



JUDGES MATTER

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Constitutional Court

Interview of Justice MJD Wallis

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Justice Wallis: But I think the background to that was, I had a record, I had appeared in over 100 appeals in that Court, I had appeared in a number of cases in the Constitutional Court. And so I perhaps wasn't entirely inexperienced.

Chairperson, Chief Justice Mogoeng: Yes. And so that explains why you moved so fast, so to speak. Tell us about your experience as an SCA judge now. You have been there for how long?

Wallis: I have been there for six years.

Mogoeng: For six years.

Wallis: Yes, so sort of leaving the acting appointment out of it. But six years. I was appointed in 2011.

Mogoeng: Tell us whatever there is to say about that court in terms of the enabling environment that exists or lack thereof, for an acting judge or a newly appointed judge who doesn't have the wealth of experience you had when you first acted there, and when you were first appointed there permanently.

Wallis: I think there are things we could do which would make it easier for people coming there, particularly people who come there who've never been there at all in their lives. And we have had both permanent appointments and acting appointments who have literally never been in that court. And the number of times I have walked down - Chief Justice you know the passageways which are lined with the photographs, and the number of times I have taken colleagues along that passageway, newcomers, and said to them "Look don't be frightened, this is the person who sat and presided in my first appeal", and taken them through and told them who there were, and perhaps some stories about how some of them got there in the old days. And tried to make people comfortable. So there are several senior colleagues who are very willing to take people around to give them help and guidance and, certainly for myself, a lot of the acting judges I have telephoned to say welcome. As indeed I was telephoned when I went up there by Justice Cachalia, rang me to say it was very nice that I was coming. And offering some tips, some advice, really saying you know, if you have a problem and concern, you know drop in, it's easy to do, just walk into chambers and having had all those years at the Bar, that was always the practice as you know Chief Justice, at the Bar. Your door was always open to colleagues and I've tried to maintain that. We don't have a formal induction system and perhaps that would be something which Justice Maya might like to think about. As something we should have, a more formal induction. But I don't recall a formal induction when I came and acted in the Constitutional Court. Obviously I knew all the judges and I was made welcome by all them and we settled down and got on with the job.

Mogoeng: Maybe I should step back a bit. You know I forgot to ask whether you are settled or comfortable or whether you're a little bit nervous? Because we all do become nervous at one stage or the other.

Wallis: You know I think this is the sixth time I've been before this Commission.

Mogoeng: Yes. It's familiar territory.

Wallis: So it's familiar territory. And if you argued as I did the initial certification case before the Constitutional Court, the eleven, if you appeared before the SCA, when modern ideas of how judges treat or should treat lawyers did not prevail - I've got broad shoulders to live with robust comment.

Mogoeng: Very well. Let's then go back to that issue. Have you had occasion to hear from acting judges or newly appointed judges, whether they were comfortable in their environment, whether they felt welcome or not, or whether the environment was somewhat unwelcoming?

Wallis: No-one has ever said to me that they felt unwelcome. Several have said to me, as I say I've taken people round and as it were showed them the ropes a little, several have said to me this is unfamiliar territory. And obviously if you're in unfamiliar territory there's a level of apprehension, and one would hope that more senior colleagues will be available to help you in that environment. So there are things we could do and we could possibly do better, if you appointed a mentor for each acting judge. And some will need it more than others. Some judges come with a fair history of experience and some familiarity with the court and they settle in fairly easily. Others find it more difficult. And I've had the acting judges of both classes come to talk to me about the experience.

Mogoeng: And a few of your colleagues have mentioned the sitting arrangements at the tea room, that surprised them a bit. Have you any comment about that?

Wallis: Well, the first comment is that it didn't surprise me. And the second comment is that I noticed it from the very first time I was there. Those divisions happen. I have tried to make a point that I don't sit in a group or a clique, whether it's a white group or a black group or a green, pink or yellow group, frankly. The one group that hasn't been mentioned, and I say this very gently, Justice Maya, the ladies tend to sit together. Yes, those groups are there and where those groups reflect different cliques or parties within the court, that's a very unhealthy situation and obviously that's something all of us have a duty to work on, to work against that.

Mogoeng: Do you have a sense that everybody does what they are required to do as well as they should, and that everybody is equal to the task?

Wallis: I think we have had and have people sitting in that court who have struggled with the level of the work that is required. And not always been willing to look for advice, and I can understand how difficult they may find that. It's a very difficult job. It involves very difficult areas of law, right across the spectrum of the law. And I think there are certainly some who find it very challenging and who would even say "Look that's not my cup of tea". So standards are always going to be uneven, qualities of the judges are always going to be uneven, but I would say that my experience with the majority of my colleagues is that they work very hard, they try their level best to produce the judgments to contribute, and most are very amenable to suggestions and often come and ask for them. So I would say there is an ethos broadly across the court of trying to do the job and to do it properly and to do it well. But there are obvious areas of weakness and we need to address those.

Mogoeng: Would it be thoroughly incorrect for any of them to say, any of your colleagues to say, that five, six but certainly not ten of the SCA judges are the ones who really carry the load, the rest are just staff riders or they really don't do much, or anything to write home about?

Wallis: I think that would be an unfair statement. I think that that there are a number of senior judges who bear a particular burden, particularly those who preside. And who perhaps more than others have to deal with instances where they find there are shortcomings in the work that is produced. But as I said, my experience broadly, with my colleagues, is that they try very hard to do the job and to do it to the best of their ability. And to do it in a collegial way.

Mogoeng: How many presiding judges do you have? More or less

Wallis: That tends to depend upon the roll. But it's usually about the top seven. But you occasionally get odd situations, I have for example on three occasions presided although strictly I am number eleven. Twice because Judge Mpati was called away and I was number two in the case and so I took over and presided. And once because we had a very, very heavy case that had run for 300 days or more. The record was 85 000 pages long. It was predominantly in Afrikaans, involving professional negligence by an auditor. And in discussion with Judge Mthiyane initially and then Judge Mpati, they asked me to preside in that appeal, which we heard out of term, we brought in two Afrikaans-speaking acting judges, one of whom has been, it is fair to say a valiant mainstay of the court since that time. He's been acting on and off ever since, been very helpful. And we dealt with that case. So I've actually presided on three occasions, although I'm not in the normal run of presiders.

Mogoeng: Would you characterise an assertion by any of your colleagues to the effect that, for all intents and purposes, the work load of that court is carried by those seven presiding officers, as false and malicious? In other words, let me make sure it is properly communicated: would it be a false and malicious assertion by any of your colleagues to say it is the seven presiding officers who do most if not virtually all the work of that court? All others are either lazy or incompetent.

