ocean in addressing the demand for legal services at the lowest end of the financial spectrum, because this is a classic instance of cross-subsidisation. The high value work must continue in order to meet the costs of the free work and with many small firms of lawyers and those at the Bar who are already struggling to make ends meet, pro bono work is a luxury they can ill afford.

The attitude is that reflected in one judge's description of counsel's argument as 'leaving no stone or any part thereof unturned.'

Ultimately I believe that there will always be an unsatisfied demand for legal services and there will always be good cases that are not brought to court and good defences that are not advanced because of the inability of people to fund or obtain funding for the proceedings. We can facilitate access to justice by way of endeavours to reduce levels of costs by simplifying procedures, better case management and contingency fee agreements. It would be a work of supererogation for me to try in a short paper to reprise what Lord Justice Jackson has already done. I make only a few comments from our domestic experience.

Contingency fee agreements have been relatively successful in South Africa in making personal injury litigation available to even the very poor in our community. Whilst we have a statute that regulates this topic[15] it is badly drafted and generally ignored by the attorneys who act on a contingency. In practical terms these attorneys conduct litigation on a 'no win, no fee' basis where, at the successful conclusion of a case, they will tax a conventional bill of costs (which covers a fair proportion, but not all, of their disbursements) and charge over and above that a proportion, usually 25% though sometimes less with small claims, of the damages recovered. The latter fee is not recoverable from the other side. Whilst there are occasional complaints of over-reaching in these arrangements by and large they appear to work well and people are willing to sacrifice part of their damages in return for making some recovery.

In regard to court procedures I have little doubt that measures to speed up cases by simplifying procedures can reduce costs simply because they involve less work and therefore fewer billable hours. However I am sceptical of achieving this through the front-loading of costs by way of detailed pre-action procedures and by shifting the taking of evidence towards written witness statements. Not only does this make proceedings more costly as noted by Lord Justice Jackson but in a country such as ours where there are wide differences between the quality of legal practitioner available to the well-resourced and those available to ordinary people it has the potential to work injustice, because the one side's lawyers are better resourced and more adept at giving evidence than those of their opponents. And we need to acknowledge that when evidence is reduced to writing it is the lawyer's voice that we are hearing not that of the witness.[16]

Lastly if something can be done to break the near universal reliance on charging by time, particularly by attorneys, but increasingly by counsel, that would be a good thing. Our courts have bemoaned it as a basis for charging fees, describing it as putting a premium on slowness and inefficiency.[17] It started as a way in which clients could monitor the costs charged to them. It has become routine because it is easy to calculate (especially if the hour is 6, 10 or 20 minutes, which is how most law firms calculate them) and I would suggest profitable when law firms demand anywhere from 1500 to 2200 billable hours annually from professional staff at the junior and middle levels.[18] Clearly it provides a perverse incentive to the lawyer to manipulate the time spent on a case and I was always amazed in practice by the number of hours my juniors would claim to have spent on a draft prepared for my consideration. The problem is that the practice is well nigh universal, although my information from speaking to the managing partners of leading firms is that it is highly unpopular with clients and a constant source of disputes over fees especially in litigation. Even experienced costs judges admit to difficulty in keeping the number of hours claimed in check when looking back over a case. How much less qualified is the litigant who is facing a bill calculated on an hourly basis irrespective of how much can be recovered from the other side? There can be little doubt that it increases costs and inhibits access to justice.

In this country hourly rates are used only to a limited extent in the taxation of bills of costs,[19] and a menu of tariff items is specified in the rules of court. However that creates the problem of keeping the tariff up to date with the result that recovery is usually limited to 50 or 60% of the actual cost to the client. There is the further problem of the artificiality of determining the value of work on a basis wholly different from that actually used as between the attorney and its client. However if hourly rates are introduced into the taxation process, as I understand happens elsewhere, the rates used are likely to be based on those charged in practice, which effectively endorses the current level of attorneys' charges. The one glimmer of light on this particular horizon is that it appears that the customers are beginning to revolt. Articles in journals and professional magazines note that corporate counsel are increasingly demanding that work be charged on a fixed rate fee basis agreed at the outset of the instruction.[20] I suspect that the problem of hourly rates is more likely to be resolved in the marketplace than by intervention from the side of the courts

Reverting to my basic theme, however, it seems to me that all these reforms and adjustments address the problems only at the margins rather than bringing about a sea change in the level of costs and the ability of ordinary people to obtain access to justice at affordable prices. It is undoubtedly helpful to allow some form of regulated contingency fee arrangement and experience suggests that clients are accept some diminution in the er than forego their claim entir one suspects that at the lowes people will regard their claims worth pursuing. To permit sor litigation by outside funders is idea although it is likely to l to a limited range of cases fi profit can be expected and th plications are potentially trou Baroness Deech points out in l have yet to work out the rec consumerism and ethics' in th other spheres.

It is also helpful to look at i issues of cost shifting in areas

To permit some funding of litigation by outside funders is also a good idea although it is likely to be restricted to a limited range of cases from which a profit can be expected and the ethical implications are potentially troublesome.

cial review. Our own experience in labour cases, where adverse costs orders are rare