MR GELDENHUYS:** I do not know about this discussion, I think you would gather from our submission that the gist is that we say we have to be led to maturity by 1999 and a local division is an alternative to what our submission is

obviously and if it is so that a local division can be instituted sooner, than we would say please because then that would be the first prize. What our concern is that time is of the essence.”

(23) “As ek dit so kan stel dat as die plaaslike afdeling gouer gaan kom dan is dit vir ons 'n eerste prys, want ons het die rigting gewing so gou as moontlik nodig. So u moet u ook laat lei, ons het gesê "the shortest, cheapest way" en as 'n plaaslike afdeling die goedkoopste en die gouste is dan is dit vir ons 'n eerste prys.”

(24) “**CHAIRMAN:** You said in fleshing out what you saw as a provincial division that the Northern Province would require seven judges. Yesterday a thought that was emphasized throughout was the absolute necessity for a continuous judicial presence here to deal for example with urgent applications. In your submission testing again the possibility of a local division, what do you think would be the minimum infrastructure right at the beginning, two judges, four judges or do you think as many as seven would be required?

**MR GELDENHUYS:** Well we are in such a disadvantaged position that one would satisfy us at this point in time.

**CHAIRMAN:** One would be really nothing but realistically?

**MR GELDENHUYS:** Realistically we say that bearing in mind, we say that we must go and sit on circuits. If you have a man on circuit you have to have a man in Pietersburg so we need two at least. If you have, you have to have one to attend to criminal locally and civil so at least you are going to have to have three and you have motion courts, so we are looking at I would say four at the very least but the other three that we included in our submission of seven is that we need to get people on that bench who have knowledge, intimate knowledge of the indigenous people of our province.”

(25) “**CHAIRMAN:** In your view would senior local attorneys of great experience be interested in appointment to such a court?

**MR GELDENHUYS:** I think there would be, I do think that some of them that are very, very suitable ...”

## ***EXTRACTS SUN CITY***

**(XXII) THE HON MR JUSTICE M. FRIEDMAN, JUDGE PRESIDENT OF THE BOPHUTATSWANA SUPREME COURT**

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

- (1) “Mr Chairman, I have updated the statistics of my submission of 5 June 1995 and I beg leave to hand them up. These statistics comprise the up to date civil and criminal records of the Bophuthatswana Provincial Division.”
  
- (2) “You will notice from them that there is a variation in regard to the work. There has been a diminution of civil cases. That has been occasioned mainly by the fact that under the previous government there were many claims against the police for assault, unlawful arrest, accidents and so forth. As against this government the claims are far less and I may also add that in regard to this government they settle cases with greater alacrity than the previous government did.”
  
- (3) “In regard to the criminal cases there has also been a falling off of criminal cases and this has been occasioned by difficulties experienced in the investigation and policing.”
  
- (4) “It is a well-established principle that the jurisdiction of courts must be co-terminous with the geographical and demographic jurisdiction of a particular area. Otherwise an anomalous position arises, for example, if the Transvaal Provincial Division had jurisdiction over certain parts of the North West it would pronounce on laws passed by the North West, whereas the North West should have laws pronounced on by its own Supreme Court.”
  
- (5) **JUDGE LEON:** May I interrupt you to ask you whether you are submitting that because there is a province *ipso facto* there must be a court? Is that the effect of your submission?

**JUDGE FRIEDMAN:** Yes, I am.

**JUDGE LEON:** Do you say that that is implied in the Constitution?

**JUDGE FRIEDMAN:** Thank you Mr Justice Leon, I will deal with that in due course. This is implied in section 101 of the Constitution ...”

(6) “What was the Transvaal has been subdivided into four different areas. Each area has its own provincial legislature, its own cabinet, it makes its own laws and it cannot be said that there is an exact community of interest between all the four provincial areas. Therefore I submit, in principle each area would be entitled to its Supreme Court because a Supreme Court is an important manifestation of its sovereignty. A provincial legislature does not want its laws to be pronounced on by another court outside its jurisdiction, save except, say, the Appellate Division or the Constitutional Court, which are obviously courts of higher jurisdiction.”

(7) “We have already in Mmabatho a Supreme Court, and I make bold to say, that can stand anywhere in this province. It is a Supreme Court in a very elegant and spacious building.”

(8) “**CHAIRMAN:** At what cost was it erected, in round figures?”

**JUDGE FRIEDMAN:** In round figures, with equipment, approximately R26 million. Now we moved into this Supreme Court in November 1991. We have been there almost five years, so one can imagine what the cost would be of establishing, say, a Supreme Court of this order at a place like Klerksdorp, which is a contender to Mmabatho for the seat of the Supreme Court.”

(9) “In the Supreme Court there are seven courts, three civil, three criminal and one appeal court. There are chambers for eleven judges and rooms for secretaries,...”

(10) “**CHAIRMAN:** Sorry to interrupt you. I just wanted to sound you, you were not able to attend the Gauteng sittings. One of the points addressed there, both by the Judge President of the Transvaal and by Advocate Van Rooyen on behalf of the Pretoria Bar and the Pretoria Attorneys’ Association was this question of wasted capital. Very briefly, the contention advanced was that in the case of wasted capital one must write it off and not feel impelled because large capital amounts had been expended to create a system which is otherwise indefensible. I am not suggesting that the system for which you contend is indefensible, but that argument was advanced to us.

**JUDGE LEON:** May I also interrupt you, on not quite the same but it is allied to it, I think? Assuming that we come to the view that the North-West Province should have a court or should not, as the case may be, there is not a possible problem as far as Mmabatho is concerned, of accessibility?

**JUDGE FRIEDMAN:** No, I do not think there is a problem in regard to accessibility and I can answer that by saying, dealing with the last question first. We have many counsel who come to Mmabatho from the Johannesburg Bar and the Pretoria Bar. It is also fairly close to Klerksdorp and Rustenburg, Zeerust, certainly in close proximity to Lichtenburg and Ventersdorp, and I do not see, with respect, any difficulty in travelling to Mmabatho and I do not think it makes all that difference as far as distance is concerned.”

- (11) **MR MALULEKE:** ...The question raised by Judge Leon of accessibility, I think you did touch on the fact that it might affect practitioners. I thought you might assist us if you dealt with it in so far as it affects members of the public.

**CHAIRMAN:** The litigants.

**MR MALULEKE:** Not only the fact that Mmabatho is situated so far from the main population they deal with in North West - we are talking about Moretele and Odi. It might help. You could also possibly assist us to tell us how it has affected the people so far - those that had to come for divorce cases etc, and they have real problems etc.

**JUDGE FRIEDMAN:** Thank you, that is a real consideration.”

- (12) People do experience difficulty with transport from time to time but the distance to Klerksdorp is a greater one. I think the matter could be resolved as a second choice by having some sort of circuit or local division in that particular area to cater for the public there, because the biggest concentration in the North West, in my view - I may be wrong - but demographically I think it is the Odi/Moretele area.”
- (13) “**CHAIRMAN:** ... I take it that on behalf of your court you advance the contention that North-West Province must have exclusive jurisdiction.

**JUDGE FRIEDMAN:** Yes.

**CHAIRMAN:** And I suppose that is a logical necessity of your argument to illustrate the point. One of the contentions raised by Mr van Rooyen on behalf of the Pretoria Bar was this: He said, if you give North-West a court which has concurrent jurisdiction with Pretoria and Johannesburg, he said then the gravitational pull of Pretoria and Johannesburg will mean that places like Brits and Rustenburg and Odi and Moretele and Klerksdorp and Potchefstroom - that work will be shut into Pretoria. I take it that you do not make issue with that proposition.

