



JUDGES MATTER

Judicial Service Commission interviews

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Gauteng Division of the High Court

Interview of Adv. D N Unterhalter

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CJ M. Mogoeng: Good morning Mr Unterhalter.

Mr D.N. Unterhalter: Good afternoon Chief Justice.

CJ M. Mogoeng: I was representing, reprimanding Mr Chalwani that he should have blocked you from entering until I came in. Are you well?

Mr D.N. Unterhalter: I am very well, thank you Chief Justice.

CJ M. Mogoeng: Are you as nervous as most of us are when they appear before this board or are you relaxed?

Mr D.N. Unterhalter: No, I have the requisite amount of nerves.

CJ M. Mogoeng: Okay. Well that makes me feel better. We did pupillage together in 1990, wasn't it?

Mr D.N. Unterhalter: It was indeed. It was indeed.

CJ M. Mogoeng: And you were already lecturing back then?

Mr D.N. Unterhalter: Yes, I was lecturing at the same time as in pupillage.

CJ M. Mogoeng: And you've been in practice ever since?

Mr D.N. Unterhalter: I have yes.

CJ M. Mogoeng: And, well I, the Minister whispers to me that you were his lecturer.

Mr D.N. Unterhalter: Yes, I hope he forgives me for that.

[laughter]

CJ M. Mogoeng: Well only if you didn't fail him.

Mr D.N. Unterhalter: No, I don't believe I did.

[chuckles]

CJ M. Mogoeng: And you've been silk for how many years?

Mr D.N. Unterhalter: Since 2002.

CJ M. Mogoeng: If you add up your acting stints, to how many months do they amount?

Mr D.N. Unterhalter: Well the acting stints in total are 11 weeks.

CJ M. Mogoeng: 11 weeks. And you are ready?

Mr D.N. Unterhalter: I feel that I am ready. I, I've done my initial acting stint shortly after I took silk, but I then was appointed to the Appellant Body of the World Trade Organisation which precludes you from taking appointments of this kind, in your home country. And so, there was a long period when I didn't act. Not because I didn't want to, but because I was precluded from doing so. And then when that ended I was, I was asked again to act and did.

CJ M. Mogoeng: JP?

JP D.M. Mlambo: Thank you very much Chief Justice. In your eleven weeks – Good afternoon, I –

Mr D.N. Unterhalter: Good afternoon.

JP D.M. Mlambo: In your 11 weeks in the division you've done 3 weeks opposed and then you've done a third court matter and 2 urgent – 2 weeks in the urgent court, and 3 weeks of appeals. As well as civil trials. Am I correct?

Mr D.N. Unterhalter: That is correct, yes.

JP D.M. Mlambo: Right. But I just want to go back to an issue the answer you gave to the Chief Justice. That you were precluded? Your appointment to the Appellant Board of the World Trade Organisation was that a voluntary appointment that you applied yourself or where you appointed or recommended by the country you come from?

Mr D.N. Unterhalter: The WTO is an organisation of states, so it's not concerned with individual litigation. I was nominated by South Africa to sit on the Appellant Body. And there is a process where other member states put up their own candidates and I prevailed in that position. And so, of course, I wanted to the job, but I did so at the, as a result of the nomination of the South African Government.

JP D.M. Mlambo: So, in that body you were South Africa's representative.

Mr D.N. Unterhalter: Yes, you are meant to lose your national identity when you assume the position on the Appellant Body because you determine disputes between all member of the WTO including South Africa. But yes, I was South Africa's nominee and, and flew the flag for our country in the WTO.

JP D.M. Mlambo: That was a process, period of some 7 years, am I correct?

Mr D.N. Unterhalter: Yes, that is so.

JP D.M. Mlambo: And the work you did there was judicial work?

Mr D.N. Unterhalter: That is absolutely right. The Appellant Body is the Appeal Court of the World Trade Organisation so member countries of the WTO who have trade disputes against each other can bring those dispute to dispute settlement under the WTO and the Appellant Body is the Appeal Court. So, it was all about appellant work on the Appeal Court of the WTO.

JP D.M. Mlambo: Thank you. And your other work sitting as a tribunal member of these other tribunals that was also in a sense adjudicatory work?

Mr D.N. Unterhalter: Yes, Fixit ICC work and the like are, are arbitration panels of different kinds and that equates (4:37) our judicial capacity.

JP D.M. Mlambo: Right, now what is your expertise, if one may ask, I hear the CJ says you served pupillage with him. I hear you've lectured the Minister. In what areas of the law?

Mr D.N. Unterhalter: Well the lecturing that I did has been over the years in numbers of fields, but primarily I have, I started of dealing with criminology when I believed the Minister was my, was in my class. But I've sin then covered Administrative and

Constitution Law, but principally my work in academic law has been in Competition Law and Trade Law.

JP D.M. Mlambo: Right. Constitutional Law?

Mr D.N. Unterhalter: And I have also lectured Constitutional Law not in, to the same degree but I have lectured both Administrative and Constitutional Law while I was at WITS for numbers of years.

JP D.M. Mlambo: Yeah, and I think the CJ asked you whether you are ready for judicial appointment in this country you said yes.

Mr D.N. Unterhalter: Yes.

JP D.M. Mlambo: Is that based on your acting stints in the division when you finished your international judicial work, coupled with that?

Mr D.N. Unterhalter: Yes, I think my sense of readiness is really threefold. Firstly, the times I've spend acting and learning something of how to be a judge. The work I've done as an international adjudicator. And lastly, my work in practice. Where I've now practiced for quite a few years in quite a few fields and I do feel relatively ready to apply some of this on the Bench.

JP D.M. Mlambo: You have a practice in the Supreme Court of Appeal?

Mr D.N. Unterhalter: I do, yes.

JP D.M. Mlambo: In the Constitutional Court?

Mr D.N. Unterhalter: In the Constitutional Court. So, I would say my practice is spread between High Court work, Appellant work in the SCA and the Constitutional Court and then before specialised tribunals such as the Competition Tribunal, Company's Law Tribunal and the like.

JP D.M. Mlambo: The Competition Appeals Court?

Mr D.N. Unterhalter: Yes, a very frequently in the Competition Appeals Court.

JP D.M. Mlambo: Okay. Thank you, Chief Justice. I've got no further questions.

CJ M. Mogoeng: Thank you Judge president. MEC?

MEC: I am also fine Chief Justice.

CJ M. Mogoeng: Thank you, MEC. Minister?

Minister J.M. Masutha: Good afternoon Advocate Unterhalter.

