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JUSTICE PORTFOLIO COMMITTEE

3 March 1999

SUPERIOR COURTS BILL; CRIMINAL PROCEDURE AMENDMENT BILL: HEARINGS

Documents distributed:

Submission from Johannesburg Attorneys Association

Superior Courts Draft Bill

Grahamstown Diocese: Church of the Province of Southern Africa Submission

[Law Society of South Africa Submission](#)

SUMMARY

Submissions on the Superior Courts Bill were heard from the Grahamstown Diocese of the Church of the Province of Southern Africa as well as the Johannesburg Attorneys Association (JAA).

The Law Society of South Africa presented a submission on the Criminal Procedure Amendment Bill [B7-99].

MINUTES

The Chair, Mr de Lange (ANC), started with an apology. The schedule for the day had changed due to the fact that telecommunication companies, police intelligence, etc. wanted to meet with the Minister first before they gave evidence at the public hearing on the Interception and Monitoring Bill.

Superior Courts Bill

Bishop Russell, Grahamstown Diocese: Church of the Province of Southern Africa

His main concern is what social and economic effect changing the seat of the high court from Grahamstown will have on the Grahamstown population. His concern is also what is best for the administration of justice in the Eastern Cape. The bishop feels strongly that you should not develop one region at the expense of another or without developing other regions as well. He said that Grahamstown has no burgeoning bureaucracy and a fundamental lack of real potential, so to remove the courts would have a devastating impact on the community; while there is massive development in Kingwilliamstown and Bisho. He asked that the poor of Grahamstown not be punished just because the bench has been so conservative and white. The bishop said too many Eastern Cape towns are on the verge of disaster and that although history is precious to the people, history should not be allowed to dictate the future.

The Chair said the bishop understood the transformation process clearly and that he appreciated the bishop's views. The Chair said that the Minister's position is that he would like to have the seat of the high court in the capital of each province, but this is subject to the decisions of the provincial government. The Minister has also been informed that the provincial legislature wants Grahamstown to have the seat. The Chair asked whether the communities of Grahamstown are supportive of the court staying there.

The bishop said the communities were definitely supportive of the court staying there, and he reiterated that having high income earners in Grahamstown (i.e. lawyers, judges) would create more jobs and help the economy through a trickle-down effect.

An committee member remarked that the Committee needs to hear from a lot more institutions like that which the bishop comes from (the church), because it is important, at this level, to hear the human

side on issues where decisions are being made and Bills being passed. The Chair echoed her view that it is excellent to have this kind of public input because, he said, justice is a public competence.

Criminal Procedure Amendment Bill

Law Society of South Africa

Mr Snitcher, read his submission which holds the view that the review process should not be abolished, rather that it be retained with limitations. He said review is an essential safety valve which protects the community.

The Chair pointed out that the review success rate has only been 3%. He could not really think of limitations that could be put on review. Mr King will obtain the views of the judiciary regarding these amendments. It seems that the judiciary is in favour of retaining "review" and that limitations on the review process should be adjusted.

Superior Courts Bill

Johannesburg Attorneys Association (JAA)

Mr De Broglio and Mr De Jager delivered the presentation. Mr De Broglio said that their submission really only touches on one point. – that the areas of Randburg and Sandton naturally fall under Johannesburg and therefore it does not make sense to give these two areas to Pretoria. Mr De Broglio also pointed out that Sandton falls under the magisterial district of Randburg. He said they were greatly shocked when Hoexter suggested that Randburg goes to Pretoria and they thought that it was a mistake, especially so if one reads the admission Hoexter made in paragraph 4(ii) of Annexure B. Hoexter admitted that he did not know that Sandton fell under Randburg's magisterial district before he had made his recommendation that the two areas would fall under Pretoria's jurisdiction. Mr De Broglio said the public would be adversely affected if this is allowed to happen, and the public who live in Randburg and Sandton will be inconvenienced because they will have to litigate in Pretoria which is 50km away, whereas under the present system, the court is only 5km away. Mr De Broglio said the poor will suffer even more, because, for example, the people from Alexandra who fall under the Randburg district will also have to travel to Pretoria. The extra costs that will have to be incurred now (like correspondent attorneys in Pretoria, travelling expenses, time wastage) are unfair and unnecessary. Mr De Broglio said that the proposal is also impractical because, for example, the municipal boundaries cross roads, resulting in the situation where one neighbour can sue in Johannesburg, but the other neighbour will be forced to sue in Pretoria. The costs of litigation will increase, and put the law out of reach of even more people.

The JAA's proposed solution states that Midrand, because it is growing fast, is a more viable area to give to Pretoria than Randburg and Sandton. Midrand is closer to Pretoria and its size alone justifies giving it its own magisterial district.

Ms Jana (ANC) asked whether they could relate their argument to cities/areas/jurisdiction and the density of the population.

They answered that geographically Pretoria is completely apart from Randburg with a population of around one million, whereas Randburg, Sandton, and Johannesburg form one area with around three million people.

An MP asked what the effect on the volume of work left for Pretoria would be if Randburg is removed from Pretoria. He also wanted to know how the JAA's proposed solution would be affected.

Regarding the first question, Mr De Broglio said the question should be "how much work will Johannesburg lose?" because Pretoria has never received work from Johannesburg, so Pretoria would not feel the effects as much as Johannesburg.

The MP said that Pretoria used to receive work from Vanderbyl Park, so to say that there would be no effect on Pretoria is wrong.

The Chair raised the issue of concurrent jurisdiction, but because nobody was really clear on the issue, they resolved to discuss concurrent jurisdiction once they had more information.

Regarding the second question, Mr De Jager said that since Midrand already has a criminal court, facilities are already in existence and this is part of the reason for suggesting that Midrand be made a new magisterial district.

Mr Cassim (IFP) said that it seems as if Johannesburg wants to retain all the productive areas; he said Midrand may create a lot of work later, but what about the present?

Mr De Broglio said that Nelspruit has thirty law firms, he does not know how much work is being generated, but work will definitely be taken away from Johannesburg and be given to Pretoria, so Pretoria is being compensated for something they will lose in the future, but that they are not losing now.

The Chair said that Mr De Broglio could not answer him on concurrent jurisdictions, so how can he conclude that this is the situation regarding Pretoria. The Chair said "not to beat around the bush, the fact of the matter is that the money is in Sandton and nobody wants to lose it". The Chair asked whether the Johannesburg attorneys would really lose so much work, because litigants will forum-shop (that is, choose between Pretoria and Johannesburg), but because the concurrent jurisdiction issue is unclear, evidence will have to be brought.

An MP asked the Department to investigate the Midrand issue so that they can determine what effect the proposal from the JAA will have.

Mr De Lange (law advisor) said basically you need an infrastructure, sound business, etc. to create a new magisterial district.

The Chair said he doubts whether this bill will be passed during this term, even though he hopes it is and that it is their utmost priority to do so. The JAA did not raise the issue of arbitration, and he knows that cases are going to arbitration instead of to the courts.

Mr De Jager replied that arbitration is expensive and not as successful, but has serious repercussions for the civil courts in Johannesburg because it is cheaper and quicker than a trial.

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