Wallis: I would not regard that as an accurate or fair statement of the position. And I would regard as unfair, and I mention names merely by way of examples across the spectrum of the court, but it would be unfair to people like my colleague Judge Majiedt who was here this morning, it would be unfair to colleagues such as Justice Dambuza who is not here but has acted as you know in the Constitutional Court, it would unfair to colleagues like Justice

Swain who works very hard. And I particularly pick them right across the racial and gender spectrum. And it would be unfair to a number of others to say that, yes.

Mogoeng: Would it be fair to others to say that?

Wallis: Sorry I'm not quite with you. Fair to other, to the others?

Mogoeng: To any of your colleagues in that court to say their work is basically being done by others. They are just there. They don't add value. They are lazy. They are incompetent.

Wallis: If I was appearing before the House of Representatives in Washington, I'd be inclined to say I'd like to take the Fifth on that.

Mogoeng: Oh no, no, no, even here you are entitled to.

Wallis: I think it's unfair and perhaps diverts us from what is in fact the task at hand, which is the consideration of candidates for your court, to say that. Obviously one has one's views on colleagues as to how efficient they are, how effective they are, how willing they are. And having been in and around the legal profession now for very nearly 45 years, I've seen judges who I would undoubtedly characterise as bone idle. I can recall a stage in my younger days at the Bar, at the Durban Bar where the then Judge President, and it goes back a long way because I'm talking about Judge James, in order to secure that some judges actually wrote their judgments, told them your long leave is starting tomorrow and you're going to spend it writing the judgments which you haven't written. You know that sort of thing. Yes, there are always judges who one feels don't pull their weight, some of them through inability, some of them through a lack of inclination, and so on. That, I would suggest is a feature of any Judiciary anywhere, and certainly in my experience talking to colleagues who sit on benches and practice law in other jurisdictions, they will say "Oh this judge is idle, this one never writes his judgments, or this one, he'll find an adjournment at the drop of a hat to avoid hearing the trial". I see a couple of knowing nods from the practitioners' side of the meeting.

Mogoeng: Ja. And you would never have made that assertion about any of your colleagues, I take it. That they are lazy and incompetent. To anybody.

Wallis: Can I exclude my wife from that? After forty years of matrimony I'm entitled to be utterly and completely honest to her. I might have made odd remarks about that, but I don't recall. I try to be pleasant, I try to be collegial, I try to be tactful. And I don't believe in making statements that are hurtful if you can avoid it.

Mogoeng: Not even to colleagues outside of the SCA? Telling them how your colleagues at the SCA are like?

Wallis: You know Chief Justice you have conversations with judges. When I was in your court, I had conversations with all my colleagues there, and I may have been fairly blunt in saying things like “I don’t think this person’s really pulling their weight”, or that, I may well have done from time to time. But I try to avoid that and I think it’s something that needs to be dealt with within the Judiciary rather than outside the Judiciary.

Mogoeng: And of course talking about suitability with your many years of experience you would know, that when questions of this nature are posed, they are designed to explore issues of collegiality. If we happen to be in the same environment, what sort of atmosphere is likely to be created by our togetherness? How are we going to relate, and so on and so on. Because suitability is not just about your forensic skill and experience, it’s also about human relations as colleagues, isn’t it?

Wallis: Yes I think that’s true. Obviously there’s one situation where one has to be - one can’t - one shouldn’t be tactful, one needs to be brutally honest, and that is, both Judge Mpati and Judge Maya have discussed with me people who might be suitable to act in the Court, and have mentioned names, and I have had to be honest and say “This is my assessment, this is what I know about them.” And I accept that in some of those cases those have not been shall we say favourable as to their talents and abilities.

Mogoeng: Yes

Wallis: But I take that as something which you’ve got to answer honestly.

Mogoeng: And acting at the Constitutional Court, did you get along with colleagues generally speaking? Or did you have any unpleasant encounter with any of them?

Wallis: I can’t think of any unpleasant encounter. I thought, I mean I came there, it was interesting and different and I was made welcome. As I say, actually I knew all of the judges. I mean Chief Justice you and I go back very, very many years

Mogoeng: Where you were the chairperson of the General Council of the Bar. We met in Kimberly and we had the spit braai.

Wallis: Yes indeed, and Judge Kgomo who was also on the GCB at that time. Judge Zondo, I’d known him since he started practice virtually, he briefed me and we appeared again, he briefed me in the then Appellate Division, you know and others. Judge Jafta I’d sat with in the SCA. Judge Nkabinde I had worked with on the Rules Board. Judge Moseneke I’d

known since early 1990s. And so on. Just everybody there was someone I had dealt with over the years, and I think that obviously helped.

Mogoeng: So you'd say you had a healthy and collegial relationship with colleagues at the Constitutional Court?

Wallis: I certainly felt that. I hope I'm not deluded.

Commissioner Motshekga: Judge, would it be correct to characterise you as someone who is very diplomatic and who doesn't want to hurt colleagues for the sake of a good collegial relationship? Secondly, if that characterisation is correct, whether that is not harmful to the profession, because there will be new entrants to the profession, there will be those that are lazy, there will be those that really don't perform, and as a senior person like yourself wouldn't it right not to be this diplomatic, but to be upfront and say to colleagues "You are not pulling your weight, you are lazy." But some of them may not necessarily be lazy but maybe needing support. That you are upfront saying to them "No we think you are not adequate in this and that respect and therefore we need to help you". But if you are, if I am correct, if you are so diplomatic don't you think the talent that you have, the experience that you have, may be lost because you won't be able to use it to help others?

Wallis: I hope not Dr Motshekga. Yes, I try to be diplomatic because it's part of my style of working with people. I think that is the best way of getting the best out of people. I think you must also bear in mind that, notwithstanding the years that I have in the profession and the background and experience that I have, that within the Supreme court of Appeal I have been a junior Judge and very much, you know I am now in the middle, as they say I am number 11 on the list, and seniority still counts. But both in the SCA and in the Kwazulu Natal Court, under Judge President Tshabalala initially and then Judge Msimang, they tried to make use of my seniority. And I'm diplomatic but I also am willing to and do say to colleagues - I think of a relatively recent example, where I got a judgment and I thought it was, it was, it was wrong in many respects and had to be reworked. It took me three days to work on it. And I wrote to the colleague and said "Here is a revision of your judgment with the things, these things are actually wrong in it, and I'm disappointed that I would get this from you, because I respect your ability, I'm disappointed that I would get from you a judgment of this standard". And the colleague in question apologised. I hope they will take that to heart in the future. So it's a mixture. You've got to be diplomatic sometimes and other occasions you have to be blunt. I try to get it right, and I may not do it all the time.

