



JUDGES MATTER

Judicial Service Commission interviews

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Eastern Cape Division of the High Court (Judge President)

Interview of Judge D Van Zyl

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CJ M. Mogoeng: Three years that you have been leading a court. Now tell us what your vision is if appointed to the position of Judge President. What is it that you intend to do to obviously carry out the mandate that rests on the shoulders of the judiciary as well as it should be carried out.

JUDGE D. van Zyl: Yes, obviously one has to start with the constitution and see what your mandate as a judge is in terms of that. And the first aspect and one will start with is that of the transformation of the judiciary. I see that as a task that lies ahead and that is something that will have to be seriously approached and tackled head-on in a very practical fashion. And the other aspect which, vision which I have for the division is that of access to justice to give effect to that right and to make it something real and simply words which are written on paper. But to try and give effect to that. It has, it is something that I have tried since my appointment or attempted to do since my appointment as deputy judge president and before that as

acting deputy judge president, is to try and improve the functions of the Bisho High Court. And that has been my main aim because by insuring an efficient and effective court one opens up the way for, for access to justice. For people to have their cases heard faster, have quicker results and for more matters to be enrolled. The old saying is justice must be seen to be done, and it's all in how quick the matter can come before the court and how quick the matter can be disposed of. It is a matter of concern, it should be to all of us, and I am sure it is if one hears the, the statistics department saying, the Statistics General saying that in a survey that they've done is that 70 percent of South Africans don't believe, or don't have confidence in the, in the justice system. And more particularly the criminal justice system. So, my focus has been from the start on that part of, of the running of the court.

CJ M. Mogoeng: Those are more of general principals. I am more interested in the how part. How are you going to apply those principals to the challenges that confront the judiciary in that province? Both the High Court and the Magistracy. What challenges are you aware of that apply to the entire province? That apply to individual courts and how with the benefit of the knowledge of these principals are you then gonna take these principals and apply them -

JUDGE D. van Zyl: - Yes –

CJ M. Mogoeng: - To solve the problems and in the process of doing so, highlight your leadership and managerial strengths.

JUDGE D. van Zyl: Yes. Chief Justice with the tools that have now been given to us by the office of the chief justice in so far as statistics are concerned, one can identify over a period of time where problems lie. And one can use those statistics to the advantage of then addressing those problems. That is something which I've done specifically in my court. I will give your more details of that. Insofar as, and I'm talking about the statistics for the last, for the last year. The courts in the Eastern Cape are not fairing badly. Most of the courts are above the average, or the target which is being set. The target being 63 percent in respect of civil matters, and I think 65 percent in respect of criminal matters. There are challenges, I know that the statistics with regard to crime in Umtata is not boding very well. They've only achieved a figure

of 44 percent which is far below the figure of 65 percent of what the aim is, or their target is at that we're aiming for. With the result is, that brings down the, the percentage overall of the province down. It seems to me that if I, if I have regard to the quarterly released statistics that were given to us over the last year or, so it seems to me that the problem in Umtata relates to partly heard matters. The difficulty with partly heard matters is that it creates a, a blockage. It doesn't allow for new matter to come onto the roll and if you have too many of those matters no new matters are enrolled and they are queuing up behind, behind those matters. So, the priority should be, and that will be my priority will be to try and get rid of those partly heard matters. That I think is the first thing that needs to be done. That's what I've done in Bisho and also to introduce what I've done is to introduce a very simplified way of case management in respect of criminal matters. If you would allow I'll explain how that, how that works. The cases are enrolled, and I have over time, I have changed, made changes to it and – but effectively what is happening is that the cases are enrolled in the term before they are heard. Then in a specific week, during that week the legal aid board would make sure or their task is to appoint an attorney or an advocate for each of the accused. The attorney or the advocate would be present at court who would then consult with the accused, who will be at court. After that consultation there would be a meeting between the parties being the state, the public prosecutor and the defence attorney or the defence advocate. And to iron out any details with regard to what evidence are to be in dispute, what is not to be in dispute and then to come back to me and to report what they have, could agree upon and what they could not agree upon. I will then make an assessment as to how many witnesses the state intends calling and how many witnesses are necessary to be called by the state. The same insofar as the defence is concerned. On that basis the matter is then enrolled. I can then, if they say to me, they are calling 10 witnesses I can then with the experience that I have over the years I can assess that this is a matter that will last for more than 1 week. And it will have to be set down for ten days. So, the matter is then postponed to the following term where it is then enrolled for 2 weeks or a week or whatever the case may be.

CJ M. Mogoeng: Can I engage you just there?

JUDGE D. van Zyl: Yes.

CJ M. Mogoeng: Do you get involved from the onset or only later? In other words, as they go through the, as the commence the process of say identifying the issues, identifying the witnesses that are necessary and satisfying themselves whether or not the investigations are complete. Are you involved, is a judge involved. Are they all by themselves?

JUDGE D. van Zyl: No, CJ I think one needs to be careful with criminal matters that you don't, as a judge, interfere too much. The basic thing that I want to achieve is to, in order to make sure that the accused has got counsel, that his counsel will be ready. That he will, that he has consulted. That he knows what he is client's defence is. And that he has sufficient time between that time and when the matter is actually enrolled on the roll to prepare himself mentally and make sure that the has his witnesses available, whatever. And the same applies to the state. So, the initial engagement is simply to ensure that there is an advocate appointment or there is an attorney appointed and then the next day, or the two days after the consultations have taken place another meeting between them where it's simply to, in a very rough manner, try and assess how much time you need. And that both parties are, are ready to proceed. This has resulted in –

CJ M. Mogoeng: Before you step onto the benefits, what if we, based on our experience from other jurisdictions half the jurisdictions in this country are implementing it like the Western Cape for instance. And it has yielded unbelievable fruit.

