



JUDGES MATTER

Judicial Service Commission interviews

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Eastern Cape Division of the High Court (Judge President)

Interview of Judge D Van Zyl

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CJ M. Mogoeng: Good morning, Judge van Zyl.

Mr. van Zyl: Good morning, Chief Justice.

CJ M. Mogoeng: Are you well?

Mr. van Zyl: Yes, I am.

CJ M. Mogoeng: A thought just dawned on me that you must have been wondering what's going on here.

Mr. van Zyl: Yes, it's been quite, quite a wait.

CJ M. Mogoeng: Yes. Well, take your time and just tell us why you believe you are the right person for this position.

Mr. van Zyl: Chief Justice, I think I'm the right person for the position. I have the necessary experience. I've been a practising lawyer for 35 years, of which 21 of those I've been a judge. I have acted in various courts; I've acted in the Labour Court; I've acted in the Labour Appeal Court; I have also acted in the Supreme Court of Appeal. I have over the 21 years I've been for 5 years I've been in the Transkei Court at the time. Thereafter in the Bisho Court, after the integration of the 4 courts, we have all been appointed, also as judges of all of the other courts; which meant that it took me to Grahamstown, it also took me to Port Elizabeth. So, as far as required experience is concerned I believe that I am qualified to occupy the position. I've also been acting as Deputy Judge President in Bisho, if fact, my first acting appointment as at that time as Judge President was, I think, in the year 2000 in Mthatha in the Transkei. I was thereafter appointed, I think in 2003 if I am not mistaken; 2013 I'm not mistaken as Acting Judge President of the Bisho Court and in March of last year I was permanently appointed. I have during the time of my acting appointment as Deputy Judge President, also as Deputy Judge President of the Bisho Court, I have implemented certain measures in order to speed the finalisation of matters both civil and criminal matters. I can give you more details of that if you require me to; which has been successful. I have also made use of the time to build relationships with the court staff to make sure that the court is properly staffed and capacitated in order to enable the judges to perform their functions. That is an ongoing process. We do have like all the other courts, I would assume, have staff shortages due to financial constraints, but we are doing well as far as I'm concerned. The finalisation rate of our cases both civil and criminal have increased drastically and so from that point of view, I've had success. I also, because of the years of having been a judge I have build up relationships with colleagues. Known to my colleagues I think I've earned the respect and trust of my colleagues to lead them in the division. So, shortly briefly for those reasons, I would say that I feel that I am qualified to hold the positions.

CJ M. Mogoeng: What is your vision for the division?

Mr. van Zyl: My vision for the division, if I can put it in one simple sentence, is the following: It's to have a transformed division consisting of a Bench that is

professional and whose aim it is to effectively and efficiently dispense justice thereby giving content to the right to access to justice. That to me, in essence, is my vision which I have for the division. I can tell you how I intend to achieve that vision. If I can break it down. The first aspect thereof; transformed division, we are all aware of the instruction that we get from Section 174 subsection 2 of the Constitution that the Bench must reflect the gender and the racial make up of our country. In order to achieve that I am of the view that we should have a more focused approach to the appointment of Acting Judges because from the ranks of those Acting Judges the permanent judges are appointed. In the past, I've had the feeling that judges were appointed as a last-minute measure to come and act and I do not think that we have achieved the objective of ensuring that the right persons were appointed as acting judges and those are the people who eventually come before you as the Judicial Services Commission for permanent appointment and on numerous occasions no appointments were made. So, it will have to be a more focused approach and in going about achieving that I would need to consult widely, I think there needs to be closer cooperation, between the Judge President and Judges of the division to extract their views with regard to acting appointments. They are after all the people before whom attorneys and advocates, practitioners appear on a daily basis, who are best placed in order to comment on the suitability of candidates. One further will have to make contact with the profession. The professions: the advocates' profession as well as the attorneys' profession; in order to firstly, enquire as to who would be prepared to make themselves available. And then have some or other system in order which to assess those who are prepared and to move forward from there. The same applies with regard to the academic institutions; we have in the past had a number of judges who were appointed from the ranks of the academics, I am thinking of Judge Hloho who was a colleague at the Bisho Court who is not retired who came from an academic and people with academic background bring or add to the jurisprudence and the make-up of the court. So the focus as I say is to identify suitable candidates and to build up a pool of candidates from which to then choose acting judges in order to ensure that transformation remains, or is and remains a reality. Transformation also includes another aspect in the sense that one has to look at the make-up of each of the courts, as you are aware we have 4 courts in the Eastern Cape. For historical reasons those courts are separately staffed with their own judges and it is important to have a good balance of experience and if I can

refer to inexperienced judges who are appointed. We know what the challenges are with regard to transformation and very often we have to appoint judges who have the potential to grow, whom we have identified to have the potential to grow and the challenge is then to have a good balance between those judges and more senior judges in the separate, in the individual courts. The second aspect of the vision that I've referred to is the professionalism of the Bench. We, the ... [interjects]

CJ M. Mogoeng: I missed the word, what of the Bench?

Mr. van Zyl: The professionalism of the Bench.

CJ M. Mogoeng: Thank you.

Mr. van Zyl: We have a totally different situation from what it used to be in the past. As I have mentioned at my previous interview where judges were required in the past to simply resolve disputes between individuals. Their functions have now been extended, it's to apply the Constitution to give content to the Constitution to give effect to the rights in the constitution, to provide a check on the exercise of public power and to rule on the constitutionality of legislation. So, the functions of judges have become more complex, require more skills from them and one has to ensure that the judges are properly skilled. In order to achieve that one needs to access the needs of each court with regard to this aspect and where there is a need to ensure that proper training or instruction is given making use of the facilities that are available to us namely the Judicial Education Institute. So, that is to ensure that judges are capacitated and that they are resources to perform their functions efficiently and effectively. And as I have said, it is to provide training and identify shortcomings and to deal with those shortcomings where they exist. We have been given tools now, by the office of the Chief Justice with regard to the keeping of statistics which is beneficial in the sense that one can identify where some judges are maybe struggling, where it takes them longer to finalise certain cases; which may require further investigation and may very well turn out to be a case that the judge lacks the necessary experience in certain fields. Again, it comes back to the issue of transformation we know that we appoint not only judges, judges are not only appointed from the ranks of the advocates any longer, they are appointed from the

ranks of attorneys and also from the academic institutions; the result is that you will find that – and, and the Magistrates, of course, let's use a magistrate as an example, one may find that a magistrate last, most of his or her experience lies in doing criminal work. There might be a need to improve the skills of that particular judge with regard to civil work, and even with advocates, you'll find that some advocates come to the Bench; they've never had a criminal practice, or they just had a criminal practice. So those are issues that need to be identified and it needs to be addressed. Practical example of that, at present, is with the case management process which is being followed in the Bisho Court and in the East London Court which is being introduced there for the last few years; is that it's quite apparent that most of the cases, and that applies to basically the whole division is that most of the civil cases that we do are personal injury claims. Either claim against the Road Accident Fund or claims against the Department of Health for medical negligence. In order to do case management efficiently, a judge needs to be, to know exactly what the claim is all about. And if you have difficulty in dealing with damages claims then it makes it more difficult to effectively and efficiently do partake in the case management process. So, there are shortcomings from that point of view that I have identified. And, should I be appointed that is one of the aspects that I would like to address with the assistance of the Judicial Training Institute in order to assist with case management. The other aspect is case management itself. It is, it's a totally different process from what most lawyers are used to. Most lawyers have grown up and, in the adversarial frame of mind mainly that litigation is driven by the plaintiff and where there is a, almost a slavery to the rules and the Rules of Court; and where the Rules of Court are sometimes used for technical, to gain technical advantages in order to slow the process down or to speed the process up or simply to achieve what is not conducive to the efficient and speedy finalisation of cases. So, with case management itself, I think there is a need for further training insofar as the judges are concerned. In the last aspect insofar as the vision is concerned is that of the efficient and effective performance of the functions of the Judicial Offices in the Court and that is not only the Judicial Offices; the judges, it is also the court staff itself. Important thing to start off is to instil work ethic; that is important. It is important in so far as the court support staff is concerned, it is something which I have done in Bisho by instilling a work ethic and to do it on a voluntary basis. It is not in my view conducive to use your office in order to extract a strict work ethic from staff. It is by