Motshekga: Secondly, can you explain why since the 1994 democratic breakthrough, we still have lawyers for Human Rights, Black Lawyers Association, National Association of

Democratic Lawyers, operating separately, unable to form one non-racial lawyers organisation? And secondly, why there seems to be a proliferation of independent Bars, who claim to be running away from the white-dominated Bars. Does that suggest that racism is playing a major part in impeding the development of a non-racial society that our Constitution calls for?

Wallis: I think it's illustrative of a number of a number of problems. Can we just put Lawyers for Human Rights on one side because they have taken, as I understand it, a very clear tactical decision, with the new Constitution and the dawn of democracy, to try and position themselves as, if not the leading, at least a leading public interest law firm, and that's very deliberate, it's been stated in their publications. There are, within the profession, there is still the BLA, there's still NADEL and of course at the Bar, AFT, the Advocates for Transformation, has arisen. And I think the answer to your question is, there is obviously felt to be a continuing need for these organisations. And you're correct that the majority of people at the Bar are - practitioners at the Bar - are still white males, although that gap is closing, and closing fairly rapidly. In the attorney's profession I am not sure of the statistics, because I think in fact the balance has tipped slightly in favour of the black community but I'm not sure of that. There is obviously a perceived need that structurally the profession is not meeting their needs. And that's a cause for concern. Certainly when I was still at the Bar, at the Kwazulu Natal Bar, I moved the resolution, first of all that it should change its name to reflect the provincial structure in the Constitution. But more to the point, that it should have a governance system which was 50/50 between the AFT, the Advocates for Transformation, and the Bar as a whole. And that worked for a couple of years, and then there was an endeavour to resist it and I moved the resolution that that should be the permanent position until reconsidered on a fresh initiative, which is, as far as I know, still the position I think. Advocate Norman will correct me on that if I am wrong on that, but I think that is still the position. And it's the position largely at most of the Bars. I think Cape Town is an exception as I understand it.

So there are problems. In regard to the independent Bars, that's a different phenomenon. It arises from the fact that our law schools are churning out vast numbers of law graduates who simply are not able to find a place in the profession. And I know the stories because the students at the University tell me these stories, about new graduates whose parents, this is back to the old apprenticeship system, are paying attorneys that they may sign a set of articles provided they sit in the corner at a desk and they don't interfere - unless asked to make the tea or the coffee, or post a letter. There's a tremendous difficulty. You've got a Bar, the Durban Bar I think has about 200, 250 members, they are getting - according to my son who's heavily involved in advocacy training there - between 75 and 90 applications for

pupillage every year. Now the burden of that on the practitioners is enormous. And so they're having to say "Well we can only take so many". And that's a real problem. And the proliferation of the people going off to practice independently has by and large been of people who can't make their way in the profession, can't find a place at the Bar, and regrettably, Dr Motshekga, my experience - and I've been a little bit removed obviously since I went on the bench - my experience certainly when I was in practice, was that many of them, although holding themselves out as independent advocates, were basically masquerading as attorneys. They were handling client money, they were doing all the work that an attorney did, they were soliciting clients in that fashion. I don't know whether that situation has changed. But there are problems of placing all the legal graduates. There are a very, very large number and very few places for them.

Motshekga: Through you Chief Justice, do you believe that paralegals, have a role to play in our society to make justice accessible to the people? And if so, would you, could you explain why the legal profession, during parliamentary discussions on the Legal Practice Bill, appear to be the obstacle to the regulation of paralegals, which some people including myself, feel that they are essential in making justice accessible to the people?

Wallis: Dr Motshekga sorry, if you've read my Victoria & Griffiths Mxenge Memorial Lecture, you will have seen that I floated that as a possibility in that lecture, and I have written articles suggesting it. And I've had very strong rebuttals from within the profession. It's something to be explored. It's a difficulty. In other jurisdictions they play some role. Though not so much in advising, but they can play a useful role in NGOs and so on, dealing with the sort of work that comes to law clinics, that comes to the Black Sash, and so on and so forth. But you've got to look at how they are remunerated, how they are regulated, how they're controlled. And I think the profession always has a fear that if you don't have proper regulations in place you may have people effectively holding themselves out as lawyers taking money from the public without the qualifications and the regulation that is necessary if they are going to do that. So it's a balancing thing. I'm not sure of the answer.

Mogoeng: And before I forget Justice Wallis, is it correct to assume that whatever feedback you gave to your colleagues in Bloemfontein about colleagues at the Constitutional Court when you returned there, is such that, if the Concourt colleagues were to hear it and you are appointed, your relationship would just be normal and collegial. It wouldn't spoil the relationship, your relationship with them?

Wallis: I would certainly hope so. I can't think of anything I've said that would spoil my relationship. It's now 18 months since I acted there, I have met a number of colleagues from the court since and our relationship has seemed unchanged.

Mogoeng: I was saying that whatever feedback you gave your colleagues in Bloemfontein about colleagues at the Constitutional Court, if Concourt colleagues were to hear of feedback that you gave to your colleagues at the SCA, that would not affect your relationship whatsoever if you were to be appointed at the Constitutional Court?

Wallis: I would certainly hope not. And if I had ever said anything unkind about someone I would hope to be able to repair bridges if there were. And that's human nature. If I've said something unkind about somebody and something uncharitable about somebody, I would hope to be adult enough to say "I'm sorry, that was unfair and unkind, and would you forgive me?" I would hope to be able to do that.

Commissioner Hellens: I just have two questions. Judge Wallis do you have any inarticulate major premise or premises which operate in your mind, which you have to confront and set aside before applying your mind to any decision that you have to make? It's a jurisprudential question as you can imagine.

Wallis: I think that any judge who wishes to be a good judge, and I aspire to be a good judge, must constantly ask themselves in any situation "Is what I am thinking now about this case, this witness, this applicant, etc, is it justified by the facts that are properly before me? Is it a misconception, or a preconception rather than a misconception, is it a preconception I have about people of that sort - you know, am I - sorry and I pick this as a sort of foolish example, so please take it as a foolish example, I can't stand men who wear earrings.. Am I put off by this person because he's got an earring? Or when I say this kind, is there an objective basement? Every judge worth their salt must confront those preconceptions and ensure as best they can, to put them on one side in the judging process. And if they can't do that, then they're not an impartial judge.

Hellens: Judge, there have been an increased number of cases involving the courts being called upon to pronounce upon the lawfulness, the constitutionality, of actions, conduct, decisions of the Executive and even of Parliament. If called upon to make such a decision, what would be your approach in your mind, bearing in mind the separation of powers doctrine, how do you tune your thinking? What are your guiding principles in applying the principle of separation of powers when making such a decision?

