



JUDGES MATTER

**Judicial Services Commission interviews
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**Gauteng Division of the High Court
Interview of Adv B Neukircher**

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CJ M. Mogoeng: Good morning, Ms Neukircher.

Ms B. Neukircher: Good morning, Chief Justice. How are you?

CJ M. Mogoeng: I'm very well thanks and you?

Ms B. Neukircher: I'm well, thanks.

CJ M. Mogoeng: Just switch on your mic.

Ms B. Neukircher: Thank you.

CJ M. Mogoeng: And just correct me. What is the correct pronunciation of your surname?

Ms B. Neukircher: It's Neukircher.

CJ M. Mogoeng: Neukircher.

Ms B. Neukircher: Yes.

CJ M. Mogoeng: Okay. You've been an advocate for how many years now?

Ms B. Neukircher: 28 years.

CJ M. Mogoeng: 28 years?

Ms B. Neukircher: Yes.

CJ M. Mogoeng: And for how many of those years were you a senior counsel?

Ms B. Neukircher: 12 years. I received my (indistinct) [00:00:52] in December 2006.

CJ M. Mogoeng: Yes, but before then you were an Attorney? Isn't it?

Ms B. Neukircher: I was a Candidate Attorney.

CJ M. Mogoeng: A Candidate Attorney until 1990?

Ms B. Neukircher: That's correct.

CJ M. Mogoeng: And when you became senior Counsel, what was your area or what were your areas of focus?

Ms B. Neukircher: Chief Justice, at the time, up until about 2009/2010, which is slightly before I took silk, I was mainly in the area of matrimonial law and family law. Unfortunately in those days it seems that if you were a woman at the Bar, that was what Attorneys gave you to do and then due to certain policy changes at the State Attorney's office, I started getting other work and I was given procurement work and unlawful arrests and detentions and I started venturing into areas of contract law and insolvency law and such like. So, as I took silk my practice became a more general practice and not just focussed on family and matrimonial law.

CJ M. Mogoeng: And did the source of your work grow beyond what the State Attorney was giving you?

Ms B. Neukircher: I do have a very varied practice, so I have private Attorneys and state Attorneys that do brief me, yes.

CJ M. Mogoeng: Yes and I noticed that you say you have used female juniors of all races?

Ms B. Neukircher: I do, CJ. I have a policy in my practice and I've had that since prior to taking silk and it is because of the difficulties that I have had to overcome as a female advocate at the bar and my policy is that when I am given the opportunity to put in a junior, I put in a woman and I try and pull in a woman, whoever is most suitable, whoever is most available. If I am given the opportunity to effect a transformative junior, I do that and they probably are about 70 percent of my juniors at the moment, but female juniors probably are 95 percent of the juniors that I use (indistinct) [00:03:19].

CJ M. Mogoeng: And in actual numbers, what does that translate to?

Ms B. Neukircher: At the moment, I have probably five or six senior juniors working with me and I have two male juniors at the moment that were given to me. They weren't juniors of choice. They were given to me.

CJ M. Mogoeng: Ma'am, over the years, how many juniors did you get to assist in that manner?

Ms B. Neukircher: Oh my word, CJ...

CJ M. Mogoeng: More or less.

Ms B. Neukircher: 20 ... 25... Maybe 30. It's almost impossible to say after 12 years of – 16 years of practice.

CJ M. Mogoeng: Thank you. JP?

JP Mlambo: Thank you, CJ. Adv Neukircher, how are you?

Ms B. Neukircher: I am well, thank you, JP. How are you?

JP Mlambo: I'm trying my best, thank you very much. I've got a spreadsheet in front of you.

Ms B. Neukircher: Yes.

JP Mlambo: The purpose of the spreadsheet is for the commission to know what you've done in your acting stints. We also have a list of your judgments that you've handed down. You've done a total of eight weeks in the Opposed Motion Court?

Ms B. Neukircher: Yes.

JP Mlambo: That was in Pretoria. Am I correct?

Ms B. Neukircher: JP, can I say this? This grid that I gave you is as far as my recollection and the bench books that I could find.

JP Mlambo: Yes.

Ms B. Neukircher: ...Total. I have done more acting stints, but I couldn't find those bench books, so they are not on this grid. But yes, as far as the grid is concerned, it is eight weeks of Opposed Motions.

JP Mlambo: Right. And how did you find that? I mean you're a general practitioner, as you say.