motivation, it can be achieved so that is the first thing; instilling a work ethic to lead by example and as I have said before, it is something that I pride myself in, it is my own work ethic and if you are seen to work hard others will follow suit. I have mentioned earlier is to build relationships in this context with supports staff to instil in them a sense of belonging to the court to appreciate their own function within the court and the importance of their own functions and thereby creating a pride in your work. And if there is a pride in your work, it also transforms into a good work ethic. The other aspect under this heading is to transfer the manner in which cases are made ready for trial. I've alluded to the issue of case of case management with regard to civil cases. I've also introduced that with regard to criminal cases and I think that is something that can be implemented right throughout the province. It has achieved results, it requires a lot more work from the Heads of the individual courts, but it does show results especially in those courts where there are a backlog insofar as criminal work is concerned and where there is a difficulty with partly-heard matters. It is the most efficient and effective way in dealing with that problem. Another aspect is to identify blockages by monitoring and performance, court performance and to take remedial action where required. Now, that basically means that the statistics which are being supplied on a monthly basis need to be analysed. I have in Bisho on a weekly basis been monitoring court performances. That I know what is happening in each court and I think that is something that can also be rolled out into the rest of the division. You can immediately, in a very short period of time identify problems; the reason for those problems and then take the necessary remedial action. Another aspect under this heading is the reassessment of the needs of each of the 4 courts in the Eastern Cape. The way the courts are being set-up, the number of sittings per court, the way in which the courts are allocated, the number of courts to allocated for civil, number of courts allocated towards criminal cases have basically remained the same for the last 15, 20 years and there hasn't been a reassessment of that and I think with the assistance of the statistics that we do have and with case management that we are doing there should be a reassessment and it is necessary in the sense that we have a shortage of judges. I think it is known that the workload has increased in all of the courts. Workload has increased, and the number of judges hasn't kept up with the workloads. So, one would have to find ways in order to deal with that. And I am certain if one has a very close look at certain of the courts some of the courts could be collapsed into one

court which would free a judge up to do cases where there is a particular problem whether it's a backlog with regard to criminal cases or whatever the problem is. A further aspect that I think that needs to be attended to is the delegation of functions. It cannot be expected of the Head of the Court, the Judge President to be everywhere, he is very reliant on the Heads of the respective courts, and in order for him or for her to efficiently perform their functions there need to be a delegation of functions, something which hasn't happened, it has created- I describe it as a bit of a grey area a uncertainty as to what exactly is expected of the different Heads of Courts, I think that need to be spelled out and the functions which are delegated are those which would enable to, which would assist and enable the Judge President to properly perform his functions, to plan the roles and to deploy and allocate judges where the need arises. I've alluded to, already to the shortage that we have with regard to the number of judges in certain of the courts I think that is something that need to be persuade and hopefully one can engage the ministry with regard to that aspect. And another aspect where the ministry does come in is the retectional conundrum that we still find ourselves in, that after 20 years we effectively still sit with the jurisdictional areas as they were determined in the previous dispensation. We basically have Bisho and Mthatha still have the old homelands jurisdictional areas, it something that needs to be addressed and whoever is appointed as Judge President I would strongly urge him or her to engage the ministry with regard to that. Thank you, Chief Justice.

CJ M. Mogoeng: Acting Judge President?

AJP Z.M. Nhlangulela: Thank you, CJ. [00:24:08 inaudible]

CJ M. Mogoeng: Mike doesn't seem to be on. Is it?

AJP Z.M. Nhlangulela: Thank you, CJ it's on now. DJP van Zyl what South Africa must know concerning the Easter Cape is this; we have a problem with applying case flow management across the board. And if this is left unresolved a lot of what is referred to as visions of the JP can never be achieved. If you are appointed JP how would you ensure that case flow management is implemented in the PE and

Grahamstown stations in the same way that it is implemented elsewhere, in particular, your court that is in Bisho and Mthatha?

Mr. van Zyl: Yes, AJP the thing is one needs to, it's a product that you need to sell. That's the long and the short of it. Because those who are affected directly by it, and with whose, without whose cooperation you won't be able to do it effectively is that of the practitioners. I would do exactly what I have done in Bisho and East London, and that is to sell the idea to the practitioners. The way in which I've done that is to place the emphasis on the benefits of the introduction of case management. There is the perception that case management is taking work away from attorneys, and advocates, it may be true for the latter to some extent but not insofar as the attorneys' profession is concerned. And once they partake in case management, and they see the benefits thereof they are quite willing to participate in it. So, what I have done is basically to sell it on the basis that we will save time, I will save you costs and I will get your case on the roll very quick; far quicker than it is happening at the moment. And that is effectively what each attorney wants, and each attorney is under pressure from his client to get his case before the court and have it finalised as soon as possible. The other benefit of cause is and that goes with the fact that cases are finalised more quicker is that many more matters now end up in settlement, which is an added benefit to bringing the matter to finalisation and putting the money in the pocket of the client's, so to speak. So, it simply, as far as I am concerned, a case of selling the idea and selling the concept to those who are directly affected by it and those who cooperation you cannot practically implement effectively. You are probably aware, you've also acted as DJP in Bisho for a while, the benefits that it has shown and attorneys which initially have not been in favour of it, those attorneys are now actually the ones who are actively participating and even making suggestions as to how it can be improved. So, it is getting past the hurdle of selling it to the practitioners. Besides that, the only other issue that, to me, that remains is getting uniformity throughout the division that we have the same practice. That if attorney goes to the Bisho High Court he knows what to expect, it will be exactly the same practice which is being followed in Port Elizabeth or elsewhere.

AJP Z.M. Nhlangulela: As you do know, the drawing up of the roll, division roll has been one of the biggest challenges we discussed, and you and I discussed it and we

did everything possible to ease it up until we landed somewhere, but what did remain was the whole question of the outstanding, that is part-heard matters, be it a matter emanating from a civil court or from a criminal court, but those outstanding matters have this problem of making it impossible or rather difficult, not impossible I am gonna say difficult for the JP to draw-up a balance roll given that when you allocate duties one has to adhere to the principle of fairness. If you are appointed JP how would you resolve this?

Mr. van Zyl: JP, what I would do is I've referred to the delegation of functions to the different Heads of Court. As far as I am concerned the person who is the best placed in order to access the way forward for a partly-heard matter is the Head of that Court. It is not the Judge President who sits in Grahamstown, who is in a position to decide how that matter is to be finalised. He needs to act on the advice of the head of the specific court. What needs to be done is with each and every matter which become partly-heard should not be postponed without permission of the Deputy Judge President of that particular court. Who will make an assessment of where the case is, on other words what still needs to be done? Are we busy with the States case? Are we busy with the defence case? How long is the trial likely to last? And how many days are required in order to finalise the matter? If the matter turns out to be a case and let me just step back a little bit; that is accessed, should be assessed by the Deputy Judge President in consultation with the parties involved. With the prosecutor and with the defence counsel or the defence attorney to access that. Then to take it forward is then if a case requires a number of days, it is then for it to be allocated a date. Being on the roll it is in the interest of everyone that that case be finalised as soon as possible. There is nothing worse for a judge to sit with a case that gets rolled over for months, by the time you get the case comes before you again, you've forgotten what the case is all about. You have to have a record typed, you had to back to read your notes, which half of the time you can't read your own handwriting and it's in everybody's interest that cases which are on the roll should be finalised as soon as possible, so that case should then be placed on the roll for the next term and the JP should be informed accordingly. The other categories of cases and I feel very strongly about this, where one witness may be outstanding, or it may a case of argument and judgement being outstanding those cases as far as I'm concerned do not require to take up more time on the roll in the

following term. Inevitably those are the type of cases which end-up pushing other cases, new cases which have been placed on the roll, pushing them out of the roll and causing delay in the finalisation of those matters. Those matters are to be dealt with by the judges in their own time and by providing a plan as to how those matters are to be finalised. And I would expect the judge to make a suggestion to the Deputy Judge President as how he or she intends to finalise that matter and when and I suggest that the opportune time to that would be during recess. We have, in total, 3 months of recess in a year. If a judge takes 4 weeks out of that 3 months he still has 2 months in which to do whatever he or she needs to do. I don't think that is a big sacrifice of anyone, and normally these cases require a day, mostly maybe another 2 days. So, by dealing with it on that basis, I would think that the problem that you alluding to should be resolved.

AJP Z.M. Nhlangulela: CJ, thank you very much. Those are my questions.

CJ M. Mogoeng: Thank you AJP. Premier?

PREM P. Masualle: Thank you very much, Chief Justice. Good day.

Mr. van Zyl: Good day Mr Premier.

PREM P. Masualle: Judge just two quick ones. In your earlier submission, you did refer to sometimes the need to consider in terms of transformation having into the Bench appointed judges with potential. You did raise that. I just want to check, in your experience, if you haven't come across with such tended to be to the detriment of the proper provision of justice?

Mr. van Zyl: Yes, Mr Premier, look most of the judges which have been identified on the basis that they have shown potential to grow have lived up to the expectation. There might be the odd one who hasn't, who's been a disappointment, but it is also something that can be resolved. And the way to resolve it is to lend, to identify those judges and to give them the proper support. Whether it is by way of training provide extra training or another way is to ensure that those judges are placed with senior judges, I am thinking of appeals for instance. We do full Bench appeals and other

appeals in the division. To place those judges with more senior judges, and for them work with them. And to have an informal mentorship by making one or two more senior judges responsible for that judge, but again one has to build a relationship with that judge. You have to, without insulting him or her indicates that we think that you do need support, and this is what is being suggested. So, I think with the necessary support that issues can be resolved. The thing is we have to transform the Bench and we do not always have practitioners who have the required experience whether it is because of adverse briefing patterns or whatever the case may be, but people need to be identified on potential and then be taken forward with the necessary support.

PREM P. Masualle: Thank you. You then brought the other matter I thought I was going to get to. That of seniority among the judges. Would you, and I don't know how much premium you attach to this in respect of this notion that there tends to this hierarchical relationship born out of the reality and perception of seniority in respect of this leadership levels don't you think this could be, or is sometimes a constraint or would you say that support is something that could still take us to, even when leadership is an issue in this respect?