JUDGE D. van Zyl: Yes. Yes, no that is true.

CJ M. Mogoeng: Just to warn you as well so much so that we are on the verge of adopting a judicial policy to that effect that we've got to step out from our conservatism -

JUDGE D. van Zyl: - Yes -

CJ M. Mogoeng: - And embrace that kind of judicial case management. That kind of pre-trial and conferences, not just for civil but also criminal trials because it works well if someone knows how to manage it. What to say and what to avoid.

JUDGE D. van Zyl: Yes, no Chief Justice I fully agree with you and I think it would be, would be a positive step if that is rolled out country wide. And I think every court can benefit. No, I can attest to that. It's what, what we've done, I can just give you an example. In order to ensure that we have two courts, two criminal courts in a week. Each court has got one case set down for that week. In order to ensure in case there is, because it happens that the accused has changed his mind and he pleads guilty; the matter is finalised within the first day. Now you have a judge that is sitting around for four days doing nothing. We enrol for every week, we've enrolled a, what we call a stand-by case as well. So, there's, there is three on the roll in the week. The results which we got from this case management system has been such that none of the standby cases are preceding. Because, or effectively none of them, for all intense and purposes. With the result is that they are con- then postponed to the following term. But the advantage of that is that, that standby case being on the roll gets then appointed an advocate or an attorney to appear and we go through the same process. So even if a case does not proceed that week, the case is then made trial ready in it is postponed to the following, to the following term. In fact, it works so well that I've now changed the system that from next term we will only have four standby cases for the whole term. In order to avoid this postponement of, of the cases.

CJ M. Mogoeng: Well it works even better if you don't enrol at all. Unless the matter is trial ready. Because then you save everybody's time. You save the witnesses time, you save the lawyers time, and that is what is being done in those jurisdictions here that have embraced the concept. So, you're on the right track. I think you just need to, to embrace the aspect of it that would yield even better results. But you were still elaborating on the, on the vision. Please carry on.

JUDGE D. van Zyl: Yes.

CJ M. Mogoeng: I'll keep on interrupting you, as you normally interrupt counsel.

JUDGE D. van Zyl: Yes. I, so in the context of me applying for, or being here for the position of Judge President the benefits that I've seen from this is to roll it out throughout the whole province. And that will be done as soon as possible.

CJ M. Mogoeng: Is that not been done by Umtata, Grahamstown and PE?

JUDGE D. van Zyl: No. No, PE has got, I think since last year, they have introduced a also a very basic form of case management. Where Judge Jetty was the senior judge there. Cases are being enrolled there for the last, I think for the last six months or so. Maybe a bit longer. Because of a backlog which they also had insofar as criminal cases are concerned. Been enrolled for the whole term. So, one judge will be allocated crime for the whole term. And in respect of the longer cases, cases that may last very long there is some form of case management. I think it is similar, on to what, what I've been doing in, in Bisho. But it's, it's not done to my knowledge in the other courts. I know Judge Nhlangulela has enquired from me as to what I am doing. In fact, the documentation which I have drafted to assist the parties in agreeing to the different issues that make come up during the trial; I've given him a copy of, of that document. So, I think the idea is probable is to implement it there as well. But this is something that is working. It's increased our finalisation rate the last year has gone up to 79 percent. I finalisation of criminal cases and it could even be better if one doesn't have the standby cases. Because you always on the last term the standby cases having been postponed on the statistics they show as a case which hasn't been finalised. But if you take them out of the equation it probable is, is a lot more, a lot more than that. The other thing which I have done, in Bisho, which I've introduced is case management insofar as civil cases are concerned. That was at, it started off as a pilot project in East London I've brought that in. I've done the same thing in, in Bisho. That has also yielded results. We have far less postponements of cases and more cases finalised. In fact, also our finalisation rate is much, it is far above the, above the target. And again, the statistics doesn't show the whole picture because some cases are, where the issues are determined, some cases that are enrolled only for the determination of some of the issues; like for instance with RAF claims could only be for liability. Liability is then disposed of the issue of quantum outstanding. Statistics will reflect that case as not having been finalised. So, I think

the actual result is far more than the statistics actually show. Case management, as far as I am concerned is a positive thing. It has, it has achieved results it has pushed up the finalisation rate of cases. But to me the important thing there is, is that it has improved relationship between the court and the practitioners. Because the practitioners that you deal with during case management are, are largely the attorneys with whom as a court we have little or no contact with. There are only a few attorneys who would actually physically appear in court. Most attorneys do not. We found that with case management more and more of the attorneys have come into the picture as soon as they see how the process worked, and the results which it's, it's been yielding. Most of them have come on board. In fact, the one or two voices that there were at the meeting that I've chaired with them when I explained to them what I intend doing; even those people have come, have come onboard and are totally in favour of it. So, it's brought people into the fold. Into the High Court fold it also has improved relationships and that to me is also a very positive thing. Between judges and practitioners, and practitioners themselves. When we started off with case management you had a situation where two attorneys would sit and fight with each other. They would actually get into, not a physical fight, but in a verbal spat about letters which had been written and this and that and the other. And they very soon realised that is not what case management is all about. So, it's improved relationship between the opposing attorneys as well, to the extent that we find a lot more cases that are being settled. Or if they are not settled in total they are limited as far the issues are concerned. Without much of a fight having to go to court and having to write judgements or issue further directives or, or make orders of, of whatever, whatever kind. So that to me has been a success that should also be rolled out throughout the province. As, as soon as possible. What I have also done, which is important and which, without a court can't function is the support staff. And you need to build relations with your support staff. And I've made it, made it my work to, to build close relationships with the court manager. But even with the staff manning the stenographer manning the machines, the interpreters I had, have meeting with them on a regular basis to explain to them the importance of their work. To explain to them complaints that had been received from judges and also to praise them. When they do good work. The same with the stenographers and I've tried to install a sense of pride in the staff in the establishment. And to try and get a culture of us working together as a team and to give them, as I say a sense of pride in, in

