

# EL CONTACT F

EAST LONDON FATHERS

KEEPING PARENTS AND CHILDREN IN CONTACT

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## MR JUSTICE SINGER – CHILD ABUSER

### EXTRAORDINARY SCENES

Extraordinary scenes took place at the Royal Courts of Justice on 23 January 2003 culminating in the Honourable Mr Justice Singer abusing a defenceless 10-year old boy in the passageway outside Court 32, aided and abetted by a CAFCASS Children & Family Reporter and two of Her Majesty's High Court Tipstaffs. Forhad Matin, born in March 1992, was terrified of going to his Mother's house where he had been regularly beaten and assaulted by her and her relatives, so when Mr Justice Singer made an Order that he go and stay with her he refused to obey it. This so incensed the Judge that he spent nearly half-an-hour outside his Courtroom trying to intimidate and threaten Forhad into submitting to his Order, finally reducing the child to tears. Try as he would, however, he was not able to break the will of this brave boy, and the Judge was forced to reconvene the hearing and rescind the Contact (access) Order he had made, so that Forhad was able to go home with his Father.

### CHILD POWER

In the public interest **CONTACT** brings you a full account of what took place that day. It's no exaggeration to call it child abuse: one of the nastiest things the Honourable High Court Judge said to Forhad was – **"If you don't go with your Mum I'll put you in a place where you can't see your Mother or your Father – How do you like that?"** – which Forhad understood to mean that the Judge was threatening to put him in a children's home. In one form or another the abuse of children who want to live with, or have a meaningful relationship with, their fathers is happening every day in the High Court Family Division and in County and Magistrates' Courts throughout the country. The malign ethos of the Family Division is still that children should be in the effective custody of their mothers not their fathers, and nothing infuriates the Judges more than the child who votes with his feet, repudiates the maternal Residence Order, and elects to live with his father. Child power is

increasingly becoming the response to the stupidity and stubbornness of the Judiciary.

### NO CENSORSHIP

There is no censorship in this story, of names or anything else. Censorship of any kind is against the editorial policy of **CONTACT** (see this Issue's Editorial). The Family Division uses censorship by injunction and contempt laws to suppress free debate about its wretched decisions and to hamstring effective campaigning by those who want to publicise injustice. If you did not know who Forhad Matin's Father was then you could not communicate with him and work with him to reform the law and the way the law is applied by the courts. Reciprocally, neither he nor others can communicate with and support you, the reader, in your own battles in the courts and campaign for change if you are forced to remain anonymous with your very name suppressed (because it is your child's name too and the child is not to be identified, according to the judges). That is exactly what the Judiciary and those who formulate family policy want – to stultify protest and stop men working together: it has nothing to do with protecting children.

### CHILD ASSAULTED

Abdul Matin has been battling in the courts for over 7 years to ensure he sees his children. Originally in Edmonton County Court his case was transferred to the High Court in 1997: see the reported case **Re Matin (Minors) (Contact: Supervision) [1998] 1FLR 721 CA** where the Court of Appeal removed an absurd supervision order imposed by Judge Tibber at Edmonton. Forhad always wanted to see more of his Father to which his Mother Ruqia Ali reacted with harsh physical chastisement. On 26 November 2002 in the early hours of the morning Forhad was dragged out of bed by his maternal Aunt, one Nashima Ali Hipkiss, by profession a social worker, and Mother and Aunt held a kangaroo court for Forhad's crime of wanting to live with his Father. The Aunt brutally assaulted Forhad to punish him for this crime and knocked out one of his

teeth. The Mother also threatened to kill Forhad if he did not live with her. Typically as happens in these cases the Police and Social Services were not interested when Abdul reported the matter – after all it wouldn't do to have a social work professional prosecuted for child cruelty and assaulting a child occasioning actual bodily harm.