Mr. van Zyl: Yes, I don't think the hierarchical issue is such a big issue, if you have in mind by referring to that as simply by reason of seniority a person should be appointed in a certain position, I don't think that is the case anymore. That is something that came from the old system where judges were appointed from the ranks of the advocates and judges were senior advocates, in other words, silks, and they had to be silks of the standing of a certain number of years when they were appointed and judges were very particular about seniority. I think we've made a break from that. The simple fact that we are now appointing magistrates and attorneys and academics to be judges that doesn't really apply anymore. I think the issue more is whether or not the person has the necessary experience and has the necessary qualities in order to fulfil that position. Look one has to be careful, you are acquiring a person, if you appoint him to the Judge President you require him to give instruction to other judges and in that context, it may create difficulties, but I don't think it's that much of a big issue.

PREM P. Masualle: Thank you very much JP.

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

JP J. Hlophe: Thank you very much, Chief Justice. Judge van Zyl I have two questions for you. The first is this; there are only two of you, sorry, there is one position of the Head of Court which had been advertised if this commission were to recommend you, for the position of a Judge President will you be in a position to embrace the loser and work closely with him? Reach out to him? And not feel that he was arrogant in the first place? We've had instances where a successful candidate looks down upon the loser instead of working together and harmonising the division in the interest of service delivery and you end up with personality. So, the question is will you embrace the loser if you were successful today and work together with him? That is the first question.

Mr. van Zyl: Yes, definitely Judge President Hlophe, I don't have any difficulty in working with what you refer to as the "loser", the other candidate and I have a long relationship and a long friendship, it comes from Mthatha days when we were still at the Bar. We are very well known to each other and at the end of the day I've taken an oath to uphold the Constitution and to perform my functions in accordance with the Constitution and in a professional manner and in such a way as to act in the interest of the division as a whole and in the public interest. That is what we are there for. We are delivering a service to the public and if there is a hindrance like that then I would be failing in my duties and my functions.

JP J. Hlophe: Thank you for that. The other question relates to transformation. Section 174 of the Constitution provides that when recommending candidates for judicial appointments regard must be had to transformation with specific reference to race and gender. Now, where you have two candidates both equally competent, they both do well at an interview, right, one of them is a male candidate, is a white male candidate and the other one is a candidate from a historically disadvantaged background. In your opinion what does transformation dictate in a situation like that?

Mr. van Zyl: Well, Judge President Hlophe, transformation has a number of aspects to it. First, as you mentioned we have the instruction in Section 174(2) of the Constitution to have a judiciary that reflects the race and gender composition of our society and that instruction is there because of what we've inherited in 1994. What we got in 1994 was an untransformed Bench which basically consisted of white males and no female judges. So, the constitution looks backwards, it looks to what the position is and how to address that issue, and it is an aspect, as I've indicated earlier, that continuously need to be addressed. It doesn't mean that because we've appointed a few black judges that is now the end of the matter. Judges come and go, they retire, and new appointments need to be made. So, it's something that needs to be kept in mind all the time. But, I would also say transformation has other facets to it, the first is that the transformation of the Bench speaks to the Bench itself. But the constitution also speaks to the transformation of the courts and the reason why it does that is in order to give effect to the right of access to justice that right which is entrenched in the constitution, and in order to give effect thereto one needs to have effective leadership and whoever is appointed would require the necessary skills and experience. So, that needs to be considered as far as the transformation of the Courts are concerned. But, there is also another aspect to it and that is that the constitution doesn't only speak towards the past, it also speaks to the future and what it does say to us is the following, what it envisages is the establishment of a non-racial, non-sexist and equal society founded on human rights. That is what we are aiming for and I believe that within that lies the question of diversity. Is what will my appointment bring to the Bench? Not only my experience, my leadership skills, my ability to, what I believe I can do for the division in order to take the division forward, but also in order to ensure that there is diversity insofar as the Bench is concerned. One needs to consider in this context, as well, is that we are not talking here about an ordinary judge's position, I am not here to be appointed as a judge, I've already been appointed a judge, we're talking here about being appointed as a Judge President of the Court. The question is to what extent have the ranks of the Judges President been transformed? And one needs to assess the appointment, whichever appointment is gonna be made, also in that context. If you say to me that you have too many white Judges President, then so be it, but is there space for diversity in the ranks of the Judges President? And if there is, then I would submit to you that nothing stands in the way of my appointment as to the position.

CJ M. Mogoeng: Thank you, JP. Deputy Minister?

DMIN J.H. Jeffery: I mean just look, it wasn't one of the questions, but an obvious response to what you've said, yes there might not be an issue with Judges President but with, in terms of the stats we've got, 15 of the 27 Eastern Cape judges are white. So that's a problem. But, look the question I wanted to ask really was your vision for the magistracy? What would you plant to as Judge President, if you were appointed and what have you been doing as Deputy Judge President in your area of the province to improve the functioning, judicial functioning of the magistrates' courts?

Mr. van Zyl: Yes, I have introduced what we refer to as a stakeholder meeting twice a year, effectively to iron out difficulties with regard to criminal matters because we are being fed criminal cases from the magistrate's courts. We're also being fed with appeals from those courts and at those stakeholders' meetings that included the magistrates in order to find out what their difficulties are if they have any difficulties and how they suggest that those difficulties can be resolved. The whole idea is to ensure that cases are, right from the beginning, when it appears in the magistrate's court that the necessary things are done to ensure that accused persons have the necessary legal representation; that those issues are not dealt with only at the stage when the matter comes to the high court. So those are issues that is addressed and what I have implemented insofar as what my positions as Deputy Judge President allow me to do. Insofar as the magistracy in the province as a whole concerned that is something that vests ultimately in the office of the Judge President, which then raised the question what do I intend doing? Closer cooperation between the high court and the magistrates as I've indicated we are being served by them in a sense that cases do come from them to be heard in our courts. It also their finalisation rate of their cases has an impact generally on the delivery of justice in the province as a whole. So, as much as we try to improve the delivery of justice in the high court the same applies insofar as the magistrate's courts are concerned. And we need to look at them and see how we can address those issues. Many issues do exist and how to deal with that. So I would say it is closer cooperation, closer contact between the Judge President and the magistracy. I think in terms of the Superior Court's Bill, I am not too certain I think so, the Judge President also has an oversight function

insofar as the magistrates are concerned. And that needs to be formalised, and it needs to be on a practical level it needs to be implemented. I don't believe that the PEEC meetings that we have every other term serve that purpose, there are too many, simple reason being there are too many other role players involved and with result that what you need to address insofar as the court are concerned get caught up in issues with regard to maintenance, with regard to problems that the police have and problems that the prisons have and that sort of thing. I think there is definitely a need for another forum if you want to call it, where the oversight function which is supposed to exist, that that is properly carried out.

DMIN J.H. Jeffery: Maybe if I could just interrupt you, it's not, it's more than an oversight function in terms of the Act it's responsibility for the coordination of the judicial functions of all the magistrates' courts. I would see that as more, and I am sure you'd agree, more than an oversight function.

Mr. van Zyl: Yes, no I agree with you.

CJ M. Mogoeng: Commissioner Msomi?

COMM S. Msomi: Thank you so much, CJ. Judge van Zyl you were here in April and obviously, you did not make it. You have come back now to this round of interviews. What interests you most about this position that notwithstanding the fact that you did not make it in April, you have come back here. What is it? You say you want to make your contribution in very, very short terms what contribution do you really want to make?

Mr. van Zyl: Contribution, Mr Commissioner, you probably gathered from what I've said so far, I am a very practical person. And to me, the most important thing as far as our function is concerned is the delivery of justice because if you deliver justice efficiently and effectively it means that you make door open for more cases to be heard and for people to really enjoy the right or to have access to the right of access to justice. And I believe there is a lot to be done in my division, I think we've been not wanting to criticise anyone I think we've been treading water for too long and we think we need on a practical level, things need to be implemented and need to be

improved and I think that with my skills, my experience that I can make a difference as far as that is concerned.

COMM S. Msomi: Thanks for that answer. I asked this question because when we obviously short-list candidates various inputs are made by various bodies, and one of the bodies that has made an input about your suitability or otherwise on this position is the Law Teachers Association and this is what they have to say about you; *“His contribution, Judge van Zyl to the transformation of the judiciary is not explicit within the context of providing access to justice to those who come from previously disadvantage backgrounds and transformation of the judiciary in the context of those who are appointed to the positions within the judiciary.”* They go on to say, *“They have not seen a meaningful role that you have played in mentoring qualified candidates in upcoming lawyers or judges from previously disadvantage backgrounds.”*. What do you have to say in response to this statement which says if you appoint this candidate he has led a leadership position but no contribution to the broader transformation agenda?