Ms B. Neukircher: I am.

JP Mlambo: Yes.

Ms B. Neukircher: I enjoy it. I find it challenging, but it's nothing that I cannot handle.

JP Mlambo: Yes. In terms of the Opposed Motion Court, especially the Pretoria one, did you experience any particular problems in terms of handing down your judgments?

Ms B. Neukircher: No, I haven't, JP. I have a particular policy when I deal with matters and that is to ensure that my judgments are all handed down within a period of approximately two weeks, as far as I'm able to. You'll notice on the list of judgments that I've given you, there is one that you will see – I think it's matter number 20 – let me just find it – that you will see is just... Yes, it's matter number 20, the Wiesenhoff judgment in 2013 that is just outside the norms and standards of three months. I don't remember why it took me slightly over that and I'm not going to make up a story as to why, but I don't like long, reserved judgments. I believe that if you delay a judgment, you deny justice, so I make it a policy to hand down my judgments expeditiously, as you will see from the grid that I've given you.

JP Mlambo: *Ja*, but from the Wiesenhoff judgment you alerted me to the fact that you could take longer than three months, because here the matter was a bit complex and you wanted to apply your mind properly.

Ms B. Neukircher: Thank you, JP. I don't recall, but thank you for reminding me of that.

JP Mlambo: Other than that, I see you've also had your fair share of sitting in Appeal Courts.

Ms B. Neukircher: Yes.

JP Mlambo: And it has spread – Civil Appeals and Criminal Appeals.

Ms B. Neukircher: Yes, 12 weeks.

JP Mlambo: *Ja*. Chief Justice, I've got no further questions. Thank you very much.

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

Mr J. Nyambi: Thank you, Chief Justice. I can see your deep interest of cats. Do you know in some cultures that black cats represent something there?

Ms B. Neukircher: Yes, I know that they are bad luck in some cultures and good luck in other cultures.

Mr J. Nyambi: Do you want us to take – do you mind to take us through your interest of the cats, especially black cats?

Ms B. Neukircher: MEC, my love of cats actually started quite a couple of years ago and I bought my first Persian cat probably in about 1993, if I remember correctly and I started breeding cats in 1995. I have a Cattery by the name of L 'Exquisite and I breed Persians and Exotics. I'm probably the top Persian

and Exotic breeder in the country at the moment. I also have what is known as an All Breeds Cat Licence and I am registered with a registry known as the WCF, which is the World Cat Federation. It's based in Germany and I go around the world and I judge at cat shows. In fact, I was in China recently and I was in Shanghai last year and I've been invited to go to Texas in December and I judge cats at cat shows. It's absolutely incredible. I love it. I meet the most wonderful people and I get to do something that is my love and my passion and my hobby and that is handle all breeds of cats, like Munchkins and Kurilian Bobtails and Korats and Sheopurs and yes, so – and that's my love of cats.

Mr J. Nyambi: Chief Justice, I present to you a future Judge that loves cats.

Ms B. Neukircher: Thank you, MEC.

Mr Msomi: Thank you, Chief Justice. Just one question from me, Advocate.

Ms B. Neukircher: Yes, Commissioner. There is a commentary that has been made by the General Council of the Bar, whilst generally it says positive things about you, there are one or two things that we couldn't just ignore.

Ms B. Neukircher: Of course.

Mr Msomi: Yes, one of those is that they say – I'm not sure if you have the pack in front of you, but in paragraph 8.2 of their commentary they say you "...generally strive to give a well-reasoned judgment, however, there are some gaps in setting out your logic in matters of greater complexity." Another comment that they make is in 12.1, where they say you "...lean more towards equity than strictly applying the letter of the law to the facts..." before you and there's also an example that they give in the matter of ABSA Technologies Finance and Solutions, where they said a practitioner of your experience could there and then have dealt with what was sought to be a waste of Court's time. You should have given a stern warning and so forth, but you didn't. What is your comment to that criticism, if any?