**JUDGE FRIEDMAN:** No, that is a reality because certainly in so far as Brits and Rustenburg is concerned, and also Klerksdorp and Potchefstroom, a tradition has been established. I cannot gainsay it.”

(14) “Another factor that I want to mention in regard to the Supreme Court being in Mmabatho is that the government infrastructure is in Mmabatho. You have the Legislature in Mmabatho you have the Executive in Mmabatho and it would be an anomalous situation if a Supreme Court was not granted to the North-West Province.”

(15) “**JUDGE LEON:** If I may interrupt you there, what is the present population of Mmabatho?”

**JUDGE FRIEDMAN:** The present population of Mmabatho/Mafikeng would be somewhere of the order approximately 200 000. I am told somewhere between 186 000 and 200 000 of this particular area. But of course, there are many outlying areas where one has a vast population. Also, there is an additional factor which I think is very important and that is that the Supreme Court in Mmabatho has become an institution in this particular area and is regarded as such by the Tswana people.”

(16) “Now you may say, well, if you move it to Klerksdorp, will they not regard it as their own Supreme Court too, because there are many Tswanas in that area. My reply is, no, they will not, because this is institutionalised as a Supreme Court in Mmabatho which is predominantly a Tswana area and it also operates predominantly with the Tswana neighbourhoods and it is looked upon by the

Tswana people as its own institution.”

- (17) “We are supported in our endeavours by the Bar in Mmabatho, which has twelve members and is recognised as such by the General Bar Council. There are approximately 62 firms of attorneys in the North-West area.”
- (18) “Klerksdorp is the only other real contender for the Supreme Court in this particular area.

**CHAIRMAN:** On that point of your submission, what are the areas of greater population density in the North-West?

**JUDGE FRIEDMAN:** The areas of greater population density I would say are the areas of Odi/Moretele. That is as I see the greatest population density.

**CHAIRMAN:** And after that?

**JUDGE FRIEDMAN:** After that probably the Klerksdorp area, as they call it Kosh.”

- (19) “**JUDGE LEON:** How does the population of Klerksdorp compare with the population of Mmabatho?

**JUDGE FRIEDMAN** It is bigger, I must concede that immediately. It is a bigger area and to really concede this point, it is from a commercial, industrial and mining point of view a much bigger area than Mmabatho - that it is.”

- (20) “**JUDGE LEON:** So boiling it down, really what you are say is that you have got an existing court structure and you have got the government infrastructure. As against that Klerksdorp is the commercial hub, as it were, with a much bigger population. What you say what you have got overall outweighs Klerksdorp, putting it in a nutshell.

**JUDGE FRIEDMAN:** That is correct, that sums it up, if I may say, with admirable brevity.”

- (21) **CHAIRMAN:** Adverting to the matter of population, the researcher of the Commission has provided us with the following figures. You might just like to comment thereon. It says: Moretele - 294 000 odd; Odi I and Odi II together - 248 756; for Potchefstroom he gives 197 679; for Klerksdorp he gives 344 873. So it would seem that on the eastern periphery of the North-Western Province there is a heavy concentration of large populations.

**JUDGE FRIEDMAN:** Yes, that would be the Klerksdorp one,...

- (22) “Now Mr Chairman, I want to conclude on the following note. The reality of the situation is that of course Klerksdorp has better commercial, industrial and mining infrastructure than Mafikeng/Mmabatho has. However, from point of view of good government, from the point of view of an institution that already exists and works efficiently, from the point of view of an established Bar and an established legal fraternity in Mmabatho and the circumjacent areas and most important of all, from the point of view of the population at large and also bearing in mind the fact that the infrastructure of government and court is situated in Mmabatho I would therefore submit that the seat of the Supreme Court of the North-West should be in Mmabatho and not in Klerksdorp.”

- (23) **“JUDGE FRIEDMAN:** Well, there is a vast distinction between the North-West Province and the Northern Province. In so far as the Northern Province is concerned there really is not a judicial presence there at the moment. It is true, you have got a Supreme Court in Venda, but that is all. It is staffed by one judge, but Venda itself, that jurisdiction does not generate enough work for more than one judge.”

- (24) “In the North-West you have an established Supreme Court that consists at the moment of six judges - there will be five starting from 1<sup>st</sup> August, because Judge Comrie has been deseconded...”

- (25) “Here, to convert this Supreme Court of Bophuthatswana to a local division

would, with respect, be a *capitis diminutio*”

- (26) “Rather I would suggest, if there are areas that have to be serviced rather have the seat of the Supreme Court in Mmabatho and you can establish local divisions which can be serviced by judges from this area, because the number of judges will have to be increased to service outlying areas, such as Odi and Moretele, possibly even Klerksdorp.”
- (27) “**MR MALULEKE:** Judge, could I just take you back a little bit? When you started, you indicated that there is a perceptible drop in the number of civil cases coming before your division. I thought you might want to comment also whether the increase in the jurisdiction in the magistrate’s courts to R100 000 is an important factor, and if this was so, I would like to get your views on this point. A lot was made of the fact that small benches, a small Bar leads to a lot of isolation and possible dropping in standards, and that the increase in jurisdiction of the magistrate’s court might have the effect that you have very little cases of more than R100 000 in civil matters coming before a division like the one we have at Mmabatho. Could I have your comments on those two points?”
- (28) “**JUDGE FRIEDMAN:** Yes, certainly. Firstly of course, it is a contributory factor, the fact that the cases that were formerly heard in the Mmabatho Supreme Court are now heard in a magistrate’s court because of increased jurisdiction civilly. The same also applies to increased jurisdiction criminally. For example, certain murder cases are heard in the regional court. There is a move to increase the criminal jurisdiction of the regional court to fifteen years’ imprisonment instead of ten years, which does make a difference. I must readily concede the point.”
- (29) “However, the important cases criminally and civilly still come to the Supreme Court, they do. In so far as the Bar is concerned, there is no question of our Bar being isolated. The Bar in Mmabatho has worked very well with counsel from Pretoria and Johannesburg. Many of them have been juniors to leading senior counsel in the various provinces and also we now have our own senior counsel. There are two senior counsel; there are twelve member of the Bar and in so far as I am concerned as Judge President, I see the standard of the Bar improving all the time, and the Side Bar as well.”

- (30) **MR MALULEKE:** ...But I would like to hear what your comments are in regard to the possible re-introduction of the Black Divorce Court in a different form, either as a family court of some sorts, because the argument has been made that divorce matters in Supreme Courts are unaffordable for most people and it seems a waste of judicial material for a judge to sit here and hear 20, 30, 40 divorce cases and just rubber stamp all the time. So I would like to hear your comment about it.

**JUDGE FRIEDMAN:** Well firstly, an all-round figure - I would imagine we handle approximately per annum something of the order of between 1300 and 1500 divorces. That is a statistic. The other point is this ...(intervenes)

**CHAIRMAN:** Are those unopposed divorces?

**JUDGE FRIEDMAN:** Yes, unopposed. I know that serious consideration is being given to the introduction of family courts. Of course, that will lessen the work of the Supreme Court.”

- (31) “In addition to operating as a court of judicature, the Supreme Court at Mmabatho also operates as a teaching court in a sense. We do have the university there, it has an adequate library, obviously not of the same standard as the library at Potchefstroom University, but that is why you will find that many of the judgments that emanate from there are long and sometimes prolix, because this has been our attitude that not only are we a court of judicature, we are also a teaching court.”