Wallis: Mr Hellens, the problem of separation of powers and judicial boundaries is something I've - actually was asked about at a previous hearing. But it is one that has concerned me for a considerable time. You will have seen from my CV that I was at Cambridge in 2013 when I was on long leave, and I spent the time studying reading and looking at that field. And I will be at Oxford University in the last term of this year. I have

been elected as a visiting fellow there. It's during my long leave, I'm not skiving off. And it's the same area that I will be looking at. It's an enormously complex decision and there are no bright lines. I think my approach would be first of all to say that any such case, it's for the judge to approach as narrowly as possible within the confines of that particular case. We're not there to make broad pronouncements about Government and so on. Secondly, it's an area where all of us as citizens will have feelings about what's going on in the country, I would hope. And so it's a particular where you must be very sensitive to those preconceptions. Because they must not be allowed to influence your decision in this particular case. Thirdly, I think the constitutional structure, separation of powers is an area which I - in Professor Paton's book on jurisprudence he says "It's easier to say there is a separation of powers than to define exactly what it is or where the boundaries lie". But I think the one thing is clear, is that it is for the legislative and executive arms to determine policy and to do the business of governing. And therefore when a court intervenes to say "This is unlawful conduct", a court does so, must do so very carefully, and must be very clear in its thinking that that is an instance where the Executive or Parliament has overstepped the legitimate constitutional boundaries. I don't know whether that gives you at least some inkling of how I would approach things. But I do feel quite strongly that one of the problems - and judges need to be aware of this - is we look at a particular case as it were from the broad end of the telescope down to the narrow end, and we look just at this situation. And we need to be aware from a government and legislative and executive point of view, they look the other way. They look at a problem and look at the broad implications and try to deal with that. So I think we've got to be very careful that we don't by our decisions in an individual case where we feel "Oh, that person's been hard done by", that we make the job of administration an impossible task to fulfil. And that is a concern.

Commissioner Malema : Before Commissioner Norman, Chief Justice?

Mogoeng: Follow up?

Malema: No, no I just want see if there can't some form of intervention, because the candidate takes long and we thought we are restricted ourselves with questions.

Mogoeng: Yes.

Malema: If there can be a way of saying to the candidate without restricting him -

Mogoeng: Yes. You would have realised that even our first candidate took long, and because they are candidates I don't want to unsettle them. It's a very difficult seat to occupy, you don't know what questions to expect, so if we could indulge him please.

Wallis: I'll do my best to keep it short for Mr Malema.

Commissioner Norman: You've written a book on admiralty law. But what I want to understand is, I haven't managed to get a copy of your book, but what I want to understand is how have you changed that book in order to suit the South African society? Because I would imagine you would have wanted to depart from what Professor Hare has in his book, and you would perhaps have developed the law so that Maritime Law can be in sync with our constitutional dispensation.

Wallis: Commissioner Norman, the book was the publication of my doctoral thesis on the issue of associateship. I would think the major thing I have done in that, in regard to the matters you're talking about, is as you know section 6 of the Admiralty Jurisdiction Regulation Act provides that in certain circumstances English law should apply to maritime matters. And I argue quite strongly in the book for two propositions. One, that notwithstanding that feature, there is scope within the Act for us to develop our own South African vision of what maritime law should be. And two, I'm fairly critical of a judgment of the late Chief Justice Corbett, it was a matter I argued, which seems to suggest that you should resort to English law to interpret our statute, and I feel very strongly that that's wrong, that it should be our norms and standards that guide the interpretation of our maritime law, and that includes of course the norms and standards set by the Constitution. And as you'll know in that book, there is an entire chapter in which I deal with Constitutional issues flowing from the Admiralty Jurisdiction.

Norman: Yes thank you. And then secondly, I understand you supervise at the University of Kwazulu Natal, of Master students?

Wallis: I have sort of overriding, keeping an eye on the LLM course, I lecture in it and I also supervise theses. Both at Masters level and at Doctoral level.

Norman: Yes. And then when they pass and they finish it, do you ever take time to check as to how far they go within the legal industry? With them possessing the Masters degree in Admiralty Law, and do you see them fitting in within the industry at all? Or do they simply just disappear after they qualify?

Wallis: No curiously enough I do, I just had one who battled to get a place with attorneys, joined a maritime institute, and is now going to a major maritime institute in the United States of America. With the clerks I work with - this is going a bit outside maritime law - the clerks I work with at the university, a number of them have gone on to very successful legal careers. They have been clerks in the Constitutional Court, nine of them have gone to major

overseas universities. And I'm constantly dealing with that and sort of tracking their progress. So I try to see how they do. And of course you go to the MLA meetings -the Maritime Law Association meetings - and you encounter them there and they're now partners in firms and they're doing maritime work. Yes.

Commissioner Schmidt: Judge, two issues. One is did you attend in your position as the SCA judge, the diversity training - in February I think it was of this year - and if so, any comment?

Wallis: No I didn't, because I had commitments at home. I heard my colleague earlier saying that what she would really like, and I've heard this from Judge Maya too, is she would like a wife. Well I have a wife and we celebrated forty years of marriage at the beginning of this year. Had family out, and the overall thing has prevented me going back early for the beginning of the term. So no, I didn't. I've heard reports on it, and I gather we're having another session in May. And I have been involved in some other things, involving other aspects of the court, which just got in the way.

Schmidt: And will you be attending the one in May?

Wallis: Yes.

Schmidt: And secondly, you have clearly an international, or you had an international practice, or have reaches towards international practice, I'm not quite sure how to put it, but how does one become involved or how does one become an honorary member of the Australian Bar Association, or the Honorary Bench of the Kings Inn in Dublin? I'm saying it as a matter of curiosity.

Wallis: Through my work in the International Bar Association, the establishment of the Advocates and Barristers' Forum in the International Bar Association, and the organisation through that forum of the World Bar Conference, which takes place every two years and which started in Edinburgh in 2002. And I've been at virtually all of them, I've spoken, in fact I was there last year – it must have been 2003 – I was there in Edinburgh last year, I spoke at that conference. And the Australian Bar, it was an honour bestowed upon me, and my colleague and friend Frank Clarke who's on the Supreme Court of Ireland, we were the initial co-chairs, and this was a recognition of what we'd done. And in 2013 I visited Dublin when I was at Cambridge on long leave, and the Irish Bar very kindly made me an honorary bencher. You know, a splendid function, with some very distinguished co-honorary benchers there - Justice Roberts for example, Lord Philips of the House of Lords, the first President of the Supreme Court. So I'm deeply honoured by it. Ja.