Mr. van Zyl: There are two statements in there, the first is the issue of transformation. There is no factual basis provided for that statement. I do not know what, on what it is based, but it is not correct. I have, in the time that I've acted as JP the year before and even from, at the previous interview that was raised by one of the commissioners, I think it was Mr Notyesi, the people that I have appointed, or had appointed as acting judges during that period and the same applies to the Bisho High Court, the people that I've recommended to the Judge President to appoint and the ones who he had appointed, on my recommendation were either women, most of them were woman and were black women. So, there is no factual basis for that statement, it is not provided, and I urge you that's it's incorrect. You have the AJP here and he can indicate to you as to what my request was to him as to who should be appointed in my place in the recent past. The second statement relates to mentoring. Now mentoring happens either on a formal or an informal basis. Again, I do not know where the, on what factual basis that comment is made. Mentoring is either on an informal or a formal basis. My approach is to mentor, to make use of every opportunity that I get to pass on knowledge and skills. I can assure you that within the case management set-up whether it is in the criminal set-up where I meet

with the practitioners and even in the civil set-up where I would go through the elements of the crime and I would take time in order to explain the legal position, what needs to be proved and what, how the case needs to be taken forward. What the implications of a defence is and how it is to be dealt with. Small examples of how it is done on an informal basis, on a more formal basis I have taken personal responsibility for each acting judge which has acted in my court. You can speak to the acting judges I have put them a practical level I have on a weekly and sometimes on a daily basis enquire as what progress they are making with their cases, how their fairing if they need any assistance and I have assisted most of them with their work on a practical level. I have put those acting judges with me on appeals, where I sit with them in order to use that as an opportunity to pass on knowledge and skills to them. I have, on a formal basis again organised workshops for public prosecutors, attorneys and legal aid practitioners with regard to criminal cases. The practical day to day running of criminal cases, in order to address problems that we were having in the finalisation of matters. And I've done that with the assistance of more senior and experienced judges. I've done the same with regard to civil work which is on an introductory level, which is something that I still intend to carry out further. And this something that can in the position of Judge President, can be further taken further with the assistance of either more experienced judges or ideally to make use of retired judges. Same applies to, as I've mentioned earlier, with the identifying process with regard to potential appointments as acting judges. So that, those statements are incorrect.

COMM S. Msomi: Thanks, Judge van Zyl. Just too take-up the question that was raised by JP Hlophe, about you, he used the word "loser" embracing the loser. If you were turn out to be the loser today would you embrace the winner?

Mr. van Zyl: My answer would be the same Mr Commissioner.

COMM S. Msomi: And lastly, from me, two candidates on paper they appear to be good. Why you? Why should we look at you not Mbenenge? Thank you.

Mr. van Zyl: I would say simply by reason of my experience as a judge, my experience as a judge in a leadership position where I've proved myself to have

made a difference to the running of the court and with great success that I am, would submit to you that I am better placed than the other candidate insofar as that is concerned.

CJ M. Mogoeng: Commissioner Nkosi Thomas?

COMM N. Thomas: Thank you, [01:01:36 inaudible] another mike. Thank you, Chief Justice. And good afternoon to you Judge.

Mr. van Zyl: Good afternoon Commissioner.

COMM N. Thomas: My question has been taken care of in part by both JP Hlope and the Deputy Minister as well as the Commissioner over there. But I just want you to assist me with reference now to the statistics that have been harvested by the office of the chief justice. In terms thereof, more than 50 percent of the judges in that division are white. Now how would your appointment be in furtherance of the provisions of Sections 174(2)? Thank you.

Mr. van Zyl: Yes, I've, my answer to that is and I think I've alluded to that before is that I am not here for a judge's position, I'm here for the JP's position. So, it's not simply a case of appointing another white judge. I am already a judge in that division. I am one of the white judges that you referring to. The question is what can I bring insofar as diversity is concerned to the ranks of the judge's president.

COMM N. Thomas: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Nkosi Thomas. Commissioner Singh?

COMM N. Singh: Thank you very much, Chief Justice. Good afternoon Judge van Zyl.

Mr. van Zyl: Good afternoon Mr Singh.

COMM N. Singh: Two of my questions have been asked by Commissioner Msomi, I think because we both come from Durban. But anyway, I have two further questions. The one question is, Judge van Zyl, you have been acting judge president before as you CV indicates. You have acted as deputy judge president and you appointed as deputy judge president. Now, you've said to the commission that there are certain measures that you would like to bring about if you are appointed as judge president. What I would like to know, in your capacity as those positions I mentioned have you ever tried to influence decisions or change so that those measures can be brought about? That is the first question.

Mr. van Zyl: Yes, I have. On various occasions in meetings that we've had because most of those issues relate to practical matters and it's to a large extent to do with the deployment of judges. You must understand that after '94 there were 4 courts, they were untransformed, and they were 4 separate courts. The initial idea was, and the first Judge President Samyaolo that was appointed after '94 which his priority was to integrate the courts. In other words, to create 1 division out of effectively 3 divisions that, separate divisions that existed before, and the way in which he went about that was in order to deploy judges from the different courts from 1 court to another court and that is what he did, and it worked. It created a unified division, what has happened in the meantime is that the Bench has become transformed to an extent, we can still improve, as was pointed out by one of the commissioners. The Bench, the make-up of the Bench has changed. Practitioners are now appointed from Mthatha to Bisho, or practitioner from Port Elizabeth is appointed to Grahamstown or to Mthatha, it is not a case of judges in those divisions are the judges who were there when unification happened in '94. So, the need for that has somewhat disappeared, the problem that is has created in the last few years is that it has created difficulties with regard to partly-heard matters in that aspect that acting judge president has alluded to. That judge were deployed to other courts to do criminal work, for instance ending up with a matter which becomes partly-heard and for that judge then to return from Port Elizabeth or wherever he is back to Mthatha for that matter to be finalised. It resulted in a delay in the finalisation of matters, it has resulted in new cases not being able to start and it simply has created a whole number of practical issues. So those are issues that we have addressed for reasons that previous judge president saw fit, he continued with that pattern of deploying

people. The AJP and I have discussed it and we have with the last two terms, we have changed that. We've now keeping judges more in their courts and deploy them where there is a necessity and also deploy them on a basis that the judge would not walk away from a court with a partly-heard matter. Now those are practical issues that I think that need to be changed which we haven't been able to do before.

COMM N. Singh: So, the rotation of judges would not be something on your mind if you are appointed?

Mr. van Zyl: It will, it will but it will be on a practical level. A judge, there is no need for a judge in Mthatha to go and do a criminal case in Port Elizabeth. Criminal cases and also civil cases for that matter has to a tendency to become partly-heard, especially if they are not properly managed insofar as their set-down on the roll is concerned. They become partly-heard and it creates an issue, but there is nothing stopping a judge from Mthatha to go and do civil duty, motion court duty in Port Elizabeth. Because when he walks away there on the Friday, he may work away with a few files, in which he has to write judgments, but he doesn't have to come back again. So, there is still that net and I think we should carry on with that. But it should be on a more pragmatic basis.

COMM N. Singh: And then, Judge van Zyl, if you are appointed, would you consider yourself being a person who would move from court to court and actually sitting and listening to cases and penning judgements or do you think you administrative and other duties would be too much for you to be able to do that?

Mr. van Zyl: No, Mr Singh, I think the initial function would be to make an assessment of each of the courts. From Bisho I know what is happening at the Bisho court, but there need to be, there will have to be an assessment of the other 3 courts in order to implement case management and in order to, as I have said earlier, I think that some courts are, could be utilised, or some judges could be utilised more effectively elsewhere. Do away with some courts and place them doing in criminal courts or whatever the case, where there is a need. So, in order to make that assessment initially I think it will need the judge president to move around to each of those courts and to sit and meet with the different role players. Insofar as

crime is concerned there will have to be close interaction and that to me is something that is lacking in the other courts, close interactions with the Director of Public Prosecution. Cases should be set down in consultation with the head of that court. So, it will require staff, as I've indicated to you, to me cooperation of the staff is essential for effective running of the courts. And then the different role players. The practitioners as well as the Director of Public Prosecutions who to me is the most important person because of the clogging up of the roll, the delays that we have, inevitably happens in criminal matters. So, it will require at least a year or two years of going around to the different courts and be there in order to assess the situation and see what remedial action is required if any. And then to visit the courts on a regular basis. The Judge President as far I am concerned, as I've earlier indicated to you, to my work ethic is an important thing and one must be seen to work hard in order to inspire others to do exactly the same. Judge President should sit in court, he should hear cases, he sits in appeals, and he should sit in those other courts and be there to sit with the other judges. So, it's not an only a case of sitting in Grahamstown in an office. No.

COMM N. Singh: My last question, Chief Justice, to Judge van Zyl. We've heard this interesting terminology and for those of us who didn't do Latin *dies non*, to what extent is it a problem in your division? And if it is a problem what can be done about it?

Mr. van Zyl: I suspect you're referring to the first day of term?

Male: Fridays, people [01:11:43 inaudible]

COMM N. Singh: On Fridays tend, not to want to work the entire day and there's a lacksi-days sort of attitude on a Friday if I am correct Chief Justice?

Mr. van Zyl: Well, it's definitely an official day, it's *non nes*, that for sure. That shouldn't be the case. The court sits until 4 o'clock or half past 4 on a Friday and judges should be there as long they are required to be. One can do your, plan your court in such a way that you can get away early on a Friday if you need to, but you

will have to do your work in order to be able to do that, but there is no official or unofficial day *non* on a Friday, as far as I am concerned.