**(XXIII) ADV. H. LEVER, SC, ON BEHALF OF THE NORTH-WESTERN SOCIETY OF ADVOCATES**

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

- (1) “I agree totally with the proposition that there be a Provincial Division of the Supreme Court for the Province and I also agree with the submission that the seats of the Provincial Division should be in Mmabatho.”
- (2) “As regards population there are a few comments which I would like to make. The first is: the total population of the North-West Province is approximately 4 500 000 people. I submit that that figure in itself would justify the establishment of a provincial division for this province.”
- (3) “A short while ago, before the Commission commenced its hearing, I had a few words with my colleague, Advocate Mosupye, and he suggested that Odi II should also be in that area. He indicated then that the total figure would be fairly close to 2 million. That is a sizeable proportion of the population which would be catered for by a local division, all in close proximity to Pretoria.”
- (4) “**CHAIRMAN:** When you speak of a local division to serve the area as you have just mentioned, are you referring to a local division as part of the provincial division of the North-West?”

**MR LEVER:** Yes.

**CHAIRMAN:** That you have in mind that it might be served by judges from Pretoria.

**MR LEVER:** Yes.”

- (5) “**JUDGE LEON:** If I may interrupt, what is your answer to the argument that Klerksdorp, having regard to its population and its spheres of activity, commercial, business and so on, would be a more effective place to have the seat of the court than Mmabatho?”

**MR LEVER:** Well, the figure I have for Klerksdorp, the population is 482 455 which is considerably less than the Odi region alone, let alone the combination of those regions. If I felt that the total population of the province as a whole merited two local divisions I could understand that Klerksdorp would come in for serious consideration as the second local division. I think priority should be given to the greater concentration of population in the area around Pretoria, that is the Odi/Moretele/Brits area. In addition of course ..(intervenes)

**JUDGE LEON:** My question is really as between Mmabatho and Klerksdorp.

**MR LEVER:** Yes, well there again ...(intervenes)

**JUDGE LEON:** What your answer is to the Klerksdorp argument.

**MR LEVER:** Well there geographical argument would be an important consideration because they would be more or less on the eastern border of the province. People travelling for example from Vryburg and Kudumane would really suffer considerable hardship. Those are remote areas in the western part of the province.”

- (6) “We have the personnel, we have the infrastructure, we have all the facilities in Mmabatho. The cost factor is there, no doubt the R26 million building would cost between R40 million and R50 million today, but in addition to that it would take about, I imagine, three years to erect such a structure. That is also a consideration.”
- (7) “**CHAIRMAN:** ...I bear in mind the vital point of distinction drawn by Mr Justice Friedman, namely that Mmabatho has a physical court and Pietersburg has not. Bearing in mind that valid distinction, what is your general reaction the suggestion thrown out in the Northern Province that perhaps it might be difficult to create a provincial division overnight and that a convenient transitional phase might be to make the adjoining provinces or some of them, local divisions to be served by Pretoria?

**MR LEVER:** I think it is an excellent idea for the Northern Province and I would suggest that North-West is not really comparable with either Mpumalanga or the Northern Province, and I agree with the Judge President as well. In our case it would be a reduction in our status and there would be no need for it. I think in reality we can cope with a little bit of assistance.

**JUDGE LEON:** But is the reduction in status a matter that ought to be paramount, or ought not the paramount consideration to be the interest of the people?

**MR LEVER:** I agree with you. That is not the paramount consideration but I think the situation in the Northern Province is unique to the Northern Province and what would be good for the Northern Province is not necessarily good for us.”

**(XXIV) MR. ATTORNEY C. WEISS ON BEHALF OF THE NORTH-WESTERN CIRCLE OF THE RUSTENBURG ATTORNEYS ASSOCIATION**

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

(1) “.... ek is ‘n praktiserende prokureur in Rustenburg. Ek is ook die voorsitter van die plaaslike Vereniging van Prokureurs. Ons is 'n vereniging van so 52 praktiserende prokureurs in Rustenburg plus nog 28 klerke en kandidaat-prokureurs. Van die 62 firmas wat hulle van gepraat het in die Noordwes-provinsie is daar so 16 firmas in Rustenburg alleen.”

(2) “Ek het volmag om namens my vereniging in die eerste plek die regter-president van Noordwes of die voormalige Bophuthatswana te ondersteun in sy betoog dat 'n provinsiale afdeling van die hooggeregshof reeds in Mmabatho bestaan en moet bly voortbestaan.”

(3) “**VOORSITTER:** 'n Provinsiale afdeling met welke jurisdiksiegebied?

**MNR WEISS:** Die Noordwes-provinsie.”

(4) “Ons van Rustenburgkant af gaan ons poog om vir u te bewys dat die syfers ekonomies/demografies van so 'n aard is dat die gebied in die ooste waarvan Rustenburg die groeipunt is, dit regverdig dat oorweging geskenk word aan 'n plaaslike afdeling in Rustenburg.

**VOORSITTER:** wat welke distrik sal insluit?

**MNR WEISS:** Dit sal dan Brits, Odi, Moretele, rofweg daardie gebied, waarna advokaat Lever u behoorlik verwys het, maar dan ook Rustenburg, Madikwe, Mokgosi, en dan selfs Swartruggens, Koster - daardie gedeelte.

**VOORSITTER:** Met ander woorde, die noord-oostelike hoek.

**MNR WEISS:** Dit is korrek.”

(5) “Ons probleem is dit, wat verskeie lede van die Kommissie al genoem het, en dit is die toeganklikheid van die hof in Mmabatho vir die plaaslike bevolking van Odi/Moretele/Rustenburg. Dit is ver en daarom betoog ons vir 'n plaaslike afdeling. Ons is ook realisties as ons sê dat dit nie noodwendig is dat 'n plaaslike afdeling summier gevestig moet word nie, daar kan tog 'n interim fase wees sodat syfers uiteindelik kan bewys of so 'n plaaslike afdeling kan voortbestaan.”

(6) “**VOORSITTER:** Nou advokaat Lever het genoem dat vir geval 'n plaaslike afdeling daargestel word in hierdie noordoostelike hoek, dit voorlopig bedien kan word deur oortollige regters uit Pretoria. Wat is u reaksie daarop?

**MNR WEISS:** Ek het nie in wese 'n groot probleem daarmee nie. Die huidige situasie is dat in Rustenburg is daar 'n rondgaande hof van die hooggeregshof wat vir lang tydperke in Rustenburg sit. Verlede jaar het die rondgaande hof, die hooggeregshof van Rustenburg, vir 'n tydperk van meer as drie maande in Rustenburg gesit. So die werk is seer sekerlik hierso.”

(7) “Ek moet ook verder gaan om vir u daarop te wys dat in Rustenburg, Tlhabane is die voormalige gedeelte van die ou Bophuthatswana wat by Rustenburg aansluit. Trouens, die twee dorpe lê fisies teen mekaar. In Tlhabane, Rustenburg en Mokgosi is daar huidiglik drie permanente streekhofe wat nie sekere dae van die week sit nie, hulle sit elke dag van die week met permanente hofbeamptes.

**VOORSITTER:** Deurlopend?

**MNR WEISS:** Deurlopend. Ons sê hierdie syfers op sigself behoort vir u te wys - en dan ook die rondgaande hof van Mmabatho, die hooggeregshof in Mmabatho sit ook in Mokgosi van tyd tot tyd. Ons sê dit op sigself van 'n kriminele oogpunt af beskou regverdig al 'n plaaslike afdeling.”