### RECOVERY ORDER FAILED

Forhad was again viciously beaten by his Mother on 27 December 2002 and then went for a holiday Contact stay with his Father until Sunday 5 January 2003. On return to his Mother's he ran away from her back to his Father who was waiting at the bus stop, and adamantly refused any more to stay with his Mother, albeit she had a Residence Order under the Children Act 1989. So Forhad went home with his Dad and has lived with him since. Ms Ali made attempts to enforce her Residence Order but failed because each time Forhad resolutely refused to go with any one sent to take him from his Father. On 16 January 2003 Mr Justice Hughes made a Recovery Order under s.34 Family Law Act 1986 and sent the Assistant High Court Tipstaff, Mr Philip Johnson, to Forhad's School to collect him and hand him over to his Mother. But Forhad refused to leave the safety of his Headteacher's Office and the Judge on hearing this declined to order the Tipstaff to physically carry Forhad away by force. So his Father was able to collect him and take him home from School.

However, Mr Justice Hughes directed a further hearing on 23 January 2003, requiring Abdul Matin to attend with Forhad. You might think that the Court would have taken steps to protect Forhad and at least ordered (as Abdul requested) that he reside in the interim with his Father pending a full investigation of what he had been suffering with his Mother. That is not how the Family Division works. Mother custody is sacrosanct and has to be preserved at all costs, never mind if the child is tormented, injured or even killed in the process. Had it been the Father with the Residence Order ill-treating the child the Court would immediately have transferred Residence on hearing the Mother's plaint. All the Court did in Abdul Matin's case was to *suspend his* Contact Order and make a series of orders to enforce the Mother's Residence. The Father resisted none of these orders – every time it was Forhad who stood his ground and refused to leave his Dad.

### CRASS CONTACT ORDER

On 23 January 2003 Father and son duly attended Court 32 at the Royal Courts of Justice at 2 PM accompanied by Dr Michael J.Pelling as McKenzie Friend (also personal friend by now of Abdul and Forhad), and Mr Anthony Torrance (also legal adviser and family friend) & Mr Steve Stephenson (of *Families Need Fathers*). A CAFCASS Children & Family Reporter, Mrs Muriel Raleigh, was in attendance. In Court before Mr Justice Singer,

Abdul Matin applied for his son to be seen personally by the Judge, which is what Forhad wanted: however the Judge ruled he would not see Forhad, who was to be interviewed by the Reporter. This was done and the Reporter then truthfully gave evidence. After hearing this sad and shocking account not even Singer J could insist that Forhad would reside with his Mother, but in typical Family Division manner refused to make an Interim Residence Order for the Father.

Doing his best to salvage the mother custody default, and ignoring the very real dangers to Forhad and his manifest fear, the Learned Judge then ordered immediate (literally) Contact with the Mother at her home for 2 days to 25 January 2003. He ordered that the Father should immediately leave the Royal Courts of Justice and go home, though on protest this was changed to going down to the RCJ Great Hall and waiting there. The Judge's plan was to get the Father out of the way and by force somehow restore relations between Mother and son ("*building bridges*", he said). Too bad if Forhad got beaten to pulp or killed in the process. A more crass and stupid plan would be hard to imagine, but this is the English High Court Family Division. Had the sexes been reversed all Dad would have got would be supervised Contact in a Centre.

### CAFCASS REPORTER LIES, ASSAULTS CHILD

The Judge directed the Reporter Mrs Raleigh to convey the news to Forhad, who was outside Court 32 in the passageway with Mr Torrance & Mr Stephenson. Despite the Judge's order that Abdul should leave, he stayed in Court 32 with Dr Pelling. After a while the latter became alarmed at what the Reporter might be telling Forhad, fearing that she would lie and say his Father had gone, so Forhad would think he had no option but to go with his Mother. This was exactly what the Reporter did. Dr Pelling went out and interrupted the Reporter to tell Forhad that he was not being told the truth, his Father was still there in the Courtroom, and if he did not go with his Mother then his Father would be able to take him home. The Reporter got cross at her lie being exposed, and her attempts to persuade Forhad to get up and go with his Mother failed. During these attempts the Reporter repeatedly pawed Forhad about and pulled him by the shoulder to force him to get up from where he was seated by his friend Mr Torrance.