COMM N. Singh: But what is the current state of play, for your experience and being there for a number of years, about Fridays?

Mr. van Zyl: Mr Singh, I can speak for my own court, I don't come in any other court so I can't say who is there on Friday and who is not. My court, it is not an issue, that I can assure you. I suspect that it may very well have something to do with judges who were appointed in certain courts and they don't actually reside in the area of that court. That to me, you might have gathered that from the previous sitting, where I participated in the sitting is a bone of contention, because you do have complaints that judges have to leave early because they have to get home, and they have a long way to go. Judges should be appointed to a division, appointed to a court, or to a court they are appointed to that court and they should preferably be there.

COMM N. Singh: Thank you, Chief Justice.

CJ M. Mogoeng: Commissioner Norman?

COMM T. Norman: Thank you, Chief Justice. Good afternoon JDP.

Mr. van Zyl: Good afternoon, Advocate Norman.

COMM T. Norman: Yes, thank you. I just want to inquire about the judgement that you listed in your application as being reserved. Has that been handed down?

Mr. van Zyl: Yes, it's been handed down.

COMM T. Norman: When?

Mr. van Zyl: Last week, Thursday.

COMM T. Norman: Okay, thank you. And then just as a follow-up to a response to the question that the Premier asked you about this newly called concept of juniority. You heard about this morning, and your response was that one has to bear in mind that the person who is appointed as a JP of the division will have to give instructions to judges who may be senior to that person. Am I quoting you correctly?

Mr. van Zyl: Yes.

COMM T. Norman: Yes, and then you also alluded slightly to some difficulties that may arise in those instances and I would like you to tell us as to what do you envisage at the problems that may arise when you have that particular judge, appointed as a judge president and giving instructions to judges who are senior to him. Thank you.

Mr. van Zyl: Look I don't think it should be a problem and I don't think in all probability it will be a problem, if, as I've said to you we've all taken an oath, we are professional judges and if a person gets appointed to a position and he occupies that position and he does what he is expected to do in that position then we should behave accordingly. We are there to do a job, we are there to fulfil our constitutional mandate and it simply won't be, it will simply be wrong to not take instruction or refuse instruction. So I don't think that on a practical level it really would be an issue.

CJ M. Mogoeng: Thank you, Commissioner Norman. Professor Motshekga

PROF Motshekga: [01:15:56 inaudible] I studied law in the 70's when it was compulsory to do Latin, Afrikaans and English in order to qualify to get a law degree. Would you agree that maybe this time because we need to progressively introduce indigenous African languages in the courts that indigenous African languages and indigenous African Law should be made compulsory courses in the Law degrees?

Mr. van Zyl: I don't see a problem with that. In fact, it maybe it will have benefits because it exposes everyone to the culture of another and we in this country need to understand each other, we need to understand each other's cultures and identities and if we do that a lot of the problems that we do have would not exist. So, it would

be beneficial it can only be beneficial especially for those practitioners who intend practising in more rural areas like the Eastern Cape.

COMM Motshekga: Don't you think if that is the case that the incumbent judges now who could contribute to the development of the indigenous African languages if they were to start learning this languages and see how they can help develop the concepts before this languages are fully developed for utilisation in the courts? And if you agree are you learning any of these indigenous languages or are you intending to do so in the near future?

Mr. van Zyl: It is not for a lack of trying. Speaking for myself and I am always trying to learn as much as I can. The practical level, the problem that we have is that in the province where we are, because of our colonial history that we have is that the language of instruction in Universities is English, most of the schools is English. In all the courts its English, so there is very little exposure given to any of the other indigenous languages and as I understand it the policy of is off, at the moment is that the court languages should be, or is English.

COMM Motshekga: If it can happen that you come out to be the best candidate and a second best candidate is recommended on the basis that you are the best candidate because you are a beneficiary of the privileges of the past would you be offended?

Mr. van Zyl: No. I won't be. I don't think my position allowed me to do that.

PRES M. Maya: Commissioner Nayambi?

COMM T. Nayambi: Thank you, afternoon Judge van Zyl.

Mr. van Zyl: Good afternoon Commissioner.

COMM T. Nayambi: Commissioner Msomi asked my question, so I'll ask you just one question. Given the challenges of the Eastern Cape Division, what will you consider as your weakness, as a Judge practising there now?

Mr. van Zyl: Probably my attention to detail which sometimes causes me headaches and difficulties because I expect work to be at the highest level and that is including my own work and work from those who serve the courts. So, maybe that is something that I can mention. I can't really think of anything else. You know it is more a frustration for myself than for anybody else.

COMM T. Nayambi: Thanks, President.

PRES M. Maya: Colleagues this another candidate that I know very well. Good afternoon, Judge van Zyl.

Mr. van Zyl: Good afternoon, President Maya.

PRES M. Maya: There are hardly any women judges in the Eastern Cape Division of the full court. Out of 28 judges, only 9 are women and 6 of those are white. Now when you were outlining your vision for that division I did not hear you address this anomaly pattern [1:22:40 inaudible] and I would like to find out if you have given it, this challenge any thought at all and if you have, what ideas do you have to change that [1:22:49 inaudible]?

Mr. van Zyl: Sorry I didn't hear the first part? The anomaly you are referring to?

PRES M. Maya: What ideas, if any, have you thought, have you given any thought to the problem because I did not hear you mention it when you were outlining your vision. And if you have thought about it, what ideas do you have to change it?

Mr. van Zyl: Sorry, I didn't the problem part of it? President Maya.

PRES M. Maya: Shortage of women judges ... [interjects]

Mr. van Zyl: Oh, the shortage of women judges?

PRES M. Maya: Also, the shortage of women judges in that division.

Mr. van Zyl: Yes, yes. You know President Maya, it's, we sit with a situation in the Eastern Cape and I think if you go and look and see who were appointed the make-up of the judges that were appointed in the last few years you will find that, I think, the majority of them were in fact, women. And many of those women have come here before this commission and were not appointed. We do have a problem with the pool of women practitioners that we can choose from, we do, however, and that is something that I have noticed, is that we have quite a large pool of younger attorneys and younger advocates at the different Bars whose got, to me has shown potential for appointment but the difficulty is that they are not there yet. They may be there in a few years' time, so that is a problem. If one identifies women with potential then I think, if they've been there and we think that they have potential then we need to do more in order to improve their skills and in order to bring out that potential so that they can come here and they can show that potential to the commission and to secure their appointment. But, it is something that we are consciously, we are conscious of and that we are in fact trying to address. I think that is a fact. It's ...

PRES M. Maya: What worries me is the fact that there is no shortage of women who are given an opportunity to act in all the [01:25:30 inaudible] of the division. Most of them, in the magistracy they are already judicial officers. But for some reason when they come here they just don't make it.

Mr. van Zyl: Yes.

PRES M. Maya: Now, that tells me that there is something, during their acting stints they don't get the support they need but there is something goes wrong or is not done right when they are acting in those seats.

Mr. van Zyl: Yes. President Maya, the thing is one needs to be very give thought to how you utilise acting judges. That you expose them to work where they can benefit from. In the first place, one needs to start with the person. Who is the person and what skills and qualifications do the person have and where are the shortcomings? What section or part of the law? A Magistrate for obvious reasons will be the civil part. So, one needs to then take that person and expose that person to that type of

work. To me, it serves no purpose in placing a Magistrate who is coming from a criminal background in criminal court because it's convenient to do so so that you can deploy other judges in the civil court. That judge needs to be placed in those courts, and that judge needs to be capacitated in order to perform the work in that specific court. Whether it's through appointing a mentor to that judge, which I think is something that needs to happen. That is in the position to, on a daily basis to see what work is being done. What challenges the judge has and on that basis capacitate person to do the work. So, one has to be very conscious as to how you deploy acting judges and that is something that I would obviously look into.

PRES M. Maya: You mentioned earlier that there are attorneys and advocates who clearly have potential and you went on about that group of potential candidates. You did not say anything about magistrates and law teachers would you if you appointed be willing to look into those areas of the profession as well?

Mr. van Zyl: Yes, definitely.

PRES M. Maya: As sources. As a pool?

Mr. van Zyl: Yes definitely. In fact, one the acting judge for last term was a Magistrate. The thing is, and it comes back to I think one of the other questions that was put is that one needs to, there needs to be interaction with the magistracy in order to identify people that is, first is willing to come and who have the necessary background and skills in order to take-up acting appointments. So, that's the starting point as far as the Magistrates are concerned. I've alluded to the fact that I've, I think it's a good thing to bring academics onto the Bench. They do bring a different angle to things and we can benefit from that. And there are very good judges who were appointed from the ranks of the academics. In fact, when was it? Last year? We had an academic who acted in Bisho on my recommendation.

CJ. M. Mogoeng: Commissioner N. Notyesi?

COMM N. Notyesi: Thank you, Chief Justice. There are just a few questions. I am making also a follow-up on this. There has been something that was of concern to

me from the Eastern Cape when you would consider candidates for acting appointment who have come to this commission who do not even meet the grade, but once they go back home you appoint them again for acting appointments even on the women. In fact, that is the position even now. What is the plan to deal with that? What is the point of keeping on appointing on an acting capacity somebody who has already shown that he cannot go any further?