(8) “Ek moet ook vir u noem dat daar in Rustenburg reeds twee praktiserende advokate is benewens die prokureurs waarna ons u verwys het. Dit is omtrent my submissie ten aansien van 'n plaaslike afdeling.”

(9) “...die sogenaamde familiehof of gesinshof. Dit is deesdae so dat 'n plattelandse prokureur se hooggeregshofpraktyk bestaan seker 70% uit egskedingsake en die stelsel van korrespondente maak 'n egskeding duur. Dit is vir die plaaslike bevolking later net nie meer die moeite werd nie of koste-effektief nie en ons wil graag sterk betoog dat die idee van 'n swart gesinshof weer 'n keer op plaaslike

vlak aangepas word. Ons is natuurlik ook... (tussenbei)

**VOORSITTER:** Toeganklik vir alle sektore van die bevolking, segmente.

**MNR WEISS:** Ja.”

- (10) “'n Ander ding wat ek graag onder u aandag wil bring... die gebrek aan 'n gesinsadvokaat-kantoor in Mmabatho. Op die oomblik is dit 'n groot gebrek en dit maak dit uiters moeilik en ons regter-president het daarna verwys dat daar aspekte is wat werklikwaar aandag verdien wat mens kundige kennis nodig het en dit is 'n groot leemte.”
- (11) “**VOORSITTER:** ... Wat is u eie reaksie op as moontlike troosprys - stel dit so - as 'n oorgangsfase die hele Noordwes omskep word in 'n plaaslike afdeling wat deur regters in Pretoria bedien word? Wat is die voor- en nadele wat u onmiddellik tref?

**MNR WEISS:** Mnr die Voorsitter, ek wil net eerstens sê, ek het nie 'n volmag om dit te sê nie, maar my persoonlike houding is dat hoe gouer ons in Noordwes ons eie identiteit kry in die howe en in ons grondgebied deste beter.

**VOORSITTER:** U voel aan dat langtermyn moet dit kom.

**MNR WEISS:** Langtermyn moet dit kom, en vir my is dit baie moeilik om swart Tswanakliënte hooggeregshof, Pretoria toe te vat. Dit maak dit baie moeilik. Soos die regter-president gesê het, om dit in Mmabatho te gaan doen, dit is hulle mense en dit is baie makliker.”

(XXV)

**MR. ATTORNEY D. KLOPPERS OF THE FIRM VAN VELDEN & DUFFEY IN RUSTENBURG**

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

- (1) “Die Rustenburg-omgewing bestaan wat my betref en die lede van die Vereniging in Rustenburg, uit die Rustenburg, Bafokeng, Madikwe en Mankwe distrikte veral ... Die totale bevolking van hierdie drie gebiede wat ek genoem het, en dan wil ek die kleiner gebiede wat bevolkings betref, van Swartruggens en Koster bytel omdat die twee dorpe geografies redelik naby aan Rustenburg geleë is. Swartruggens is 60 kilometer ongeveer; Koster 52 kilometer ongeveer - is die totale bevolking van daardie gebiede dan 512 000 mense ...”
- (2) “Voorsitter, die huidige begroting van Rustenburg is ongeveer R345 miljoen vir die volgende jaar. Dit is net so 'n rapsie minder as R1 miljoen per dag wat gespandeer word.”
- (3) “Wat die ekonomie betref - en ek sal nou-nou die getalle van die dorp self aan u voorhou - is u almal daarvan bewus dat die grootste platinastreek in die wêreld in die Rustenburg-omgewing geleë is. 75% van die wêreld se platinum word in die Rustenburg-omgewing gemyn, en dan is daar ook nog goud, urideum, rodium en 'n paar ander metale en minerale wat hier gemyn word.”
- (4) “Ek wil graag die volgende syfers oor Rustenburg uit 1992 aan u voorhou. Die waarde van bouplanne wat in daardie jaar in Rustenburg goedgekeur is - en dit het Thlabane of dan die Mafokenggebied uitgesluit - was R32 miljoen. Die waarde van geboue wat in daardie jaar voltooi is in Rustenburg was R45 miljoen. Ek kan terloops sê dat daar nou in Rustenburg 'n stadsentrum opgerig word en daardie sentrum se begrote bedrag was ongeveer R70 miljoen gewees.”
- (5) “Ten slotte is daar beramings gemaak dat daar teen die jaar 2010 ongeveer 35 000 nywerheidswerkers in Rustenburg sal wees en dat daar ongeveer 215 000 werksgeleenthede vir tradisioneel Tswanawerkers in die gebied sal wees. Dit is net Rustenburg in, dit sluit Sun City soos dit hier staan en ook Mokgosi, die dorp naaste aan waar ons vandag is, uit.”

(6) “U sien dus, om af te sluit, Rustenburg lewe; Rustenburg het geld; Rustenburg het mense. Dit is my submissie en dié van die Vereniging, en al wat Rustenburg op hierdie stadium kort, is waarskynlik 'n hooggeregshof in hetsy plaaslike afdeling of 'n provinsiale afdeling.”

(7) “**VOORSITTER:** ...By monde van mnr Weiss het ons verneem dat as prokureur dit vir hom makliker of geriefliker is om met litigante te reis na Mmabatho in plaas van Pretoria. Wat is u eie ondervinding, as u nou Pretoria met Mmabatho moet vergelyk met die oog op gedingvoering?

**MNR KLOPPERS:** Voorsitter, ek sal Mmabatho kies.

**VOORSITTER:** Uit hoofde van welke oorwegings?

**MNR KLOPPERS:** Uit hoofde van die volgende oorwegings: Die eerste een, Mmabatho is die provinsiale hoofstad, dit is die Noordweste se mense wat betrokke is by die litigasie. Die tweede oorweging is bloot 'n praktiese oorweging. Die pad tussen Rustenburg en Mmabatho is oor die algemeen makliker rybaar as om in Pretoria in die middestad verdwaal te word met 'n klomp boere.”

(8) “**MNR KLOPPERS:** Wat hofgeriewe betref, binne 'n radius van vyf kilometer in Rustenburg self is daar op hierdie stadium twee hofgeboue. Dit is die Rustenburg hofgebou.

**VOORSITTER:** Die landdroshof?

**MNR KLOPPERS:** Die landdroshofgebou, op hierdie stadium, met vier landdroshowe, 'n streekshof, die hofgebou self en 'n hooggeregshof en dan in Thlabane is daar op hierdie stadium ses hofsale.

**VOORSITTER:** Modern?

**MNR KLOPPERS:** Modern, dit is nuutgebou. Met respek, dit is waarskynlik beter as Rustenburg se geboue. Dan is daar ook natuurlik Mokgosi wat baie naby is wat ook moderne hofgeboue het.”

**(XXVI) MR. ATTORNEY P. SEDILE PRESIDENT OF THE BOPHUTHATSWANA LAW SOCIETY**

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

- (1) “I am practising in Garankuwa. The law society presently is in Garankuwa. We are supporting the view by our Judge President that there should be a provincial division in our province at Mmabatho and also that there should be two local divisions in our province. It is common cause that Odi and Moretele have more numbers of population than the other areas, which is approximately one million. There are two courts, there is one court in Garankuwa with six courts and three regional courts and in Moretele we have six courts with two regional courts.”
- (2) “We have got a large population of poor people who want access to justice. Access to justice means we must have our own supreme court. If we look to factors which have been enhanced by the Transvaal Provincial Division, for instance, Judge Eloff, Judge Eloff is still looking at the old structure that he has had in the Transvaal. There is no more Transvaal. They are having four provinces, whereby each province must have its own provincial division.”
- (3) **CHAIRMAN:** May I just ask you to clarify? I understand you to support the judge president's claim that there should be a provincial division for North-West Province, with its seat at Mmabatho.