Ms B. Neukircher: Okay, thank you, Commissioner. Can I just deal with the last question first? The ABSA Technologies matter is not as simple as simply issuing a stern warning to practitioners. That matter had two separate applications before me. They both needed to be dealt with. The one was, if I remember correctly a Rule 35(12), which required a response and the other one was a Rule 30, if I remember correctly and those parties were at logger heads. The comment was that I should have issued a stern warning and sent them out to settle the matter between them. I could not do that. They were not prepared to listen to each other and the only way that you can sometimes as a Judge deal with parties like that is by writing a Judgment and give them a stern warning in your judgment, so that they can see it in black and white and that they can look to themselves in future and take to heart what you've put – when you put pen to paper. Secondly, as far as that is concerned, one must always remember that whilst the Attorneys in that matter were at logger heads, the parties are entitled to the hearing. The parties are entitled to

receive a hearing. They are entitled to receive an opinion. They are entitled to receive a judgment and that is what they received. Their Attorneys are the ones who got the slap on the wrist. Insofar as the the reasoning issue is concerned and the comments from the GCB, I did take note of that. Some of those judgments were my earlier judgments. I was aware that sometimes I tended to gloss over issues that required a little more thought and if you have a look at my later judgments, especially my judgments in the last – I would say 10 years or 12 years, you can clearly see that I have remedied that issue. I really put a lot of thought and effort into the manner in which I write my judgments and the research that I do and how I express myself so that there is no misunderstanding as to the point that I am trying to make and how I express myself, so that the party reading the judgment knows exactly why I make a decision. The second – sorry, the second comment, Commissioner, I don't recall anymore.

Mr Msomi: The second comment was about the fact that you lean more towards equity, rather than applying strictly the letter of the law.

Ms B. Neukircher: Yes, that has to do with the issue of the matter that went on appeal. You know, I must say, when I am given an opportunity and I am given an opportunity to express a judgment that leans towards equity, I do that, because the constitution provides that opportunity to me. I am either entitled to do that in terms of Section 8 of the constitution, if it's a constitutional issue or – I think it's Section 173 entitles me to expand on common law and bringing constitutional equity issues. I know that that was the judgment that was taken on appeal and overturned by Judge Southwood and Judge Engelbrecht and I am always mindful of these issues. There are only two judgments of mine in 16 years of being over the bench that have been overturned, but these are issues that I am mindful of when I sit and I do write judgments. I hope I've answered your question, Commissioner. Thank you.

CJ M. Mogoeng: Commissioner Norman?

Ms T. Norman: Thank you, Chief Justice. Good morning, Adv Neukircher.

Ms B. Neukircher: Good morning, Commissioner.

Ms T. Norman: So, what is your understanding of the concept of access to justice?

Ms B. Neukircher: Everybody is entitled to be heard. Everybody is entitled to have their case come to Court. Our problem is in this country that there are too many indigent people, who don't have the means of access to justice. So, the first hurdle, Commissioner, is getting your case to Court. The second hurdle of access to justice is actually, once you are in Court, getting heard and that entails somebody who is prepared, in other words has read the papers, somebody who knows the law, in other words, if you don't know the law, you have read up on it – you've read the heads of argument, you've gone and researched the matter and then thirdly, given the parties a good hearing,

listened to the arguments that are presented to you and fourthly handed down a judgment expeditiously.

Ms T. Norman: Thank you. Just linking it – that description you've given to the judgment that you hand down, I see that you've handed down a judgment at page 57, which is in Afrikaans.

Ms B. Neukircher: Yes, of my – the separate bundle?

Ms T. Norman: It's in the – let me just give you the – it's Book 1 of 2.

Ms B. Neukircher: Sorry, which bundle is it, Commissioner?

Ms T. Norman: It's Book 1 of 2.

Ms B. Neukircher: Book 1 of 2?

Ms T. Norman: Yes.

Ms B. Neukircher: Page 57?

Ms T. Norman: Yes. I beg your pardon, it's not at page 57. That's not the one. It's at page 35. I beg your pardon.

Ms B. Neukircher: Yes, the Scheepers Judgment?

Ms T. Norman: Yes.

Ms B. Neukircher: Yes.

Ms T. Norman: Is this how or is this – the parties within that division that judgments are handed down in Afrikaans and if so, how do you then, if you appreciate the whole concept that people must be able to access your judgments, how do you make it possible for someone who does not understand Afrikaans to access it?

Ms B. Neukircher: No, it's not the practice anymore. It used to be the practice, Commissioner, in – when I started off in 2002, it used to be the practice that you heard the matter in the language of the person in front of you. In those days, it was either English or Afrikaans. It was not a satisfactory state of affairs. It is now and then of course, if the losing party was Afrikaans, then you delivered the judgment in Afrikaans and that is why that judgment was Afrikaans. My judgments are now all in English.