what they are doing. In the image of the court and the image of, of the Bisho, the Bisho High Court. They should be proud to work there at the court. And that has worked wonders. I have staff who would come and talk to me about what they did over the weekend. Even the, the court orderlies I've build a relationship with. And it's done wonders. It's just simply getting people together to work together as a team and to see and express to them the importance of their function. We have issues, like any other court, with regard to for instance recording which are not being done properly. And ones you explain to staff what devastating effect that has got, and they understand it it's eliminated those type of problems that we have. It's also to me identified where problems lie. I have taken each section by itself, as you can gather from what I've said. The court staff being the interpreters and the stenographers the office of the Registrar and the sub-offices like the appeal office and taken them one by one to find out what their problems are. What their challenges are and what can be done in order to move, to move forward. And the issues that had been identified have been addressed. I can just give you, if I can give you another example. Two examples that I would like to mention is with regard to opposed and unopposed applications. Again, the statistics have shown us that there is very low finalisation rate insofar as those matters are concerned. I investigated the matter with the assistance of the court staff and found out that the problem lies in the unnecessary postponement and continuous postponement of cases. Cases become opposed, Rule 65 Applications become opposed, the matter is then postponed in order to give the respondent an opportunity to file an answer affidavit. Given two weeks. The matter comes on the roll, two weeks nothing has been done. The matter is again postponed, giving me another two weeks and so it carries on. I've issued notices to the judges to ask them to deal with these matters in a certain way in the unopposed court. To prevent postponements to make orders as to the filing of papers. And to enforce those orders. It is a little bit soon to say if that has any effect, but everyone seems to be working together. The other aspect that I have identified, is with opposed applications. Opposed applications we have two scenarios. The first scenario is Rule 65 Application becomes opposed. The parties leave the court, they go to the Registrar's Office, they go and reserve a date on the opposed roll. The matter is placed on the opposed roll. Comes the opposed date there is nothing in the file except the founding papers and the notice to oppose. Nothing else has, has happened. That is the one scenario. The other scenario is that the papers are ready,

but it comes to the date of the hearing. No heads of argument have been filed the matter is once again postponed. I've also addressed that issue in a very simple fashion in that the Registrar would bring those files to me, I would issue directives as to the filing of the outstanding papers, the filing of heads, the pagination, indexing and those matters are placed on the roll. So that all six matters or eight matters which are placed on the roll on the Thursday are actually then heard and are finalised. I've done that in Bisho and I've also done that in East London. We found the same issue with regard to appeals. Parties ask for a date; the matter is enrolled. Judges are coming from Grahamstown or from Umtata to come and hear the appeal only to find that there are no heads of arguments. Or there is no appears for the parties or the papers have not been paginated or indexed. I've done exactly the same thing there on an individual basis. Those appeals are brought to me and I issue directives. I see someone has complained about a directive that I've issued with regard to an appeal. That is my form of case management and I will continue to do so. It's, it's working. It's working results. So, there are practical things that can be done to improve the effectiveness and the efficiency of the running of the courts. And that ultimately is the duty of the Judge President at the end of the day.

CJ M. Mogoeng: If you are appointed tomorrow and there is a complaint about any of the courts you can't be heard to be saying I don't know. I'm not aware of that problem. What problems do you know of that would require a solution from you in the other courts other than Bisho? What specific problem are there that hamper court performance that require the attention? What about in the Magistrates Court, Regional Courts, District Courts? What plan have you crafted to deal with problems that bedevil court performance or access to justice in the province.

JUDGE D. van Zyl: Yes. Chief Justice judging by the statistics and communication with the other judges in the other courts as far PE and Grahamstown are concerned there are no obvious problems. They, their performance is above the target. The only court that has a problem, as I've said, insofar as criminal matters are concerned is in Umtata. And that seems to me if I have a look at the statistics and the list of outstanding judgements, list of outstanding criminal cases that it relates to party heard matters. Now that needs to be addressed. That will have to be addressed in, in a quite a robust fashion and I'm afraid to reenrol matters, partly heard matters only

during term would result; as I've indicated, not allowing any new matters to come on the roll. And I'm afraid the judges will have to come in during recess and they will have to do their partly heard matters. And a target will have to be set how those matters are going to be finalised. What I will do is to require each judge to report, as to how many partly heard matters he has and what plan does he, has he devised. Or what plan does he propose in order to have those fi- matters finalised as soon as possible. Because until such time as that problem has resolved there will always be a problem with the backlog. Another issue which I have, which has been mentioned to me is insofar as circuits are concerned it that, and it's again it's a lack of case management. It's something that, that something can be down with, about. And that is that judges would be sent to, let's say a place like a place like Pasanno for two weeks. They would arrive there and there's still issues with regard to the appointment of legal aid counsel or ad- attorneys for, for the accused persons who haven't seen their clients. They haven't consulted the same with state counsel. Who haven't consulted with result that matters are being postponed. Which again is a, is a waste of court resources, a waste of the court's time and a waste of the departments, the departments money. So that, that is something that also needs to, to be addressed. What I've done in Bisho with regard to outlying – outlying areas such as Whittlesea, which is on the other side of Queenstown, which is quite a distance away. Those matters are, we don't have a circuit. Those matters are brought to Bisho, I have had a meeting, I'll tell you more about what I've done in that regard. But arrangement have been made with the prison authorities in King Williams town that the accused in, or the accused persons in such a case will be brought the week before, will be transferred from Whittlesea or Queenstown where they are detained. The awaiting trial accused will then be transferred to King Williams town and during that week arrangement will then be made by the legal aid board to consult with the accused person or the accused and the same process will be followed with regard to case management to ensure that the case is ready the following week, when it is to start. With regard to witnesses those witnesses will be put up in, in local hotels that I've also arranged with the registrar. Now these issues, I mention this, because these issues have been identified at, at meetings that I have. We have the PEC meetings which basically is aimed at the province as a whole. In order to get all the role players together, for those of you not to *au fait* with, with how the process works. Insofar as the criminal justice system there is a whole lot of role