Mogoeng: Thank you Commissioner Schmidt. You know I just picked up something from your questionnaire, Justice Wallis.

Wallis: Yes.

Mogoeng: Page 8 of your questionnaire, paragraph 12. Are you there?

Wallis: Yes.

Mogoeng: Thank you. There's reference there to the books that you wrote. And the first is Labour and Employment Law.

Wallis: Yes

Mogoeng: Now 12.1 you say "My book on Labour and Employment Law has been cited in a number of judgments in the Labour Courts, including those prior to the LRA, as well as in the SCA and most recently in the Constitutional Court".

Wallis: Yes

Mogoeng: Is it fair to assume that most recently in the Constitutional Court, you are referring to the *Toyota* judgment?

Wallis: Sorry, the?

Mogoeng: *Toyota*

Wallis: Umm, it's referred to both in the *Toyota* judgment and in *Steenkamp and Edcon*. You may recall in *Steenkamp* the bench was divided in that it was quoted by both the majority and the minority judgment.

Mogoeng: Yes

Wallis: So I had it quoted against me by whichever side I joined in it.

Mogoeng: But in *Toyota* you would recall that it's quoted by a colleague whose judgment you did not support. He quoted it to contradict the position you have taken. Basically saying "but what you are saying is contrary to the book that you have written". I just wanted you to comment on the following, and that is footnote 125, no 123 I beg your pardon. You say there, "My colleague cites as supporting his view what I wrote 20 years ago in Labour and Employment Law", and then you say: "Like Brasswell B in *Andrews versus* - is it Stirrup?

Wallis: Yes, Stirrup

Mogoeng: You say, your quote, that's your response to the fact that your colleague is contradicting you with what you have written, you say "The matter does not appear to me now as it appears to have appeared to me then".

Wallis: Yes.

Mogoeng: What does it mean?

Wallis: What it means –

Mogoeng: Does it mean the book can still be relied on or at least that part of the book? What does it really mean?

Wallis: It means that on further thought and reflection, I think that particular passage in the book is not correct, and it's not how I would think about the matter now. Sorry it's just a neat way of saying "look, I've changed my mind, on that point I've changed my mind".

Mogoeng: Any reason why you went about it in such an unusual way "The matter does not appear to me now as it appears to have appeared to me then"?

Wallis: Occasionally, Chief Justice, one is carried away with the flurry of your own eloquence, and you like a quotation so you use it.

Commissioner Msomi: Thanks CJ. Just two questions Justice Wallis. One relates to judicial activism. What are your thoughts on judicial activism? Particularly in a constitutional democracy.

Wallis: You know judicial activism is an expression which was coined to attack the more liberal of decisions of the Warren court in the United States. And so it's a tag which is thrown very often at judges who are inclined to develop the Law and make changes by those who are more hidebound, those who think the Law should develop very slowly and not, as I think one judge said, "with cartwheels and hand-springs". But you can have judicial activism which goes the other way. For example, the Rehnquist Court in the United States cut back on those very rights for accused people. And it was undoubtedly activist under Chief Justice Rehnquist and Justice Scalia in doing that. So as a tag I find it quite unhelpful. I would like to look at the question from the perspective, in our context, of the Constitution and say this: It's not a judge's job to go out to change the Law. That's a legislative function. Then you must be elected to Parliament or some other body that's legislative. But it is a judge's function to keep the law abreast of affairs, it is a judge's function in this country importantly to keep it abreast of the Constitution and compatible with the Constitution. And this all goes to the question of transformation. And for me a judge is there, the main work we do is write our

judgments. And one must look to those judgments and see whether they are transformative or not. And if they are transformative, that's the kind of judge I would hope we are looking for. And I leave it to you to judge whether my judgments fall in that category.

Msoni: Being a great thinker that you are known for, a great intellectual within the legal fraternity, given your high intellectual respect that you command within the legal fraternity, I am not sure whether you have had the opportunity in the last few years to analyse the judgments that are coming out of the Constitutional Court. And if you have been able to do that, are you able to comment on the quality, on the evolution of our jurisprudence within the constitutional democracy? Thirdly, and this is the last question, I see in your CV you spent a year, it was in 2015 at the Constitutional Court. If you were to be appointed to the Constitutional Court now, what observations did you make when you were there? What would you suggest that it be changed so that that court becomes even better? Thank you so much.

Wallis: On the first part of that question, the answer is yes, I have considered and reflected. It's my practice to read every judgment that comes out of the Supreme Court of Appeal and out of the Constitutional Court, as they are delivered. They arrive on my emails, I read them the same day and I think about them. I think if you look over a twenty odd year period we've done remarkably well in building a constitutional jurisprudence. There are aspects of it and there are judgments which have come out, which I disagree with. I think as for example in the *Vodacom v Makate* case I wrote a dissenting judgment, three of my colleagues agreed with me, the others didn't, on an aspect of the law. So I would be lying to you to say I look at every judgment and say "Well done the Constitutional Court, yes they've done it again". Obviously I look at some of them and think "No I don't like that, I don't like the reasoning". As I have been told by academics about reasoning in my cases. "That wasn't your best effort" is one of the kindest remarks I've had. So that's it. From my experience at the Constitutional Court, and I think this was mentioned earlier today so I'm not going to go on about it, there is a risk, you're beginning to, if I put it this way, drown in paper. I grabbed the figures - you had 319 applications last year. You've had at least 62 this year already, of which the vast majority is still awaiting directions. You still have 42 cases hanging over from last year. And this burden is growing and it's going into chambers every single day. I mean I was horrified, every single lunch-time somebody would come in and put another pile of papers to be sorted into a whole load of files in my chambers. So I think that is something the court's going to have to address. I don't think it's yet got to the stage of the full challenge that will be posed by its extended jurisdiction. It's no longer just a Constitutional Court. One question - is it necessary that every single declaration of every by-law and provincial ordinance, that is said to be unconstitutional, has to be confirmed by the Constitutional Court? Because often the

Court is confronted with, where the Government comes up there and says “We agree, what we’ve done is unconstitutional”. That seems to me a waste of time and effort when the Court is under a great deal of pressure to get cases heard. So you know there are issues, and I would hope to be able to lend my experience to help solve those problems.

Commissioner Didiza: I just want to follow up on the question that Commissioner Msomi has just raised, and just in your answer you said yes there are things that have to be changed, you have outlined what you regard as problems, but how? Maybe just give us one or two examples of what, in your contribution, what would those things be specifically? That you think must be changed and how must they be changed.