Ms T. Norman: That was in 2013. This judgment is in 2013.

Ms B. Neukircher: That judgment in 2013, the parties were all Afrikaans in those days. I beg your pardon, not in those days, but the parties in that matter were Afrikaans and I handed down the judgment in Afrikaans.

Ms T. Norman: And you wouldn't do another one – a translation of that? You would simply publish it in Afrikaans?

Ms B. Neukircher: I didn't at that time. I wasn't aware it was going to be published on JDR. Had I been aware, I would've translated it.

Ms T. Norman: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner. Commissioner Schmidt?

Mr Schmidt: Thank you, Chief Justice. I'm partially covered, except that I found – I'm missing my notes. You've contributed to three books, Lexis Nexis?

Ms B. Neukircher: That's correct.

Mr Schmidt: Would you – sorry, would you say that that contributes to improving your research capability or ability?

Ms B. Neukircher: It does assist. What it allows me to do is, access other forms of publications that I might not ordinarily have access to and it also allows me to research a little more quickly than I might otherwise and I do love it. I must tell you. I'm busy trying to publish other books at the moment, so I have something else in the pipeline right now as well that I can't really talk about, but I love the publication part of it. It is immensely interesting. It's very challenging and what I do love, especially about the Motion Court forms and precedents book, what was so terribly exciting about that book, it's almost become like the bible for the Motion Court and it is immensely rewarding to see that being taken into Court by practitioners and being used as a handbook and that was the purpose of that book. The Lexis Nexis publication – that initial contribution – that online publication has, as I understand, incredibly popular, so much so that they're using it in other formats. The Magistrates Court Book, I haven't contributed. Again, you'll note that I simply mentioned that I was an initial contributor, so I haven't recontributed to that.

Mr Schmidt: Thank you.

CJ M. Mogoeng: Thank you, Commissioner Schmidt. Prof?

Prof Ntlama: Thank you, CJ. Good day, Advocate.

Ms B. Neukircher: Hello, Commissioner.

Prof Ntlama: You have a case, the Frasier one, where you appeared as an *amicus* about the rights of fathers to adoption. In your own opinion, what is the impact of that judgment in relation to other legal systems where a child born out of wedlock belong to the maternal family?

Ms B. Neukircher: You know, Commissioner, one must have a look at that case in the context of the time that it was actually decided. Can I just preface my answer and I will answer your question by the following – in that matter and it

was a very strange situation, I was appointed as the *amicus curiae* for the adoptive parents and I was *curator ad litem* for the minor child there. My function was a strange one, because if you think about it, it was two competing interests, if you think about it. They were sort of aligned, but they were competing and it changed the law in this country as far as adoptive fathers were concerned. One must be very careful with – when you're dealing with laws of adoption, how to apply them to traditional norms and traditional standards in other cultures, Commissioner. You must research how those cultures work before you can simply go and apply a standard like the one in *Fraser versus Naude*, because there is a reason why those traditional cultures have survived so long and are still so relevant today, so I would answer your question by saying, you need to first research that culture that you want to apply, the *Fraser versus Naude* standard to and you need to see whether you can apply it and if you want to apply it, you need to see how it's going to affect that culture, because we also know that in this country with the diversity of cultures that we deal with in this country, you cannot simply blanket apply every standard that you want to apply. You cannot do that. You tread sometimes where angels fear to tread. There is a reason. We have so many wonderful diverse cultures in this country. You cannot simply take one and apply it to another, because then you diversify in ways that you will – that impact on a system that has worked for hundreds of years and that's not correct.

Prof Ntlama: So, does it mean those practices, does that have to develop in the light of the new dispensation?

Ms B. Neukircher: No, that's not what I'm saying. What I'm saying is, you must take the practice. You must see how it works. You must have a look at how you can expand on it, but you cannot simply take a new standard and apply it willy-nilly. You must look at how the new standard is going to affect that which has existed for hundreds of years, because otherwise you may end up with a system that doesn't work. So, you must be very careful how you want to apply your new standards and that's our job as a Judge, not so? That is how – that is why we have these wonderful new judgments that have come out of our Courts recently in applying our constitutional values. I mean, our jobs as Judges is to apply the *custos mores* of society at the time, not so? That is our job and the *custos mores*, as *custos mores*, you apply what society wants at different times within society, so in 1960 you would apply X, but in 2018, you'll apply Y, because society has changed so much over the last 58 years. It's wonderful. That's what makes our law such a wonderful, living, breathing entity. It's exciting.