**MR SEDILE:** That is correct.

**CHAIRMAN:** In addition you make a plea for the creation of two local divisions. Where in your submission should the seat of the two local divisions be respectively?

**MR SEDILE:** The local division should be in Garankuwa. The other local division must be in Klerksdorp, because Klerksdorp is also a commercial area with slightly more population than the Odi and Moretele region and I assume that there is an existing pseudo-infrastructure because the WLD also uses Klerksdorp at this present moment on circuit basis.”

- (4) “**CHAIRMAN**: So you see a total complement of nine judges for the North-Western Provincial Division.

**MR SEDILE**: That is correct.

**CHAIRMAN**: Five in Mmabatho, two in Garankuwa and two in Klerksdorp.

**MR SEDILE**: That is correct.”

- (5) “The problem with the present structure of the maintenance court is that the clerks there are inexperienced, they are not legally trained. They are ordinary clerks with matric, so I am of the view that especially section 11 of the maintenance court it is not properly looked into or adjudicated into. Those areas, they form part of the court process. There need to be an experienced person who can adjudicate well for the well-being of the minor child who is in dispute with the maintenance. So if they are properly cared for by experienced people, paralegals or people, for instance, with BIuris, they can serve a useful purpose or office.”

**(XXVII) ADV. D.D. MOSUPYE IN HIS PERSONAL CAPACITY AND ALSO REPRESENTING THE ODI HUMAN RIGHTS CENTRE AND THE ODI BRANCH OF NADEL**

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

- (1) “I am an advocate now, but I have previously been an attorney.

**CHAIRMAN:** Where?

**MR MOSUPYE:** In Garankuwa. I practised for myself under the name of D D Mosupye in Garankuwa, from 1980 to February 1987. From there I joined the Pretoria Bar, which I left in 1992.”

- (2) “We have now twelve firms of attorneys in Garankuwa ... Presently I am the only advocate practising in Garankuwa.”
- (3) “Mr Chairman, I am in agreement with the proposition that a provincial division for the North-West Province, as it now stands, be continued, with its seat at Mmabatho.”
- (4) “I have no comment to make in the issue of Klerksdorp, but I wish to propose that a local division also be established at Garankuwa for Brits, district Odi I and II and district Moretele, which, as the Commission has heard, has a combined population of about 1,3 million people. These districts have a high density of people.”
- (5) “Brits itself is the hub of the industrial area in that region, coupled with the Garankuwa industrial area and Babelegi industrial area in Moretele. I wish to propose that this local division has civil and criminal jurisdiction concurrent with the provincial division with two judges. I say so because from the huge population there, there will definitely be a large number of criminal cases as well as civil cases. As Mr Sedile said, in Garankuwa you have got five district courts and three regional courts; in Moretele we have got six district courts and two regional courts which sit daily.”

(6) “I am appealing to the Commission to establish this local division of the supreme court in Garankuwa because we have had problems in the past and the cost of travelling to Mmabatho for an unopposed divorce is about R2 500 and for indigent people it is cost prohibitive. One can say that perhaps some of the indigent people can get legal aid, however, there are also other problems - transport problems and accommodation problems.”

(7) “**MR MALULEKE:** If you are going to have two local divisions in the most densely populated parts of North West, in Odi or in Rustenburg or in Klerksdorp, you virtually leave the court, the provincial division in Mmabatho with no population to serve. So in fact instead of having five judges in Molopo you would possibly only need one, because you have taken all the population for the area and given them local division. Could I have your comments on that?

**MR MOSUPYE:** I have no comment to make about the local division in Klerksdorp.”

(8) “**CHAIRMAN:** Well, you have a map before you. What districts do you suggest the local division, with a seat at Garankuwa, should encompass?

**MR MOSUPYE:** Starting from the far east it will be district Moretele, Odi I, Brits and Odi II.

**CHAIRMAN:** What else?

**MR MOSUPYE:** That is all.”

(9) “**CHAIRMAN:** So you have in mind one local division.

**MR MOSUPYE:** One local division, yes, and then the rest of the province will be served by Mmabatho.”

(10) “**CHAIRMAN:** Why would the claims of Garankuwa be superior to those of Rustenburg in your submission? Why would you favour Garankuwa rather than Rustenburg?

**MR MOSUPYE:** I want to believe that the bulk of the population is situated within the vicinity of Odi and Moretele.

**CHAIRMAN:** And the bulk of the litigation?

**MR MOSUPYE:** Well the bulk of the litigation, commercially perhaps will

come from Rustenburg, commercial litigation, but divorces and criminal matters definitely will come from those areas, because if you look at the statistics which were submitted by Justice Friedman, you will see most of the criminal trials in the supreme court come from that area.”

- (11) “**CHAIRMAN:** Earlier the view has been expressed that in the North-West Province the average of an attorney's civil practice consists of some 70% of divorce matters. Does that coincidewith your experience?”

**MR MOSUPYE:** Yes, definitely so.”

- (12) “**MR MALULEKE:** ... the question of having an attorney-general in a local area, whether in Mmabatho, or having one attorney-general in Pretoria, would you let us have your comments? We have had the AG for Pretoria, for instance, suggest that Pretoria is well able to service North-West from Pretoria as the AG, but you do not need an attorney-general here.

**MR MOSUPYE:** Let me tell you, there was so much criminal work, that they had to appoint a deputy attorney-general sitting at Garankuwa. The criminal cases which emanated from the district of Garankuwa was so much for the attorney-general in Mmabatho that a deputy attorney-general had to be appointed in Garankuwa, and that is the situation. I do not think that the attorney-general in Pretoria could cope with the work as he envisages it, because he always complains about shortage of staff in his office.”

(XXVIII) THE HON. MR. JUSTICE M. FRIEDMAN BY WAY OF CLARIFICATION

- (1) “Perhaps I did not make the position clear. The five judges I am talking about are dealing with the old jurisdiction that was Bophuthatswana. In other words, we have got no extended jurisdiction. Should there be extended jurisdiction we would obviously have to increase the complement of the Supreme court at Mmabatho.

**CHAIRMAN:** To what extent, in your submission?

**JUDGE FRIEDMAN:** In my submission, assuming we have jurisdiction over Klerksdorp, Potchefstroom, Rustenburg and so on, I think we would have to increase it to about nine.”

- (2) “**JUDGE LEON:** What is your reaction ... about the suggestion of there being two local divisions, one say in Klerksdorp and one somewhere else, or Rustenburg and one in the North East corner.

**JUDGE FRIEDMAN:** I think the point has been made, I think it was made by yourself, that if there are two local divisions, and I think also by Mr Maluleke, it would detract from the work of the supreme court in Mmabatho.

**JUDGE LEON:** This is what *prima facie* gives me some pause, I should say.”

- (3) “**CHAIRMAN:** While you are there, judge Friedman ... just for the record indicate to us what criminal circuits are run from Mmabatho and where they sit?

**JUDGE FRIEDMAN:** The criminal circuits run are one at Garankuwa, one at Temba, that is in Moretele. Garankuwa is in Odi, and one at Mokgosi. That is in this area. Mokgosi is approximately 30 kilometres from here. So we run three circuits from Mmabatho.”