players. It starts with the police; it's the prison authorities; it's the Magistrates Court; and then eventually the director of public prosecution at the legal aid board and eventually ending up with the High Court. Those role players are like a link in the chain. If one of those links are gone, then things don't work. At the PEC meetings it's fine, it's being discussed on a provincial level and we also hope that the provincial commissioner or whoever attends those meetings whether it's the commissioner of police or whether it is the prison commissioner would then filter whatever is decided and explained at, or complained about at those meetings down to the ground. What I've, what I've done is I have, I'm having a - two meetings a year with the different role players. But on the local level. So, it will be with the, the head of the prison in King Williams town; it will be with the police in Umgazana; it will with the police in King Williams town; in Bisho it will be with the Magistrates of Mdatsane and Zwelitsha which is the bigger centres which service, which feeds our court in Bisho with cases. And it's in those meetings where problems are identified. Problems like for instance the late arrival of, of prisoners. At the last meeting we've had, we found out that the reason why the awaiting trial prisoners are arriving late at court, or rather court can't start, start at half past nine. Is because they have a first come, first serve method that they've adopted at the prison. So, whoever is there to fetch their prisoners for the day first will, is helped. The others have to wait in a queue. And it turned out that the court orderly who has the vehicle in order to go and fetch the, the awaiting trial prisoners are not arriving there first. Their arriving later and now they are waiting in a queue. And the reason why they are late is because they have to stand parade at the, at the police station in the mornings. So that was resolved. So, it's, it's that type of, of matters which come to the fore. Another issue that we've identified with the last meeting was with regard to appeals. There was a complaint from the legal aid board that appeals in one of the Magistrates Courts are being held back, they are, they are not being processed And, it turned out that there are problems in that specific office with lost records and incomplete records and recordings which have not been done properly. I had been in contact, after that, or I've asked the registrar of the High Court in Bisho to, to look into that. I've also been in contact with the, with the regional office to try and resolve that issue. So those issues which come out at these sorts of meetings. And that is effectively what, what I have done in order to, on a day-to-day basis ensure the smooth effective running of, of the court.

CJ M. Mogoeng: There are official targets and personal targets. Botswana's achievement is 95 percent. So, I thought over and above the official targets your target is 100 percent. So that you can fall somewhere closer to that and your blueprint however difficult it may be to achieve that target in the short term; but your master plan would project deep into the desirable future the ideal achievement. Okay, you're saying Grahamstown and PE have achieved the target so there is no plan for distinction?

JUDGE D. van Zyl: I think we should always try and improve Chief Justice –

CJ M. Mogoeng: - No I'm asking about the plan -

JUDGE D. van Zyl: Yes. Well, I think it's just as far as Grahamstown and PE is concerned I think a lot could be more achieved if case management is introduced. Both criminal and civil. If they already serve – getting their targets as it is with not having any form of case management they should improve. And I agree with you, we can do better and we should do better. And as we refine the whole thing, we're learning as we're going along. I think one must remember, one must remember and that is the unfortunate thing the system that we've inherited, we've inherited a civil procedure system and a criminal procedure system which is adversarial in nature. And where the parties, as far as civil is concerned has been dictating the, the speed at which the whole thing unfolds. And, and until such time as case management is properly introduced through the rules we are going to have hick-ups here and there. We are going to have people not wanting to pull in the same direction, raising issues like we've seen with, with the letter which I've written. So, once that is done I am sure that we can set the targets even, even higher.

CJ M. Mogoeng: JP?

JP J. Hlope: Thank you CJ. JP there is a time, if I remember correctly I think it was when I was on long leave, when you'd requested me that you'd like to go through all these stations of ours. All of them, including particularly at the time Port Elizabeth and Grahamstown. So that you introduce case -

JUDGE D. van Zyl: - Case management. -

JP T. Sangoni: Yes, for PE and Grahamstown in particular at the time. And you had to through every, all the stations. What happened to that? Did you get any resistance, or you decided to move away from that?

JUDGE D. van Zyl: No, no JP. I didn't move away from it. I think it was simply a case of not, of not having had the opportunity to achieve what I wanted to achieve. If you remember correctly when I, when you asked me to stand for you during that period. I still remained with my duties in, in Bisho. So, I still had court duties every week. So unfortunately, I didn't have an opportunity to, to move along with that. That was also the time when the final draft rules were discussed and that was also another reason. Was a reason why I decided not to, to push with it at that particular point in time. If you remember I was a member of the committee who drafted the draft rules in relation to case management. And those rules were then placed by the committee which was appointed by the Chief Justice, was then placed before the different courts in a different division for their comment. So that was the stage at which we were during that period of time. So, the emphasis was on make, having, getting comments on the, on those draft rules and get that in. And the feeling, my feeling was at that stage it was no use pushing something onto PE and Grahamstown until such time as the issue with regard to the rules have been finalised and, and discussed. And that was done. That was sent off to, to the committee.

