

The Circuiteer



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News from the South Eastern Circuit

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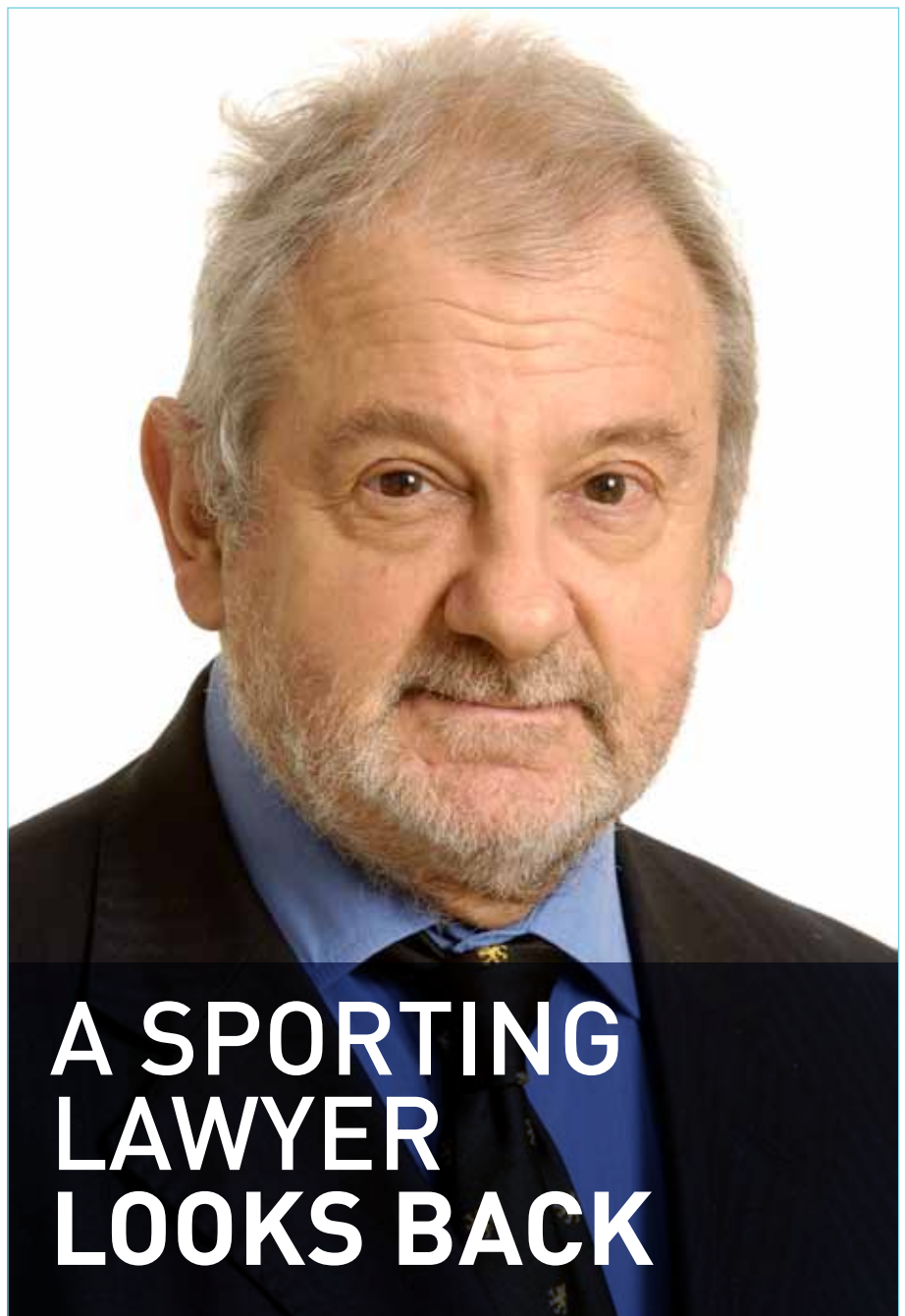


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A SPORTING LAWYER LOOKS BACK



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Editorial Committee:
Ali Naseem Bajwa QC (Editor),
Fiona Jackson, Tanya Robinson,
Tetteh Turkson and Emily Verity

LEADER'S COLUMN

BY NICHOLAS HILLIARD QC

I don't suppose that there has ever been an easy time to take over as Leader of our Circuit, but that can certainly not be said about the situation from January 2011 onwards. Barristers doing publicly-funded work can never have faced the variety of challenges that we do at the moment. Everyone understands that some cuts in public spending in the justice system are inevitable. The public are, however, entitled to expect that cuts will not be implemented on a scale and in a manner that puts in jeopardy the professional survival of those barristers who undertake this work and whose existence is vital if access to justice is to be maintained.

... it is in my view a remarkable risk to take with the justice system, and it may obviously all end in disaster

At the time of writing, we await the Government's response to the submissions it received following the publication of the Green Paper on the reform of Legal Aid. The Circuit submitted its own response to a large number of proposals affecting civil, family and criminal Legal Aid. The submissions made by the Circuit are available on the website. Sarah Forshaw QC chaired the group who provided our response and they deserve the thanks of all of us for providing a high quality document under considerable pressure of time. I hope that at least some of the points made by those who know what they are talking about will be listened to. Removing large areas from the scope of legal aid simply

means that conflicts are displaced and that their resolution will fall upon other agencies or result in self-help.

It seems inevitable that in the near future the Bar will be able to bid for contracts with the Legal Services Commission. Whether the Bar will in reality be in a position to compete with solicitors in this market is far less clear. Whilst it may satisfy economic theorists, it is in my view a remarkable risk to take with the justice system, and it may obviously all end in disaster. I have heard it said that there is some appetite at the Bar for change of this kind. I have seen almost no evidence of this. I am clear in my own mind that the public interest is unlikely to be well-served by what is in prospect.

Of even greater concern is the possibility of a system which incorporates One Case One Fee. I firmly believe that Government should take responsibility for setting the rates payable for publicly performed advocacy in cases which merit public funding. It is a vital safeguard of quality at the stage of the legal process which is the most important for the public and for the "consumer" of legal services. The alternative is, of course, a race to the bottom in the pursuit of profit. For as many years as I can remember, Government has accepted this responsibility and it should continue to do so.

I have no doubt that the answer from the Ministry of Justice will be that a system of Quality Assurance for Advocates means that there is nothing to fear. No doubt that is why the Legal Services Board has said that such a scheme should be drawn up for advocates in criminal cases by July of this year. It will depend in large measure upon judicial assessment. The Circuit's response to these proposals is again available on the website. It was suggested, for example, that Queen's Counsel should be subject to



the scheme. Any degree of familiarity with our profession reveals that Queen's Counsel are already subject to an expensive and extensive accreditation process on appointment. Thereafter, they are subject to the same continuing education requirements and complaints procedures as everyone else. Dogma aside, it is hard to see why it is thought that Queen's Counsel should be subject to this further degree of regulation.

As is the way with these things, the scheme is at present wholly uncoded. I hope that the Bar Council will examine ways to find savings in its own operations so as to ensure that the cost can be met from the charge that is already made for practising certificates. And lest anyone should think that contracting and quality assurance issues are of concern only to criminal barristers, there can be no doubt that the

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intention is to extend the schemes in due course to other practice areas.

As if all of this were not enough, a National scheme for the grading of external advocates used by the CPS will be underway by the start of April 2011. I have already written to Circuit members about this. I cannot stress enough the

I am told, however, that on occasions she resembled Chief Inspector Dreyfus in the Pink Panther films.

importance of taking the time and trouble which are necessary to ensure that application forms are completed in a high quality way. It is the best means of avoiding subsequent disappointment, either because a particular grade is not achieved or because an individual finds that he/she is not on the list at all. It is a competitive process and numbers will be limited by what the CPS decides are its business needs.

Plainly, any barrister whose practice involves publicly funded work cannot proceed as if none of this were happening. At the very least, it seems to me that the response must include the following:

- 1) intense scrutiny of present levels of Chambers expenses and accommodation;
- 2) every effort needs to be made to diversify practices to reduce total dependence, if possible, on particular sources of publicly funded work;
- 3) if the choice is forced upon us, consider whether or not contracting is for you. This is not simply the preserve of large sets of Chambers. There is no reason why smaller



sets should operate in isolation when they could join together for a venture of this kind. Whatever your response, doing nothing is not one of the options. I hope that the Circuit's programme of continuing education will provide you with some help.

On a brighter note, this is an opportunity to say thank you to my predecessor, Stephen Leslie QC, for the outstanding way in which he gave of his time and energy in his term as Leader. I can't think that anyone ever enjoyed being Leader more than he did and the pages of the Circuiteer will be less colourful without him. I cannot guarantee to match his dress sense but Stephen's delight and pride in being a barrister seem able to withstand anything that Government and Regulators can throw at us.

Amazingly, our Circuit Administrator, Inge Bonner managed to stay in post throughout Stephen's period of office! I am told, however, that on occasions she resembled Chief Inspector Dreyfus in the Pink Panther films. Nonetheless, she has now decided that the time has come for her to move on. She has played an enormous part in the life of the Circuit. She will be sorely missed and we will be

arranging a suitable event to thank her properly for all her efforts. Natasha Foy will be taking over from Inge, and we look forward to working with her.

I should also record that Maura McGowan QC has taken over from Anesta Weekes QC as Director of Education and Training. Anesta made an immense contribution to our education programme, which is one of the things we do best, and she also has the gratitude of us all.