Mr. van Zyl: Yes, now I agree with Mr Notyesi, that's why I am saying if the person comes to the commission and doesn't make the grade and is not appointed, but that person has got potential to be appointed, I don't see any difficulty in bringing that person back to act again. And then capacitate that person and put that person in a position to come back here and to apply again. If the person has got no potential then I agree with you, that person, in fact, he is, that person is occupying a position which could be occupied by another more suitable candidate who can be appointed with the necessary exposure and the necessary experience.

COMM N. Notyesi: This morning, we have just heard that there is a judgement which has been reserved for 9 months dealing with the quantum on medical negligence that judgement is reserved there. Are you aware of that judgement? And if you are aware about that outstanding judgement, what steps have been taken in relation to this unduly delay of delivery of judgement.

Mr. van Zyl: Is that a Bisho judgement, Commissioner Notyesi?

COMM N. Notyesi: It's Mthatha. It's Mthatha.

Mr. van Zyl: Mthatha.

COMM N. Notyesi: Yes. Are you aware of it, and if you are aware because I believe maybe you share the statistics? If you are aware, are there any steps that have been taken?

Mr. van Zyl: Well, if any steps are been taken it should be taken by the Head of that particular court because it seems to me to an excessive period especially with only dealing with the quantum of damages.

COMM N. Notyesi: Lastly, there is a concern in the Eastern Cape, particularly in the Eastern there is a practice, the practice of the certificate of urgency. Thank you to Commissioner Mpofu here he raised this point where they before you even launch an urgent application you first have to ask for permission from a judge who must rate the certificate, he may say, no I don't see anything on this, he just turns you back without even hearing. And in other divisions, you just move an application in the ordinary way in terms of the Rule 4 for Urgent Application and it dealt with. What is your view on that practice? Would you say we must join the practice in other division, or we must adopt this Eastern Cape practice for uniformity? What can you say on that? Because it is subject, there lot chances of an abuse in this process, it is loose.

Mr. van Zyl: The reason for the existence of that practice is to avoid applications being brought on an urgent basis which are not urgent. It was found that there were very many applications brought, especially after hours and over weekends and during recess which are not urgent. And it still happens, despite the measures which have been taken. I personally think it is a good measure, it's made practitioners more aware of the fact that if you're, to make sure that your case is urgent if it not urgent you are not gonna be given an urgent meeting, hearing. And your opportunity, although you are not heard, your opportunity to convince the judge concerned of the urgency of the matter is in the certificate. And it not simply a certificate as the Rules required, namely that you have certified as so and so that the matter is urgent, and it should be enrolled in non-compliance with Rule 6; 5 or 6 of the Rules of Court. It's a certificate that requires factual allegations to set out what urgency is and also to make the judge aware of what relief would be sought. And on that basis a decision in then taken as to whether the matter is to heard immediately of whether it is to heard the following day or the day after on where the service is required. It's simply a form of case management Mr Notyesi, I think it is a good practice and I don't see any difficulty it being applied elsewhere.

COMM N. Notyesi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Notyesi. Commissioner Mpofu?

COMM D. Mpofu: Thank you. Hi DJP.

Mr. van Zyl: Afternoon Advocate Mpofu.

COMM D. Mpofu: Thank you, Chief Justice. I just wanted to raise two or three quick points. The first one is, you know this issue about the readiness or otherwise of people and the support you give them when they are acting and all that. In my view, it's just solving the problem at a much later stage than it should be solved. The real issue here is that black and women practitioners in particular are not exposed to particularly commercial work, because it is still kind of preserve of a club of white practitioners and therefore they unless we address the question of briefing patterns you'll always be solving the problem at a point, as I put it, which is maybe too late or even irretrievable, that the damage is irretrievable. What would you do to ensure that this perennial problem of briefing patterns, particularly in relation to commercial work which is the, seems to be the sole preserve of white practitioners is broken so that the people that you say you try them to act and you find that they are not yet there, which is true. Can be there even before you call them up to act?

Mr. van Zyl: Yes, may I just say Mr Mpofu is that it's not, that is not really a problem which we have in the Bisho and also in the Transkei area. You'll find that majority of the practitioners are black, the attorneys are black, and they are briefing black women to appear in the courts. So, in those areas, it is not a problem. It may be more an issue that may arise in Grahamstown and in Port Elizabeth. What exactly the briefing patterns are in those areas I can't exactly tell you, but I would assume it is exactly the same problem that you have throughout the country. I expect that to be the position. As I understand it the Bar has introduced measures in order to ensure that more black women are briefed and are appearing with a senior. I don't know if it is on a sharing of a fee basis or something to that effect, I am not sure of the details and if that has been implemented. If not, then as I've indicated to you, is that there need to be communication between the judge president and the

professions for various reasons, for the case management process in order for the smooth running of the courts and for the appointment of acting judges identifying people who could be appointed and that is an issue that I think could pertinently be raised with the senior members or the leaders of respective Bars as to what they have done in order to, the people that they have identified to me as the Judge President that could be appointed as acting judges. What have they done in order to capacitate them from their side? And in that way place pressure on them to try and change briefing patterns.

COMM D. Mpofu: No, sorry. Follow-up CJ? No, let me put it like this. I agree with you that firstly it is a national phenomenon and secondly, the profession obviously has a big role to play in it. That's all very well, what I am asking you is, as it pertains to the Eastern Cape or any part thereof do you think that the Bench, more particularly somebody who is a Judge President has any role to play in solving this problem of briefing patterns? If so what can you do? What intervention can the Bench actually do or rather make in assisting with other stakeholders, obviously because you are quite right there's the clients, there's the attorneys and advocates and so on. It is not going to be resolved by one particular branch of the profession. But all I am saying is that insofar as this is the real source of the problem of the quality of judges from which you can draw as the JP, are there any – maybe, let me give you an example. Here one of the things we did to agree with you as the Bar when I was in the Johannesburg Bar Council, we introduced a rule that says that you may not have, in the bigger and complex matters, you might not have 3 white counsel. So in other words, after 2, every time the 3rd counsel has to be black and preferably a black woman. So it's a professional rule, if you break it you face a disciplinary hearing, there is no debate about it.

Mr. van Zyl: Yes.

COMM D. Mpofu: And there are those who are saying it should even be reduced to 2, but we are not there here. So that was the one thing. Then at the same time the DJP in Pretoria has now started, because I had a discussion with him when I was chairing the Bar counsel and he said look, this rule of yours is all very well, but what we, I've observed from our vantage point as the Bench is that there is formalistic

compliance with it. In other words, people because they know they are going to be punished they simply bring a junior of one year and he said you can actually just see as you're sitting on the Bench that this person probably has never ever read the papers. They are busy filling the crossword puzzle or whatever and they don't even have papers in front of them. So they've obviously just been drawn for compliance and really there is no imparting of skills. As result of that, the DJP has now introduced a form, which you must fill if you are in that kind of matter to actually indicate who are the practitioners in this matter, are they black or white and women and so on and so on. Obviously as a kind of a subtle way to put pressure. Would you support measures like that?

Mr. van Zyl: Yes, I would definitely support measures in that. I think it's in the, is not the initiative that from the Heads of Court in order to assess briefing patterns, that form that needs to be filled in? So that is something that's rolled out throughout the country.

COMM D. Mpofu: Okay, good.

Mr. van Zyl: And as far as I know it is also done in the Eastern Cape.

COMM D. Mpofu: Is it ... [interjects]

Mr. van Zyl: But on a more practical level, Mr Mpofu the responsibility to supply the judiciary with judges is not only the responsibility of judges to go out and look for judges. It is the responsibility of the professions.

COMM D. Mpofu: Correct.

Mr. van Zyl: And it's for the professions to ensure that they take the necessary steps that the right people get the necessary experience in order to be appointed as acting judges and I think in one's interaction with those, with the professional bodies, one needs to emphasise that and to ask them what in fact are you doing about it? And in that way put pressure on them. Because it's a joint responsibility and I think people should realise that.

COMM D. Mpofu: No, fine. Look okay, I don't want belabour the point but really what I am getting at is that even the odd speech from somebody in your position, if you are the Judge President, as the Chief Justice now and again does when he gets the opportunity, could go a long way into, you know, influencing the clients, the attorneys to understand that this actually has an impact on the future of the judiciary and ... [interjects]

Mr. van Zyl: Yes, no I agree with you.

COMM D. Mpofu: That's what I mean by the, I agree with you it's multi-stakeholder thing but the judiciary, particularly the leadership might have a special role. Anyway, okay. Then you said something about the rationalisation of the courts in the Eastern Cape. Pointing out clearly the reason why we have those 4 or 5 courts is because of the homeland, the historical ... [interjects]

Mr. van Zyl: Historical jurisdictional areas.

COMM D. Mpofu: Ja.

Mr. van Zyl: Yes.

COMM D. Mpofu: Now how would you go on rationalising those courts, assuming costs was not an issue, which obviously it is. How would you re-rationalise those courts so that you undermine those homelands special planning so to speak? If, as I say, for as economist do all things being equal?