Mr D.N. Unterhalter: Good afternoon Minister.

Minister J.M. Masutha: In the early days, in the early 90's late 80's we, some of us often saw you through the mirror of your dad, Jack Unterhalter the famous. And we always associated whatever skills that he exuded with his own legacy. Do you think that his role in your life as a lawyer especially in the formative years was significant in elevating you to the heights that you are at today and if so wouldn't you consider that a matter of fate as having had the unfair advantage of having been born into, I wouldn't use the term privilege position generally from a professional point of view, something along those lines? That gave you some kind of an in quotes unfair advantage.

Mr D.N. Unterhalter: My father was an extremely influential person informing my views about law and what it could do. And he spent a good deal of his professional life acting for people who were in different ways oppressed under apartheid. That was very much the legal family that I was born into. I don't know that I've always lived up to everything that he did because I think that there was a great deal that he did do at a difficult, at a much more difficult time in our countries history than the one that I came to professional maturity in. And I certainly had very significant privileges as a result, not just by a way of his example but also by way of a professional

background were law was very much part of the texture of family life. And it gave me a sense of things I wanted to do and that undoubtedly helped me greatly.

Minister J.M. Masutha: And you are a member of the Helen Suzman foundation?

Mr D.N. Unterhalter: I am, yes.

Minister J.M. Masutha: Are you a member of any other similar or generally non-profit organisations?

Mr D.N. Unterhalter: I have listed the organisations that I have been part of over many years I have participated in being a member and held positions in a number of different civil society organisations. Starting with Lawyers for Human Rights, The Society for the Abolition of the Death Penalty, NICRO and others. So, I, so I have over the years participated in different civil society organisations of which the Helen Suzman foundation is one.

Minister J.M. Masutha: Yes, yes. Now some of those organisations have taken an active stance in challenging government on a number of policy matters. All the way to the Constitutional Court. Now if were to be appointed as a judge to what extend would you close association with some of those organisations contribute or otherwise to your objectivity in situations where matters, similar matters may come before you. No longer as a practitioner but now as a judge.

Mr D.N. Unterhalter: Minister I think the answer to that is that I'm keenly aware of the fact that when you assume judicial office you have to leave behind associations that you've had in your professional life. I do think it's an attribute of our society that civil society is very strong and does in fact bring many important cases to the courts. But the fact that, that is a feature of our society and I think a good and strong one, doesn't and wouldn't influence me in any way as to how to dispose of a case. Which I would seek to do simply on the best way in which I understood the law and had to apply it.

Minister J.M. Masutha: Just a follow on that response. There are judges who have gone on upon retirement to be active in civil society formations. But have held strong views on certain matters. Do you think that a judge who is no longer in active service could not be perceived to have held those strong views even when they were on the Bench? If they continue after they have left the Bench to, not really left it but more to have ceased to being active service, and have taken particular stances on contentious social issues. That, that could be seen as a reflection of that judge's continued upholding of a particular biased on certain matters? Even when they were still in active service. Assuming that when they were in active service they completely abandoned those activities for that duration.

Mr D.N. Unterhalter: I can see that there might be an argument for that perception. I think that if I had in mind the judge, I think you have in mind, a good deal of –

Minister J.M. Masutha: - I'm sure we are of the same –

[chuckles]

Mr D.N. Unterhalter: I, I think a good deal what his organisation has sought to do does direct itself to rule of law questions and institution integrity which I think is a feature that we should all be interested in upholding. I do understand though that sometimes gives rise to quite contentious litigation and there is reason for judges to consider their roles with circumspection. Even after they leave the Bench. But I, I do think that there is also a role in civil society for upholding what is seen to be fundamental features of the constitution and its institutional framework.

Minister J.M. Masutha: Thank you Chief Justice.

CJ M. Mogoeng: Thank you, Minister. Judge President Hlope?

JP J. Hlope: Thank you very much Chief Justice. I would like to place on record that I've known Mr Unterhalter for a very long time. In fact, we were students together at the University of Cambridge. We over the years, we lost each other but we finally found each other. Good afternoon Mr Unterhalter.

Mr D.N. Unterhalter: Good afternoon JP.

JP J. Hlope: If I look at your CV you did your first degree at Cambridge. I give you 10 out of 10. You came back, this is on a light note, to WITS 10 out of 10 but you made a mistake when you went to Oxford. Not so?

Mr D.N. Unterhalter: It's the folly of youth JP.

[chuckles]

JP J. Hlope: I forgive you for that. I am going to ask you question which I have asked other candidates before and I have to consistent. It has to do with racism in our country. Racism in the profession and racism on the Bench. The question it this sir, is there racism in the judiciary and if so why in your opinion after 23 years of democracy in this country. And secondly, where you to be recommended for permanent appointment is there anything that you as a judge would do to assist the leadership of the judiciary to deal with the issue of racism on the Bench and in the profession. Thank you.

Mr D.N. Unterhalter: Firstly, as to the question as to whether there is racism in the judiciary, I suppose there are two sources of experience that I have. The one is my personal experience when acting appointments and I have to say that the experience, that experience has been one where there is great deal of collegiality among judges that I've experienced and little sign of racism that I was able to evidence during the period that I have acted. But the second source of experience, of course is, that we are observers of the judiciary and very concerned about the judiciary as an institution. And it is the case that there have been instances of racism that have come from the judiciary. The good feature of this is I think is that the, they have been dealt with very quickly and with quite severe results leading, at least in one instance, to a resignation of somebody who was an acting, who was a sitting judge. And I think that salutary because it, it racism is intolerable and intolerable everywhere and should be manifest in any form in the judiciary. What would I do, in a position where I was a permanent judge if I encountered it? I would both want to

challenge it, if it occurred. Both to the person who might be guilty of it and report it. Because the only way these things are dealt with is by bringing the light of day to these matters. And we know that racism often is a festus (18:05) in quiet corner where people believe can be said when, when they are somehow not subject to open view and it is exposing it; dealing with it; challenging it and I would do my bit to try and bring a harsh light to sign on it.

CJ M. Mogoeng: Thank you, Judge President Hlope. Commissioner Nyambi?

COMM A.J. Nyambi: Thank you CJ. Afternoon Advocate.

Mr D.N. Unterhalter: Good afternoon.

COMM A.J. Nyambi: As a professor of law how would you sum the performance of the judiciary in the last five years enhancing democracy and ensuring its own accountability and that of the other two arms of the state?