### JUDGE ABUSES CHILD

A while later the Judge himself came into the passageway, dressed in his overcoat and on his way out of the Royal Courts of Justice. By this time another Tipstaff was also on the scene, Mrs Susan Cheesley, the Acting Deputy Tipstaff, and she told the Judge the problem they were having in persuading Forhad to comply with his Order. Whereupon Mr Justice Singer wheeled round, went

back down the passage and confronted Forhad. There then ensued the remarkable spectacle of a High Court Judge (in contravention of his own judicial decision) haranguing threatening intimidating and humiliating the 10-year old boy Forhad for half-an-hour in an ultimately vain attempt to bully the frightened child into going home with his Mother. Forhad bravely resisted but at the end was reduced to tears and held his head in his hands in miserable despair. When Forhad begged for his Dad to be with him, the heartless Judge said, **"No, you don't need your Dad with you"**. When Mr Justice Singer saw he was not getting his own way with Forhad, he resorted to crude threats, abusing his authority as a High Court Judge to say for example, **"If you don't go with your Mum I'll put you in a place where you can't see your Mother or your Father – How do you like that?"** – which terrified Forhad into thinking the Judge would put him in a children's home.

### JUDGE GIVES UP; TIPSTAFF ASSAULTS DR PELLING

Eventually even Mr Justice Singer had to give up, and he reconvened the case in Court 32, immediately rescinding his earlier Contact Order. While the parties went back into the Courtroom Dr Pelling took the opportunity to sit beside and comfort the distressed Forhad, whereupon the Assistant Tipstaff told him not to talk to Forhad and assaulted Dr Pelling by grabbing him to pull him away from Forhad. Dr Pelling then returned to Court 32 as McKenzie Friend and Mr Justice Singer informed him that he was going to take steps to have a summons issued on him for criminal contempt of court. However, Dr Pelling is disappointed to have heard nothing further on that score. Then the Judge ordered that Dr Pelling should not continue any more in the case as Mr Matin's McKenzie Friend and so he left Court 32 and went out to tell Forhad the good news of his victory. Whereupon the Assistant Tipstaff again intervened in a threatening manner and Dr Pelling had to take Forhad down the other end of the passage and tell the Tipstaff to keep out, warning him that he now faced legal proceedings.

The hearing concluded shortly after; Forhad continued to live with his Father despite the Mother retaining Residence. On 31 March 2003 Mr Justice Johnson adjourned Abdul Matin's applications for a Residence Order for Forhad and a Shared Residence Order for Forhad's sister Forida (born 1990) who wants to live with both her parents. We hope that at the final hearing on 29 April 2003 the 8 year saga that Abdul Matin and his children have suffered within the English Family law jurisdiction will conclude and that Johnson J [the most hated Judge in the Family Division whose erratic judgments are a by-word and who only escaped compulsory retirement on 9 February 2003 on reaching 70 because he was appointed before the amendment to s.11(2) Supreme Court Act 1981]

will for once show a little wisdom and compassion and make the right orders. It will not, however, be the end of the saga so far as the general civil law is concerned.

### FORHAD SUES JUDGE, CAF/CASS REPORTER, AND TIPSTAFFS

Because Mr Justice Singer was not acting in a judicial capacity when he tormented Forhad in the passageway outside his Court, and indeed was on his way out of the RCJ and acting in contravention of his own Order that he would not interview the child, it is believed that he has no judicial immunity from suit. Of course, the Reporter Mrs Raleigh and the Tipstaffs Johnson and Cheesley have no immunity anyway. So Forhad on 28 March 2003, suing by his Father as litigation friend, issued a Claim in the High Court Queen's Bench Division (No.HQ03X01005) seeking damages in excess of £15000 plus aggravated and exemplary damages for all that he suffered at the hands of these four persons on 23 January 2003.