The Circuit's Annual Dinner will take place on Friday 24 June in Lincoln's Inn as always. If you haven't come before, please come for the first time. If you have come before, please come again. I hope it will provide some reasons to be cheerful, not least the opportunity to hear from our speaker, Lord Justice Moses. He was a keen Circuiteer when at the Bar, thereafter one of our Presiding Judges, and I am delighted that he will be our principal guest. I hope to see you there.

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DAVID PERRY QC

PROSECUTION AND DEFENCE ADVOCATES: ARE THEY THAT DIFFERENT?

BY AMANDA PINTO QC

 David Perry QC, a well-known and erudite barrister, was introduced to the audience of this lecture and question and answer session by Anesta Weekes QC. David started his career in criminal chambers, becoming Treasury Counsel and is currently a Deputy High Court Judge, who spends much, but by no means all, his time at the Bar in the appellate courts, be it the Court of Appeal, the Supreme Court or Strasbourg.

David introduced his excellent talk by answering the question posed in the lecture title: "Yes... and no." He highlighted the changes in acceptable advocacy style over the years, both in this jurisdiction and abroad, with the sobering thought

...barristers must strive to fulfil a public duty and not to be a public nuisance.

that prosecution and defence advocates only began appearing regularly in serious criminal trials after the Prisoners Counsel Act of 1836, when rules relating to barristers' duties were first crafted. He then embarked on a historical account - informative, amusing and shocking by turns - of fashions in advocacy. We have been learning and honing our duty (whether for the prosecution or the defence) ever since.

David emphasised the duty of the advocate to the court and to the administration of

justice generally and that barristers must strive to fulfil "a public duty and not to be a public nuisance". He defined the Bar as a profession and focused on what that entailed: firstly, it is more than a group of workers doing a particular job; secondly, the Bar benefits the community a whole by discharging a public duty not a business transaction; and thirdly, a barrister's profession requires mastery and the specialised knowledge of the law over a lengthy period of training.

Perhaps his best piece of advice was that: "advocacy is psychology: one mind working on another." That tenet informed many of the other points he made, applicable to both sides of the profession: preparation is crucial - the earlier the better; try to put yourself in the position of your tribunal: how would you like to be the victim of your own advocacy; submissions which are short, to the point and simple can be far more effective than longer less thought-out ramblings; answer the question asked; be courteous and respectful to your opponent and to the court. Some if not all of these may be obvious, but it is important that they are articulated because it is astonishing how often they are not observed at the Bar.

Anesta Weekes QC asked a number of questions of David of which I mention just one, which highlights the difference in our adversarial system between the practical position of defence and prosecution barrister. The difficulty posed by the disclosure regime, in which the prosecution is entrusted to decide the relevance of unused material in the absence of the

defence, places a burden on the prosecution advocate to act with even more scrupulous fairness than usual. It is inherently dangerous to have the prosecutor and the judge conferring in the absence of the defendant. This difficulty arises, on analysis, because it is a departure from the adversarial system, which provides the balance between the parties.

David's address was a thoroughly researched composition on the ethics as well as the practicalities of adversarial advocacy. He evidently adheres to the advice given to his audience.



Amanda Pinto QC is a barrister at 5 Paper Buildings

SOUTH EASTERN CIRCUIT BAR MESS FOUNDATION



Advanced Advocacy Course

Keble College Oxford

Monday 29th August - Saturday 3rd September 2011

This is an intensive, week long, residential course described by a former presiding judge of the Circuit as the "Best Advanced Course in the UK". It is designed for practitioners in both civil and crime who want to improve their advocacy skills. The trainers are distinguished judges and practitioners from the UK and abroad.

Speakers this year include Lord Walker of Gestingthorpe and Lord Justice Moses

45 CPD hours, including 9 hours of advocacy and 3 hours of ethics
Open to members and non-members of the Circuit

The Inns of Court are each offering funding for up to five of their members practising as Barristers in publicly funded work* towards the cost of attending the Keble Advanced Advocacy Course. The closing date for applications to the Inns is **6th May 2011**. For application forms and further details, please see:

Gray's Inn: www.graysinn.org.uk
Inner Temple: www.innertemple.org.uk
Lincoln's Inn: www.lincolnsinn.org.uk
Middle Temple: www.middletemple.org.uk

*Gray's Inn funding will not be restricted to barristers from the publicly-funded bar

“ Intense! A huge amount of teaching, learning, and socialising crammed into five days. ”

Adam Cher, barrister, Fountain Court Chambers

“ Now I can cross-examine with precision, focus and control. ”


Charlene Hawkins, barrister, Littleton Chambers

Numbers are limited. Please apply early. To reserve your place please contact **Carol Harris** on 020 7242 1289 or email charris@barcouncil.org.uk by 10th June 2011.

www.southeastcircuit.org.uk

A TRIBUTE TO PAST LEADER STEPHEN LESLIE QC

BY FRED FERGUSON

 Stephen Leslie QC took office as the Leader of the South Eastern Circuit in January 2009, in what, even then, were perceived to be difficult times ahead, following his pledges to act courageously and to continue to fight, especially on behalf of the young Bar, minorities, women and those doing publicly funded work, in order to see our profession survive, and indeed, flourish.

Given those pledges, it was perhaps appropriate that Stephen's term commenced with 'A Celebration of Equality and Diversity', held at Middle Temple Hall, albeit that the event had been organised in the era of his predecessor, David Spens QC. Stephen, as ever, welcomed all attendees enthusiastically. He embarked on his journey as Leader with equal enthusiasm.

During Stephen's tenure, Martin Forde QC replaced Mohammed Khamisa QC, to join Francis Oldham QC, as co-chair of the SEC Equality and Diversity Group. The Constituent Bar Messes now each have their own diversity officer with a view to extending the Mentoring Scheme, one of the objects of which is to assist members of the Circuit to take Silk and/or sit, should their aspirations take them in that direction.

Stephen was anxious to increase the Circuit membership, working on the theory that an increase in membership increases the volume of the Circuit's voice when projected in any given direction. He was particularly keen to increase the number of civil and family practitioners. He appointed a membership committee under Annie Cotcher QC whose committee members included current junior Georgina Gibbs. Their initiatives resulted in an increase in membership by 310 in his 2-year term.

With a view to providing a more vibrant communication link between the members of the Executive and the Committee as a whole, Stephen initiated the bi-annual co-opting of five members of Circuit Committee

to the Executive. Stephen also increased the practice of inviting guests to attend Committee and Executive meetings to address the meetings and answer questions. During Stephen's tenure, we were fortunate enough, in both years, to secure the attendance, at

What is clear is that Stephen approached his task with his customary enthusiasm and energy and provided colour to his office...

Committee meetings, of the Presiding Judges and, in addition, Etherton LJ, in 2010. Other distinguished guests at those meetings included the DPP, the Chairman of the Bar, the Chairman of the CBA, the Chairman of the European Circuit, representatives from the Young Bar and the Bar Pro Bono Unit and the Bar Council's Head of Communications. Guests at Executive meetings included Baroness Prasher who dealt with the topic of judicial selection and sittings, Sir Geoffrey Nice QC who spoke about QAA, the Directors of Court Services for London and the South East, the Chairman of the IBC, the Head of Member Services at the Bar Council and an MP, who discussed the possibility of developing relations between the Bar and back benchers.

Stephen was keen to publicise the work of the Circuit. The Circuiteer was given a new look, under the Editorial Committee of Ali Naseem Bajwa, Fiona Jackson, Tanya Robinson, Tetteh Turkson and Emily Verity. In addition, in Stephen's first year, much work was done on the Circuit website by Faisal Osman. The following year the website underwent a complete overhaul, organised by Emily Verity, with assistance from Ryan Thompson.

Stephen initiated a competition to find a suitable strapline for the Circuit. That competition was won by Fiona Jackson with "Your Circuit, Your Voice", which is now being used in Circuit advertising and literature. Stephen restarted the regional roadshows to Circuit Messes and was keen to attend Constituent Mess functions. He introduced an annual dinner for the Mess Chairs and the Circuit Recorder and Junior, the objects being to enable Mess representatives to hear how other Mess Chairs around the Circuit dealt with issues and to exchange information with one another, to the advantage of the individual Messes and the Circuit as a whole. Stephen also entertained Leaders from other Circuits. Four out of the five Leaders of the other Circuits were able to accept an invitation to stay with Stephen and Melissa at Stephen's home in Spain. Apparently, Stephen was able to persuade them (or most of them) to climb into a large egg, from the school of Picasso, for a photograph. This, Stephen thought, typified the good relationship between the Circuits, although it also may be a testament to his powers of persuasion.

Stephen has campaigned over many years to maintain appropriate levels of remuneration for members of the Bar. In 2009 he chaired the Bar Remuneration Conference. In March 2010, given the delays, in London, in relation to the payment of fees by the Crown Prosecution Service, Stephen entered into discussions with the Director of Public Prosecutions and Alison Saunders, Head of CPS London, which resulted in an agreement to make hardship payments to members of the Bar in real financial difficulty. Stephen also spent a great deal of time negotiating with the CPS on issues such as general delays to fees and grading. One of his initiatives was to organise a meeting at Lincoln's Inn between Heads of Chambers, Clerks/ Practice Managers and the CPS. Representatives of the CPS, including Alison Saunders, outlined CPS plans for 2010/11 and beyond and new arrangements for the payment of fees.



Those present were given the opportunity to ask questions and raise any concerns.