CJ M. Mogoeng: Thank you, Prof. Commissioner Duda?za?

Ms Didiza: Thank you very much, CJ. Good morning.

Ms B. Neukircher: Morning.

Ms Didiza: Good afternoon, rather.

Ms B. Neukircher: Good afternoon.

Ms Didiza: On your questionnaire, when you're responding on what has been your contribution to law, one of the things here, in pursuit of justice in South Africa, one of the things you've mentioned is your involvement or rather ensuring that you bring in female juniors of all races in the work that you do.

Ms B. Neukircher: Yes.

Ms Didiza: Maybe if you can share with us, without saying what inspired you to do that, what did you see as impediments that make a majority of female juniors from other races and not to be able to you know, get work or participate as they would?

Ms B. Neukircher: You know, Commissioner, I and I know this is probably going to sound very strange to you, but I never looked at it as an impediment of race. I looked at it first as an impediment of gender, because that's where we start off as women, not so? We start off first as women and then we go to race and I remember how hard it was for me as a young woman in 1990 at the Bar to get work and I then remember how long it took me to get out of an Unopposed Motion Court and get Trial work and get a Post Motion work and when I got the opportunities and there were more young black women at the Bar, I started looking around and I realised that it was time to start effecting a more transformative roll at the Bar, because we as women need to empower ourselves, because if we don't do it, nobody is going to do it for us, Commissioner, nobody. And we need to become role models for our sisters, so if you start bringing in young women to assist you and you empower them, they will start doing that for their sisters and it builds and it becomes – that stream becomes a river and the river becomes larger and it becomes eventually a sea and that's where we want to be eventually.

CJ M. Mogoeng: Commissioner?

Ms Didiza: The last question.

CJ M. Mogoeng: Oh, okay.

Ms Didiza: Having said that, if you were to look from 1990 and to where we are today, what would you say has been the pace of transformation in the judiciary, particularly as it relates to race and gender?

Ms B. Neukircher: I think it has been a moderate pace. I think this JSC has done some extraordinary work. I do realise that there is still a lot to do and I do realise that we need more women on the bench and I do realise that it is a difficult task for the JSC, but it is one that I know that the JSC is trying to fulfil.

CJ M. Mogoeng: Thank you, Commissioner Duduza. Commissioner Cane?

Ms Cane: Thank you, CJ. Good afternoon.

Ms B. Neukircher: Good afternoon.

Ms Cane: I'd like to understand why it is that you didn't continue with your work at the Independent Regulatory Board for Auditors. It seems that after five years you discontinued that. In the light of the previous Commissioner's questions, because it would seem to me that that would've given you an opportunity to be engaged in commercial work that perhaps wasn't available to you earlier in your career.

Ms B. Neukircher: Commissioner, that is a very difficult, personal issue for me.

CJ M. Mogoeng: Maybe you should let her pass, unless you really have to.

Ms B. Neukircher: No, it's fine, CJ. Let me answer the question. I had a wonderful lady working for me for 17 years. Her name was Felicia Nortje and her son I helped raise. Ellie passed away from cancer in 2013 and for the year subsequent to his death she was just never the same and she passed away in January – on the 6th of January 2014 and unfortunately my life didn't take a turn for the better after that and I just couldn't see my way clear to running my practice and continuing my work on IRBA and as a result of that I relinquished my duties on IRBA. I'm sorry. I didn't... I'm sorry.

Ms Cane: I'm sorry to have evoked such a deeply personal issue. That wasn't the intention and I had no knowledge that I was doing so, but it does cause me to follow up with the question as to how your practice has been since that time and whether you fully recovered.

Ms B. Neukircher: I have a successful practice, Commissioner. I have no issues with work. I have no problems getting work. I have no problems in doing my work and anyone you speak to will be able to tell you that I am a successful practitioner.

Ms Cane: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you so much, Commissioner. Minister? I forgot that yours was a follow-up question. I apologise.

MINISTER Masutha: It's fine. Advocate Neukircher, just following on the *Naude // Fraser* matter, it's a 1996 matter. It stood clear that we were the losing party as the Department of Social Development at the time.

Ms B. Neukircher: Yes, you were.