Mr. van Zyl: Yes, well I think for start areas which fall historically within another area should not necessarily stay with that area. If it, from a practical point of view, makes no sense. In other words, what I am saying is that if an area historically forms part of, a district form part of the Transkei, it should not remain to form part, if it's more practical for that area to form part of the Bisho local division. So it should be a practical arrangement. At the end of the day, we want to bring justice to the people. We want them to put a court within close vicinity of the majority of people who are

the users of that court. So it's simply a case of on a practical level to ... have the areas.

COMM D. Mpofu: Okay, now I think that's a good answer. In other words, you wouldn't necessarily have to build new buildings but you might change the jurisdiction the boundaries and so on.

Mr. van Zyl: Yes.

COMM D. Mpofu: Okay. Fair enough. Then the last point is, and this is maybe I am sneaking in my own personal gripe here; I appeared in the Grahamstown Court in June, I've mentioned this to the Acting Judge President, and there was an Acting Judge there who was so efficient that she gave a judgement in two weeks. A very important matter, a big matter involving quite a large sum of money and so on, and senior counsel on both sides. And then Application for Leave to Appeal towards the end of June, now it's almost 4 months and we don't have a judgement. An Application for Leave to Appeal, quite frankly it's yes or no. So how do you do the difficult job in two weeks and then the ... [interjects]

Mr. van Zyl: The easy job not in 4 months.

COMM D. Mpofu: Easy job is now taking 4 months, pass the 3 months that the CJ has put? What, firstly how would you stop things like that? And secondly, where should practitioners complain if such things happen?

Mr. van Zyl: Well practitioners should complaint to the Head of the Court, and the Head of the Court should be himself or herself should be in a position to know which judgement are outstanding if he gets the right information from the relevant employees within that particular court. And if a judgement is outstanding for longer than three months the judge must be requested to give reasons for why the judgement is still outstanding and to indicate a plan as to how the judges is planning to move forward in order to expedite the finalisation of the matter.

COMM D. Mpofu: Okay, what I'm saying is that, okay, it might, it's obviously the fault of that judge to do that but isn't there, isn't some of the responsibility on you as the leaders of those courts to make sure that that does not happen or if it happens at least you know about it? In other words, monitoring particularly the acting judges who are there.

Mr. van Zyl: Yes, yes Mr Mpofu. Especially with acting judges. They should be monitored more regularly than the judges are required to hand down a judgement at least within 3 months unless there reasons why they couldn't do so. But, as far as with acting judges one needs to monitor the position very closely and it's something which I have been doing because if the judge has difficulties it needs to be addressed otherwise one find for various reasons person being too scared to ask for assistance, person not knowing what to do etcetera the judgment gets delayed. So with acting judges I do, on a regular basis enquire as to how they proceed with their judgements. If they have any problems with the judgement, then to discuss it with me or I will allocate a judge with whom that acting judge can discuss the matter in order to take it to finality.

COMM D. Mpofu: Thank you. Thank you, CJ.

CJ M. Mogoeng: Thank you, Commissioner Mpofu. Judge van Zyl I think I heard you say that if appointed JP you would need about a year or two to familiarize yourself with the situation in the other courts, other than Bisho because Bisho you're already familiar with.

Mr. van Zyl: Yes.

CJ M. Mogoeng: Did I misunderstand you or did I understand you correctly.

Mr. van Zyl: Yes, I think maybe the period that I've mentioned was too long, it could be done on a shorter basis. I am not referring simply to the assessment but also take remedial action where that is required. But I think initially one will have to attend to each court and see what the difficulties are and what action could be taken

with, in conjunction with the head of that particular court and with the judges of that court.

CJ M. Mogoeng: See, I don't understand. All and all including your acting stints you were in a leadership position for about 4 years 7 months, acting deputy, acting judge president, acting deputy judge president and now permanent deputy judge president. Why is it that you haven't familiarised yourself with the challenges in the other courts in the Eastern Cape?

Mr. van Zyl: Chief Justice, maybe it is an exatiation by saying that I have to make an assessment of each of the courts, it's simply for the future planning of the rolls and how to allocate cases. The problem that we have at the moment is that we haven't got enough judges to staff all the courts because of, for various reasons. Grahamstown the motion court matters have increased to such an extent that we require more than 1 judge to effectively deal with those matters in a week. So, it is those practical sort of issues, but as far as what is happening in the other courts, I've got a very good idea what is happening, that is clear from the statistics that we are getting. I know where there are an excessive amount of number for partly-heard matters and I know what the difficulties are in Port Elizabeth as well.

CJ M. Mogoeng: Okay. What are the major performance related challenges in those courts? In the Eastern Cape? At the High Court level? I'm starting at the High Court level.

Mr. van Zyl: I think at this stage it is criminal matters. I think we, for various reasons crime rates have increased, the number of cases that we have to deal with have increased to such an extent that it really is placing a burden on the Courts and I think one must also understand the fact that we have, as I've mentioned, we've got a shortage of judges to deal with matters, so it is a case that there need to be better planning and better managing of the criminal matters. The immediate problem may be in certain of the courts that there are partly-heard matters that need to be disposed of but that can be done. I don't foresee a problem with that, it needs to be planned for and it needs to dispose of with the assistance of the Director of Public Prosecutions and the practitioners involved.

CJ M. Mogoeng: What exactly are problems with criminal matters? Except for the volume?

Mr. van Zyl: It is partly-heard matters.

CJ M. Mogoeng: Why are there partly-heard matters?

Mr. van Zyl: Partly-heard matters, Chief Justice has a history. As I've previously indicated earlier on, is that with judges being taken from one court to another court has resulted in a number of partly-heard matters with regard to criminal cases. And the absence of managing those cases, to enrol cases only when they are ready to be heard. You ... [interjects]

CJ M. Mogoeng: Why is that not be done. Why are matters not enrolled only when they are ready to be heard?

Mr. van Zyl: Chief Justice, earlier there hasn't been any case management with regard to criminal cases. It is something that has been recently introduced. I know Judge Nhlangulela has started that in Mthatha and also in Port Elizabeth that has been, but historically we sit with a backlog of basically of partly heard matters that need to be finalised. That is the only problem.

CJ M. Mogoeng: Where do you have the major problem in relation to part-heard, I am trying to assess what plan you have developed in anticipation of appointment?

Mr. van Zyl: Yes.

CJ M. Mogoeng: I'm moving from the assumption that you have scanned the environment. You had also just to check whether you would be equal to, as they put it, the gravity of the position. What challenges have you picked-up and where? Where are those major challenges in relation to criminal matters, very briefly?

Mr. van Zyl: Ja, there were only two courts where there is a challenge. It's Mthatha and Port Elizabeth. Port Elizabeth has been resolved. Port Elizabeth has been resolved by a form of case management and also by judges having been allocated criminal duty for long periods of time.

CJ M. Mogoeng: I thought PE had not yet introduced case management, has it?

Mr. van Zyl: Sorry, did I say that now?

CJ M. Mogoeng: Port Elizabeth I thought it had not yet, I thought Grahamstown and Port Elizabeth have not yet implemented case management. They have embraced the concept and have developed some proposals but the only two courts that have actually implement are Bisho and Mthatha. So, do I have wrong information that PE ... [interjects]

Mr. van Zyl: No, no Port Elizabeth has as far as criminal matters are concerned there is a form of case management.

CJ M. Mogoeng: I don't understand is there case management, is there a form of case management? What is there? In your assessment?

Mr. van Zyl: It's effectively assessing whether a case is ready to proceed to trial. In order to make sure that practitioners have been appointed to the accused, that they've consulted and the matter is ready to proceed and is then on that basis that it enrolled. So that has happened in Port Elizabeth, what hasn't happened in Port Elizabeth and in Grahamstown is case management with regard to civil matters.

CJ M. Mogoeng: So Grahamstown case managers in relation to criminal matters as well?

Mr. van Zyl: No.

CJ M. Mogoeng: What is the reason for the apparent resistance to the implementation of case management in Port Elizabeth and Grahamstown.

Mr. van Zyl: Chief Justice ... [interjects]

CJ M. Mogoeng: Just in preparation for the interview and also as a co-leader so to speak in the province?

Mr. van Zyl: Yes, talking about resistance as far as the judges are concerned, the decision has been taken to roll it out to those two courts. There hasn't been any resistance. As far as the judges are concerned there is no problem ... [interjects]

CJ M. Mogoeng: Just there ... [interjects]

Mr. van Zyl: There might be some resistance from attorneys.

CJ M. Mogoeng: Yes, well get to that. Let's start with the judges. When did they take the decision?

Mr. van Zyl: The decision I think was taken earlier in the year if I am not mistaken.

CJ M. Mogoeng: When were the Norms and Standards implemented? When did they kick into operation?

Mr. van Zyl: Yes, it was a long time before that.

CJ M. Mogoeng: Was it not the 28th of February 2013?

Mr. van Zyl: No, it was a long time before that.

CJ M. Mogoeng: So, what has been the problem. As a leader what have you identified as the reason for refusing or being less enthusiastic if there was enthusiasm at all in implementing what must be implemented?