Mr D.N. Unterhalter: I think the judiciary has when the history is written of the last five or ten years, judiciary will emerge as having discharged its constitutional mandate with distinction. Because it is upheld its independence and it has decided to numbers are very important cases which of sought to ensure that the constitution applies to everyone as was always envisaged. Which is not to say that the judiciary doesn't sometime err, it does, and an appeals system is there to correct those matters. But I think that the constitution is the essential framework for our democracy and in upholding that constitution and disciplining everybody under the dictates of the constitution our judiciary has done extremely, extremely well. I know there are controversial parts of what the judiciary has done, and the separation of powers is one such area. But in my understanding of things the judiciary has essentially been careful to demarcate areas where it should not go because those are the province of the executive or the legislator. But where there is illegality the judiciary has been the ensure that the constitution is upheld and that is its function and I think it has done a very good job.

COMM A.J. Nyambi: I thought you were going to tie it to the other two arms of the state?

Mr D.N. Unterhalter: Well, the as far as the relationship between the judiciary and the other two arms of the skate it is inevitable that they will always be that relationship will be in tension. Because a great deal of the work that the judiciary has done has to bring, has been to bring particular the executive under judicial scrutiny. And that inevitably lead to tension. But I think the remarkable feature of our constitution and the manner in which it is being applied is that even where contentious decisions have been made by the courts the executive and legislature has abided by the decisions and that is fundamentals to the integrity of our system. So, whilst I recognise these branches are in, are in some measure of tension between one another I think the ultimate message has been that there has been respect between the three branches and that is what the constitution is there to achieve.

COMM A.J. Nyambi: Is there any relationship between the Rule of Law and democracy?

Mr D.N. Unterhalter: Yes, there is a fundamental relationship between the two. Because democracy is not simply about casting a ballot ones every five year. Democracy is a concept that depends upon adherence to law and for example the Bill of Rights which enhances people's lives in all sort of fundamentals ways. And a democracy that isn't just a formal democracy but is a full and vibrant democracy depends upon the kind of constitution that we have and the rights that it permits.

COMM A.J. Nyambi: My last question, it's your personal experience are you personally satisfied about the pace of transformation when it comes to judiciary?

Mr D.N. Unterhalter: Transformation is a process. It is not an event. And it would be remarkable if transformation were to be achieved in a generation. It is not going to be. Because of the history from which we come. So, the question is, is there significant progress that is being made. I would say the answer is yes. Is, are we at the end of that process, by no means. And it would be hard to conceive of

transformation simply being done within the kind of time period that we've had since the end of apartheid.

COMM A.J. Nyambi: Thank you CJ.

CJ M. Mogoeng: Thank you, Commissioner. Colleagues just to avoid what one homeland leader reportedly said, I don't want any of you to say Commissioner Nyambi did it why can't I did it. He asked many questions so let's stick to the agreed number. It's two, unless it's strictly necessary. Commissioner Mpofu?

COMM D. Mpofu: Thank you very much CJ. Good afternoon counsel

Mr D.N. Unterhalter: Good afternoon Commissioner.

COMM D. Mpofu: Thank you. Yes, I am going to ask you two which because they are related I'll ask both of them and you can then deal with them. We've received a letter of support from advocate Ngcukaitobi who is my normal partner in crime in junior. And in it he talks about your support for people like him in group 621 which is one of those highly regarded groups. Can you tell us more about what you personally have done to support Pete? Firstly, entry into group 621 and making sure you retain particularly black and female advocates. Now the second question relates to one of the candidates this morning said, there is nothing beyond silk. When I was just now I was, it occurred to me that there is something behind silk it is eminent silk and it's a, I don't know how it is earned, but I know it is nice to be called that. So, I am sure you are undoubtedly a member of that group called eminent silk. Now would you agree with me that there is a special duty on so called eminent silk to do more, actually it is a criticism that's not, those people who are in that position have not done enough to assist in the transformation of the profession. And I mean it in this way, understandably even as a leader sometimes you might not have the leverage to insist upon attorneys or clients that you want to take on a black junior or a female junior and so on. But even those people are less likely to resist that suggestion if it comes from eminent silk. They are hardly going to tell you to jump in the lake or, well we will just and grab someone next door. Would you agree even in hindsight that maybe there is a special role that should be played by those people to twist their

arms, to put it mildly. Of the constituencies that resist transformation to ensure that black and female practitioners are brought in more into matters?

Mr D.N. Unterhalter: We've done as a Bar relatively well in attracting black and women practitioners as advocates. The numbers have risen, and you can see those numbers. But there is a big difference between bringing people into the Bar and ensuring that they have thriving robust practices. And I don't think that the profession at large and silks who do care influence in who is appointed to assist them in cases have done enough to give people the kinds of opportunities that make a difference. The truth is that everybody who has made their way into the profession at various points in their career depends upon more senior people who will give them a hand. At different points in their career. Just introducing them to attorneys, showing that there are people of huge talent and skill who just often don't get the chance or don't get enough of the chances that matter at the times that matter most. So, I agree. That not only senior silks but silks generally leaders within the Bar have to take this on and take it on with much greater deliberation than I think they have. Because often it's done on an ad hoc basis and some silks are just more open to it than others. But there are some more general responsibilities, I completely agree. And I think it matters because it is generating those opportunities and breaking some of the patterns of the past that is critical to building the kind of profession that we want. And the odd thing about it is that some of the attorneys who have perhaps, you know, simply adhere to past practices because they are comfortable and used to them are often pleasantly surprised at the wealth of talent that exist that they just haven't thought about in relation to briefing. We need to open to all of that up. And I think it's something that is something a priority. As to what I have sought to do. I would just try and sum it up in three ways. One, I have strongly supported in our recruitment process a much more formalised and deliberate policy by which we recruit black members and women members and it's been a process, but the group is now more representative. It is not where it should be, but it is getting there. The second thing is to take on and work with black and woman, juniors on a pretty extensive basis and I have sought to do that, and I think have worked very productively and happily with many such people. And then lastly, to try and take initiatives both in the group and beyond it to encourage both attorneys and clients. To open their eyes as to the

people that are there and that they should be thinking about when it comes to briefing. We have to change some of these patterns of the past.

COMM D. Mpofu: Okay. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Mpofu. Professor Motshekga.

Prof M.S. Motshekga: Mr Unterhalter there is growing demand decolonisation or afri-indigenisation of the law and the need to develop and indigenous African jurisprudence which may begin to legitimise our system unless urgently attended to. Don't you think that we urgently need to employ or appoint people who firstly have a command of the African language. People who have studied African law so that transformation is not only seen as a knowledge of the Eurocentric system we have now but also people who can begin to develop the alternative African system that we are looking for it?