JP T. Sangoni: I thought you were now saying without case flow management in PE and, I think in PE in particular that things are going well there. You were registering cases, completed cases. I thought in other words their performance has gone high up –

JUDGE D. van Zyl: - I don't –

JP T. Sangoni: - With what Judge Chetty is doing.

JUDGE D. van Zyl: Yes –

JP T. Sangoni: Continuous roll in particular.

JUDGE D. van Zyl: If I can, if I can just have a look here quickly. The statistics with regard to civil trials for the last year in Grahamstown was 71 percent and PE was 68 percent. So that is above the target which is being set. But as the Chief Justice quite correctly has said, we should improve. And if –

JP T. Sangoni: I thought you were talking about crime?

JUDGE D. van Zyl: Yes, no that's civil. If I can give the crime statistics as well. Crime, the overall figure for the year, that's the whole of the province is quiet low, it's below the target of 65 it's 56 percent. The –

JP T. Sangoni: Just, just that's the province.

JUDGE D. van Zyl: Yes. That's the whole province. The reason for the low figure there is Umtata. Because Umtata as I've said earlier achieved a result of 32 percent. PE and Grahamstown both had a, a result of 64 percent. Which is also not good if you compare that to Bisho which is 79 percent. So, with case management I am sure that in those two courts, even the crime statistics could be pushed up.

JP T. Sangoni: That is PE and -

JUDGE D. van Zyl: - And Grahamstown.

JP T. Sangoni: So, we are not doing well there? Also.

JUDGE D. van Zyl: No, no I don't 64 percent if the target is 65 I don't think that is good enough.

JP T. Sangoni: And Grahamstown? It is part of that 64?

JUDGE D. van Zyl: Ja, they are both 64 percent.

JP T. Sangoni: And then Umtata?

JUDGE D. van Zyl: Umtata is 32 percent. And that's, that's what bring down the, the provincial target to, to figure to 56 percent.

JP T. Sangoni: In other words, if you had to ask, we were to ask you to give a view as to our performance as so far as crime is concerned; you'd be saying we are not doing well at all.

JUDGE D. van Zyl: We are not doing well. No. I would say we are not doing well.

JP T. Sangoni: Now how do you bring everything up so that everything is running smoothly when you're taking over the reigns?

JUDGE D. van Zyl: Through case management. Case manage those cases in the manner in which it is been done in Bisho. As I've said our, the figure in Bisho was 79 percent. And as the Chief Justice has said it should be, it should even be higher than that. And that is something that is not Bisho alone, it is the other divisions that are doing it as well. So, that is something that, that I should be introduced.

JP T. Sangoni: In other words, there is something peculiar with Bisho which can make you bring us to order in so far as performance is concerned.

JUDGE D. van Zyl: Yes. I must add that it is hard work. I spend a whole week doing case management. I have a meeting with the director of public prosecutions and the head of the legal aid board every Monday morning. And then I have a follow-up meeting with them every Thursday to look at the progress of the cases that have gone through the roll for that week to identify where problems. And if any, in the event of there being a problem with any case they will approach me immediately to see what can be done. Either swapping around judges, bringing in a standby case or whatever the thing may be. But -

JP T. Sangoni: -And this case flow we are talking about -

JUDGE D. van Zyl: Yes.

JP T. Sangoni: Oh. It's your personal -

JUDGE D. van Zyl: - So it takes time, but it takes time, but it can be done. It is hard work, but it should be done.

JP T. Sangoni: What I mean is, is it because of case flow management that it being operated properly or is something personal with you and those people you are communicating with that is bringing the results?

JUDGE D. van Zyl: JP as I've said earlier. It's a combination I think. It's case management and as I've said one, one of, one thing that I pride myself in is my relationships with fellow, with colleagues. Whether they are colleagues at the, at the on the Bench or whether they are practitioners. And I do as far as I can try and build relationships, try and inspire people. Try and convince them to come onboard. Try and con- show to them the benefits of, of whatever system I wish to introduce. And I've got the full cooperation of the DBP's office and the legal aid board in, in Bisho.

JP T. Sangoni: I heard you talk or speak of witnesses. I think that were put in hotels?

JUDGE D. van Zyl: Yes.

JP T. Sangoni: And in what circumstances does that happen?

JUDGE D. van Zyl: That's simply the distance, the problem that we have with outlying areas is that witnesses are brought to court by the investigating officer and at times you find the investigating officer coming to court from Whittlesea with his witnesses plus the accused. And they will all be travelling in the same, in the same vehicle. That has happened as well before. So, in order to prevent that from happening, and in order to prevent the court from starting late on a Monday morning; because they, according to the, to the DBP's office the investigating officer tells them that he's gotta pick those people up at 5 o'clock in the morning, and he's gotta drive

through rural area picking up people at their homes and then leave Whittlesea for, for Bisho and then after court drive back again and drop them off in the same process that the whole week or the whole two weeks. That's totally unacceptable. So, I've put a stop to that and asked the Registrar to, to ensure those people are getting accommodation.

JP T. Sangoni: That is for Bisho.

JUDGE D. van Zyl: Yes.

JP T. Sangoni: I'll tell you why I'm asking that. It's because there are people who appeared before me, and of course they were found not guilty then immediately thereafter counsel came into my office asking for money to take them. I must make an order, so is to transport them back. What I want to know then is if the police are bringing them in, have you got any arrangement with them that they should take them back. If those people have been acquitted, for instance?

JUDGE D. van Zyl: You mean –

JP T. Sangoni: - What is the arrangement? -

JUDGE D. van Zyl: - You mean at the end of the trial?

JP T. Sangoni: Ja.

