the iron laws of the pocket calculator)? When President Mandela asked Chief Justice Corbett to continue in that office (twice) was it at the cost of legitimacy – or did this in fact give stature to the Appellate Division?

The legitimacy of public institutions is a complex thing. It has everything to do with a moral authority derived from fidelity to the Constitution. Obviously that is weakened if the composition of a body, its decisions and the way it functions are seriously out of kilter with the society it serves (like the old Appellate Division in the emergency years). But it is not all about race, because the Constitution is not all about race. The Constitution is, in fact, undermined when demographics – and these with broad, selective and inexact brushstrokes - are used to overpaint the core values of the Constitution. One such value is explicitly "non-racialism" (section 1(b)). It is reinforced by section 7 and of course the equality clause (section 9). Indeed, in authorising racial redress, the Constitution stresses that this is "*to promote equality*" (section 9(2)). These provisions are the antithesis of a mere numbers game.

As Mamphela Ramphele has remarked: it is not for this that we worked.

When a brilliant South African, known for his commitment to constitutionalism, his scholarship and his dedication, is passed over by the President for appointment to the Constitutional Court in the circumstances which recently applied, legitimacy is not advanced. The institution is not enhanced; only a racial ratio is.

"We need to say, as Edith Cavell said of patriotism, that race is not enough."

Transformation

If that is right about legitimacy, what does transformation then mean? Cheryl Loots, in her discussion paper on the proposed single legal profession, says it means change. We have said in our response that it does not: in context, it means changing *for the better*. How do we measure that? Certainly we start with the fact that it is not right that still too few judicial officers and legal practitioners are not male and not black. We must be committed to changing that – and with all deliberate speed. But we must not lose sight of the fact that change must make things better, not worse. If the result is less, not greater, access to justice, there will not have been transformation, only transmogrification. What applies to health and education applies to justice: we need to recruit, train and advance in a way which redresses current imbalances in race and gender. But we must not lose sight of the fact that the ultimate requirement is the capacity to *improve* the justice system. Nothing less will meet the injunction in the last words of the President's inaugural address to "*get South Africa working*".

This is not a call for quiescence: far from it. The GCB has frankly acknowledged that it has been too complacent and reactive in the past. As Arthur Chaskalson has said, there is none of us who in the past has done all that he or she could do.

But in tackling the issues with which I began, we have to start in the right place. Unexamined slogans should not be left unchallenged – particularly when put to destructive use.

We need to say, as Edith Cavell said of patriotism, that race is not enough. 🕮

Letters to the editor

Strategy of reform

Alan Dunlop
South African Institute of Intellectual Property Law

I cannot allow the September 1999 issue of *Consultus* to pass without paying compliments to the refreshing and encouraging impression conveyed from the very first pages of this issue. The courage and clarity of thought evidenced in the Bar's new strategy for reform and in the speech of the new Chair of the GCB to the Commonwealth Law Conference are a source of hope and encouragement to all in South Africa that our extraordinarily diverse heritages which now make up the new South Africa will indeed achieve the creation of legal structures in our country which take the best from all our influences.

It is interesting that the GCB has now issued a general policy statement which defines an encompassing strategy in three dimensions and these are discussed in the Chair's contribution. I am happy to say that for a few years now the South African Institute of Intellectual Property Law has restructured its organisation and practises into two main areas, (a) public services and (b) professional services. The former is outward looking, dealing with training and student affairs, advice to Government and public affairs in general and the latter to various services to its membership. The Institute has for many years been responsible for the lectures and examinations conducted under the auspices of the Patent Board of which the Registrar of Patents is Chairman, the examination for qualification as a Patent Attorney. It has also created its own special qualification of a trade mark practitioner with similar very high standards to that required of the Patent attorney. These lectures are being offered to a wide audience, and particularly through the stimulus of its lectures given to the BLA membership the Institute has been wrestling with the twin problems of preserving high professional standards and of opening the profession to the previously disadvantages. A recent special general meeting of Institute was devoted to finding solutions and I believe we are well on the way, including the intractable problem of pupillage being made available to those outside the traditional centres of excellence in this profession. 🕮