Mr D.N. Unterhalter: Yes, I would agree. The constitution in Chapter 12 proclaims a new beginning for indigenous law in this country. But I think it has been very slow to materialise in terms of the practical way in which that body of law can flourish and develop. And there is scope, conditional scope for it, but it doesn't seem to have been realised, because again I, I don't know a great deal about this area, but it is still often consigned to quite specific areas of law instead of being seen as an important feature of our law, which can cross numbers of different areas. And it, therefore I would entirely agree that we need to look at the ways in which this body of law can be developed and the institution structures within which that can take place. Because historically indigenous law was either seen as a sub-set of the common law or was seen a feature of law that was only of application to African people in certain context. And that, that is something that needs to change.

Prof M.S. Motshekga: Would you feel bad if we appoint someone who can appear less qualified than you but who'd fill this gap that is glaring today, but which is very urgent because our growing, the growing demands of the young people may jeopardise this system. Yes.

Mr D.N. Unterhalter: There are obvious a need, there is obviously a need for different skills and lawyers with different competencies and backgrounds in law. This is not an area that I have speciality in. And it would be ultimately for the recommendation to this body to decide where people are needed most and for what purpose in constituting the judiciary.

CJ M. Mogoeng: Thank you Prof. Commissioner Norma.

COMM Norma: Thank you Chief Justice. Good afternoon counsel Unterhalter.

Mr D.N. Unterhalter: Good afternoon.

COMM Norma: Does the fact that you have not done any criminal work, or criminal trial at all. Do you regard that a limitation?

Mr D.N. Unterhalter: It is a limitation. Let me say what I have done and what I haven't done. Early on in my career at the Bar I did do a limited number of criminal trails. Where those were the days of pro-dayos (32:59) in murder cases when the least experienced members of the Bar were put to criminal trials an iniquities system but nevertheless one that I participated in as they, just as that system was coming to an end. I have since then done criminal law in a particular way which is that where criminal cases has involved a constitutional issue I have been called upon from time to time to act in those cases. And then whilst acting I have appeared in, I have dealt with a number of criminal appeals. Which is not to say that I would for a moment suggest that I have extensive criminal law experience. I don't. It's simply an area in which I would have to spend time bringing myself up to speed. I have some of the background but undoubtedly there is work for me to do there.

COMM Norma: Yes, thank you. One of the comments from the Democratic Governance in Rights Units has quoted they've referred, I don't know if you have them. Those comments in front of you, but it will be at, there is dividers in the files it will be DJRU at page 113 of that. They've quoted – oh sorry.

Mr D.N. Unterhalter: Yes, I have it.

COMM Norma: You have it.

Mr D.N. Unterhalter: Yes, I do.

COMM Norma: Yes.

Mr D.N. Unterhalter: On what page are you referring to?

COMM Norma: It would be 113 right at the bottom.

Mr D.N. Unterhalter: 113. Thank you.

COMM Norma: Thank you. I'm just interested in the statement, have you found it?

Mr D.N. Unterhalter: Mine doesn't seem to have 113, but perhaps just read it to me and I'll -

COMM Norma: Oh, I'll read it to you. Yes. They are quoting you in a matter *Posa vs Unterhalter* and then it goes on to say can Zuma have a fair trial; Mail and Guardian, 6 February 2009. I'll just quote the area where I want, which relates to the question that I want to put to you. It says at the end, none the less that is, or they say that Unterhalter disagreed with this. Saying that there are many charges in South Africa who are aligned to the current legislative framework. Nonetheless he conceded that many judges tended to be middle class people and that there were instances where errors were made. Where judges stray, the public must come down on them like a ton of bricks. It disturbs me to hear that we inherited apartheid judges. Who are they? Let's have it out there to ensure that we have the best kind of judiciary. Do you recall that?

Mr D.N. Unterhalter: I must say I don't. But I know that I have from time to time in an academic capacity commented on cases including cases such as those involving Mr Zuma.

COMM Norma: Yes, no what I want to understand is what is it that disturbs you about the statement of someone saying that you inherited apartheid judges. What exactly is it that disturbed you about that?

Mr D.N. Unterhalter: Well I mean I'm the problem of transforming a judiciary is that we plainly had judges sitting on our Bench who were closely aligned with the apartheid government. And over time those judges no longer sit on the Bench, but it was a legacy problem that we have to recognise and if such judges were to give voice to any of their allegiances to the apartheid regime then that is something that the public should be dealing with and speaking out about.

COMM Norma: It is just that the question who are they suggest that you were not aware. But from what you've just explained now you seem to say there were such judges.

Mr D.N. Unterhalter: Unquestionable so, it would be, be an, I mean we know from, from many indications that the apartheid government for many, many years appointed judges who they considered to be sympathetic broadly speaking to the apartheid regime. And some of those judges continued in office after democracy came.

COMM Norma: Thank you Chief Justice.

CJ M. Mogoeng: Commissioner Maya. Oh, yes Commissioner.

COMM M. Maya: Thank you Chief Justice.

Mr D.N. Unterhalter:

CJ M. Mogoeng: Yeah, I'm Commissioner Mpofu.

COMM M. Maya: Good afternoon counsel.

Mr D.N. Unterhalter: Good afternoon.

COMM M. Maya: I'm happy to see that you survived what you read the media recently. With the armed robbery incident.

Mr D.N. Unterhalter: Thank you very much.

COMM M. Maya: Your colleague Commissioner Mpofu just described you as an eminent counsel and I have no reason to disagree with him. What I want to know from you is why you would want to leave a thriving practice and become a judge and why now?

Mr D.N. Unterhalter: I think the short answer to that is that I suppose part of my history in the law has been seeing the law as public service and not simply about professional advancement or a good way to make a living. And in a sense, being a judge is another form of public service. But the other thing is just this I think and it's not true for everybody, but it is probable true for me which is that I don't think it is necessarily a good thing to keep doing the same sorts of things over and over again. And the logical progression in our profession is that if you are given an opportunity to be judge then it's a different way of applying your skills. And it's a challenge I would like to try and meet.

COMM M. Maya: I am satisfied CJ. Thank you.

CJ M. Mogoeng: There is a follow-up question from Commissioner Norma.

COMM Norma: CJ I might have misled you. It's not really a follow-up. I beg your pardon. But it's a recommendation. I just want to take up one thing from the JCB. I beg your pardon Chief Justice. Sorry, Mr Unterhalter the JCB in its recommendation it doesn't simply recommend you for this position but what, what troubled me is that fact that it goes further. It says, it says you are, you'll be suitable even for Higher Courts in the future. And my question to you is how long do you plan to be a judge in the High Court?