Stephen talked to many Bar organisations about a number of issues. He demonstrated his support for the Young Bar by joining the panel at the plenary session of the Young Bar Conference, in 2010, along with the then Chairman of the Bar, Nick Green QC, Baroness Deech, the DPP and Belle Turner (then YBA Chair). The session was moderated by Nicola Higgins, (then YBA Vice Chair).

During Stephen's term as Leader, the Circuit continued with the very successful Keble Advanced Advocacy Course, which takes place at the end of August and beginning of September, the joint directors, of the course being Philip Brook Smith QC and Philip Bartle QC. Lawyers from across the world attend, both to teach and to learn and there appears to be world-wide recognition that Keble is a very special programme. The course is able to attract eminent participants and guest speakers. Stephen attended as a tutor in both years of office, attending in his second year immediately after a holiday in Spain.

The Circuit ran workshop sessions at the Bar Conference, on the impact of culture in 2009 and advocacy in 2010. These were arranged, with the help of others, by the two Keble directors and the then Director of Education, Anesta Weekes QC. Again the courses were thought to be of very high quality and well worth attending. The Circuit continued to support the Florida Civil and Criminal

Advocacy Courses. The Masters of Advocacy series of lectures were revived during Stephen's term and were organised by Anesta Weekes QC. Lectures by Michael Mansfield QC and Jonathan Sumption QC in 2009 were followed in 2010 by Dinah Rose QC, Andrew Hochhauser QC, David Perry QC and Mostyn J.

In 2009 Lord Bingham spoke on royal pardons to a capacity audience in Inner Temple Hall. There was enthusiastic support also, for the Fifth Dame Anne Ebsworth Memorial Lecture held in 2010. The speaker on that occasion was Lord Hoffmann. The Annual Dinners in 2009 and 2010 were a great success and were well attended. Guests included several past leaders. On both occasions Stephen displayed his colourful side (or front), appearing in Leslie tartan trousers and waistcoat. The guest speaker in 2009, Sir David Penry-Davey, gave his usual outstanding after dinner-speech. In 2010, Lord Neuberger, was equally entertaining. Knowing that Stephen's former family name was Shivitza, he remarked that he felt that Stephen's wearing of the Leslie tartan might give rise to a passing off action. The Scots present maintained a diplomatic silence. On both occasions we heard entertaining speeches from the Juniors, Emily Verity and Adaku Oragwu.

Stephen was enthusiastic in promoting Circuit trips and was known to try to persuade guests at Committee meetings to enrol. His view is that such trips provide an opportunity to mix, exchange ideas and forge friendships with other Circuit members and with lawyers and

Judges in other jurisdictions. There were two circuit trips during Stephen's term of office. In 2009 the circuit went to Bruges and in 2010 Malta.

This article may demonstrate that Stephen fulfilled the pledges he made when he took up office as Leader. Our profession certainly has survived. If all areas of work cannot be said to have flourished, this may be more as a result of interventions by those who appear to have failed to recognise, or value, the work undertaken by independent barristers, particularly in areas of publicly funded work, rather than as a result of any lack of effort on Stephen's part. What is clear is that Stephen approached his task with his customary enthusiasm and energy and provided colour to his office, both through his personality and, on formal occasions, his dress sense.

Fred Ferguson is a barrister at 9 Gough Square and Recorder of the South Eastern Circuit



SIXTH ANNUAL EBSWORTH LECTURE

MR. JUSTICE HARDIMAN: PLUS CA CHANGE

BY SIOBHAN LLOYD

 Litigation involving the Human Rights Act has stirred debate on the role of the judiciary and the separation of powers in the United Kingdom. These debates are mirrored in Ireland where the Constitution has enabled judges to review decisions of the executive and their impact on human rights for decades. Mr Justice Hardiman, a member of Ireland's Supreme Court since 2000, delivered this year's Ebsworth Lecture on 8 February and examined the separation of powers through the lens of judicial review. In particular he focussed on reasonableness of decisions concerning fundamental human rights.

The Irish and English legal systems are in fact very similar. Ireland is a common law country and has been since 1167 when Henry II invaded the island. In 1922, the leaders of the newly independent Republic of Ireland decided to preserve the common

The Constitution enables the courts to strike down a statute for being unconstitutional.

law system when they adopted the Constitution of the Irish Free State. This text was superseded by Constitution of Ireland in 1937, which remains in force today. The new Constitution incorporated fundamental human rights in a similar way to that of the United States. This was not the first human rights instrument to be framed for Ireland. In 1892, when the then British Prime Minister, William Gladstone, was formulating his second Home Rule Bill for Ireland, he appended a Bill of Rights type document. Curiously, although this document faded from public attention when the Bill failed

to progress through Parliament, some of its provisions found their way into the 1937 Constitution.

As a result the Irish judiciary have held powers for many years which were only conferred in this jurisdiction when the Human Rights Act came into force. The Constitution enables the courts to strike down a statute for being unconstitutional. Although this power has rarely been exercised, there came with it, or so the judges found, a power to construe a statute so as to make it constitutional and to preserve the intention of its framers insofar as it was possible. In many ways this became the most powerful aspect of constitutional jurisprudence.

In the 1960s Ireland underwent something akin to the "Due Process Revolution" that took place in the United States at the same time. Essentially, the rights enumerated in the Constitution were discovered. Thus armed, judges set about a remarkable programme of what, if it had not have been done by judges, may have been called law reform. They legalised contraception, decriminalised homosexuality and revolutionised family law. They even insisted on each successive cession of sovereignty being approved by popular referendum. In making these reforms, the judiciary set in motion a procedural revolution in administrative law, the terminal point of which is still rather unclear.

A generation on, the judiciary have been urged to go further and to take over a number of functions that were traditionally the prerogative of other organs of government. This development has taken two forms. The first is in the burgeoning area of judicial review. The main trend has been a persistent attempt to persuade the courts to depart from the traditional approach contained within Keegan and O'Keefe,

two Irish authorities, which are extremely similar in substance to *Wednesbury*. This has been very challenging and has divided the opinion of judiciary. Very many cases end up in the Supreme Court on appeal because litigants are rarely satisfied once they have obtained a judgment in the High Court. Over the years there has been a dramatic shift in the subject matter of judicial review applications. In the 1970s claims tended to be based on planning, tax and attempts to confine various bodies within their jurisdiction. Nowadays there is a considerable element of social welfare and asylum cases. In 2008, 57% of all applications were related in some way to asylum claims, which would have been unheard of in the 1970s, simply because not many people chose to emigrate to Ireland at the time.

The second development is more radical still. Strong demands have been made for the Court to take and enforce decisions in sensitive policy areas such as the provision of education and services for disabled children, without really considering how these policies will be financed. Several examples were cited of where the High Court had controversially made mandatory orders forcing public bodies to deliver services that had not been provided for in statute. One such decision was described by the influential *Irish Times* as an unprecedented constitutional collision between the executive and the judicial arms of government. When the public authorities concerned appealed these decisions, the Supreme Court was offered an opportunity to dramatically extend the scope of its own powers. However, it declined to do so and took the view that the separation of powers should be strongly demarcated.

The Supreme Court's refusal to take a positive role in enforcing social and political rights by judicial order led proponents of



judicial activism to concentrate their fire on changing the nature of judicial review instead. This sparked a major debate in the Supreme Court which came to a head in the *Meadows v Minister of Justice Equality and Law Reform* judgment of 2010. This was an immigration case where the plaintiff's application for asylum had been refused on two occasions and eventually a deportation order was made. The judicial review application was made against the deportation order and not against either of the previous substantive decisions. The case gave rise to an assessment of the criteria for judicial review, which in itself entailed a consideration of the separation of powers and the role of the courts. The Supreme Court had endorsed *Wednesbury* unreasonableness in several judgments over the previous three decades. Indeed the Irish view of *Wednesbury* was arguably more *Wednesbury* than *Wednesbury* itself. The sole issue in *Meadows*, was whether this test should still apply.

At one level all this controversy concerning the appropriate test for control of the discretionary power is no more than semantics. What is irrational or unreasonable depends on the subject matter and the context. The poles of this discussion may be found in two dicta of Lord Bingham. In *R (on the application of Quintavalle) v Secretary of State for Health* in 2003 he asserted that there was a constitutional imperative

that the courts stick to their interpretative role and do not assume the mantle of legislatures but equally as Master of the Rolls in *R v Ministry of the Defence ex parte Smith*, he affirmed that the courts had the constitutional role and have

“the constitutional role and duty of ensuring that the rights of citizens are not abused by the unlawful exercise of executive power. While the court must properly defer to the expertise of responsible decision-makers, it must not shrink from its fundamental duty to ‘do right to all manner of people ...’

Both of these statements are true but it is very difficult to reconcile one with the other. In *Meadows*, the Supreme Court was referred to a number of leading UK authorities on judicial review that sought to apply an “anxious scrutiny” test. The term “anxious scrutiny” is not easy to discern. It first appears in Lord Bridge's judgment in an asylum case called *Bugdaycay* in 1987. Lord Bridge held that the power to decide applications for asylum was vested in the Secretary of State for the Home Department subject to the courts' power of review and said

“the limitations on the scope of this power are well known and need not be restated here. Within those limitations the court must, I think, be entitled to subject

the administrative decision to the more rigorous examination, to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual's right to life, and when an administrative decision under challenge is said to be one which may put the applicant's life at risk. The basis for the decision must surely call for the most anxious scrutiny.”