He is suing in tort for common law harassment threatening health and safety, statutory harassment (the 1997 Act), intimidation, and trespass to the person, and for human rights violations under the Human Rights Act 1998. The latter are for inhuman and degrading treatment contrary to Article 3 of the Convention on Human Rights (this Article is absolute), and for violations of the right to respect for private and family life under Article 8(1). He is further suing all defendants for misfeasance in public office. The day the Claim was issued Senior Master Turner immediately ordered it be not served and be struck out, an obviously craven act designed to thwart justice being done against the High Court worthies who have persecuted Forhad. This decision is now under appeal.

### DR PELLING SUES ASSISTANT TIPSTAFF

Because the Assistant Tipstaff Philip Johnson interfered without lawful authority and assaulted Dr Pelling when he sought to comfort and talk with Forhad, Dr Pelling on 6 March 2003 also issued a Claim in the High Court QBD (No.HQ03X00730) for damages in excess of £15000 plus aggravated and exemplary damages, suing for trespass to the person, misfeasance in public office, and for violation of the right to respect for private life under Article 8(1) of the Convention. The day after the Claim was issued one Master Foster made an own motion Order that no person be permitted to examine the Particulars of Claim without Leave of a Judge or Master – normally the public have a right to inspect the Claim and take a copy, on payment of the prescribed fee: Civil Procedure Rules 1998 r.5.4(2). Since the Learned Master's Order only applies to the Court File, Dr Pelling is happy to provide anyone interested with a copy of his Claim – and you can also obtain it by emailing a request to [paulmw@ji-net.com](mailto:paulmw@ji-net.com).

# OPEN JUSTICE: STRASBOURG FIASCO

JUDGMENT 24 APRIL 2001

Judgment in the cases of *Pelling v. United Kingdom* 35974/97 and *Bayram v. United Kingdom* 36337/97 was given by the European Court of Human Rights on 24 April 2001. The 3<sup>rd</sup> Chamber decided by a 5-2 majority that there had been no breach of Article 6(1) of the Convention in the English courts holding the applicants' children's Residence trials in secret without public pronouncement of judgment, nor breach of Article 10(1) by contempt of court legislation preventing publication of information about the Children Act proceedings. You can read the Judgment on the Court's Internet Website at [www.echr.coe.int](http://www.echr.coe.int), or in Law Report series such as the Family Law Reports, reported at [2001] 2FLR 261 ECHR. It was also reported in *The Times*: see *B, P v. United Kingdom* [2001] TLR 15 May 2001 ECHR. The Court ignored Dr Pelling's complaint under Article 17 that the United Kingdom by its national legislation and rules of court had "**engaged in activities and performed acts aimed at the destruction of Convention rights and freedoms or at their limitation to a greater extent than is provided for in the Convention**", notwithstanding the complaint had been ruled admissible.

## REVERSAL OF COURT'S OWN CASE LAW

To reach its conclusions the Court indulged in reversal of its own case law. Numerous cases in the European Court have affirmed the principle that the Court must confine itself to an examination of the concrete facts and case before it and determine if in the particular case before it there has been a violation of Convention rights – see for example *Axen v. Germany* (8/12/83) A72 p.7 §24. For the first time the Court has allowed a State to designate an entire class of case – cases about custody of and access to children – as an exception to the general rule of public trial under Article 6(1), and in the applicants' cases the domestic courts and the European Court accepted their falling within that class as sufficient without examination of the concrete facts which might justify such exception. Further, by allowing States to make the exception to public trial the norm by legislation (here the Family Proceedings Rules 1991 Rule 4.16(7)), the effect is to reverse the burden of proof and require the individual to prove a negative, that there are no sufficiently strong interests to exclude the public from the trial. This is the reverse of what Article 6(1) demands. It reverses the Court's case law which requires a narrow interpretation to exceptions to Convention rights – see for example *Silver v. UK* (25/3/83) A61 p.34 §97(d).