Mr D.N. Unterhalter: Commissioner I would take all of this one step at a time. I'm contend to, if it should be so recommended to be a High Court Judge and if I turn out to be good at being a judge and there are further opportunities then obviously I would look to them. But I don't have a specific time table or set of ambitions. I would just look to become a judge.

COMM Norma: Thank you. Thank you, President. Thank you, Commissioner Norma.

President: Commissioner Smith.

COMM Smith: Thank you President. You've already referred to the fact that you where the Chair of the Johannesburg Chapter of the Society for the Abolishment of Death penalty in South Africa.

Mr D.N. Unterhalter: Yes.

COMM Smith: Now I read with some measure of curiosity on a lighter note that you pending of publications, one of two are under the swinging arch. Would you're welcome to indicate to us what it is all about?

Mr D.N. Unterhalter: Yes, under the swinging arch is happily a metaphorical reference that has nothing to do with the gibbet that is used for the execution of persons. It's a metaphorical reference to law as a bow of a tree. So, it's all together more benign reference.

COMM Smith: Thank you.

President: Commissioner Didiza?

COMM T. Didiza: Thank you very much President. There are two questions for me sir. How are you?

Mr D.N. Unterhalter: Yes, hello.

COMM T. Didiza: One of them how did you find transition from being an academic to full time legal practitioner? The second one relates to your stint at the WTO I've looked at the matter, some of the matters that you have put there, and I just wondered whether you can share with us in your experience whether South Africa as a WTO member has really taken full advantage of the Appeal Committee within the WTO particularly on issues of dumping. I'm thinking of the matter that took some time on South Africa's free trade area between EU and South Africa on geographic indications which meant that South Africa couldn't use certain names. Particularly on wine line champagne and others but also on the issue of tariff escalation which affects value added products from South Africa's Agricultural into the EU market which has been a problem of non-tariff barriers. And looking at those and I was looking of the cases which you dealt with South Afri- it doesn't seem like South Africa had taken advantage of that instrument. Is it because there is little knowledge of what they need to do, or you don't have within the South Africa, particularly government system lawyers who would understand part of that international trading arrangements and its instruments that could be used to protect South Africa's market. In particular Agriculture market. Thank you.

Mr D.N. Unterhalter: So, as to the first question for much of my career I have both practiced and been an academic together and, so I haven't had to as it were adapt from one to the other. I would say that it's been a privilege to do both, because they are enriching of the other. Each of the other and it's a useful discipline in practice to think about matter sometimes from a more abstract point of view. Just as sometime in academia it is useful to bring down to earth and so I've benefitted from the two and haven't had much difficulty in moving between the two worlds. On the question of South African Trade Policy and the use of the WTO; South Africa has actually played quite an influential role in the Africa group in the WTO. And certainly, in certain earlier administrations a very important role. Mr Erwin was a very, very important figure in the WTO at a certain point in its development. But it is undoubtedly true to say, that South Africa has been very reticent about using dispute settlement in the WTO. It has again, some of the encouragement I have sometimes suggested to those involved in trade matters not taken advantage of third party representation in disputes where you don't need to directly engage the matters. And I, I think unlike a country like Brazil where we have very comparable talents in terms of our ability to

use the trade system; Brazil has been extraordinary adapted using disputes settlement to advantage their trade agenda and I would think that South Africa has been to reticent to its detriment unfortunately.

COMM T. Didiza: Thanks CJ.

CJ M. Mogoeng: Thank you Commissioner Didiza. Professor Nclama.

Prof Nclama: Thank you, Chief Justice. Good afternoon advocate.

Mr D.N. Unterhalter: Good afternoon Professor.

Prof Nclama: My question relates to your professorial position.

Mr D.N. Unterhalter: Yes.

Proff Nclama: From 2000 to date you have been professor.

Proff Nclama: Yes.

Proff Nclama: But on the other hand, you have been a practicing advocate. So, how do you strike a balance between the two? Are you full term practitioner or university is it flexible in terms of allowing you to go to practice?

Mr D.N. Unterhalter: Just to say this that I've indicated for most of the time I've done both together. But there was a, a period when I was I full time academic when I was the Director for the Centre for Applied Legal Studies. But I then did revert back to being a part time academic. And the universities have essentially permitted me to do that by giving me relatively flexible teaching schedules and asking me to do my research and conference work and so on within the framework of, of really by reference to results rather than by fixed times when I would have to do certain things. And I've largely tended to teach Masters programs which tend to be after court hours. And sometimes over the weekend. So, that's how I've managed to do

the two together with very kind colleagues in the academic world who have helped me. And understanding administrations who have wanted to have me fulfil an academic role as well as be in practice.

Proff Nclama: May I follow up, please. With your experience as an academic considering the fact that there is a lack of succession planning in the academia, I am saying this I'm very happy to see an academic raising in hand to join the Bench. So, this lack now is causing a death of experience in the academia to ensure that there is a proper succession planning in bringing up the young and development lecturers into your level. Now what would make you unique as an academic in the judiciary instead of playing that role in the academia that will ensure the facilitation of the young ones coming up and filling in your space. Thanks.

Mr D.N. Unterhalter: You know I think there are many dedicated academics who are in full time academia who spend a lot time developing younger colleagues and developing academic law. It is a constant challenge in the universities to get people to commit to a full-time life in academia. And many talented people come to academic law but leave for practice and so on. I think part of the key is to try and find some flexible models which would allow academic institutions to retain people even if they have interest outside of academia. It is difficult to do, but I do think it is important. And as to where my role is best fulfilled I would hope even if I where to be appointed to the judiciary still to be able to have some kind of an academic role. I would certainly want to keep teaching in some capacity and still be able to encourage younger academics in pursuing academic careers because it is fundamental to education lawyers who will then come into the profession.

CJ M. Mogoeng: Thank you Prof. Commissioner Malema?

COMM J. Malema: Thank you very much, Advocate. Our advocate here already read a nice letter about you. Did you see it?

Mr D.N. Unterhalter: I did, yes.

COMM J. Malema: And he says in one of the sentences there, when I joined the Bar David was already a leading member of the group 621 with a strong commission and human practice. He took a keen interest in facilitating the entry of black members to the group. Is that correct?

Mr D.N. Unterhalter: That is correct.

COMM J. Malema: So, what happened when you accepted a brief of all white team to represent Cyril Ramaphosa during the commission?