**(XXIX)            MR ATTORNEY J. DE KOCK OF KLERKSDORP ON BEHALF OF THE CITY OF KLERKSDORP**

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

- (1)        “I am a member of the Executive Council of the city of Klerksdorp and I am representing the city of Klerksdorp, but not only the city of Klerksdorp, actually a task group working on the idea of a metropole for the Klerksdorp region which will then entail Orkney, Stilfontein, Hartbeesfontein and the surrounding which then is a very vast community in that area.”
  
- (2)        “It is true that Klerksdorp is contributing close to 40% or more than 40% of the gross geographical product of the North-West Province.”
  
- (3)        “The North-West Province is formed like a kidney and it was already raised this morning that Mmabatho might be geographically better situated but in fact I believe that is not true. Mmabatho is on the one side of the province and Klerksdorp is on the other side of the province.”
  
- (4)        “We feel very strongly that the accessibility by the public at large is of the utmost importance, and Klerksdorp, having 40% of the economics in this whole province going on there, we can actually draw from that. Virtually 40% of all court cases should be also from that area.”
  
- (5)        “**CHAIRMAN:** ... we have had the opinion expressed early this morning already that for the average attorney in the North-West Province 70% of his civil practice consists of divorce actions. How does that ...(intervenes)

**MR DE KOCK:** Yes, it is not easy to give a 100% answer, but I can well believe that 70 out of every 100 summonses issued in our area might be divorce matters, yes, I might accept that.”

- (6)        “**MR MALULEKE:** ... The argument advanced by Rustenburg is not in many ways, if one looks at it, much dissimilar from yours in the sense that, depending

on how creative one is, Rustenburg can very well end up also producing statistics to show that it is also a potentially high income area. It has got a bigger area, it can include all the mines. If these considerations were to become decisive between Rustenburg and Klerksdorp to the exclusion of, say, Mmabatho, why should in your submission this Commission prefer Klerksdorp to Rustenburg?

**MR DE KOCK:** I have already said, and I think I would like to say it again, on page 6 of our memorandum you will find the graph showing that 40% of the geographic product is in Klerksdorp and that can be compared to Rustenburg, which you can also see there, which is very much less... (intervenes)

**JUDGE LEON:** How much less?

**MR DE KOCK:** I would say 25% of the Klerksdorp area gross product will be found in the Rustenburg area.”

- (7) **MR MALULEKE:** In your submission we have the seat of court, say in Klerksdorp, would you then propose circuit courts for local divisions for Rustenburg or Odi or Mmabatho?

**MR DE KOCK:** Yes, I think an appropriate division will then be a local division in Mmabatho and one in the Odi area.

**MR MALULEKE:** Actual local divisions, you say?

**MR DE KOCK:** Yes, two local divisions with two judges each.”

- (8) “We strongly feel that the supreme court must be there where the financial problems are. Therefore Odi, although they have not got the people, we might find that a lot of the court cases going on there is not within the jurisdiction, the necessity of the supreme court, whilst the Klerksdorp area we believe is quite different. That is where the money is generated in this province.”

- (9) **JUDGE LEON:** You are saying Odi will really be more appropriate for a magistrate's court than a supreme court? Is that what you are saying?

**MR DE KOCK:** I am not really that well-known, but yes, my gut feeling tells me that the population distribution might necessitate another kind of approach than that which is needed in an economic, viable area.”

(XXX)

**MR. ATTORNEY R. BRADY OF THE FIRM WACKS & BRADY IN  
KLERKSDORP ON BEHALF OF THE GREATER KLERKSDORP  
ATTORNEYS ASSOCIATION**

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

- (1) ... we are in favour of a provincial division for the North-West Province and so we support that.”
- (2) “In Potchefstroom there are three district courts, which are the local magistrate's criminal court; Rustenburg have three; Klerksdorp have seven and Brits have three.”
- (3) “The civil courts, Potchefstroom has one, Rustenburg has one, Klerksdorp has two and Brits has one.”
- (4) “ The regional court, Potchefstroom has one, sitting all the time, Rustenburg has one, excluding eight days when it goes out on circuit. So it has one regional court. Klerksdorp has two, permanently sitting in Klerksdorp and Brits has one.”
- (5) “In Potchefstroom there are 22 firms and 50 attorneys; in Rustenburg there are 16 firms and 46 attorneys; Mafikeng/Mmabatho has 16 firms and 35 attorneys; Brits has 13 firms and 23 attorneys; Klerksdorp has 33 firms and 70 attorneys.

**JUDGE LEON:** So you are saying in short you have got double the number of practitioners in Klerksdorp as there are in Mmabatho.

**MR BRADY:** Correct ...”

- (6) “... and we have five practising advocates in Klerksdorp, coupled with the fact that Potchefstroom, many of the academics there are practising and they are often in our courts as well.”

- (7) “The only conclusion I would like to suggest there is the fact that there so many more firms of attorneys and practising attorneys in our area - and I would like to include Potchefstroom in this whole exercise, then you will see that the need for the services of lawyers in that area is clearly far more substantial than in the other areas.”
- (8) “In conclusion, the synopsis as in our memorandum, I reiterate, I suggest that we do have the need to have a supreme court in our area. I am inclined to suggest to the Commission that my own view and that of some of the committee members' - we are flexible as to where the provincial division must be.

**CHAIRMAN:** The seat?

**MR BRADY:** Yes.

**JUDGE LEON:** I think you also said, in answer to the question that I asked you, as I understood it, was although the majority of the population live in that north-east corner, your view was that their needs will be addressed largely by magistrates' courts than by the supreme court. I think that is what you said.

**MR BRADY:** Yes.”

**(XXXI) MR. ATTORNEY E.G. HARRIS OF THE FIRM MINCHIN & KELLY INCORPORATED IN MAFIKENG REPRESENTING THE MOLOPO CIRCLE OF ATTORNEYS**

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

(1) “... I was a member of the Bophuthatswana Law Society for some nine years, of which I was chairman for four years. So I have reasonable knowledge with dealings of the court. I also practised as a legal practitioner, a litigating practitioner for some sixteen years in the supreme court ...”

(2) “**CHAIRMAN:** Your Molopo Circle embraces Mmabatho, Mafikeng and Monshewa, is that correct?”

**MR HARRIS:** It embraces those towns, yes. It currently consists of 43 practising attorneys made up of 22 firms and there are 16 articulated clerks.”

(3) “Therefore even though our numbers might be slightly inferior to some of the other towns in the North-West Province I think we are one step ahead of them in this regard, that we have all at one time or another practised in the supreme court. We are used to the procedure of supreme courts, we have a Bar Association, as you have heard before, we are used to the procedure whereby advocates are used in the supreme court. Of course, now that attorneys are allowed to practise in the supreme court I have no doubt that many attorneys in the Molopo region will apply for admission; some have already and will themselves appear in the supreme court.”

(4) “Mr Chairman, we fully support the submissions made by the judge president. We also support the submissions made by the Bar Association, perhaps with one or two small distinctions, as far as the Bar Association is concerned in any case. We support fully that there should be a provincial division in the North-West Province. We do not necessarily support ideally that there should be local divisions because we feel that one provincial division will adequately serve the needs of the North-West Province ...”

