11 In his article referred to above at p 4, Sander states as follows: 'The most common and familiar form of dispute settlement between two parties is bargaining or negotiation. Negotiation offers the great advantage of allowing the parties themselves to control the process and the solution. Sometimes, however, disputants are unable to settle the dispute, and a third party must be engaged. If a third party joins the negotiations, the parties must determine whether he/she has power to impose a solution on the parties, or whether the third party is simply to help the disputants arrive at their own solution. The latter role is commonly referred to as conciliation or mediation. The former might entail some form of adjudication, by a Court, an administrative agency, or a private adjudicator also known as an arbitrator'.

12 Sander (at p 10 of his article referred to above), describes the mini-trial as follows: 'Ten years ago some imaginative litigants in the federal district court in California developed an innovative extra judicial mechanism to aid in the settlement of complex and protracted litigation. The procedure calls for the parties to select an experienced individual to preside at a two-day information exchange. Each party has one day to present its case in any form it desires, including questions for the opposing side. The highest official of each party, assuming a corporate litigant, must attend this hearing. At the end of the proceedings, the two top officials confer, without their lawyers, to evaluate the case. In the seminal case utilizing this innovative procedure, the parties promptly settled. If an agreement is not reached, then the presiding official will give his view concerning how the case would be resolved in court. The parties then use this additional information to discuss settlement. If settlement is not achieved, the procedure has no evidentiary effect and the case returns to court. In virtually all cases which have utilized this procedure, however, settlement has been achieved. The procedure has the additional virtue that it can be readily adapted to different situations (eg the presider can be dispensed with, more or less time can be allowed for the presentations).'

13 During 1989 the Independent Mediation Service of South Africa (IMSSA) mediated and arbitrated approximately 750 labour disputes.

Litigation:
In the American legal system, a basic right which guarantees every person his decade in court.
– *White's law dictionary*

Joint Statement by Association of Law Societies and General Council of the Bar of South Africa

On Friday, January 26, 1990, the Executive Committees of the Association of Law Societies ('ALS') and the General Council of the Bar ('GCB'), held their annual joint meeting to discuss matters of common concern to the attorneys and advocates of South Africa.

Subsequent to the meeting, the following joint statement was issued:

1 Both branches of the profession have agreed that they will actively promote Alternative Dispute Resolution procedures such as arbitration, mediation and conciliation. Alternative Dispute Resolution ('ADR'), is not a simplified method of litigation, but a more informal system for resolving disputes. The main advantage of this method is that parties to a dispute will often be able to achieve a quicker and cheaper resolution of their problems without having to subject themselves to the rigours and delays of a court case. ADR, however, can never provide a complete substitute for litigation. It should therefore be seen as an integral part of the whole process of justice and should form part and parcel of the skills upon which a lawyer can call in delivering legal services to his clients. The importance of ADR is that, in certain appropriate circumstances, the dispute can best be resolved without resorting to litigation, and more often than not, the opposing parties' sense of justice may be satisfied when a particular method of ADR is implemented, because it is more flexible than strict litigation conducted in the Courts.

The ALS and the GCB have accordingly decided to act jointly in making this system known to the public and in organising seminars on the subject for members of both branches of the legal profession.

2 The ALS and the GCB are also of the opinion that the reform of the *pro Deo* system should be given urgent attention by the Government, especially in cases where the death penalty may be imposed. In all such matters the advocate should be assisted by an attorney and proper instructions given to both advocate and attorney by the Legal Aid Board. The ALS and the GCB share the view that it is a top priority that the *pro Deo* system be brought under Legal Aid without delay.

3 The ALS and the GCB once again reiterate the necessity for the creation of an Ombudsman, in the classical sense, in South Africa. In the current debate about a new constitutional dispensation for the Republic and with major changes envisaged, it is imperative that fresh attention should be focused on the administrative side of the Government of this country. The classical Ombudsman, as known in European and other countries, is an independent commissioner who has the authority to investigate any complaint by a citizen concerning the administrative actions of public officials and to report thereon to Parliament after a proper investigation.

The ALS and the GCB are of the opinion that at present the Advocate-General does not have sufficient powers to fulfil the role of an Ombudsman and they therefore urge the Government to give serious consideration to the appointment of a full-fledged Ombudsman. ■