Mr D.N. Unterhalter: Well I don't think that it is invariable the case that one can use one's position to ensure that there are black members of one's team. I think all I can say is that I have taken steps to ensure in many cases that there are black members of the team, and woman members of the team.

COMM J. Malema: No, I'm talking specifically about that. Because you knew it was going to be publicised and if you are committed to transforming the legal fraternity and judiciary as it where you'd have taken a keen interest to perhaps advise that our team, particularly representing a certain deputy president must reflect the demographics in our country. Have you expressed that opinion and got rejected or you were comfortable with an all-white team?

Mr D.N. Unterhalter: I, I think the issue in that case was really one in which it was simply a, I don't to be, to answer your question directly; I don't recall specifically raising the question as to whether there should be a black member of the team. And I can't actually recall the particular circumstances as to why that didn't arise. As I've said its, it isn't something that one does in every case, but one must do it often in order to ensure that one opens up the opportunities that I've described.

COMM J. Malema: I don't know other cases. I am talking about something I know. Where you comfortable representing such a high-profile person with an all-white team?

Mr D.N. Unterhalter: The answer is yes. I was comfortable.

COMM J. Malema: You didn't see anything wrong with that.

Mr D.N. Unterhalter: No, because it's not the case that in every single instance the team must always have a black member. As long as one is taking steps to ensure that those opportunities are given then that is sufficient in my estimation.

COMM J. Malema: There are certain cases that just require all white-team?

Mr D.N. Unterhalter: I don't think it's a question of requiring an all-white-team. I think it's a question of whether it is invariable the case that every case must have a black member in the team. And I don't think that, that is so.

COMM J. Malema: Can you speak any African language?

Mr D.N. Unterhalter: No.

COMM J. Malema: Are you a white supremacist?

Mr D.N. Unterhalter: No.

COMM J. Malema: Why are you not speaking any of the indigenous languages?

Mr D.N. Unterhalter: I, it's something that is undoubtedly an omission and it's something that I should have spend time doing but I haven't.

COMM J. Malema: So, do you think, have you taken any lessons about indigenous languages?

Mr D.N. Unterhalter: No, I haven't.

COMM J. Malema: Will you advocate for our white advocate and legal practitioners to take any lessons of indigenous languages?

Mr D.N. Unterhalter: I think, in fact, in our group we have had teachers of Zulu who have made themselves available. And it's a very good thing. And people undoubtedly should become conversant in, in African languages. I, I simply haven't done so.

COMM J. Malema: So, those whites who look down on indigenous languages they are suffering from white supremacist?

Mr D.N. Unterhalter: I, I'm sorry I didn't hear you?

COMM J. Malema: Those whites who look down on indigenous languages -

Mr D.N. Unterhalter: - Yes –

COMM J. Malema: - When those who see them as something that is not of interest it is something that is law and does not deserve to be learned by them. Are they white supremacists?

Mr D.N. Unterhalter: Well I think it would be wrong attitude to take. To suggest that those languages are not important and that as South Africans we should learn them. I am not certain that it makes one –

COMM J. Malema: - That's not what I am asking. I'm saying those whites who saying that our languages is inferior and do not deserved to be learned by them because they are so superior, will I be correct to call them white supremacists?

Mr D.N. Unterhalter: I think if something had a disposition to believe that an African language was inferior they might very well have white supremacist's inclinations.

COMM J. Malema: So, if you advocate for learning of such languages, even when you don't take an initiative to learn it, don't you think that is hypocrisy?

Mr D.N. Unterhalter: No, I don't think it is hypocrisy. Unfortunately, it's something where I, I have done numbers of things in my career and it something that I should

have found time for and didn't. But there, we are all human and there are omissions that are a feature of our lives.

COMM J. Malema: Do lawyers, are the lawyers allowed to advise their client? Advise their clients. Will a, lawyers advise their client, are they allowed?

Mr D.N. Unterhalter: If the question is, I mean clearly lawyers the central role that they play is to advise their clients.

COMM J. Malema: Did you advise the Deputy President to apologise about his remarks in Marikane?

Mr D.N. Unterhalter: I don't believe that my advice was ever sought on that score.

COMM J. Malema: But you are the team that represented him and five years later he says, I'm sorry about what happened in Marikane. Don't you think that it puts you on a different light? You should have then said to him it's a good thing to apologise because five years down the line he has done the same. You don't think it was necessary for you to that?

Mr D.N. Unterhalter: I don't recall whether my advice, I'm almost certain my advice was not sought on that matter. And the, I have no recollection that it was and the question of an apology is ultimately not a legal question, it's a question for Mr Ramaphosa to square up to.

COMM J. Malema: If you were asked by Mr Ramaphosa at the time, whether he should advise- he should apologise or not, you think it was a good thing to do?

CJ M. Mogoeng: Commissioner Malema I think focus on testing his suitability for judicial appointment.

COMM J. Malema: I'm doing exactly that.

CJ M. Mogoeng: No, it's not a strictly legal issue. To apologise or not to apologise, I don't think it's a, it's a role, more of a political thing than a legal thing. Quiet apart from the fact that you've exhausted the questions, the number of questions that you should be asking.

COMM J. Malema: I think the last comment is a fair comment. But to ask me to ask legal question is unfair on my part because I don't know anything legal.

CJ M. Mogoeng: No -

COMM J. Malema: - Don't ask legal questions. I just aske general questions to -

CJ M. Mogoeng: - No -

COMM J. Malema: - test the suitability of any candidate.

CJ M. Mogoeng: - Ja but -

COMM J. Malema: - I wouldn't ask legal questions. I don't know anything legal -

CJ M. Mogoeng: - Ja -

COMM J. Malema: - I am not a lawyer.

CJ M. Mogoeng: The commission was not about apologies. It was about testing who is responsible for what. Lawyer or no lawyer Commissioner Malema, that what is was about. And I am saying quiet apart from the fact that you've asked more questions than you're entitled to.

COMM J. Malema: No, no I, I accept that. I don't accept being censored Chief Justice. That I don't accept.

CJ M. Mogoeng: - No. I'm not, I it's my responsibility to make sure that as Mr Unterhalter is sitting there he doesn't get any impression that I allow question that do

not go to testing whether he is suitable to be appointed as a judge. I don't think the question you are putting to him speaks to suitability for judicial appointment.

COMM J. Malema: No, I am done Chief Justice.

CJ M. Mogoeng: Thank you very much. Commissioner Nkositomo?

COMM Nkositomo: Thank you. Thank you, Chief Justice and good afternoon, to you.