- (5) “The distinction, of course, between the Northern Province and the North-West Province is that we already have a supreme court. It is already established, it already sits in Mmabatho. You have heard the statistics, you have heard the people that practise here, you have already heard about the buildings and all the other aspects of the Mmabatho Supreme Court.”
- (6) “It is true that the judges at present do not serve the whole North-West Province and therefore the conclusion one must draw therefrom is that six judges could not adequately serve the whole of the North-West Province. But there is no reason whatsoever why the number of judges cannot be extended. You have heard that the court building can house eleven judges.”
- (7) “With regard to the geographical situation of Mmabatho, if you look at the situation of the North-West Province you will find that it is shaped vaguely in the shape of a banana - not that we are a banana republic. But Mmabatho is situated on the inside edge of that banana, but it is in the middle and if you take a compass and you were to put it at the centre of Mmabatho and draw a compass line, you will find that if you were to draw a circle it would go around Rustenburg, it would go round Klerksdorp and go towards the southern end of the North-West Province. It would perhaps miss Moretele and the Odi district. That means that as far as distance is concerned we are just about equi-distant from the major centres in the province. That means we could adequately provide a service to Rustenburg, just as we could to Klerksdorp, Potchefstroom, Stilfontein and that particular area. If, on the other hand, the provincial division were to be established in Klerksdorp or Rustenburg, the same will not apply.”
- (8) “**MR MALULEKE:** ... we have heard suggestions that, say, people in Odi might find it a lot cheaper to get a bus and go to Pretoria and instruct an attorney directly to litigate in the TPD rather than be faced with the great cost, not only trouble wise, the great cost of instructing two firms of attorneys to litigate in Mmabatho, simply for the luxury of a province having the status of a provincial division. That is why I wanted to get your comment on that.

**MR HARRIS:** Mr Maluleke, I fully agree with you that it certainly would probably be cheaper for persons living in the Moretele and Odi area to commute to Pretoria and instruct an attorney directly rather than use an attorney there and use him there as a correspondent with a Mmabatho firm. But then again, the same applies to Vryburg which is in the south west portion of the North-West Province.”

- (9) “We state that categorically, it must be in a province, and you are going to have logistical problems wherever you go, one way or another. Yes, it will be easier for a party to litigate direct with Pretoria in the Odi area, but then again, from Pretoria's point of view, what about persons litigating from Nelspruit? What about persons litigating from Pietersburg? Unfortunately exactly the same applies there. You are always going to have some sort of problems with regard to proximity to the court.”
- (10) “Yes, to answer your question, yes, as far as proximity is concerned, it might be easier to litigate in Pretoria, as far as the Odi/Moretele region is concerned, but with regard to all other areas of the North West this is not so.”
- (11) “There was a point raised earlier on about accessibility and Mmabatho is extremely accessible by road, by air, by rail. You can get to Mmabatho by anyone of those mediums. There are direct links with all the major centres in South Africa. It is also an important point of exit out of South Africa because it is right next to the border with Botswana, with whom Mmabatho has enjoyed a close relationship over many years, despite the apartheid era.”
- (12) “**MR MALULEKE:** As one of the oldest attorneys practising in this area, I want to find out something: From a human resource point of view, the human resources attached to the Bophuthatswana General Division, as it is called now - I am talking about the master, the registrar, etc, what would your comments be if this Commission were to be disposed to recommending that this court be dismantled and be replaced by a local division from Pretoria, what would you think it would do, or rather the problem with the human resources could be dealt with or that the court should move to Klerksdorp and here that we should be should remain with the second. Do you think the human resources which we have developed here is easily replaceable and duplicated in other parts of the North West?”
- (13) “**MR HARRIS:** Mr Maluleke, you will probably find numbers wise, the number of persons directly affected by the demise of the Bophuthatswana Supreme Court would not be that great but I think the ripple effects thereof would be astronomical. They would certainly be disastrous to Mmabatho. As far as numbers are concerned, I think you are talking about 50 to 60 people all in all, if you are purely talking about numbers, which include the judges, the registrars, the masters and all the affiliated sections which I am tying to this office. But the ripple effect of the removal of a supreme court from Mmabatho would be totally

disastrous.”

- (14) “I am only talking about administrative officials excluding the 43 attorneys - you would effectively, as far as the legal fraternity is concerned, you would effectively kill 80% of the attorneys who practise in Mmabatho, you will kill the total bar, consisting of twelve members - of course the judges are affected - and you would have the ripple effect that this would cause throughout the legal fraternity because Mmabatho would then become a country town as far as legal practice is concerned. We would be sitting with one magistrate's court; I do not know what they would do about the regional court structure. The supreme court of course would go, and it would be absolutely devastating.”

**(XXXII) PROFESSOR I. VORSTER, DEAN OF THE LAW FACULTY AT THE UNIVERSITY OF POTCHEFSTROOM**

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

(1) “Ek is die dekaan van die Fakulteit Regte. Die Fakulteit bestaan uit vyf departement, 23 doserende personeellede en die Fakulteit bedryf ook 'n aantal regsclinieke, die meeste daarvan in samewerking met die Regshulpraad en hierdie klinieke, regshulpinstellings, word ook deur die universiteit of deur die Fakulteit dan, as 'n onderrighulpmiddel gebruik.”

(2) “Die studentetal in die regs fakulteit is net oor die 900 studente. Die kursusse wat aangebied word is BIuris, BA met regsvakke, BComm met regsvakke en dan LLB.

**VOORSITTER:** En wat tel die LLB finale jaar? Hoeveel studente, plus/minus?

**PROF VORSTER:** Die finale jaar studente is ongeveer 62 ...”

(3) “Die gedagte is, as dit u sal behaag, dat ons by monde van prof Venter 'n kort voorlegging maak ook teen die agtergrond van die Grondwet oor die plasing van 'n hooggeregshof in die provinsie self en dan 'n paar kort gedagtes oor waarom ons Potchefstroom as setel ter oorweging wou gee.

**VOORSITTER:** As setel van 'n provinsiale afdeling?

**PROF VORSTER:** Ja.”

**(XXXIII) PROFESSOR F. VENTER, HEAD OF THE DEPARTMENT OF PUBLIC LAW AND JURISPRUDENCE AT THE UNIVERSITY OF POTCHEFSTROOM**

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

(1) “Ek is Francois Venter, hoof van die Departement Publiekreg en Regsfilosofie aan die Potchefstroomse Universiteit waar ek betrokke is vir 25 jaar. Ek was ook betrokke gewees in die grondwetskrywende proses as 'n adviseur in altwee die prosesse, die onlangs afgehandelde een ook.”

(2) “Daar kan nie gesê word dat enige van die twee Grondwette onomwonde vereis dat daar in elke provinsie 'n provinsiale afdeling moet wees nie.

**VOORSITTER:** Dit word nie kaalkop gestel nie.

**PROF VENTER:** Inderdaad nie, maar die implikasies in van die tersaaklike bepalings is baie sterk in daardie rigting.”

(3) “By die samestelling van die Regterlike Dienskommissie wat verantwoordelik is vir die aanstelling van regters is daar 'n bepaling wat vereis dat wanneer daar regters van die betrokke provinsiale afdeling aangewys moet word, die premier en die regter-president van die betrokke provinsie, betrek word, lede word van die Kommissie. Die implikasie daarvan is dat, gestel nou die provinsiale howebedeling sou nie verander nie dan sal daar by die aanstelling van 'n regter van die Bophuthatswana Provinsiale Afdeling waarskynlik twee premiers betrek moet word, of 'n premier en twee regters-presidente.”

(4) “Dit sou 'n vreemde situasie wees vir 'n hof in Pretoria om oor die grondwetlikheid van 'n wet van die provinsiale wetgewer van die Noordweste te beoordeel, waarmee ek eintlik ook net wil sê dat die implikasie baie sterk is in die Grondwet dat konstitusionele jurisdiksie ook provinsiegerig behoort te wees.”