JUDGE D. van Zyl: I'm not sure if there is any arrangement with regard to that. I would, I would accept that the police will take them back.

JP T. Sangoni: They bring them, if they're found not guilty -

JUDGE D. van Zyl: - Sure they will take them back as well -

JP T. Sangoni: - they must go home. On their own.

JUDGE D. van Zyl: I'm sure they will take them back JP. We've, on many occasions when there is a difficulty raised by counsel that a witness is not available or an accused we'll send the investigating officer to go and fetch him or her.

JP T. Sangoni: I've got a different experience when it comes to that. Now perhaps this come closer to the fears I think most of us are missing in this matter. The question of transformation. Much as you can do you also nervous about whether people are not going to apply this transformation in principal. If you are taken on. What is your take on that?

JUDGE D. van Zyl: JP we, what the constitution envisages is a transformed judiciary and in Section, I think it's, 174 with the regard to the appointment of, of judges. It is quite specific that it should reflect, the appointment should reflect the gender and the racial composition of the country. That I accept and that is something that we have to work towards with, too. We have, if one only looks at appointments that have made in the last 20 years and how the Bench have been transformed. We've had great success with that. And with that I'm not saying that we've now come to the end of transformation. It is an ongoing process and it is something what one will have to be working on the whole time. That's the one aspect. The other aspect is that transformation in my view goes wider than that. In Schedule 6 of the constitution it, it's talking about transformation of the courts. And, and what is envisaged there is a court or courts that are functioning in line with the values in the constitution and courts which can give effect to the rights that are in the constitution. And various pieces of legislation have been adopted in order to try and achieve that. I am of the view that insofar as that transformation is concerned I can make a contribution. I've spoken about the issue of access to justice as one of the rights which, to me is very, very important and it's very dear to me. I have the, feel that I have the necessary experience. I have the necessary vision to move, to move forward on that, in that regard. And take the courts further insofar as that is concerned. So, on that basis I would submit to you that my appointment would, would enhance the transformation of the courts. The courts also, or the constitution demands a, from us a more professional judiciary. The functions of the judiciary have expanded with the new constitution. Under the old const- the old system parliamentary system that we had, judges were basically there to resolve disputes between individuals, and in a very

limited extend to, to interfere with the exercise of public power. But besides that, those were their functions. The functions of judges of how now increased tenfold, they are now determining what, they are now to give effect to the rights in the constitution. They have to preside over the exercise of public power. They have to have an oversight function insofar as the exercise of power by the other, by the executive and parliament is concerned. So, their functions have, have increased. And that, that requires, in my view, a skilled and a very dedicated and hardworking judiciary. And one thing that I do pride myself on is, is my work ethic. I'm not scared to work, and I think that I can set an example. I can encourage. I can inspire people to reach standards and to work towards reaching that goal of having a professional skilled and experienced judiciary.

JP T. Sangoni: Final question.

JUDGE D. van Zyl: If I, if I may just add to that JP. You'll see that the practitioners who support my nominations are black practitioners. Those practitioners trust me with, insofar as transformation is concerned. They think, or they of the view that I would enhance transformation and I would ensure that transformation as Section 174 says, that I would, that I would comply with that. I won't break their trust.

JP T. Sangoni: You remember just, just a final question to close. Do you remember we discussed this issue with your colleagues Judge Nhlangulela when I went on leave, or after I've come back from leave I, we did discuss the question of we, amongst ourselves we should not consider anybody senior to the other?

JUDGE D. van Zyl: Yes.

JP T. Sangoni: In other words, if I were to go on leave now, I'd probable, in fact in all certainty I would ask Nhlangulela to act as JP.

JUDGE D. van Zyl: Yes.

JP T. Sangoni: No, what I mean is I didn't compromise anybody, even at that time. I know now your gonna say when we are looking at statistics I've acted as a JP at a certain time and he has not, in truth.

JUDGE D. van Zyl: JP -

JP T. Sangoni: - So that means it gives you an, an -

JUDGE D. van Zyl: - an edge –

JP T. Sangoni: - I don't want to say an unfair advantage

JUDGE D. van Zyl: No, I don't believe so JP. I –

JP T. Sangoni: - But do, do you remember we discussed -

JUDGE D. van Zyl: - I can confirm you have discussed it with me, and I've indicated to you that I fully agree with you. If you should go on long leave again; or you need to ask somebody else, then I think you ask Judge Nhlangulela as well. I've, I've no problem with that, and I confirm you, we've had that conversation.

JP T. Sangoni: Thank you. Thank you, CJ

CJ M. Mogoeng: Thank you. Judge President Premier?

JUDGE PRESIDENT PREMIER: Thank you so much Chief Justice, the Judge President have cover my questions towards the end of his sub- presentation. Thank you.

CJ M. Mogoeng: Thank you very much Premier. Commissioner Smith?

COMM Smith: Thank you Chief Justice. Judge, during the course of these sets of interviews there seems to have been, certain indications of tensions that exists a between themselves for certain reasons whether it be diversity or other reasons and

then tensions which exists between the leadership of a particular division and member or members Now the easy example problem would be is where a judge appears to act in a way that falls crisply within the ambit of being referred to the JCC. But there are instances where it is neither grey, nor white nor black it is, where it is a manipulative way of conduct which I don't wanna say would undermine the JP in his authority but is – needs some form of redress and where one is party to that particular conflict. It is very difficult to resolve that conflict, cause you're a party to it. Is there a mechanism or do you follow a mechanism where certain tensions exist either between yourselves or between yourself and in the leadership position and member of your judiciary, where it can be dealt with without it boiling, and boiling and festering and then eventually it comes big spat JSC for instance? Have you any recommendations in this regard or procedures?