What is irrational or unreasonable depends on the subject matter and the context.

The examination is therefore more rigorous depending on the significance of the decision. All the same, it is difficult to see that “anxious scrutiny” is either verbally or conceptually a legal test at all. It does not appear to attempt to express a legal standard but to be a statement of care that the judiciary should entertain when determining an application. Nevertheless, both Lord Phillips MR, as he then was, and Lord Justice Laws spoke in favour of using an anxious scrutiny test *R (Mahmood) v the Secretary of State for the Home Department* in 2001. Lord Justice Laws set out the test



Mr. Justice Hardman

essentially repeating what he had said in the judgment of *R v Cambridge Health Authority ex parte B* from the 1990s in which he said:

“the law requires that where a public body enjoys a discretion whose exercise may infringe such a right, it is not to be permitted to perpetrate any such infringement unless it can show a substantial objective justification on public interest grounds.”

... it is surely reasonable to require the applicant to show on a prima facie basis, that the decision is in fact arbitrary, unreasonable or procedurally flawed.

The majority in *Meadows* rejected the strong submissions that the Court should adopt this anxious scrutiny test and ruled that *Wednesbury* unreasonableness should prevail. They found room within it for a proportionality test, with which there is no difficulty as this is essentially a Convention requirement. However, this further step, which derives essentially from the extra-judicial writings of Lord Justice Laws, to the effect that where a right is established and there is an interference with that right, the decision maker must come to the court and justify to the judge by way of showing compelling and objective justification seems to effect a revolution in judicial review, as conceived in our jurisdiction for many decades.

This concern is at its best a real and not a verbal one. Its one thing to say that *Wednesbury* unreasonableness has set the bar far too high. It is quite another thing to say that a decision maker, whose decision is reasonable, in the *Wednesbury* sense, must in addition prove to a judge that there is substantial objective justification for the decision. This turns the onus of proof on its head, a fact illustrated in the Irish courts, in all too many judicial reviews where no concrete objection is taken to the decision maker, or to her decision making process but all the focus is on her justification of the decision taken.

More fundamentally, it is difficult to see from where a court derives the power to call a constitutional decision maker to account in a legal forum for the objective justification for her decision. Everyone would agree that there must be a remedy from arbitrary authoritarian or unreasonable discretionary decisions. But it is surely reasonable to require the applicant to show on a prima facie basis, that the decision is in fact arbitrary, unreasonable or procedurally flawed. Often very little or no attempt is taken to do this in Ireland and this is not surprising if one can simply call on the decision maker to justify herself and hope to find an argument in the attempt.

The ability to call for approved objective justification in a court forum, would add an extra layer of decision making which would be expensive, adversarial and overly legalistic in nature. This would be superimposed on a process which is often quite sufficiently complex in itself. That process may damage the law by intruding into areas where it is not exceptionally competent.

It is important that the taxonomy underlying judicial review is clarified and made consistent with the prerogatives of

all the organs of state and not simply of the judiciary. We have not as yet succeeded in doing this. Law operates in verbal terms where it is important to be precise about the words used. It has been suggested above that anxious scrutiny is not verbally or conceptually a test at all. It is an attitude, a rather soft and cuddly attitude but it is not one which precisely identifies the judicial domains from other domains. Unless and until a certain precision enters into these discussions there will continue to be a good deal of confusion.

The unfashionable *Wednesbury* doctrine leaves space to reconcile the concept of unreasonableness with the equally important need for the court not to usurp a discretion vested elsewhere. This reconciliation is feasible because paradoxically, reasonableness leaves scope for a different view.


Siobhan Lloyd is a pupil barrister at Garden Court Chambers



KEEPING ALIVE THE ART OF ADVOCACY

A FAMILY JUDGE'S PERSPECTIVE

BY JUDITH ROWE QC

 22 November 2010, 5.45pm. Two cosy armchairs, covered in faded rose coloured velvet with two plump cushions, separated by a small occasional table with two glasses of a clear liquid. The lighting was a little bright, there was no soft music but the large picture of George VI just behind the stage in Inner Temple Hall completed the air of relaxed sophistication. The stage was set for a fascinating ninety minutes. The audience filed in and expectations were high when the two performers took their seats.

The interviewer: Anthony Kirk QC, former Chair of the Family Law Bar Association; urbane, elegant and enormously experienced in his field. The speaker: Mr. Justice Mostyn, High Court Judge of the Family Division for just seven months; a larger than life, sometimes controversial lawyer, with many fascinating experiences to pass on to us, his audience. He has challenged the principles by which applicants are allowed to relocate abroad with children no matter how good the children's relationships with the left behind parents. His description of himself? "Catholic, Welsh, Wagnerian".

The evening was split into three parts: an address, an interview and then questions and answers involving the audience. The address was peppered with vivid anecdotes from key cases featuring Mostyn QC, though inevitably the case to which he returned most frequently was *Mills v McCartney* in which he acted for Paul McCartney. It was, he said, the "perfect case" which was "sprinkled with magic dust" at every step of the way. He spoke of experiences in the House of Lords and Supreme Court in which he was successful on some occasions ("from that moment, they were mine") and unsuccessful on others ("at least I persuaded one of them to my point of view..."). His advice on the art of advocacy could and should, however, be followed from the family proceedings/magistrates court to the Supreme Court.



Mr Justice Mostyn

The essential building blocks for any advocate are: music – the sound and momentum of the words; meaning – choice of language (simplicity, beauty, imagery); and passion – to show conviction. Do not: rant, go on and on, be a bully or, the worst sin, be boring. Flatter your judge ("we are egotistical monsters, who love subtle flattery"). Prepare your documents on time. When preparing them, hold something back for oral submissions. Critically, although preparation can be laborious and exhausting, follow the advice of Wilson LJ that you can never over-prepare a case. In every case, Mostyn QC wrote out his entire cross-examination, in full, on the left hand side of the page, leaving room on the right hand side for the evolution of the case as answers were given. There was, he said, much evolution of the case during his cross-examination of Heather Mills... Use re-examination sparingly. If and when you do appear in the Supreme Court where "intellectual purity" is all important, be ready for anything, maintain eye contact and, above all, relax (easier said than done, some of us mere mortals might think).

Prior to the evening, Mostyn J had already received many of the questions by email: he "proposed to take the fifth amendment

on nearly all of them" but, in fact, answered all questions put to him by Anthony thoughtfully and fully. To Anthony's first question during the middle section of the evening, "How do we get where you are?", the answer came "Luck, just luck." What was crystal clear from the address and from his answers to questions, however, was that the basis of Mostyn J's elevation was the precise opposite of luck: it was a love of language, a dedication to the interests of the client and sheer dogged hard work, "even if it meant not going to bed at night". In all his time in practice, he told us later, he had never ever missed the deadline for the filing of a document. He likened the reasons given to him in his judicial capacity for counsel's failure to file a document on time as "the equivalent of: the dog ate my homework". Anyone listed before Mostyn J from now on: be warned.

Had he not been a lawyer, Mostyn J would, he said, have gone into broadcasting. With his love of language and the depth of energy he brings to his projects he would undoubtedly have succeeded in that career. As a lawyer and a speaker for this excellent Circuit event, he sent us away, whether 1 year or 30 years' call, determined to do better next time and with a wealth of invaluable advice on how to achieve it.

Judith Rowe QC is a barrister at 1 Garden Court



A SPORTING LAWYER LOOKS BACK

BY THE HONOURABLE MICHAEL J. BELOFF QC

 Just over two years ago I was sitting by the finishing line in the Bird's Nest in Beijing watching the final of the women 400 meters with my fellow arbitrators at the Court of Arbitration for Sport (CAS). As Christine Ohurougu's powerful finish took her to the line in 1st place, and gave Great Britain its only track gold medal of the Games, I shouted; I screamed; I gave high fives with one hand and punched the air with the other. My colleagues thought I must have had some kind of fit. And yet there was method in my madness. But for my advocacy some six months earlier, Christine would not even have been in the British team at all and I hope I can be forgiven my spontaneous and celebratory enjoyment of that fact.

Let me explain how I got into sports law in the first place. Bill Shankly once said that football wasn't a matter of life and death - it was far more important than that. Sport certainly isn't any longer a matter of health and recreation - it's a matter of business, and, and a result, a matter of law as well. Lawyers are all in favour of fairness, justice, indeed of motherhood and apple pie too, but even they have to pay the bills. My life

I promptly foreswore athletics, and instead took up smoking and politics - in that necessary order.

as a sports lawyer has been a substitute for the real thing. I had once aspirations to be an Olympian. But I was rudely reminded of my limitations on the only time I was

selected for my school team to run in the 100 yards. When the team list was posted the coach was heard to mutter that it must be a "sprinter's error".

Most developments in a legal practice are the result of pure chance. When I came up to Oxford, as, without prejudice to the coach's jibe, a reasonably proficient schoolboy sprinter, I went on the first night to see the Captain of the College Athletics team to inquire about standards. Next to me on the sofa sat a northern grammar school boy with legs somewhat longer than those of Beyonce. He reeled off a series of best times and convinced me that if this was average college standard, God knows what the standards must be at university level. I promptly foreswore athletics, and instead took up smoking and politics - in that necessary order. I had not realised that my co-freshman was Adrian Metcalfe, one of the most gifted athletes of his generation, and who was, briefly, in 1963 (alas a non-Olympic year) the best 400 metre runner in the world.