Mr D.N. Unterhalter: Good afternoon.

COMM Nkositomo: Fifteen years ago, I joined group 621 because I admired people like you and I wanted skill development or skills transfer of sorts to occur. I was there for 5 full years and I found myself having to leave the group because I had not realised that which I sought to achieve by joining the group. In other words, there was no tangible transformation plan. The question has things changes ever since I left the group? And let me throw something else in there. We watch you often on TV acting in high profile cases. I am yet to see you lead a black practitioner. So, please enlighten this commission about what you mean when you say you are committed to transformation.

Mr D.N. Unterhalter: Well let me deal with the second part of your question first. I'm not certain that you are correct, I am afraid in respect of leading black juniors. Because I, I've done a little bit of an audit of the cases particularly high-profile cases and black juniors figure very frequently in the teams that I lead. So, it may not be depicted on television but, but it wouldn't be factually correct that black juniors and women juniors don't figure prominently in the teams that I've led. As to your experience in group 621 I think you are right. That if we go back 15 years the kind of initiatives that were then being taken to both secure the admission of black people and women into the group and what was sought to be done ones they came into the group was inadequate. I don't say that the group has yet got to a position where we have got it obsolete right, but I do think the one thing that you can now clearly see about the group is that there are significant numbers of black people and women who have stayed in the group for long periods of time and are, and have thriving

practices. They have thriving practices by their own desert but that in part does reflect changes that have occurred since the experiences that you've had 15 years ago.

COMM Nkositomo: I'm, I'm relieved to hear that things have changed for the better. Thank you. Thanks Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Nkositomo. Commissioner Cane.

COMM Cane: Thank you Chief Justice. Good afternoon Mr Unterhalter.

Mr D.N. Unterhalter: Good afternoon.

COMM Cane: As you know I have a disclosure to make which is that we practice in group 621 at the Johannesburg Bar. Limiting myself to two questions only is difficult, but let me give it a go. Mr Malema criticism of you, of course has a particular sting because there is validity in the fact that we have to respect the dignity of black people and there has to be demonstrable commitment doing that. Are there other ways in which you've demonstrated such commitment?

Mr D.N. Unterhalter: Well I would say the commitments that I've made are the ones that I've already in part described which is that I've made it my business to ensure that in group admissions we have a strong policy in favour of the admission of black people and women. The second thing is that I have taken steps to ensure not just in the juniors that I work with, but in fee splitting arrangements and the like. I have sought to encourage the use of black juniors and women juniors. And thirdly, I've done a lot of work in judicial, in training of advocates and over the years that has become more and more an important part of how we seek to give skills to entrance to the Bar. And provide skills to black practitioners and women who now figure more and more importantly in our training programs.

COMM Cane: Thank you, then my second question would be to request you to describe to the commission when you took a leadership role in the group and what your current position is.

Mr D.N. Unterhalter: Yes. Given the variety of both academic commitments that I've had and commitments overseas to the WTO I wasn't really much able to discharge a leadership role within the group until I returned from my WTO stint. So, from probable from 2014 I, I've been part of the leadership committee of group 621 and as part of that committee I have sought to take various group wide initiatives where we have tried to take steps which will enhance transformation both within the group and beyond it within the bar.

COMM Cane: Thank you Mr Unterhalter. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Cane. I just want to touch on a few issues and that is because I know you are strong enough to deal with the issues and to help us. The first relates to the NGO's you were asked about the, your membership of an NGO. Tell me if I am wrong, and I've said it one of the judgements that I have written. One gets a sense that NGO's show their hand when there is something to challenge about how the country is run but hardly ever when issues like incidence of racism shows up, incidence of employment equity arise. Like two stories that I've sited having read in the newspaper of a black person, same qualification with the white person in the corporate sector. Experiencing a margin of underpayment that goes to up to R20 000. Even if the black man, and I restrict it to males, is highly qualified than the white male and also a white woman never earns the same in those, in some of these corporate, in the corporate, some of these companies never earn the same salary as a white colleague but will certainly earn more than a black man who in turn earns more than a black woman. It doesn't matter who experienced you are. That is the one issue that I am raising. I wonder why NGO's never say anything that will challenge these things in a court of law to say, this resistance to the implementation of employment equity. Management of then - of our companies', big companies, has been to white and male for a long time. No voice is heard and so, I'm talking about NGO's, and you know that it happens (1:07:01)? As a judge when these things come before you the - your world outlook is likely to inform how you deal with cases relating to these matters when they come before you and they do. I don't see much activism relating to land redistribution. I don't see much activism say relating to well how do we make sure that, to the extend

that much of the land is in the hands of our white compatriots. What needs to be done? Let's find the solution or let's challenge some of the problems that might be there. And finally, I don't see much activism from the NGO's in relation to ensuring that there is minimum for participation in the economy of this country. Also by the previously disadvantaged including women. Why? I am I mistaken? Or is that the reality as you have experienced it? And if so why? And I again I must under, under, explain this by saying as judge you are expected to be conscious of the injustices of the past and play a role as and when the facts and the law allow you to. To help heal the country by rendering just judgements that will, that will normalise the otherwise abnormal situation that obtains in South Africa. Do you have a comment there?

Mr D.N. Unterhalter: Well I suppose my comment -

CJ M. Mogoeng: - I am not blaming you. I'm just saying, it is my observation right or wrong?

Mr D.N. Unterhalter: Yes. Chief Justice I think it is true that NGO's have particular, a particular focus and that sometimes means that they concentrate on particular cases to the exclusion of others. And not every NGO can do every case. I think that there are NGO's that cover some of the issues that you speak of, for example the Legal Resources Centre does work, significant work around land and land redistribution and like. It may be that the NGO world is always partial in the interest that it manifests in particular areas. So, there has been a lot of prominence given to Rule of Law issues and institution integrity questions and it may be that hence their programs have not covered all the areas that they should. But I do still think it correct by large that we have a very dynamic and active NGO sector which covers a lot of ground. It may not cover all the ground and all the ground it should, but it covers a lot of ground. Including some of the areas that you've referenced. And just the last observation to make which is that apart from what NGO's do there are members of the Bar who act *pro bono* very often in leading cases where there has been injustice. And that should, more of that should happen and it does. But that is another way in which recourse does occur in many instances where there are cases of this kind.