- (5) “Die assosiasie van Mmabatho met die ou Bophuthatswana is onvermydelik baie sterk en 'n mens sou graag wou sien dat die gedagte vermy word of nie bevorder word nie dat die Noordwes-provinsie eintlik 'n verlengstuk, 'n uitbreiding geword het van die ou Bophuthatswana.”
- (6) “**PROF VORSTER:** Voorsitter dan kortliks enkele submissies oor Potchefstroom as dorp en as sentrum en die universiteit as sodanig.”
- (7) “Ek het reeds aangetoon dat die universiteit in sy visie en in sy missie baie graag as 'n ontwikkelingsagent in die Noordwes-provinsie gesien wil word en teen hierdie agtergrond het ek verlot van my universiteit om dit voor die Kommissie te stel dat die universiteit bereid is om bepaalde fisiese fasiliteite tot die beskikking van 'n hooggeregshofsetel, indien en wanneer dit in die provinsie tot stand sou kom en dit in Potchefstroom geplaas sou word, te voorsien.”
- (8) “Hierdie fasiliteite val in twee dele uiteen, in die eerste plek biblioteekfasiliteite en tweedens fisiese fasiliteite wat betref huisvesting van die hof en sy infrastruktuur.
- (9) “Die plaaslike universiteitsbiblioteek beskik oor 21 524 boekdele. Dit is 'n baie omvattende versameling.”
- (10) “Die biblioteek beskik ook in die Hertzogversameling oor 'n baie omvangryke en uiters seldsame versameling gemeenregtelike bronne wat baie handig deur 'n afdeling van die hooggeregshof gebruik sou kon word.”
- (11) “Dit is die standaardwerke van die Romeinse, Middeleeuse en Romeins-Hollandse sowel as die Franse en Duitse regskole. Al die belangrikste Romeins-Hollandse outeurs se oorspronklike werke is in die biblioteek opgeneem asook die van minderbekende outeurs. Die wêreldbekende regshistorikus, prof Robert Feenstra van die Rijksuniversiteit van Leiden in Nederland het die biblioteek as heel indrukwekkend vir 'n Suid-Afrikaanse biblioteek bestempel en dit bevat van die weinige Bartolus-versamelings wat in Suid-Afrika beskikbaar is.”

- (12) “Die voordeel gee ons, met respek, ter oorweging dat as so 'n biblioteek op 'n onderhandelde basis beskikbaar gestel sou kon word vir 'n setel van 'n hooggeregshof, dat dit in die eerste plek die aankoop en instandhouding van 'n duur en omvattende biblioteek sou uitskakel en dit maak - as ek dit so mag stel - daar is twee regters op die Kommissie, dit sou 'n regtersklerk se paradys wees as hy 'n bietjie moet gaan "devil" vir sy regter.”
- (13) “Dan daarby die elektroniese ontsluitingstelsel in ons biblioteek is van die beste in Suid-Afrika. Dit is wêreldwyd gekoppel. Dit is die sogenaamde Nolliconetwerk. 'n Mens kan enige tydskrif of bykans enige tydskrif of regsbron wat nie in die biblioteek beskikbaar is nie, baie vinnig in die hande kry. Dit is 'n baie gevorderde stelsel.
- (14) “... ons het wyle advokaat Oscar Rathaus se totale versameling van die Engelse verslae gekoop. Dit is 'n volledige King's Bench, Queen's Bench, Chancery en Exchequer's Division. So ons het die fasiliteite en ek het die magtiging van die universiteit om dit vir die Kommissie te stel - dit kan op 'n onderhandelde basis beskikbaar gestel word. Ek gaan nie verder hierop in nie, ek wil maar net die submitisie maak, sonder om die detail te gee. Dit is volgens erkende standarde 'n gevestigde navorsingsbiblioteek met volledige ontsluitingsfasiliteite wêreldwyd.”
- (15) “Die universiteit is bereid in beginsel om 'n hofgebou op die koste van die universiteit in te rig en dit dan op 'n billike onderhandelde basis aan die staat beskikbaar te stel. Ek kan miskien net 'n foto ophandig. Wat gebeur het is dat die geboue van die Potchefstroomse Normaalkollege, waarvan sommige pragtige klassieke geboue is, is oorgedra aan die universiteit.”
- (16) “As u daarna wil kyk, ons het hier 'n stel planne. Dit is nie planne wat met die oog op 'n hofgebou opgestel is nie, maar dit dui sekere ruimtes aan wat daarop dui dat daar ongeveer ses ruim hofsale ingeruim sou kon word asook volledige stelle kantore vir die personeel van die hof, insluitende regters. Ek kan miskien dit ook net ophandig as u vinnig daarna wil kyk. Op die oomblik maak dit voorsiening vir lesingsale. Dit is twee verdiepings met 'n annexe.

**VOORSITTER:** Die staan bekend as die Barnardhuis.”

- (17) “**PROF VORSTER:** It is situated on the eastern border of the province and has the advantage that the city is situated closest to the rapidly growing Gauteng area and it is situated on the national road and main railway line between Gauteng and Cape Town. It is in our submission, extremely accessible.”
- (18) “Secondly, Potchefstroom is unquestionably the educational centre of the province.”
- (19) “Potchefstroom word baie sterk sigbaar en op 'n baie professionele manier gepoliseer. Maar daarmee wil 'n mens nie ontken dat hy ook maar sy probleme rondom misdaad het nie.”
- (20) “Die submitisie is dus dat Potchefstroom, wat 'n deel van die Potchefstroom, Orkney, Stilfontein, Klerksdorp area uitmaak, is baie goed geleë. Dan as u my sal veroorloof, een aspek wat ons tog met respek aan die hand wil doen, maar dit is baie moeilik om dit onder woorde te bring: Die atmosfeer van Potchefstroom is 'n atmosfeer wat ons ter oorweging wil gee "conducive" is of mooi aansluit by die idee van 'n hooggeregshof. 'n Hooggeregshof is in 'n sekere sin ook 'n kultuurgoed van al ons bevolkingsgroepe.”
- (21) “Dit is 'n rustige atmosfeer wat nie oorheers word deur 'n bepaalde sektor nie, wat by die gees en werksaamhede, die "spirit" sal aanpas.

**VOORSITTER:** Wat bevorderlik is.

**PROF VORSTER:** Ja. Wat afstande betref, die Kommissie het nou... (tussenbei)

**JUDGE LEON:** Conducive to giving judgments in appropriate surroundings where one can contemplate peacefully and correctly what to do.

**PROF VORSTER:** Exactly, that is what we are saying.”

**(XXXIV) MR. ATTORNEY E.G. HARRIS BY WAY OF REJOINDER**

- (1) I am afraid a misconception has been raised here today and that is that Mmabatho was only a creation of apartheid. What he has lost sight of, I am afraid, is that Mafikeng and Mmabatho are synonymous. Now Mafikeng adjoins Mmabatho. Mmabatho was the new name and Mafikeng of course became a suburb of Mmabatho, but essentially the old town, as you might call it, has always been Mafikeng. Now Mafikeng enjoyed a very unique position until not so long ago. Mafikeng of course was created as the capital of the Bechuanaland Protectorate. It was actually situated in British Bechuanaland. Sorry, the Bechuanaland Protectorate was created in 1885. British Bechuanaland was annexed in 1895.”
  
- (2) “So in fact Mafikeng has been a traditional capital of the Tswana people since 1895. It did not start with Mmabatho in 1977, it started nearly a century ago and I submit that it is the history of connection with the Tswana people, the biggest population group in the North-West Province, and I submit with respect, that it should remain so and the court then deserves to be in the capital of the Botswana people.”