## PUBLIC PRONOUNCEMENT OF JUDGMENT

The reversal of case law regarding public pronouncement of judgment was even more striking. Unlike the trial, Article 6(1) admits no exceptions to the requirement that "**Judgment shall be pronounced publicly**". Yet the Court concluded that, "**the Convention did not require the making available to the general public the Residence judgments in the present cases, and there has been no violation of Article 6(1) in this respect**". The Court also held that the publicity requirement for judgment was met in Pelling's and Bayram's cases by the ability of anyone who can establish an interest being able to apply to the court for a copy of the judgment. But leave of the court in England and Wales (as required by FPR 1991 Rule 4.23(1)) is very rarely granted: members of the public will not be granted sight of judgments in children cases. In *Campbell & Fell v. UK* (28/6/84) A80 §90 the Court held that the principle of public pronouncement of judgment was not subject to an implied limitation as suggested by the Government. More recently in *Szücs v. Austria* (24/11/97) & *Werner v. Austria* (24/11/97) [1998] 26 EHRR 310 the Court held that Article 6(1) was violated where "**a third party can be given leave to inspect the files and obtain copies of the judgments if he shows a legitimate interest. Such leave is, however, only granted at the discretion of the relevant courts, so that the full texts of the judgments are not available to everyone**" (see *Szücs* §§44,45,48 and *Werner* §§56,57,60). So the decision in *Pelling* and *Bayram* is in flat contradiction to *Szücs* and *Werner*.

## GRAND CHAMBER

There is a right, subject to leave, of appeal from a Chamber of the Court (7 Judges) to the Grand Chamber (17 Judges). Leave will be granted [Article 43(2)] if the case raises a serious question affecting the interpretation or application of the Convention, or a serious issue of general importance. Notwithstanding the mess the 3<sup>rd</sup> Chamber has made of the Court's case law on Article 6(1), leave to refer to the Grand Chamber was refused. There were other good reasons to refer the cases to the Grand Chamber. The applicants' cases alleging violation of Article 10(1), freedom of speech, were largely ignored and the Court gave no explanation of why it was necessary in the democratic society of England & Wales to ban publication of information about child cases (on pain of up to 2 years imprisonment for contempt), yet in the democratic society of Scotland there was no such necessity, the holding of such cases in open court with no reporting restrictions, including free identification of

names of parties and children, being the normal practice.

## ***"It remains unclear why it is necessary in a democratic society to suppress Dr Pelling's identity"***

The Court also ignored Dr Pelling's specific complaint about the Court of Appeal's non-identification Injunction of 20 June 1996 (still in force) made notwithstanding that the Court of Appeal proceedings were not about Residence, or anything to do with the private lives of the parties or child, but purely about the procedural questions of open justice. So it remains unclear why it is necessary in a democratic society [Article 10(2)] to suppress Dr Pelling's identity when he campaigns and brings test cases about freedom of speech and open justice.

### **COURT'S DISPLEASURE**

Both applicants also sought to refer to the Grand Chamber the anonymisation by the Court in October 2000 of themselves and the titles of their cases, contrary to their express wishes and in plain violation of the European Court's own Rules of Court. At the oral hearing on 14 November 2000 the President of the Chamber stopped Dr Pelling when he sought to address the Court on that issue. The anonymisation seems rather stupid considering that for a whole year the Admissibility Judgment of 14 September 1999 had been on the Court's public

Website without anonymity! The Court obviously did not like its own procedures being attacked; the Judgment §9 states that, *"The Court noted with considerable displeasure that during the hearing, in breach of the Vice-President's order of 2 November 2000, Mr McFarlane QC [Mr Bayram's advocate] and the second applicant [Dr Pelling] referred to the full names of the applicants, their wives and their children"*. Perhaps this Court of Human Rights also did not like Dr Pelling's comparisons with the censorship practices of Nazi Germany and Soviet Russia, or the statement in his Grand Chamber application that: ***"A person's identity is perhaps his most precious possession as a human being. To rob a person of his identity and reduce him to an anonymous cipher is degrading treatment worse than torture (the two often go together). Jews in the Nazi death camps were identified by numbers stamped or tattooed upon their bodies"***.