Some years later, when I was making my way at the Bar even more slowly than I had notionally processed down the running track at Ilfley Road, I was telephoned by Adrian. He was by now the founder member of the International Athletes Club (IAC), a pressure group formed by athletes to carry on the perpetual war against the sports administrators. I went to a meeting of the Amateur Athletics Association presided over by Harold Abrahams of Chariots of Fire fame and was photographed sandwiched between David Hemery and Mary Peters. I wonder in that event whether puzzled reader of the Evening Standard thought I must have won my own gold medal. I was elected an honorary member of the Club (together with John Cleese of funny

walks fame) and went on advise the IAC on whether or not a ban by Mrs. Thatcher on British athletes competing in the Moscow Olympics would be judicially reviewable. The IAC subsequently ignored her advice not to go and won four track and field gold medals. I also acted in the libel action against the Daily Telegraph for David Bedford, the laughing cavalier of British athletics of an earlier generation, and now best known as supremo of the London Marathon, who had been prosecuted for a motoring offence, in which it was alleged that he had been under the influence of drugs, whereas he had (perhaps characteristically) only been under the influence of beer. The Telegraph settled at the door of the court; and we went off to spend the money on a celebration lunch at which still greater quantities of better alcohol were consumed.

I then moved up market and started to work for governing bodies, not the sportsmen. It's the way of the world for advocates. The young act for plaintiffs; the - how shall I put it? - mature, for defendants. I represented the International Amateur Athletic Federation (IAAF), and appeared in the trilogy of major drugs tribunals, the first two in cramped offices at the back of Hans Crescent, and the third in more amenable surroundings in Monte Carlo, where Dr. Primo Nebiolo, the head of the Federation, had moved his headquarters in order to elude the clutches of the English legal system. No-one can understand the legal system in Monaco except a handful of Monagesque lawyers who charge so much that it isn't worth asking them. All three hearings were presided over by Lawrence Tarasti, a distinguished Finnish judge, who had, however, somewhat individualist ideas about the rules of natural justice. These



included starting a hearing at some early hour in the morning, pausing only briefly if at all, for comfort breaks during the day, and concluding at whatever hour it took to finish. All hearings took place at weekends. I do not think that the orthodox system of barristers refreshers catered for this cruel and unusual punishment.

As I said of my opponent's unsuccessful submission, "Where's the beef?"

It was, however, more damaging for the jet-lagged American lawyers in the first of those cases, that of the world 400 metre record holder Butch Reynolds. It is the only time I have ever asked for adjournment on my opponent's behalf. In the second case, that of the German double world champion Katrin Krabbe, I equally had not the slightest doubt of her guilt. But, on the occasion when I represented the IAAF, a gap in the German rules, meant that the Federation had lacked jurisdiction to subject her to the out of season testing which she declined to take, although the buzz was that she had secreted clean urine in an envelope concealed in a most intimate part of her anatomy. As a star struck athletics groupie, I also asked Miss Krabbe for her autograph and she provided it with some accompanying German phrase which I thought might be the Teutonic equivalent of "up yours" but actually was translated as with "very good wishes". I think my cross-examination must have been a little weak...

The third case of the Australian sprinter Dean Capabianco, involved an ingenious new defence, namely that Mr Capabianco



had, as Australians do, eaten steak for breakfast, lunch and dinner, and that Euro-steak was saturated with steroids. As I said of my opponent's unsuccessful submission, "Where's the beef?". According to my expert, Mr Capabianco would have had to live as long as Methuselah and do nothing but eat steroids impregnated with beef all day to produce the level of drugs actually found in his bloodstream.

Defence attorneys for athletes charged with doping offences certainly lack little in imagination. Dennis Mitchell, the American relay runner attributed the unnaturally high levels of testosterone in his bodily fluids to a combination of sex and beer. Javier Sotomayor, the world record holder for the high jump claimed that the cocaine found in his sample was the result of American corruption of Canadian laboratory officials. He produced a statement in support from President Castro. It was a long statement. The weight given to it was in inverse proportion to its length.

It was as a result of my involvement with the IAAF, that I was elected to the Court of Arbitration for Sport (CAS), sponsored by the IOC, which sits in Lausanne. And it was as a result of that I was appointed to a twelve person CAS panel and arbitrated during the last four summer Olympics. In the end the panel had just enough work to justify its existence, but not enough to destroy its enjoyment of the Games. My own participation in Atlanta was restricted to the athletic equivalent of the "Mouse that Roared". It involved a dispute in the Cape Verde delegation - the smallest delegation

in the Olympics - as to who should carry the Cape Verde flag at the opening ceremony. The administrators, who outnumbered the athletes, had designated the chef de mission as the flag bearer. Just before the Cape Verde team entered the stadium (with the eyes of the world on them through the good offices of CNN) one of the athletes leapt forward, seized the flag from the bemused official, and strode purposefully forward with it. As a result he was banned from the Village and from the Games. My colleagues and I took the view that there was a clear breach of the rules of natural justice. So we reinstated him.

At the Sydney Olympics a dispute arose between the IOC and the French gymnastics team as to whether the French had broken the rules on advertising. Two successful French gymnasts had appeared on the rostrum to receive their medals, wearing a logo of a prominent manufacturer of sporting kit. The rules said that such logos should not be larger than a specified measurement. The legal issue was whether that measurement was on the garments as sold or as worn. Since the garments were of the most modern materials, they had the capacity to stretch. On the chest of a man or the poirtrine - I hope the mot juste - of woman the logo would be far larger than as set out in the rules. We gave a purposive construction to the rules, and decided that, in the interest of legal certainty, the measurement meant as sold, not as worn.

Athletics was not the only sport in which I was involved in a legal capacity. My first boxing client was McInnes v. Onslow Fane.

He had had his trainers licence taken away by the British Boxing Board of Control (BBBC) without reasons. There was a good natural justice point. Unfortunately, Mr McInnes insisted on coming to Court. One look at his red face and unsteady gait, let alone coming within range of his exhalations, and you didn't need written words to know why his licence had been removed. My first major boxing client was John Conteh, a brilliant young light heavyweight, who was perpetually at odds with the BBBC. Still he bore me no grudge. And several years later I passed him at the 16 mile point in the London Marathon. Since I was about three decades past my modest sporting best, you can imagine how much time and chance had taken their toll on John.

One look at his red face and unsteady gait... and you didn't need written words to know why his licence had been removed.

Frank Bruno came to see me when the BBBC threatened to take away his licence because of an alleged detached retina. Good judges of the sport consider that Mr Bruno's capacity to box could scarcely be lowered by an inability to see. In the end there was no litigation. That I regretted. I had always hoped that the case would come before Lord Woolf, in which case I could have borrowed my client's celebrated catch phrase, "Know what I mean Harry".

Football was another source of litigation. As junior counsel I represented the late George Best (a 5 times better footballer than Wayne Rooney and 50 times better looking) in his challenge to FIFA's refusal to allow him to be released from his contract with Fulham in order to play in the American League for the Tampa Bay Rowdies. We won the case on the basis that the decision of the international body was in restraint of trade. Little good did it do the Tampa Bay Rowdies. George Best played the first match. In the second he was substituted at half time. In the third he was removed for the purpose of therapy in a de-toxification unit, whence, as far as I am aware, he never actually returned during the season. It was George Best who was later found by a waiter in a double bed in a luxury hotel quaffing vintage champagne flanked by the two most recent winners of the Miss World contest with a counterpane strewn with £20 notes. The waiter, a soccer fanatic, memorably asked, "Ah George, where did all go wrong?"

Football, however, remained on my agenda.