Wallis: Well, can I give you one small example of a change that actually happened? My clerks were on the Orders Committee, and one of the things that surprised me when I got there, is that the Constitutional Court was not getting formal records in the same way that we get in the SCA. They were sort of assembled in a general fashion. I asked Deputy Chief Justice Moseneke about it, and he said “Well it was an access to justice thing”, but wasn’t really necessary now. And so I suggested to my clerks that in the Orders Committee, they should start saying “You must prepare a record in terms of Rule 19”, which is I think now the standard order that is made from the court as a result which they get proper formal records. In regard to the applications for leave to appeal, there needs to be a debate as to whether they should be dealt with by the whole court. In the United States they are dealt with by the whole court, but they are processed through a clerks committee, with the exception of one judge, Judge Alito is not part of the clerks’ pool. The usual practice is the Chief Justice goes to the meetings and says “I have a provisional list” circulated before the meetings and colleagues could add a case or two to the provisional list. And then they’d deal with that provisional list. Those are the ones where certiorari is granted, and the rest it’s refused.

So there are ways of dealing with it administratively I think, which would help. It would certainly help I would think the judges, not to have to have, what is in effect the filing system or 1/11th of the filing system of the court in their chambers. Because that’s what you have. You have every single judge has every single record, unless that has changed, has every single record, every single file, every single piece of paper that comes into the registry, goes to every single judge. I think one ought to be saying to the judges: “Look, it should come to you when it’s ready for you to deal with it”. And there must be a way of working that out. So that’s the sort of suggestion I would make. There may be practicalities I am unaware of, and no doubt the Chief Justice would enlighten me about that.

Minister Muthambi: On page 34 of your questionnaire, paragraph 17.25. You indicate that since your appointment at the Bench, you have tried to make available to your colleagues

the benefit of the experience you have had and adopt an open door policy towards colleagues seeking advice. Also that you can make it in any collegial environment. I'm basing it as a follow up at the question from the Chief Justice earlier. The way I understand, the SCA has got 25 judges, including the President. For you maybe to tell us, because you say you are not a person who sits in groups, you prefer to be alone most of the time. And then I want us to link with it with what you have written here in 17.25 to say, out of the 25, yourself included, how many are you actually referring to? And then also in line with what you said when the issue of groups was raised, yourself in fact you prefer to be your own man.

Wallis: Well can I just correct a misapprehension. If I conveyed it I'm sorry. But when - I didn't say I wanted to sit alone, in the sense of 'I sit in a corner by myself'. I make it an active policy to try and ensure that I circulate amongst my colleagues at tea and so on, and sit with all of them during the term, by and large. In regard to what is in 17.25, my experience is that it is inevitable, in every case that I sit in, that two or three of my colleagues will pop in for a chat, have a word about it in the corridor, with me. And my experience is that a number of my colleagues come to see me, just in chambers, knock on the door, come and say "Can I have a moment?", to discuss cases, even cases I am not involved in. Just talk about the law and approach to it and so on. And of all my colleagues, perhaps three or four haven't done that. But the others frequently do so. And you know as I say I try to help. I try to help the President of the court when I'm asked to do so, when there are issues to be dealt with. So that's how I do it. As I say I have friendly and amiable relationships with all my colleagues. Inevitably we've got 23 people, you like some more than others, but I do my best to like as many as possible.

Muthambi: Then on page 8 the same questionnaire.

Wallis: Page 8.

Muthambi: Is the books, the publications that you have, in the field. I think we need to commend you for that. I'm reading it in line with the number of articles that you've written and papers and speeches that you've delivered, on page 28 up to page 31. Apart from the judgments that you presented I think you need to be commended for that. To say you have been contributing towards the legal jurisprudence.

Wallis: That's very kind of you Minister. I'm afraid it's one short because I finished a week ago the complete revision of the section on courts in LAWSA, which I was asked to do by the consulting editor. So I have just finished, so it's now three, I'm afraid.

Muthambi: Yes, and I think also to say apart from writing judgments, maybe to say, with the colleagues to share, the best practice, how do you make it? Like you were comparing yourself with the Acting Judge President, to say her being a wife and a mother, you being a husband and father, to say then you are able to deliver your judgments. I know you don't have any outstanding one. And at the same time you are able to write and publish so many articles, including books.

Wallis: Minister I work very hard. As far as writing judgments is concerned I always - the recesses are not there for a holiday. They are there to do the preparation, and I do the preparation. I am in the middle of doing the preparation for the May term at the moment. I'm fascinated by the law. I write. I am asked to speak at conferences so I speak, and then very often I turn what I have said into a paper for publication. It's been a fascination of mine since I started university in 1968, so that's 50 years. And I am still fascinated by it.

Muthambi: Do you get any proceeds in relation the books that you have written, especially the two?

Wallis: I received, I haven't received any royalties from the Labour and Employment Law for a very long time. I offered to Butterworths to update it as a project. When I went on the Bench I thought I might be able to find some time to update it and they said no thank you, we've got somebody else writing a book on Labour law now, so they weren't interested. And I got, I suppose overall, there was a print run of I think a thousand of my doctoral thesis. I might have got two or three thousand rand in royalties for it. For seven years work. I would have done better attending to an opinion in Chambers.

Muthambi: Definitely something that you declare?

Wallis: Sorry?

Muthambi: Definitely something that you declare?

Wallis: I declare it all, and regard to my writing I have written to the Chief Justice, and written to the Minister of Justice on every occasion. I must say I have my reservations about that provision in the Act. I don't think it's a very clever provision, but it's there. So I write when I am asked to do that sort of thing. I don't get paid anything for the articles, I am sorry. I get nothing at all. Other than such academic credit as the university gets as result, which makes available to me then research funds if I need them. But they are very limited research funds.

Muthambi: So yours is for the love of the profession that you have to play a part and contribute towards the legal jurisprudence. I think we want to commend you for that.

Wallis: Thank you.

Acting President Maya: You and I have worked together for a number of years, and we have together in many, many cases. And I'm quite happy to confirm the manner in which you describe yourself. I have only ever experienced you as a courteous gentleman both to counsel and colleagues alike. And you have always been helpful in ensuring that colleagues, the colleagues you sit with, produce judgments that are of the quality that is expected to come from the court.

Wallis: Thank you.

Maya: And I will repeat something I said to our colleague Majiedt in the morning. The past six months have been difficult, very difficult for me because I've been running the Court with no assistance. I didn't have a Deputy, and I was also sitting in Court. I was foolish enough to try to allocate myself as many cases as the rest of the colleagues. And you are one of the colleagues who did their very, very best to assist me in a number of respects in carrying out my functions. And I want to thank you, I want to thank you sincerely for your help.