### **"SHYSTERS"**

So, despite much effort, a pretty shabby outcome to the long journeys of Dr Pelling and Andrew Bayram which started in the County courts in 1996 and ended 5 years later with Strasbourg's Judgment of April 2001. Norman Scarth, who brought a successful case to the Court concerning the holding of Small Claims trials in chambers (***Scarth v. UK 33745/96, Judgment 22/7/99***), has referred to the Strasbourg Judges as ***"shysters"***, an opinion from which the two applicants do not dissent. However, it is not the end of the matter in England since, as discussed elsewhere in this Issue of **CONTACT**, Dr Pelling is in process of relitigating everything domestically under the Human Rights Act 1998. ■

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# **CAMPAIGN FOR OPEN JUSTICE BATTLE RESUMES IN THE HIGH COURT**

## **JOINT RESIDENCE APPLICATION**

On 15 January 2003 Dr M.J.Pelling filed a Joint Residence application in the High Court in respect of his son Michael Alexander Pelling-Bruce, the hero of the 1996 Residence case at Bow County Court which went to Strasbourg on the questions of trial in open court and public pronouncement of judgment (see this Issue of **CONTACT**), and freedom of publication and identification. In 1996 little P-B, as the then Lady Justice Butler-Sloss insisted he be called (see ***Re P-B (Minor) (Child Cases: Hearings in Open Court) [1997] 1AER 58 CA***), was 5 years old. Now her Ladyship is President of the Family Division and Alexander (as

he is usually called) is 12 years old, boarding at the Dragon School, Oxford.

Seeing as since June 2001 Dr Pelling and Mother had shared time with Alexander on an exact 50-50 basis, and Dr Pelling made substantial financial contribution, he saw no reason to retain the old 1996 Sole Residence Order in the Mother's favour, and applied therefore for Joint Residence, alternatively to discharge all the Court Orders. Unfortunately Ms Bruce-Williams is strongly defending and insists on retaining Sole Residence. A crucial difference between 1996 and 2003 is that the Human Rights Act 1998 is now in force. Thus in regard to Residence, Dr Pelling can now rely directly on Article 8(1), the right to respect for family life, and use Article 14 to complain of discrimination.

## OPEN JUSTICE

Dr Pelling has again applied for trial in open court with public pronouncement of judgment in the case, relying on Articles 6(1) and 10(1), and for a Declaration of Incompatibility under s.4 Human Rights Act 1998 of Section 97(2) Children Act 1989 with Articles 6 and 10 of the Convention. In relation to public trial and judgment in child cases application has also been made for *Certiorari* to quash Family Proceedings Rules 1991 Rule 4.16(7) [which mandates hearings in chambers] and to quash in part FPR 1991 Rules 4.23(1) & 10.20(3) so far as they prohibit disclosure and inspection of judgments. Apart from the s.97(2) issue, considered below, all these issues were considered in 1996 and at the European Court of Human Rights which gave judgment in April 2001. It is not, however, an abuse of process to relitigate them all over again, given that the Human Rights Act is now in force in England and that the Strasbourg jurisprudence is not binding on the English Courts. Further, that jurisprudence is, as discussed elsewhere in this Issue, internally inconsistent and there are good grounds for submitting that the English Courts should not follow it on the issues of concern.

It may be hoped that the High Court of England & Wales will not follow the shysters of Strasbourg in holding that public pronouncement of judgment is validly constituted by the right of members of the public to ask for leave (which won't be granted in 99.999% of cases) to have copies of judgments. One may as well say the President's house is a public highway because anyone can walk through it if she grants leave. The trial of Dr Pelling's case is fixed for **5 & 6 June 2003** with the first day dealing with the open justice issues: that part itself should be in open court and all interested are most welcome. The case is entitled ***Pelling v. Bruce-Williams FD03P00743*** and will be heard by a High Court Judge of the Family Division at the Royal Courts of Justice.