Mr. van Zyl: Chief Justice, the position is that it was rolled out in Bisho and in East London as a pilot project. Mthatha then followed, decision that was taken by the

DJP there Judge Nhlanuglela who is here. The position with regard to the other two courts is that a decision could not be taken and as far as I am concerned, to be honest with you, I think it was simply delayed and there was possibility, not the will to take the decision. It was a matter that was discussed at various meetings, proposals were made, I made proposals insofar as the implementation of it. The manner in which it should be implemented, and it was dragged along for quite a long period of time.

CJ M. Mogoeng: I don't understand, about, I don't even understand the decision element of the answer because when Norms and Standards are Gazetted they are immediately applicable to all judicial officers.

Mr. van Zyl: Yes.

CJ M. Mogoeng: It's not a question of all right you want to decide, you not want to decide. Whether you want to decide or not they are binding, they apply to you. Why did it take 2013, 2014, 2015, 2016; four years and it's only now 2017 that Grahamstown and Port Elizabeth are warming up to doing what they should have done as far back as 2013? What is the problem? I'm asking you as a person who may be appointed as JP, familiarised yourself with the problem you ought to be having some kind of an answer in dealing with this problem. So why was there resistance or maybe lets water it down to lack of enthusiasm to do what must be done?

Mr. van Zyl: Judge President, Chief Justice I have taken a decision in Bisho to introduce it as the Head of that Court.

CJ M. Mogoeng: Yes.

Mr. van Zyl: It was for the Head of the Court in Grahamstown and for the Head of the Court in Port Elizabeth to take that decision. Why they have not taken that decision earlier, I don't know.

CJ M. Mogoeng: I don't know.

Mr. van Zyl: I, we had several meetings about this and we've discussed it and we have from our side tried to explain the benefits of it, and it didn't happen.

CJ M. Mogoeng: You see I'm asking because as a person hoping to be appointed to this position you very much like, the judicial doctor so to speak of the Eastern Cape and if you don't even know the diagnosis what injection are you going to give? What tablets are you going to dispense, that is my problem. I've thought as a leader you would have worried about this situation and worked out some kind of plan, however imperfect it may be to address this concern.

Mr. van Zyl: Chief Justice, I can't tell at home many meetings we have discussed. I can't tell you. I have gone so far as to draft, on my own, my own accord, I've drafted a set of practice rules with regard to the implementation which was made available to the committee who was responsible for the implementation of it in Grahamstown, and it didn't happen.

CJ M. Mogoeng: Sure. Now how do you give us a measure of confidence that if appointed it will happen? If you don't know what the real problem is and you are not offering any possible solution to the problem?

Mr. van Zyl: Well, Chief Justice the ... [interjects]

CJ M. Mogoeng: Can I explain in a practical sense so it doesn't look like I am badgering you or something. When I was Judge President I looked at the problems, not just in the North-West but in the country and ran workshops on case management for judges who were available and magistrates, throughout the country, and I was a Judge President of a small division which many did not have much respect for. Cause I was worried about the problem in the country I identified them, they worried me and so far as I could play some role to address them. I saw it as my responsibility to do so. I partnered with a colleague from the US, funds were available and we were running around together. So it is in that context that I am, I was hoping that just confining it to the province that you hope to lead, you would be in a position to provide some solution. But I understand your, your situation. What

about the magistracy? What are the problems in the magistrates' courts? And how do you, serious problems in the magistrates' court in the province and how do intend to tackle them?

Mr. van Zyl: At the PEEC meeting that we had, there were no serious problems that was identified as far as I know. All the heads of the respective courts that were there reported on their court performances and they were happy with the performances of their courts.

CJ M. Mogoeng: They were happy, or you were happy?

Mr. van Zyl: Well, short of going and seeing what is happening in those courts, one has to rely on what you are being told by the heads of the courts and if they say that their performance ... [interjects]

CJ M. Mogoeng: Is good.

Mr. van Zyl: Is good then I accept that to be the position.

CJ M. Mogoeng: Well from time to time, including last week Thursday I had a meeting with all the leaders of the Magistrates' Court in the country, here in this very room. And that was subsequent to the meeting I previously had with them and they presented their statistics to me in relation to court performance. I looked at them and said they don't make sense. And I put questions to them. Their statistics were not satisfactory to me. The whole country. I said you must go and redo these things, they are not right. I am not satisfied, and I took a former Magistrate, Deputy Judge President Moosie and said come you must now be my coordinate on this aspect because you were a Magistrate before, you know how the system works. I want you to check the statistics from the Magistrates' before they come to me. I am not satisfied that the people are well served here, and the result is we now have statistics that reveal the problems at the magistrates' court level. So have you done any kind of exercise, so that you can help improve performance in the Eastern Cape? Or maybe just find out from the Judge President to say as a in quotes "general overseer" what problems have you picked up? What are the major

problems? Staffing problems at a judicial level? At an administrative level? Accommodation challenges, and the enrolment of cases prematurely, the proper implementation of case management. Have you explored those issues?

Mr. van Zyl: Not beyond what, or what is presented at those PEEC meetings by the different heads of the courts, Chief Justice.

CJ M. Mogoeng: All right, now I heard you allude to a shortage of judges I need to understand that because it worries me when there is a shortage. But looking at the statistics now it looks like Port Elizabeth and Bisho don't have any problem. Because there isn't a single matter that is reserved for more than ... [interjects]

Mr. van Zyl: 3 months.

CJ M. Mogoeng: Well, for more than 5 months.

Mr. van Zyl: Yes. No ... [interjects]

CJ M. Mogoeng: And I don't have the Mthatha statistics. When I enquire they say you don't have the Mthatha statistics because there is not even a single case that has been judgement has been reserved for more than 3 months. I was only shocked to learn that in fact there is on that has been reserved for more than 9 months. So, how can you be asking for more judges when it looks like you are just cruising.

Mr. van Zyl: Well, in I would agree with you, Chief Justice that as far as Port Elizabeth is concerned and I think also Bisho, we don't have a shortage of judges. It's more, I was, what I had in mind is more Mthatha and simply only on the criminal side.

CJ M. Mogoeng: But they don't have challenges, it looks like it at least according to the stats they send me, and I believe there is no misrepresentation. So what judges are they looking for?

Mr. van Zyl: Well, at the last PEEC meeting ... [interjects]

CJ M. Mogoeng: I can tell you Gauteng, looking at the statistics is in dire need of more judicial capacity.

Mr. van Zyl: No, that may be so. That is true, Chief Justice. But, in Mthatha, there is a problem with criminal work. The extent of the work is such that the judges have difficulty in coping in bringing cases to finality within the required time periods. The last PEEC meeting the Director of Public Prosecution there have indicated to us that the nature of the cases, and the cases which they still have to come forward the number of accused and the nature of those matters. The Commissioner of Police at that very same meeting has indicated that there is a unit to deal with serious economic crimes it's going to be created in Mthatha and as we all know, those matters normally take long period of time to finalise. So all indications are that the workload in Mthatha is going to increase even further.

CJ M. Mogoeng: And the ... [interjects]

Mr. van Zyl: And there are challenges.

CJ M. Mogoeng: According to direct reports when whispers you've received they work for the full 5 days working week? There is no unofficial *dies nons*?

Mr. van Zyl: Not to my knowledge, Chief Justice.

CJ M. Mogoeng: Now maybe I should just end with this one. You say you will instil a work ethic, I am not too sure I understand that. What do you mean by that? Among judicial officers? Among the staff members? You will make sure that you will instil a work ethic in order to improve court performance. I am not sure I understand that.

Mr. van Zyl: Well it's simply to encourage staff and colleagues to do their best. To do the work as they suppose to do and as your talking about a *days non* and that sort of whispers that are going around, for that not to be the case. For judges to be at their stations to do their work and to come forward and volunteer to do work if their

work is finished. For the court staff to make sure that they do what they are supposed to do. Those sort of, that's what I have in mind Chief.

CJ M. Mogoeng: Hell, I expect you to be more frontal about it. In your assessment and in preparation for today, did you get a picture that reveals that the work ethic is low, among judges and staff members and identified it as a problem that would require mentioning here as something that must be attended to? Are people a bit slothful or on the lazy side? And they need encouragement to move out of what the now President Donald Trump said about another low energy people, to stop the low energy people?

Mr. van Zyl: Chief Justice, we can always improve our work output.

CJ M. Mogoeng: No, as a leader have you identified that there is a measure of laziness among judges and staff members.

Mr. van Zyl: No.

CJ M. Mogoeng: Or you can even use a softer word if you want, but I want to know whether there is that problem?

Mr. van Zyl: No. There is not. It, not what you can describe as a problem, no. But as I say it always helps to motivate and to get people to do more than what they are doing.

CJ M. Mogoeng: Okay. Let me disclose that I've asked you more questions than I've asked your colleague Judge Mbelenge because you took almost the whole hour before we could even ask explaining any and he even put questions to himself and answered them. So, think that you were asked, you were unfairly asked more questions than another question? I just needed the answers to questions that you did not volunteer.

Mr. van Zyl: Yes, I understand. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you very much for making yourself available Mr van Zyl.
You are excused now.

Mr. van Zyl: Thank you.

CJ M. Mogoeng: Thank you. I think it's time now for the room to be cleared.