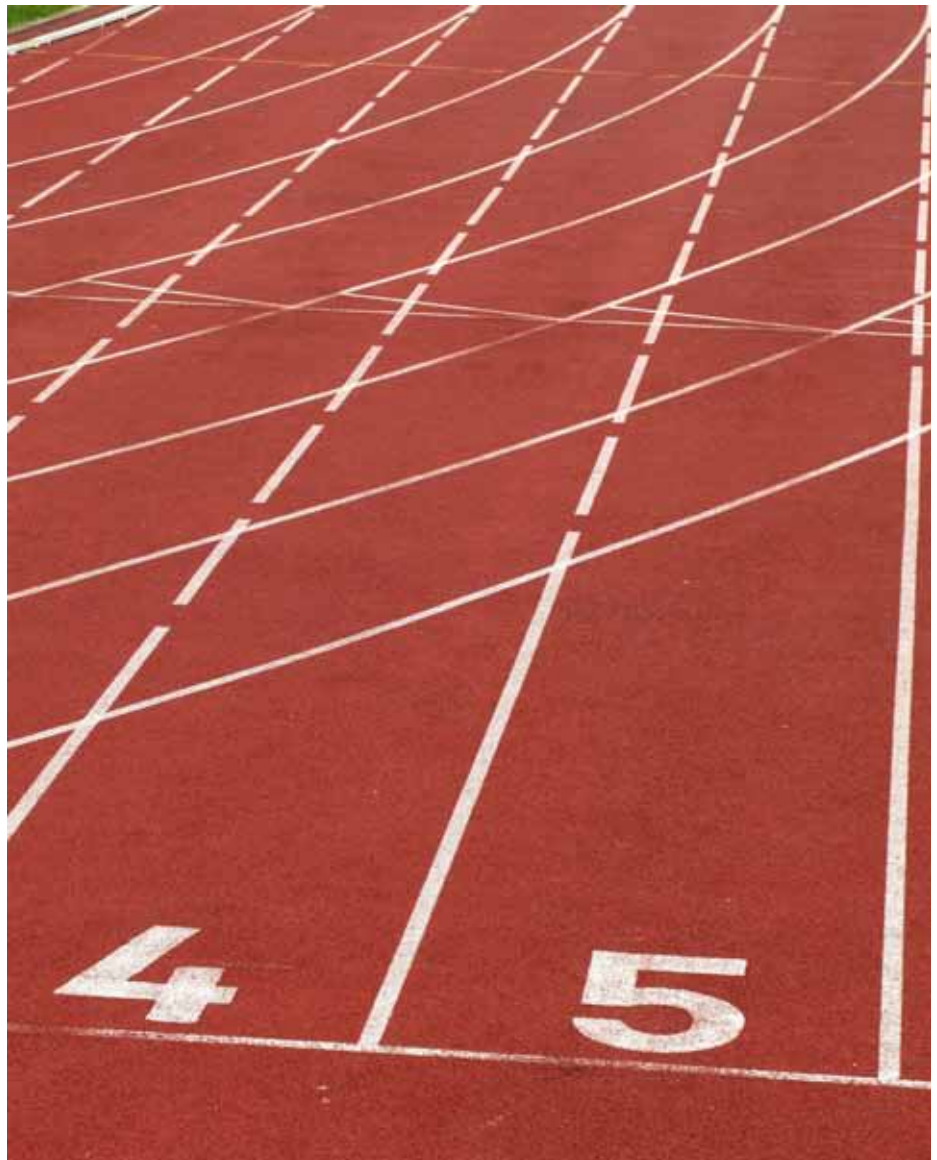
I was instructed on behalf of a football club with financial irregularities, Tottenham Hotspur, the club I had supported since childhood. An ad hoc arbitration panel was set up. This was to be chaired by Roger Parker, recently retired judge of the Court of Appeal. As is so often the case in the law, the real issue was when the case could be heard, the diaries of leading counsel being satisfactorily congested. As I walked down Chancery Lane to the Directions Hearing before Sir Roger, I saw a headline indicating that Ossie Ardiles had been dismissed from his position as Spurs' manager. I opened my submission to Sir Roger by saying that it would be a great misfortune if Tottenham Hotspur were to lose their manager and their leading counsel in the same day. That submission, if no other, touched the judicial heart.

But sports law is not all drugs and money. It is about sex too. I represented the redoubtable Florence Nagle, who had achieved a signal victory against the Jockey Club which refused her a trainers licence on the ground of her sex in the well known case of *Nagle v Fielden*, a decision of the Court of Appeal at a time before there was a Sex Discrimination Act on the statute books. Mrs Nagle then returned to the fray challenging the Kennel Club's domination by males. Led by the aptly named James Fox Andrews, we sought to suggest that the Kennel Club was a qualifying agency for the purpose of the Act. Although we failed before the Industrial Tribunal, the publicity persuaded the Kennel Club to change its mind.

Vivian Saunders, a woman golfer, brought a claim under the IDA 1976 when she was refused appointment as a golf professional. The late Mr Justice Phillips presiding over the Employment Appeal Tribunal, said that my main submission, which got nowhere, "tended to become overlaid and obscured by others to which they could attach little importance." These included pointing out the fact that the letters sent out to applicants were all addressed in standard form to "Mr". In the modern climate this would be regarded as a sure sign of sex discrimination at work. In the unreconstructed '70s it had less resonance.

The British Judo Association tried to prevent women from refereeing contests. The basis for their policy was that women lacked the physical strength to separate aggressive male contestants. Without warning, two Olympic male medallists staged an impromptu contest at the Ebury Road Industrial Tribunal. Either they failed to make their case or I did.

My more recent appointment is as Chairman of the International Cricket Council Code of Conduct Commission. I, together with Mr. Justice Albie Sachs of South Africa and Sharad Rao of Kenya, spent a number of days in January this year in the modern



and elegant Qatar Financial Centre in Doha grappling with the Pakistan cricket spot fixing allegations. Suffice it to say, the case, conducted by a variety of able advocates, was immensely enjoyable; the outcome, for those who care for cricket, less so.

Returning then to where I began, with Christine Ohurougu. To see the fruits of one's professional skills ripen so marvellously before one's own eyes, as I did on that high summer evening in Beijing, is an experience, I suspect, given to few and one I shall cherish. Happy is the man or woman whose hobby and whose profession coincides. My childhood fantasies of winning an Olympic gold; scoring the winning goal in the Cup Final, recovering the Ashes at Lords having all come to naught, but at least I have frolicked in the antechamber to the arena. And, although it is often said that silk's fees are exorbitant - I am consoled by the fact that many of my sporting clients are a good deal richer than I shall ever be. The free tickets ain't bad either.

The Honourable Michael J. Beloff QC is a barrister at Blackstone Chambers and President of the British Association of Sport and Law



PETER LODDER QC ON PLANNING FOR THE FUTURE

BY QUINTON NEWCOMB



The timing of Chairman of the Bar Peter Lodder QC's talk to the Circuit could not have been better.

Coming shortly after the Circuit's response to the Joint Advocacy Group's Consultation Paper on Quality Assurance for Advocates (QAA), and hot on the heels of the response to the Legal Aid Green Paper, his audience were focused in on the challenges facing the Bar. No surprise then to see a full house at Gray's Inn.

"What a time to be Chairman of the Bar..." was a common greeting for him from members of the profession, he told us. What followed made it absolutely clear to all present that this is indeed a testing time to lead the Bar. Peter told us that at times he felt a little like the priest who, upon asking the condemned man in an electric chair if he had any requests, was told: "Yes, hold

What a time to be Chairman of the Bar...

my hand." After providing us with an insight into some of the less weighty issues that he is asked to act upon, such as the "outrage" expressed by at least two members of the Bar at the depiction of the profession in the BBC series "Silk", he took us through the big issues.

Peter started with legal aid. He reminded us that the 13.5% cuts to legal aid between 2010 and 2012 would continue. Another painful reminder was of the headline figure for cuts to the criminal legal aid budget, announced in last Autumn's Spending Review: £96 million, out of a total of £350 million for the Criminal Justice System as a whole. Peter provided us with robust

assessment of the Government's Green Paper on Legal Aid, assisted by references to the Council of Circuit Judges (CCJ) response. He exposed the misconceptions that permeate the pages of the Green Paper, such as the apparent suggestion that it is the advocate who decides when and where their client chooses to plead guilty.

A major concern of all at the publicly funded Bar was summed up by a quote from the CCJ's response: "It is a real concern that the pool of skilled advocates willing to undertake the work will diminish to the disadvantage of litigants and the detriment of the efficient running of cases". The Bar's concerns over the cuts to civil and family legal aid were ably summarised by the Chairman, who noted that as a result of the proposed cuts funding would be withdrawn from whole areas of important work, subject to certain perverse exceptions in some cases. He laid bare the paradox between the proposals in the Jackson Report in relation to Conditional Fee Arrangements (CFA) and the suggestion, in the Green Paper, that some of those who are now denied Legal Aid funding would have recourse to CFAs as an alternative route to representation.

An important question that had been posed by the Bar Council in their response was, he said, this: what is the cost of these proposals? There was, he said, a real danger that these changes, which if implemented will cause irreparable damage to the justice system, will cost more than the amount that they purport to save. One of the most controversial proposals of recent times, One Case, One Fee (OCOF), had, the Chairman noted, crept into the Green Paper in the shape of payments for cases in which a defendant elects Crown Court trial but then pleads guilty. Whilst the Bar Council remains opposed to OCOF the Chairman pointed out that there was no clear single voice from

his constituents on this issue. Indeed, some saw it as a positive thing and something which needs to be pushed through as soon as possible. Others seek delay, and are absolutely dead set against it.

The same was, he said, true of price competitive tendering. Since April, 2010 when the Bar Council produced various model documents and guidance notes on the ProcureCo model many sets had embraced it and set themselves up for tendering. Some still were taking the ostrich approach and he gave an anecdote of a robing room discussion in Southampton as an example: Q: "Do you know what these ProcureCo whatsits are?" A: "Yes, but they won't happen here. They'll be in London..." It was this kind of attitude, still held in some quarters of the profession, that the Chairman sought to challenge. If you don't accept these changes as a reality and prepare for them, he asked rhetorically, what are you going to do?

To quote Peter directly: "A ProcureCo is an incorporated vehicle which administers and procures legal services. It does not itself provide legal services through employees because any entity that supplies legal services must be regulated. At present, the Bar Standards Board does not regulate barrister-controlled entities. Accordingly it was necessary to devise a business model which does not fall foul of the regulatory requirements, but also retains the traditional model of a predominantly self-employed Bar. The Bar Council is deploying a significant amount of resources to consider how the Bar, through ProcureCo-type vehicles, can bid for and win legal aid contracts. We should remember that ProcureCo and other models which may come within entity regulation, are flexible vehicles. They are not simply to deal with the legal aid problem. They are being



developed in many different ways. By way of example, some members of a set on the North Eastern Circuit have successfully acquired the child care work of a local authority that has decided to outsource this function. This has been done on a direct access basis to begin with, but with a view to it being run through a ProcureCo. They are considering using it as a model for further contracts."

Instead of being fearful of change, many sets of chambers were positively embracing it. Others were against ProcureCo and tendering and had expressed anger at the way in which the Bar Council has "embraced" contracting. To this the Chairman's response was simple: if you don't like it, you don't have to have it. But if we don't prepare it for you, you've got no option.