JUDGE D. van Zyl: Well, look I think one needs to accept that judges are fiercely independent minded and, and they will have differences. And they can differ from each other in quite extreme ways insofar as their thinking is concerned. I'm talking as judgement as such, and the way in which judgements should be approached or the what result should be, or what how we, how we would justify the result. And so there would be tensions or differences of opinion also with regard to what should be done in, in the division as a whole. Those matters are matters which are discussed at the judge's meetings that are being held on a quarterly basis. And they are discussed in the open, everybody is able to partake. Everybody can state his viewpoint and we try and reach consensus. And on those matters which would concern the implementation of something where the ultimate responsibility lies with the head of the court. If there is no consensus then the head of the court must make the decision and move forward. But, I think in most cases you will find that, that issues like that will be resolved at that level. For judges who have issues which they don't bring forward, I'm not aware of any of that. You know, I think one thing that the Eastern Cape can pride itself in is its collegiality and so many people have remarked that having coming and acting in, in our division and – so I, I don't see that there is a problem. And a problem that cannot be resolved by an open discussion of it at the judge's meetings where it is raised and ventilated and some or other decision has come to.

COMM Smith: Thank you Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Smith. What do you do when you pick up problems that could impede colleagues' reality within the court? Let me give you an example; I picked up a one or two of my colleagues have got a generally well managed anger problem but when it surfaces it becomes something else. And I've attended to it, I want to know how would you deal with this situation very well?

JUDGE D. van Zyl: CJ I think the best thing is to deal with it as quickly as possible.

CJ M. Mogoeng: How?

JUDGE D. van Zyl: And to discuss the matter with the judge concerned. And be open and frank. If the judge has a problem with personal relationships with staff, or whether it is with, with other colleagues or anything like that the best to do is to call the person in and to speak to him or her about it. There is no other way really to, to resolve it. I mean as judges, judging or being required to judge the disputes which are being placed it surely, we should be able to resolve small issues that may arise which may create a bit of tension between, between two colleagues. The main thing is to deal with it decisively and quickly as possible.

CJ M. Mogoeng: Very well. Commissioner Fourie?

COMM Fourie: Thank you Chief Justice. Good afternoon Deputy Judge President.

JUDGE D. van Zyl: Good afternoon Mr Fourie.

COMM Fourie: You've touched on the support that you're receiving from practitioners and I want to briefly refer you to the comments of the law bodies.

JUDGE D. van Zyl: Yes sir.

COMM Fourie: Or four of them. The first one is not in support and that is the comments by the society of advocates of the Eastern Cape. If I may just find it quickly, I thought I marked it. They say that – sorry -

JUDGE D. van Zyl: - My appointment won't enhance the –

COMM Fourie: They say it is the view of the Eastern Cape society of advocates that while Judge van Zyl has the requisite skills to discharge the duties of a Judge President his appointment would not further, would not further transformation and would not likely address the unification of the Eastern Cape divisions. You've I think, to a large extent dealt with this in an answer to what the Judge President, a question the Judge President put to you. But I must make the remark that I do find some of these comments a bit territorial. And that is one of the difficulties I also have with the Eastern Cape division and I think because of the size and the geography and the distances although really ideally to be operating as basically one court it operates as at least four separate courts.

JUDGE D. van Zyl: Yes,

COMM Fourie: With a lot of, with a lot of territorial fighting going in between. Am I correct in what I am observing?

JUDGE D. van Zyl: Yes. If you refer to the law bodies themselves that is, that is definitely so. I think to this day; since 1994 they haven't been able to amalgamate, and I am talking about the society letter you are referring to, the different societies. They still exist, you still have a Transkei society of advocates; a Bisho society of advocates and then the what is referred to as the Eastern Cape, which includes Grahamstown and Port Elizabeth. They haven't been able seem to find common ground and amalgamate as one would be expecting them into one, into one society. And if you look at their make-up you'll find that their make-up of, of Umtata I think they've got two white colleagues and the rest of them are all black colleagues. The same with Bisho, I think a few more white colleagues, the rest are all blacks. And you have a total different situation in Grahamstown and in Port Elizabeth, where I think out of, I think there are 21 silks and there's of which one is a black silk. You

have more than 80 advocates where junior counsel, I can't remember now exactly what, what the comparison –

COMM Fourie: - Ja, we've heard those figures earlier -

JUDGE D. van Zyl: - Yes, yes.

COMM Fourie: But for the sake of time I just want to refer you to the support from law bodies that you have. The first one is the black lawyers' association that says they are of the view that you would make a good candidate, you noticed that?

JUDGE D. van Zyl: Yes.

COMM Fourie: The second one comes from Nadel, it says and I'm not gonna read a lot of the motivation why they come to the conclusion. They say in Judge van Zyl the Eastern Cape will have a judge will restore or maintain the dignity of the division. Have you seen that? I you don't have -

JUDGE D. van Zyl: - Yes, I've seen it. –

COMM Fourie: - Particular comments on that? And the society of advocates for Transkei that says, Judge van Zyl is in our view intrinsically fair minded and even handed in his dealings with whomsoever he interacts. He commands the upmost respect and admiration that is required of a judge president. He's knowledge of the law is impeccable, and his interpersonal skills are in our view beyond reproach. He is well reasoned promptly delivered judgements speak volumes of him. In the circumstance, we hold the view that if Judge van Zyl were to be appointed to the position of Judge President of the Eastern Cape division the division can only be the richer for it.

JUDGE D. van Zyl: Yes. And as I've said, Mr Fourie those are black colleagues and I highly regard the support that I am getting from them. And if I don't do what the constitution demand of me to do to transform the judiciary I will be letting those people and I would be dishonest towards them.