MIN Masutha: The principle that was enunciated, as I understood it, by the Constitutional Court there was to affirm the equal rights of mothers and fathers in the case of children born out of wedlock and even though it was in relation to adoption, subsequent legislation such as the current Children's Act move from the premise that both parties, whether there's wedlock or not, should have equal rights as a point of departure, which is a deviation from the

common law principle. Now, you in earlier responses eluded nonetheless to the significance of this cultural background where in the Roman Dutch context it would be the mother, but say in an African context it would be the father's side.

Ms B. Neukircher: Yes.

MIN Masutha: Now, in the face of those two opposing cultures and in the face of what the Constitutional Court has now laid down as the law, how do you see the two diverse cultures finding expression in the face of the new order where the Court has come right down in the middle and said this is the position now?

Ms B. Neukircher: Minister, I understand the *Fraser versus Naude* judgment to equalise the rights insofar – and could we just then – I assume we're talking about the adoption issue, or we...?

MIN Masutha: Well, it was about adoption, but the point I'm making is as a result of that principle approach subsequent legislation sought to realign the entire Children's Law or parent and child's law system along the lines that was adopted in that judgment.

Ms B. Neukircher: You see, as I understand it, Minister, what you need to do is you need to realise – well, we need to realise as practitioners that there is a traditional norms and standards that in a traditional culture – this is the way that it's done. The father and his family make the decisions as far as the children are concerned, but in the ordinary every-day day-to-day life the Children's Act applies, so when you go to Court the Judges are obliged to hand down judgment in accordance with the Act and that is the way that works. So, when you go to Court the Children's Act will apply. What the other Commissioner and I were discussing is, how would we expand on the law, taking into account the principles and traditional culture. Would you simply apply it? Would you enhance it? Can you enhance it? And the answer is, yes, but you need to be very mindful of how you would enhance it. So, to answer your question is, the Children's Act is applicable to everybody in this country when you go to Court, so even if it is a traditional couple, when they go to Court for things like primary care and residence or rights of contact, the Judge sitting there will be obliged to apply the principles in the Children's Act.

MIN Masutha: Now, there's a new challenge, which both the common law and maybe even customary law are trying to avert, which is now presented by this egalitarian principle that has now been laid down as the new law and that is to say in an event where a child is not being raised by both parents, in other words the child happens to be with one of the two, what we're trying to avoid is a situation where a burden is then created on the father – on the parent who has the child to have to seek the acquiescence or the cooperation or even find the other parent, whether for purposes of adoption, for purposes of wanting to take a child out of the country, *et cetera*, which can be an onerous burden, because that might involve litigation. Do you think this has helped

the position of the child or made it even more complex, given the additional burden that has been created on the parent?

Ms B. Neukircher: I do think it might have just helped to make it a little more onerous, but I do think, Minister, that the problem that I see when I look at the practice – my practice as far as divorces, family law and such is concerned, people don't utilise the mechanisms provided in the Children's Act and one of the mechanisms is the mediation mechanism. You know, the Children's Act has this wonderful principle that one should try and avoid acrimonious litigation in so far as possible and that is for a reason, so we have these principles that are there, but they are not fully utilised and that is a problem. It would go a long way to alleviate the issues that you are mentioning and I don't think it just is insofar as children are concerned, but all forms of litigation. There should be some form of mediation prior to litigation, because it's important. We have severely indigent people in this country, Minister – severely indigent, who cannot afford the Court process. They come to Court. They want our assistance, whether as Lawyers, Advocates, Judges. They don't even get their foot in the door, because they can't afford the first hurdle. It is a huge problem and some form of mediation process might assist them and especially insofar as the children are concerned. You might find a lot of these matters do not even need to get into the Courtroom if you start off with that. I hope that answers your question.

MIN Masutha: Thank you, Chief Justice. Thank you.

CJ M. Mogoeng: Thank you, Minister. Commissioner Nkosi Thomas?

Ms Thomas: Thank you, Chief Justice. Good afternoon, Ms Neukircher.

Ms B. Neukircher: Good afternoon, Commissioner.

Ms Thomas: So good to see you again...

Ms B. Neukircher: And you too.

Ms Thomas: ...after a very long time.

Ms B. Neukircher: Yes, it has been too long.