CJ M. Mogoeng: -No, no. I, here is where I'm coming from. There are things that are responsible for the extreme inequalities that South Africans are experiencing right now. There are things that continue to divide us as a nation. They pop-up from time to time and racism is one of them. I speaking as a South African and as a judge would expect those with the capacity to challenge these injustices commentators on television, radio those who write in newspapers to raise awareness about this embarrassing development. And knowing how racism has divided us even for the NGO's to say this injustice must be tackled head on, but I often experience dead silence from the NGO's. You know how emotive the land issue is. You hear people talk about language but not about the land issue in the sense of let there be restitution. People have been saying, I haven't checked it myself, but it hasn't really been gain said that when you go to the stock exchange, for instance, you don't see much persons of the previously disadvantage. When you look at the economy you don't see persons of the previously disadvantage. Where is the voice of the NGO's there? That's what I'm wondering. It looks like the NGO's have are focusing on something else but on those things, that cost a lot of harm and hurt that disadvantage the majority. You don't see a hand being raised there. And excuse me, I may be ignorant, I seek to understand so that when a judge who comes from an NGO becomes a judge I have the comfort that, oh this one when matters of this nature come before him or her he'll make sure as he has been doing, as she has been doing that the injustices of the past are as required by the constitution. Dealt with and dealt with firmly and properly.

Mr D.N. Unterhalter: Yes. Chief Justice there is no question that the matters that you reference are, are important questions of injustice that need to be both raised and dealt with in, in the courts where appropriate. I, I don't have sufficient conspectus of all the work that NGO's do but I would just say that there are NGO's that certainly work on land issues. Whether they have brought the right cases, sufficiently, clearly to the courts I am not sufficiently sited to say. And similarly, in respect of employment equity issues. There are NGO's who work in these fields –

CJ M. Mogoeng: - Yes -

Mr D.N. Unterhalter: - And it may be that their work is just not always as highlighted as other, other work that is done by NGO's.

CJ M. Mogoeng: What I've picked up is that those that work on the land issue are those that say, you know government you should have done this, you didn't do this. I haven't come across those that says, a strategy needs to be developed for those who more land to realise that unless this is addressed and addressed properly, not in an emotive way, in a manner that will heal the country. The strategy must be there to make sure that this thing is dealt with before it overtakes us. I haven't seen those. It's a question of government as you do this, consider this consider also having a plan in place to fund those that land is restituted too so that they can become effective farmers. That's how far they go. But anyway, my next, second question is this. Instruction giving and briefing patterns. You know worried I have been at the Constitutional Court and sometimes even embarrassed our lean over to the former deputy and say, there about 16 advocates here and at times you'd be one of them, and either all of them are white and male or you have a few white women. But generally, you hardly ever see a black juniors or black women juniors. Why is that so? As we try to heal this country as we try to say, a future judge how are you going to help shape South Africa in such a way that you never go back to the wars of the past?

Mr D.N. Unterhalter: Yes. Chief Justice this is a process and there, and it's one that's probable it's taking longer than it should. I mean I, I have observed in more recent times that in your court there are many more both black advocates and –

CJ M. Mogoeng: - Many? -

Mr D.N. Unterhalter: - Well, more than was the case. I recently in fact was in there, I perhaps the last appearance I made in the, in the Constitutional Court where the majority of those who were making submissions before the Court were black and women.

CJ M. Mogoeng: Generally speaking -

Mr D.N. Unterhalter: - But I agree –

CJ M. Mogoeng: - Competition cases whether you appear for business or for the state I hardly ever see black people. Hardly ever. I don't, I am not saying never. Hardly ever and these are the big and complex matters where there is a lot to learn. Hardly ever seen people and women there. Even as juniors or even as seniors. It's, it's a rare thing. How are we transforming?

Mr D.N. Unterhalter: Well Chief Justice I think we're, we're clearly; we're clearly not then doing enough. If that's your perception. But there are certainly, you know concrete efforts that are being made to include –

CJ M. Mogoeng: - Is it my perception. Or is that what is happening?

Mr D.N. Unterhalter: Well I think we need more empirical information, frankly.

CJ M. Mogoeng: I have the records, in the constitutional Court. Remember whenever you people come to see me I have a list of who counsel is -

Mr D.N. Unterhalter: - Yes. –

CJ M. Mogoeng: - It's there. It doesn't have to be researched. I've got it in my office.

Mr D.N. Unterhalter: Yes, Well Chief Justice you will have the records and they will indicate whatever pattern you've indicated. The fact is that what needs to happen is that these briefing patterns, as I've indicated, need to be opened up and senior practitioners have a duty to discharge in contributing to doing so. That's part of the story. It is not the whole story. It is, it's something that has to happen at every level in the profession including amongst briefing attorneys. But counsel are important voices in that process and it needs to happen more and there needs therefor to be more opportunity given.

CJ M. Mogoeng: What more should they do to facilitate that which over and above, what they have been doing? Or what is it they have not been doing which they now need to do?

Mr D.N. Unterhalter: Yes. I think there are, I think partly it's a question of consciousness. So, it's a question of people bringing to mind every time that there are cases where they could bring somebody to think about who they could bring in and that black people and women should be at the top of their minds not at the bottom of their minds. I mean that's partly a consciousness question because people do get into habits of working with people that they're familiar with and they therefore don't always have these things at top of mind. So, that's part of the, part of the answer. The second is to look at more systemic ways of doing this. I mean our group has a junior fund which is utilised to assist in funding participation of new counsel. But particularly black and women counsel in so that they brought into cases. Those are concrete steps that are taken and there's financial backing for it that matters. There are fee sharing arrangements where counsel will give some of their fees to bring somebody in, that is another initiative that happens. It should happen more. And then there are more widespread opportunities to try and introduce attorneys. Sometimes through cases but sometimes just in more informal ways to who are the counsel that now are an important component of the Bar that are available and that they should consider in what is, what talents do they have to bring to bear. It has to happen at every single level and clearly on your statistics it is not yet happening sufficiently.

CJ M. Mogoeng: And you'd recall that from the time I made my first public speech after my appointment to this position every time I speak to attorneys that is the message that I have been communicating. Talking about consciousness.

Mr D.N. Unterhalter: Yes. I think that, that's right. I mean one of the encouraging features certainly, as I see it from partly a group wide perspective but also among black juniors and women that I work with is that there are now significant numbers of people who have very, very well-established practices that are thriving. And that's what we want to achieve, and it is happening. And that, that surely is a sign of health.

CJ M. Mogoeng: Thank you Mr Unterhalter, as I said I had to put these difficult questions to you because not only because you serve in an NGO, because I also knew you take the punch. If a punch it was.

[chuckle]

CJ M. Mogoeng: You're excused sir.

Mr D.N. Unterhalter: Thank you very much.