But having said that I just want to take you back to a question the Chief Justice raised with you earlier, which you tactfully avoided to answer. And I am going to answer it for you. You know that I always speak my mind. If we don't speak frankly about the challenges in the court then they will not be solved. And I am sure you will agree with me that there are colleagues at the SCA who do not produce judgments that are of the quality that is expected of an SCA judge. And that places the presiding judges under tremendous pressure because not only do they have to produce their own judgments, but they also have to spend a lot of time, you know just working on other colleague's judgments. And I think what we need is very important, that we acknowledge that difficulty. Because it is a fact, and I can't think of a better venue at which to raise it than here. Because this is the body that appoints judges, and that perhaps can help us come up with ways in which we can capacitate the judges who are not able to pull their weight in the court. Would you like to comment on what I've just said?

Wallis: No, I mean, Justice Maya, yes that is true. Maybe I put it too delicately. I mean, yes, you get judgments sometimes and you look at them, you just shake your head and start all over again. How one deals with that is a very difficult question. You know with an acting Judge of Appeal, one can talk quietly to yourself as the President and hope very much that

they won't come back immediately or they won't come back until they've acquired the skills that are missing. If that is possible. And that if they come to the JSC that you'll be in a position to convey that shortcoming. Where you have problems with judges who are full time members of the Court, I really don't know how to resolve that. And I suspect it's a problem that presidents of courts have had down the years. So you've got someone who's - I know what happens in some of the provincial courts. They look at people and they think "For heaven's sake what can I do. I'll send them out on circuit. They can just go and sit out on circuit and I hope they've got a couple of decent assessors with them to help them through it". They try to avoid allocating the heavier cases to them. And so on. But in a court like ours, the SCA, that imposes a burden. If you're trying to, in a long term, you're looking at - senior people should be doing three or perhaps four judgments a term. And if they're having to rewrite two or three judgments for colleagues who can't make it, it's a very heavy burden indeed. And people will grumble and be stressed by it. I don't know how one solves that. How do you deal with someone who quite literally just can't do it. They produce something and it just doesn't touch sides with what is necessary. I don't know.

Maya: Don't you think that perhaps - well we have the South African Judicial Education Institute that runs courses, training courses for judges.

Wallis: Ja. Well maybe what you could do - I mean I've taught on those courses on how to run civil trials, I taught on Judge Davis's tax course earlier this year, I'm dealing with Judge Majiedt on business rescue in July. You know at the Bar, they - and I'm frequently asked to engage on this - I go and I teach about appellate advocacy. The GCB has had advanced appellate advocacy workshops. Maybe we need to have some, SAJEI ought to be having some workshops on appellate work, and what are the constraints of appellate work, and how can one go about dealing with appellate work. And how one goes about appellate judgment writing, because judgment writing in the SCA is different from judgment writing in the High Court. So maybe that's something we need to look at and have a serious - where we ask the judges president to identify potential appellate candidates, and then have a serious appellate judging workshop, and see what comes of that. Maybe that would help.

Maya: One last point on this issue. Judge Majiedt mentioned, he actually reminded me of something I'd forgotten that I think is also very helpful. The peer training sessions that Justice Harms used to run at the Court in respect of intellectual property.

Wallis: Yes.

Maya: Intellectual property Law. What do you think of that? And in addition to that, you are an expert, one of the foremost experts in Shipping Law in the country. Would you be amenable to -

Wallis: You know Judge Maya, I've offered to do that. It's a matter of actually finding a day when colleagues would like to come and listen to me telling them about or giving them some education in maritime work. I am very happy to do that sort of thing. And Judge Harms' lectures were very helpful, so wherever you've got someone who has expertise, it's a good idea to make use of it.

Mogoeng: Additional to what the Minister said about your hard work and so on, is that how you became a professor extraordinaire of two different universities?

Wallis: Ja I suppose so. I love working with young people. I think you'll recall I had a good relationship with the clerks when I was at the Constitutional Court and I was very touched by their thanks to me at the end of it. I love the teaching I do at the university. The young clerks and the excitement in there. The researchers of the SCA sent me an sms message this morning saying "Judge you know we're holding thumbs for you". To work with young people, to stimulate their minds and so on, it's a great privilege. And it's giving back wonderful things. I had the privilege of good teachers, of mentors, people who encouraged me. One of the greatest advocates this country produced, Douglas Shaw, taught me an enormous amount. And if I can't give that back then that's worthless so I want to give back.

Mogoeng: Well I recently recommended you to go to the Inns Court, can you explain why you were, you are no longer able to go there? What has since happened?

Wallis: I'm not able to go there because I was elected to a Fellowship or two Fellowships, one at Magdalen College Oxford, and one at Mansfield College, and accepted as a visitor to the Bonavero Institute of Human Rights, the director of which is of course former Justice O'Regan, at Oxford. So during the Michaelmas term, from October to December, I will be in Oxford doing research, studying, I hope presenting papers, and I hope writing something while I'm there. And that precluded me being in London to take up the Inns of Court Fellowship. And I was very grateful you nominated me, and when I wrote to them and said I'm sorry, they wrote back and said they were very disappointed because they haven't had a South African judge for a long time. They would like a South African judge to go there.

Mogoeng: Would you like to tell us why they seem to be competing for you like this?

Wallis: I have no idea. Ja - this is what I've done, if they feel it's worthwhile then they feel I have something to offer and I can do so. As long as my health permits and I am able to do it, I'll do it.

Motshekga: Judge Wallis, there is a school of thought which says that judges should not address conferences, express opinions on matters that are likely to come before them, and I personally disagree. I want to know if you were here to address us as a conference, on whether or not Section 25 of the Constitution should be amended to allow expropriation of land without compensation, would you do so? And if so, would you also be prepared to write an article or a book on your interpretation on that section, to guide both the courts and society before the matter comes before you?

Wallis: Dr Motshekga, it's obvious that I share your view that judges do have a public role beyond their judging. And they are right to teach and to speak and to convey things. They do have to be careful about what they speak about. In the Mxenge lecture, I made some comments about access to justice, and the passing comment that contingency fees were not necessarily the remedy, on the basis of which I was subsequently in a case involving this cottage industry of identity documents in Kwazulu Natal, they asked me to recuse myself saying I was prejudiced against contingency fees. I refused to do so, but that's by the by. You've got to be careful, because otherwise people will have a legitimate claim, "Look, you've expressed your views so forcefully, so clearly, that you shouldn't sit", and there is an English case where that actually happened with a judge. But particularly on the sort of things I tend to talk about, which are broader, of the profession, of the legal responsibility, of the responsibility of judges on broad questions of separation of powers and the limits of the judicial power, I don't have a problem with that. I don't have a problem with teaching or speaking about things at the level of 'This is what we have'. So I would have no difficulty with somebody saying "Well Judge, come talk to us about Article 25 in the Constitution", we'll talk about the *WesBank* case, and the jurisprudence that's grown up around the difference between a 'deprivation' an 'expropriation'. Article 3, which doesn't provide for compensation to be compulsory or provide for it to be by willing buyer or willing seller. Those sort of things. This is what it says now. But your question to me says "Come and talk about whether we should change it to have expropriation not compensation. That for me is beyond the line. That's a policy issue. That is what the legislature has to decide. So for me I would say that's going too far. I don't have a difficulty with talking in a fashion about what, where the jurisprudence stands now, what is in it now. It's another thing to say "and I think it ought to change this way or that way", because these are policy matters, high policy matters. I think that's outside a judge's remit.