The Chairman stressed his belief that it was important that the Bar maintained a dialogue with the Government on these

...sets which do not have this basic requirement are handicapping themselves in an increasingly competitive market.

issues. He was realistic in his expectations from this dialogue: some in Government are sympathetic to our cause, whilst the economists, both at the Treasury and at the Ministry of Justice, are anything but. At least through this dialogue we would, he said, have a chance at shaping the changes in some way.

In the meantime the Chairman, describing himself on more than one occasion as an optimist, encouraged us to be more proactive in doing things for ourselves. For example, in this regulatory age, he said, it was important that chambers look into getting themselves a quality mark. As he spoke, he said, only 35 of the 330 sets of chambers in England and Wales had BarMark. However, that sort of kite mark was likely to become a prerequisite of being able to tender for work. His message here could not have been clearer: sets which do not have this basic requirement are handicapping themselves in an increasingly competitive market.

The Bar Council launched a new public access course in November 2010. This is high quality, cost-effective training for barristers who wish to offer their services directly to clients. Over 110 barristers, clerks and chambers employees in Birmingham, Leeds, Liverpool, London and Manchester have already been trained. The Bar Council's Access to the Bar Committee is working with many organisations to broaden the knowledge, skill base and uptake of public access instructions.

It was equally important that the Bar approach QAA with a positive attitude. He reassured us to the effect that if we are competent then we have nothing to fear from it and, potentially, everything to gain; it will prevent incompetent advocates from taking the more serious work and will begin to restore a level playing field.

The new panel scheme for CPS advocates also ought to be approached with a positive attitude. The quid pro quo for the inconvenience of filling in the application forms was a guaranteed 75% of the CPS advocacy work for the criminal Bar, which ought to be welcomed by the profession.

Together with Nichola Higgins, Peter has been negotiating with the SFO to set up a programme for secondments for junior practitioners; a small initiative but it provides work for some. In addition, last October Peter chaired a seminar on international opportunities for criminal practitioners. It was well attended and well received. Mediation is a major plank of the government's green paper. The Bar is planning courses and possibly accreditation for training in this area. There is a Local Authority Contracting Group, which has the potential to cover a wide range of work. Individual London Boroughs currently spend hundreds of thousands of pounds on criminal and regulatory work.

Whilst all present undoubtedly left, as I did, with a lot on their minds, the Chairman had given us an encouraging push in the right direction, and his closing words summed up his message to us: Often you are instructed in an impossible case. You quickly assess your client's chances as being minimal, but it doesn't stop you fighting his corner. Indeed the very hopelessness of it can motivate you to try even harder. And every so often you win. That spirit is in most of us. I suggest you take courage, seize the opportunities that are and will become available, think laterally and fight vigorously for yourself.

Quinton Newcomb is a barrister at 1 Paper Buildings



BAR COUNCIL MEMBER SERVICES

BY RICHARD ATKINS QC AND PAUL MOSSON



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...we are catering for a diverse profession whose needs vary incredibly

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You may not want all the services on offer but we are catering for a diverse profession whose needs vary incredibly. Take the 5% discount available at Sainsbury which can be used on shopping or fuel. If you spend £100 per week



Richard Atkins QC



Paul Mosson

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in chambers or on Circuit as you wish. The courses combine quality with value and our team of trainers stay up to date. Anyone who pays the voluntary MSF also gets a £20 plus VAT discount per person per course. An added bonus has been that since introducing competition into the market the cost of our main competitor's course has already fallen by around 20%. So the Bar wins whichever provider it chooses.

So before you book your Public Access training course or make any other purchase, check out Member Services (www.barcouncil.org.uk) and make sure you're not paying any more than you need to. And if you don't pay the MSF, I urge you to reconsider as you really are missing out. Still unconvinced of the value of the MSF? Then email me at MemberServices@barcouncil.org.uk and let me know why. I'd be interested to hear from you.

Go on try it. You never know you might like it, and it may even save you some money.

Richard Atkins QC is the Chairman of the Member Services Board and Paul Mosson is Head of Member Services at the Bar Council

RESTAURANT REVIEW

LUTYENS, FLEET STREET



BY TETTEH TURKSON

I have grown suspicious of set menus. All too often they are cheap because they are not very good and don't require much work. However I wanted to try the Menu Compris at Lutyens, Fleet Street. I had been there for lunch a while ago when it was packed and seen that they seemed to have good ingredients which were nicely cooked. In the light of that the Menu Compris was tempting. For £39.50 it promised three courses, and half a bottle of wine, and coffee and petit fours, and water. It all seemed too good to be true.

Thus I went on a Friday night with JC and a small group of friends. When we arrived it was clear why that had been possible to change my booking at short notice. There was 1 other table filled with a couple. The Lutyens Bar, which has its own menu, was also empty. This made for a very odd experience in a restaurant with at least 50 covers. In the circumstances I'm not sure it was not necessary to put us in the far corner of the restaurant. It might also explain the complete failure of our waitress to mention the Menu Compris when she gave us our menus; maybe things are just that tight. Whether the restaurant was empty due to half term or because we are in silk party season, I cannot say; it certainly wasn't because of the food.

it was nicely balanced by the cucumber salad and mustard and dill dressing. The one starter (indeed the only dish in the meal) that fell flat was the soufflé. Again I didn't manage to taste it but my companion said as a positive that it was "very cheesy" but heavier than one would expect from a soufflé so that it was almost more like fondue in texture.

My main course surpassed my starter. It was a fillet of hake with steamed clams, pancetta and parsley. The hake was perfectly cooked. It was crisp on the outside with firm meatiness inside that was so moist it was almost creamy. The clams were a nice touch that one would probably not expect with a set menu. If I had a complaint it was that just a tiny bit more of the small pancetta pieces would have made it perfect. The thin sauce – almost a light broth – was so delicious that I recall leaving the new potatoes that came with the course to soak in it so that I could taste the full benefit. Others seemed to enjoy their duck breast with cabbage and, again, pancetta, although all who chose it thought that the hispi cabbage was too heavily salted. Surprisingly, no one chose the daube de boeuf, but I am less surprised that not one of us chose "spring rolls, sauce vierge." It seemed to me that it such a description was symptomatic of the general underselling by the restaurant.

We covered the full range of desserts between us and I managed to persuade everyone to let me taste theirs. The crème brulee was beautifully smooth and creamy but too much sugar was used for its top making the crust a bit chewy. My poached berry compote was pretty with the acidic edge removed from it and the lemon verbena ice cream was really lovely. More poached fruit appeared on the menu in the form of Yorkshire rhubarb which had a tropical taste from the citrus. Finally, a chocolate mousse with honeycomb and Irish whiskey ice cream lacked any kick in the whiskey.

Lutyens is not a fine dining restaurant. The food is not challenging, not has it been worked to within an inch of its life. However it is a perfectly decent restaurant and I think it would be perfect for a group of friends wanting to chat and socialise over a few drinks. The Menu Compris represents excellent value and, despite the slight ghost town feel, we really enjoyed the evening.

Cost: £39.50 for 3 courses

Verdict: Excellent value

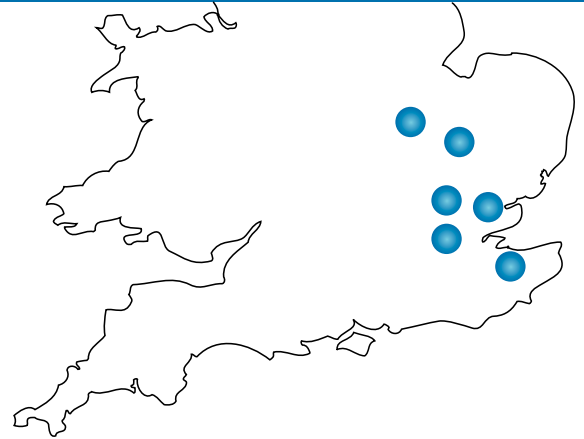
Tetteh Turkson is a barrister at 23 Essex Street

Although I was too late to steal any...

Each course gave four options, but they achieved the masterstroke of a set menu, which is to make you still feel that you have too much choice. I chose the ham and parsley terrine, cornichons and toast; but could easily have chosen the cured salmon or the Souffle Suisse. The ham in my terrine was beautifully tender with balanced aspic and parsley. It was served with proper strong English mustard (which it needed) and the tiny gherkins and pickled onions were perfect. Judging by the speed with which one companion polished off his thin slices of cured salmon he enjoyed it. Although I was too late to steal any, he told me



BAR MESS REPORTS



CENTRAL CRIMINAL COURT

There is a real spirit of spring about the Bailey at the moment, in the sense that with the spring comes the need to tidy up and sort out.

First there was the sorting out of the committee under the new Chairmanship of Brian Altman QC. Tribute must be paid, of course, to his predecessor Jonathan Laidlaw QC who did much to foster closer links between the Mess and the Circuit and, in particular, to take on the roles of the Mess in encouraging diversity at the Bar. Jonathan will continue the latter task in his new role of Mess Diversity officer.

Secondly, the new Treasurer, Alison Morgan, superintended a complete sort out of the Library. Case papers that had been left by careless members of the Bar (who were clearly not members of the Mess) were shredded, Archbold supplements from 1994 were removed and the books sorted.