COMM Fourie: Thank you I won't take it further with you Deputy Judge President.
Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. Commissioner Norma?

COMM Norma: Thank you Chief Justice. Good afternoon Deputy Judge President.

JUDGE D. van Zyl: Good afternoon Advocate Norma.

COMM Norma: If you are appointed, will you relocate to Grahamstown?

JUDGE D. van Zyl: I haven't made that decision yet. Maybe it's a bit premature.

COMM Norma: Yes. But you are considering it?

JUDGE D. van Zyl: Yes.

COMM Norma: Yes. Thank you. And then secondly, we have a court which is Port Elizabeth, that says well we've got our systems they've been working for years we are not gonna implement the case management system. Although it's legalised, its legislated we are not gonna do it. How are you gonna deal with that?

JUDGE D. van Zyl: If, what we introduce in the one court. You must understand we are dealing with one division. The unfortunate thing about the Easter Cape division is that we have four courts. And that is a reality. It's got a disadvantage as Mr Fourie has indicated with regard to distances and territorial areas etcetera. But we are one division and there should be a uniform practice throughout the division. If a practitioner goes from Umtata to appear in court in Port Elizabeth he must expect to find exactly what he will find in Umtata. So, whatever is implemented in the other courts will have to be implemented in Port Elizabeth as well.

COMM Norma: I don't think, sorry CJ, I don't answer my question because you already, we have a Judge President that is given the directive. You have Chief

Justices office that is given the directives that this is legislation it must be obeyed. The norms and standards must be carried out, case management must be implemented. And Port Elizabeth has decided, I'm not gonna do it. Grahamstown has decided you know what I'll simply do it casually as and when I want to do it. But I want to know how are you going to make it happen?

JUDGE D. van Zyl: Well it's simply taking a decision from the Judge President that it should be implemented. And that decision was taken by the Judge President as I understand it at the last meeting. Norma, you must understand the situation that we have is that case management was run as a pilot project. In Bisho and, in East London I extended it to Bisho as well. Umtata came later onboard. What we are doing in Bisho and East London are not exactly the same as what Umtata is doing. And then you have Grahamstown having some form of case management. I don't exactly know what that entails it hasn't been explained to me. What needs to be done is that there should be a uniform set of directives issued with regard to case management that reads exactly the same. We can't have case management looking different in PE, even if it is instituted there then what is practiced in Bisho. So, the challenge at the moment and that is the committee of which Judge Smith is, is a member of. Him and Judge Griffiths are, are – their mandate by the Judge President is to draft a uniform set of directives relating to case management so that it could be introduced throughout uniform, throughout the province. So that's where we are at, at the moment. If I'm, if you appoint me to that position I can ensure you that I will speed it up as quickly as possible.

COMM Norman: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner. Commissioner Matjesi?

COMM Matjesi: Good afternoon Judge van Zyl

JUDGE D. van Zyl: Good afternoon Mr Matjesi.

COMM Matjesi: As I understand, correct me if I am wrong. When you apply for the current position of being a deputy judge president –

CM M. Mogoeng: J-, Okay current. The one occupies now?

COMM Matjesi: The one he is holding.

CM M. Mogoeng: Okay, okay.

COMM Matjesi: You received a resounding support from the Eastern Cape society of advocates. Now today, now today when you apply to be, I mean to be JP they say, no you cannot qualify therein because of this. What can you about this hypocrisy from this people?

JUDGE D. van Zyl: I must say Mr Matjesi it, it also baffling to me. I can't understand how I could be, I could be good enough for the one position where I also have to deal with transformation issues and not be good enough for the other position. If I read, with all due respect, if I read the document, the latest document that you are referring to it, it appears to me to, to a case of having to say something and have nothing and have nothing to say. If you know what I mean, with all due respect.

COMM Matjesi: And if you read the letter of Mr Makanja. Mr Makanja paint a picture that in the Easter Cape there is a division, in fact this is what transpires as we deliberate, as we defiant and taken from the issue of the case flow management Grahamstown appears to have a troublesome division there. How are you going to handle because they resist what is law requires case flow management? How are you going to handle that?

JUDGE D. van Zyl: Mr Matjesi if I can, if I can answer it that way or this way, the, what you would regard as, as resistance is more an issue of opinion as to, as to the functionality of, of case management. Because those very same judges that you are referring to are also doing duty in East London and in Bisho at times. Where they have to do case management. And they do case management. And they don't complain about it. They do mutter as to whether it is in fact working and if it does in fact show the results which we are saying, it is showing. So, it's I don't think it's a case of them saying. Look if you introduce this we are not going to comply with it.

They will comply with it. I think it's simply an expression of an opinion and it, I don't think it should be taken as, as much more than that.

COMM Matjesi: And lastly under question of commitment now to transformation you acted as a JP in that division. Can you reflect on your appointment of recommendation of acting judges during the time that you were acting? Whether it was consistent with the principals of transformation?

JUDGE D. van Zyl: Yes. If you want to know who I recommended during that time period; if I remember correctly there was three –

COMM Matjesi: - No I don't necessarily say go to names. But all that I want to hear from you were you able to appoint black female -

JUDGE D. van Zyl: - Yes. –

COMM Matjesi: - Black male? In compliance with the –

JUDGE D. van Zyl: - Yes. –

COMM Matjesi: - Transformation imperative?

JUDGE D. van Zyl: Yes, during that term I've appointed 2 black males, which is the 1 black SC in, in Port Elizabeth. One coloured, one Indian male and 4 women.

CM M. Mogoeng: Thank you very much Commissioner Matjesi . Judge van Zyl thank you. Your excused.

JUDGE D. van Zyl: Thank you very much.