Motshekga: In 1985 Professor Van der Vyver convened a Human Rights conference at the University of Cape Town to address the question whether or not our Constitution should contain human rights or group rights. In 1986, Professor Van der Westhuizen convened a conference at the University of Pretoria to address the same question.

Wallis: Yes

Motshekga: And because the judges there expressed themselves on these critical issues which were facing the nation, we were able to find a bridge between the Apartheid leaders and the leaders of the national liberation movement, which took us to the 1994 democratic breakthrough. So don't you think that suppressing the opinion of judges on policy matters is actually denying the nation the wisdom that we need at these critical times?

Wallis: It's a very difficult issue. If judges can provide different perspectives on policy issues, that can be valuable. What you want to avoid is, if I can use an external example, what happened in the United States with President Roosevelt being advised by Justice Brandeis, as to what he should do, and by Justice Frankfurter. I think you want avoid the situation - and this is one that's a very painful one in this country - where you have as the Chief Justice the person who did the commission of enquiry and wrote the report on terrorism and so on in the form of the Rabie Commission, and the Rabie Report. And I appeared in that court, you'll see one of the cases I mention, was the endeavour to get Mr Tsenoli out of jail during the state of emergency. I argued that before Chief Justice Rabie who sat there all day, didn't listen to me, and then wrote a judgment which bore no relationship to the arguments. That you've got to avoid. So you've got to be careful about the policy boundary. We want to use wisdom wherever we have it.

Mogoeng: Let me make sure I understand you. I was asked to address a conference of Auditors General some time last year. And of my own accord I said to them "I've reflected on the powers of the Auditor General in our Constitution and in Legislation, the Auditor General virtually doesn't have teeth, and if there were anybody to ensure that there is compliance with audit queries, who understand what it will take for that to happen, it would be the Auditor General herself or himself. Why can't you ask for the Constitution to be amended or legislation to be amended, in a manner that empowers the Auditor General to at least have the same powers as the Public Protector? So that he or she can cause the audit queries to be followed through, to be enforced. He or she best understands what it will take to avoid this repetition of virtually, of non-compliance with the recommendations of the Auditor General. He or she just recommends and that's it. Is that encroaching in a matter exclusive to other arms of the state, that is impermissible as we engage with the public?"

Wallis: No, I think -

Mogoeng: And as a matter of fact I understand they are working on legislation to that effect.

Wallis: No I think Chief Justice, I and I'm grateful to Dr Motshekga for his intervention too, that I perhaps expressed it a little too broadly. I think you've got to be careful about trespassing in the policy area. I recall at the JSC, being asked by Mr Radebe when he was the Minister of Justice about some very highly controversial amendments to the Labour Relations Act. And my view on those, and my answer to that was, this is a policy decision. It's going to be debated at NEDLAC and all the other organisations and so on. But yes, I've also participated at meetings of the Maritime Law Association to debate amendments to the Admiralty Jurisdiction Administration Act. I think you've - it's a typical example of how difficult it is to draw the line. What you need is sensitivity from the judge that "Hold on, I'm not stepping into the terrain where I should be, I should be keeping out". Yes, judges can add a lot of value, a judge who's got a lot of experience in family courts to say "The Children's Act isn't working here". Yes, obviously we should be saying that sort of thing.

Mogoeng: I was raising it with you because there really is a lot of misunderstanding out there. People think you speak through your judgment and nothing more. Otherwise speak to the students. What are you going to be saying to the students that you can't say to the public?

Wallis: No, no -

Mogoeng: And what are you going to tell them that you can't say in a judgment? Anyway, Commissioner Didiza? You're the last.

Commissioner Didiza: I just want to take you back to the question that Justice Maya was saying you diplomatically avoided. About the quality of the judgments that sometimes get produced by your colleagues. I wanted to know where you have to assist, how do you do it in a manner that does not destroy any individual who might have written that judgment but seek to build and assist so that next time he or she will improve?

Wallis: I've developed a practice in the SCA, which I carried forward without anybody objecting to it, everybody seemed to find it useful, when I was in the Constitutional Court. When I receive my colleagues' draft judgment I sit down with it, and within a day or two I go through it and I put my comments on the side, using the modern miracle of computers, the comment function. "I've got a difficulty with this" or whether it's linguistic, you know, "we need a comma here" or "I think there's a typographical error" or "I'm unhappy about this sentence. Can we talk about it?" or "I think it would be strengthened if we put these three additional

paragraphs and it would seem to me an important point in the argument". And that can, I mean, certainly there have been judgments I have sent back to colleagues with a hundred comments on in more detailed cases. And my colleagues seem to appreciate that. Were we to talk, I get a phone call "Can I come and see you, will you come and see me?". We talk something through, "No we can leave that sentence out, we can rephrase it this way". And I do the same with my colleagues when they bring, they come to me with comments on my judgments and we work through them. And I usually call them up on the screen, I do my own typing and make the amendments then and there, and say "How about we put it this way?" or "Actually you've got a point but if we put it that way that would be really good". And, it's that kind of process. As I say, my colleagues seem, nobody has ever come to me and said "That's unacceptable, that's rude, that's, you know, undesirable". I only send it to them. I do not send my suggestions to the whole bench. Because, you know if I've pointed out an error they might feel a bit embarrassed, "Oh dear I've made a silly mistake" or something of that sort. I send it to them, I'm available to them, I'll talk to them, they come back and say, a lot of the time they're kind enough to accept the suggestions and sometimes they're don't.

Mogoeng: Thank you Commissioner. Thank you very much Judge Wallis and once again apologies for starting so late with you, keeping you until now. Thank you for making yourself available.

Wallis: Thank you Chief Justice.

Mogoeng: You are excused.

Wallis: Thank you. I think I can just get back to the airport in time to catch my plane. Thank you very much indeed, everybody.