Thirdly, the Court organised a clear out of the robing rooms. The quantity of case papers found in the library was as nothing compared to the vast piles of unclaimed papers and items of property that had been dumped in the robing rooms. As the photos that have already been circulated around the circuit demonstrate this was a totally unacceptable quantity of mess, and a wholly unprofessional failure by those concerned to look after confidential papers. We hope that the publicising of the hoard recovered on this occasion will encourage those using the robing rooms to behave more responsibly in future (although we are not optimistic!).

Finally, our energetic Treasurer is organising a recruitment drive. It has been of note that many people are using the Mess facilities, and treating them as their own, who are not actually members. Whilst we welcome all advocates appearing at the Bailey to join us on the fifth floor, we do also encourage them to pay the piffling membership fee to help defray the costs that the Mess incurs on their behalf. If you are a user but not a member of the Mess, please contact Alison Morgan at 6 King's Bench Walk without delay.

Duncan Atkinson

CENTRAL LONDON

I'm sure all of you who regularly visit the Woolwich Palais de Justice will be impressed with the all new grand glass-fronted entrance, complete with double the number of metal-detectors and bag-scanners. Unfortunately for those hoping for a reduction in the inordinate time it takes to enter, the increase in facilities has not been matched by an increase in security staff. Therefore for the foreseeable future, only one scanner will be in operation. The five additional 'modular courts' (anyone referring to them as 'portacabins' will be severely dealt with by HHJ Byers), procured at a cost of £4.5m, should become operational in the summer. Upon re-opening, the car park will have an additional 53 spaces.

A bit further upstream at Southwark Crown Court, the end of an era is fast approaching with the impending retirement of HHJ Geoffrey Rivlin QC (22 years on the bench, the last 6 as Resident Judge) and HHJ Christopher Hardy (19 years on the bench). Prendergast will keep you informed when details of their valedictorys are known.

Regular users of Inner London will be delighted to hear that the work at the 'chocolate box' (aka courts 5-10) has been completed and the car park re-opened. As a result we can enjoy the 'temporary extension' (opened in 1982) for another dozen years – Woolwich, take note.

'Prendergast'

SUSSEX

Spring has sprung in Sussex as members of the Mess offer their warmest congratulations to all those newly appointed as Queens Counsel and Recorders. Visitors to the Sussex courts will have noticed the gentlemen of the Mess sporting the most attractive new Sussex Bar Mess tie, whilst disgruntled lady members await the arrival of the equal opportunities Bar Mess scrunchie.

The Mess now meets on the first Thursday of the month at Pelham House for drinks (with a small Mess subsidy) between 4.30-6.30pm, the early finish intended to accommodate London members intent on weaving their way back to the station afterwards.

This year's summer Garden Party will be held on Sunday 17 July 2011 at Anne of Cleves House in Lewes - all are very welcome.

'Lewes Lane'

CAMBRIDGESHIRE AND PETERBOROUGH

On 24th March, we held a dinner at the Old Bridge Hotel, Huntingdon, to welcome the new resident Judge at Peterborough Crown Court, HHJ Madge. We all turned out in our black tie best – HHJ Madge's waistcoat winning the prize for the most understated! The resident Judge entertained us all with his speech, referring back to the good old days at Cambridge University... misspent springs to mind!

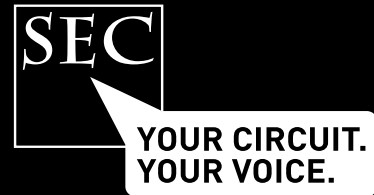
Peterborough and Huntingdon Crown Courts are to be the pilot centre for the enhanced PCMHs. This means Judges and Counsel will be expected to spend time on drawn out inquiries/question and answer sessions.

The yearly held Mock trial for schools in Cambridge is to be in June.

It is hoped that there will be summer drinks held on Fenners Chambers' lawn.

Azza Brown.

Florida Criminal Advocacy Course 2011



Applications are invited from candidates to attend
The South Eastern Circuit

Criminal Law Florida Advocacy Course

Held at the University of Florida, Gainesville

The program is CPD accredited by the BAR Standards Board awarding participants with 9hrs advocacy, 3hrs ethics and 33hrs CPD.

Applications will be considered with regard to the following criteria:

1. Membership of the South Eastern Circuit (compulsory) – visit www.southeastcircuit.org.uk/members/register
2. Demonstration of above average written and oral advocacy skills.
3. Demonstration of diverse experience and a detailed knowledge of criminal law and procedure.
4. Obvious transferable social skills and a sound understanding of the independent UK Bar.
5. Recent court experience of prosecution and defense work.

Application from previous program attendees and those with three years post-tenancy experience will not be considered. This is a remarkable opportunity to showcase the independent UK bar. We therefore invite applications from candidate who will be regarded as ambassadors to our profession.

7th Aug - 12th Aug 2011

Applications for this year's Prosecutor/Public Defense Trial Training Program held in conjunction with the Florida Bar and the University of Florida should be made to Kevin Molloy by email (kevin.molloy@1itl.com). Applications must be made in writing in the form of Curriculum Vitae and supporting covering letter; short listed candidates may thereafter be invited for interview prior to selection.

THE KALISHER SCHOLARSHIP TRUST

RUMPOLE DOUBLE BILL

BY MAX HARDY

When under siege it sometimes does one good to remember why you're in the fight and the Kalisher Fundraising Event, this year to be held in Middle Temple Hall on Sunday 15 May at 6.30pm, is perhaps one of the best opportunities available to remind the downcast and the weary that there is more to this job than page counts and LSC cuts consultations. This year another selfless troupe of generous actors will be presenting two episodes of Rumpole: 'Rumpole on Trial' and 'Rumpole and the Right to Privacy'. We are immensely grateful to the Estate of John Mortimer for granting us permission to remember, even if for one evening, what the Bar used to be like.

Nobody who attended last year's triumphant 'Dunsinane Two' penned by Peter Moffat, the man responsible for persuading the viewing public that an impecunious pupil might do a runner when trying on his wig and gown,

Maxine Peak also returns to the fold this year...

will forget what a tonic these evenings are to morale. What is particularly encouraging is that actors of such distinguished calibre should give up a Sunday to support a cause which does not obviously pertain to them but which is dear to all our hearts, namely enabling access to the Bar by the brightest and the best.

It is possible that when Michael Kalisher QC passed away in 1996 he could foresee the stony path that was unfolding before the criminal Bar. What would have shocked him about 2011 though would have been the startling reduction in the number of pupillages being offered. The Kalisher



Photographs by kind permission of Derek Zeitlin

Scholarship Trust is alive to the threat this poses to the survival of the profession and money raised by the Event will be used with careful regard for this unhappy development. Historically the Scholarship has been awarded to a BPTC (then BVC) candidate about to leave Bar School and embark on pupillage. This has been made possible through the collaborative generosity of the BPTC providers. For the future the intention is to provide in addition to this targeted help the details of which are still being fleshed out.

The Scholarship is now in its fourteenth year and the Event is in its fifth. We began in April 2007 in Middle Temple Hall with an adaptation of the trial of *Bardell v Pickwick*, the cast including Martin Shaw, Richard

Griffiths, Simon Russell Beale, Jenny Seagrove, Patrick Malahide, Phoebe Nicholls and Tilly Blackwood. In 2008 we put on two episodes from A P Herbert's *Misleading Cases* with Timothy West, Prunella Scales, Jeremy Irons, Sinead Cusack, Patrick Malahide, Ray Fearon, and Juliet Rylance. In 2009 on a smaller scale at Gray's Inn we did a collection of sketches as *The Legal Mire* with Martin Shaw, Maggie Steed, Nicholas Le Prevost, Patrick Malahide, Ray Fearon, Daniel Hill and Tim Frances.

Such is the dedication of Martin Shaw and Ray Fearon to the work of the Scholarship, they both agreed some time ago to become trustees and both will be participating in this year's Event. Maxine Peak also returns to the fold this year having torn herself away from



her preparations for the filming of a second series of Silk.

Tickets for the event are available from Middle Temple Treasury (Tel: 020 7427 4800) and are priced at £50 each. If the run on last year's tickets is anything to go by you would be advised to make haste. You won't regret it and neither will the embryonic barrister in whose future you will be investing.

If you want to know more about the work of the Kalisher Scholarship Trust you will find its website at: www.thekalishertrust.org

Max Hardy is a barrister at 9 Bedford Row



FAREWELL TO INGE; WELCOME TO NATASHA



After many years of loyal and invaluable service to the Circuit, we bid farewell to our administrator Inge Bonner, who moves on to pastures new, and we welcome her successor, Natasha Foy. Natasha joined the Bar Council in 2006 working with the team in Representation and Policy. Many will already know Natasha from her work with the Young and Employed Barristers' Committees, the Neuberger Working Groups and her involvement with events such as the Young Bar Conference and the Future of the Bar Symposium. On 18 April, Natasha moves from her position as Assistant to the Director of Representation and Policy to be the Administrator to the Circuit and she is looking forward to hitting the ground running.

If you wish to contribute any material to the autumn issue of The Circuiteer, please contact:

Ali Naseem Bajwa QC
alib@gclaw.co.uk



THE SOUTH EASTERN CIRCUIT ANNUAL DINNER 2011

GREAT HALL, LINCOLN'S INN
FRIDAY 24 JUNE at 7.00 FOR 7:30PM

GUEST OF HONOUR:
Lord Justice Moses

SILKS **£95** JUNIORS **£75** UNDER 7 YEARS' CALL **£54**

Dresscode: **Black Tie**

Contact Natasha Foy

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DX: 240 LDE

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