Ms Thomas: I went through your questionnaire, your questions and answers that – the answers to the questions rather than you've given to the commission and I found myself concerned with what occurs on page 13, where you really are telling us that you have zero percent experience in criminal work.

Ms B. Neukircher: Yes.

Ms Thomas: Well, to be precise, the question is what proportion of your work is criminal work and you said zero percent, so my question to you is how would you then execute your duties where say you get appointed and the JP says

put on your red gown and get on with it. How would you discharge those responsibilities?

Ms B. Neukircher: Thank you, Commissioner. Let me assure you, Commissioner that as a baby junior at the Bar I did my fair share of *pro deos* back in the day. They weren't that many and I did see my way around Criminal Courts and criminal trials. It has been many, many years since I last conducted a criminal trial, that I will tell you. I have – if you look at my acting Judges grid that our JP has given you, you will see that I did spend two weeks in the third term of 2006 in Criminal Court. I spent – I did hear matters. If I remember correctly and you know, I must tell you, two of them stick out. Even though it is 12 years ago, I remember like they were yesterday. The one was a gang rape of a 24-year-old young woman and the other one was a rape of two young children. The one was five and the other one was six. I had to sentence him. The other one was a conviction and sentencing and the other one was just a sentencing that had been sent to me from the Magistrate's Court. So, I have done criminal trials and then I have done my fair share of criminal appeals. I don't profess to be an aficionado on criminal law, so please don't get me wrong. That's not what I'm saying, but I'm a hard worker. I read voraciously. I ask people that I know are efficient in and proficient in that area of law and I – you know, in the criminal appeals that I have done and I have done many, many criminal petitions and reviews, I have managed to do them without difficulty.

Ms Thomas: Don't you think that perhaps it could benefit you – just a suggestion – to spend a bit more time in the Criminal Court and I'm talking about Trial Court, not appeals to adequately equip yourself before you raise your hand for appointment or do you consider yourself ready?

Ms B. Neukircher: Commissioner, you know, I've been doing this for 16 years. If my JP feels that I need more experience in the Criminal Court, then I defer to his expertise, but I do feel ready.

Ms Thomas: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Commissioner Masuku?

Mr Masuku: Thank you, Chief Justice. I was going to abandon the opportunity to ask, until you answered the last question about deferring to the JP's judgment on your readiness to be a Judge. What's your understanding of judiciary independence and the role of a Judge, is it your view that in order for you to fully engage with criminal cases you ought to have had – given that experience you ought to have had that criminal experience in the sense of having adjudicated a criminal case.

Ms B. Neukircher: No, because I have adjudicated criminal cases.

Mr Masuku So, but why did you say that you would defer to the JP to decide for you?

Ms B. Neukircher: No.

Mr Masuku: ...whether you're ready or not.

Ms B. Neukircher: I beg your pardon. If that is the way you understood it, then I misspoke. If the JP feels that he needs to put me in Criminal Courts once I'm appointed, then I will defer to his expertise.

Mr Masuku: Okay, thank you.

CJ M. Mogoeng: Commissioner Moeketsi?

Mr Moeketsi: Thank you, Chief Justice. Good afternoon.

Ms B. Neukircher: Afternoon, Commissioner.

Mr Moeketsi: Perhaps my question would have been a follow-up to Commissioner Duduza's question.

Ms B. Neukircher: Yes.

Mr Moeketsi: The fact of the matter is one of the serious impediments to transformation is the gatekeeping that we often see in the Bar, where they will only take five or three people in a period. Now, what I want to know from you, would it be appropriate at this stage to have one uniform training for all the practitioners, whether you are an Advocate or an Attorney? You are just having one uniform training, so that you can be ready to enter into the profession?

Ms B. Neukircher: Commissioner, you know, that's a very difficult question for me to answer, having grown up at the Bar for 28 years and I'm a big proponent of the Bar, having grown up there and applied my trade there. I do believe that a combined legal profession does have its place, but – and I think it's important that we have – because we are a referral system at the moment. We have clients who go to Attorneys, who then go to Advocates, because Advocates are supposed to be specialised in litigation, not so and that is important that clients need to know that their cases are being applied in a Court and presented in a Court by specialists in that field. So that is my answer to your question. It is important for a client to know that their case is being presented in a Court by a specialist in that field of litigation.

Mr Moeketsi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you so much. You're excused, Ma'am.

Ms B. Neukircher: Thank you, Chief Justice. Thank you, Commissioner.