### SECTION 97(2) CHILDREN ACT 1989

Section 97(2) of the Children Act 1989 says: "(2) No person shall publish any material which is intended, or likely, to identify – (a) any child as being involved in any proceedings before the High Court, a County court, or a Magistrates' court in which any power under this Act may be exercised by the court with respect to that or any other child; or (b) an address or school as being that of a child involved in any such proceedings". Section 97(6) states: "(6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale [£2500]". Thus Section 97 makes it a *criminal offence* to even say to others that one has made a Residence application!

It seems hard to explain why such a Draconian restriction on free speech is necessary in a democratic society, as the Crown is going to have to prove if it defends Dr Pelling's Declaration of Incompatibility application. There is no such restriction in Scotland, a country believed to be a democratic society. Nor was there any such restriction in England and Wales in the High Court and County courts until September 1999, when the Access to Justice Act 1999 extended the original s.97(2), which applied only to Magistrates' courts, to include those courts. It should also be noted that publication of the information forbidden by s.97(2) is not a contempt of court and does not fall within the contempt categories listed in s.12(1) Administration of Justice Act 1960: see ***X v. Dempster [1999] 1FLR 894 FD.***

Why did the UK Government extend s.97 to include the High Court and County courts? Probably because the Strasbourg cases brought by Dr Pelling and Andrew Bayram led to close examination of the legislation by the Lord Chancellor's Department and they decided to continue their programme of ***"engaging in activities and performing acts aimed at the destruction of Convention rights and freedoms or at their limitation to a greater extent than is provided for in the Convention"*** (see Article 17 ECHR) by extending s.97 to cover all courts of first instance.

### SECTION 97 AND THE TIMES

**CONTACT** is not aware of any prosecutions under Section 97. The Editor attempted to prosecute *The Times* and its Editor, one Peter Stothard, for a breach of s.97(2) when the 18 December 2000 issue of *The Times* published a report of the Residence case brought by Mr Bob Geldof in relation to the orphaned child Tiger Lily of the late Paula Yates and Michael Hutchence. The child was identified by name and photograph. The attitude of the authorities to this offence is interesting. First, Dr Pelling wrote to the High Court Judge involved, actually Mrs Justice Bracewell, not Mrs Justice Hogg as the report had said, to enquire if a s.97(4) order had been made lifting the s.97(2) restriction. Bracewell J said she *"was unable to discuss details of particular cases and therefore could not assist"* – which translated means: *"No s.97(4) order was made, and an offence has been committed, but because it involves celebrity figures and The Times I am going to do my best to cover it up"*.

Then Dr Pelling wrote to the Attorney General asking him to uphold the criminal law and prosecute *The Times* for the offence it had committed. No reply was received. So Dr Pelling laid information himself in the public interest at the Thames Magistrates' Court and asked for a summons to be issued. The Court convened a special hearing on that question in April 2001 and *The Times*, while admitting the offence, instructed expensive counsel to attack Dr Pelling with sundry allegations

impugning his motives. They even obtained an affidavit from Mr Geldof's solicitor! Mr Geldof did not want *The Times* prosecuted. The Learned Thames Magistrate, Mrs Comyns, decided that Dr Pelling's motive must be "improper" because "no-one else was concerned to take action". No summons was issued. The law was not upheld.

The truth is that Section 97 doesn't exist to suppress reports in celebrity cases (where indeed a prosecution would expose the stupidity of this law): it exists to suppress you, the aggrieved father robbed of his children for no just cause. To stop you publicising the injustice you have suffered in the corrupt and evil Family law system of England and Wales, and to stultify your protest. To keep you isolated in the caverns of anonymity, your tongue permanently silenced.

## DR PELLING PUBLICLY PRONOUNCES JUDGMENT

Now that the Human Rights Act 1998 is in force in England, Dr Pelling has decided to do what the English courts forbade in 1996 and Strasbourg forbade in 2001: **to publicly pronounce his Bow County Court Residence Judgment of August 1996**. After all, Article 6(1), as now enacted by the Human Rights Act, does say, without qualification, that "**Judgment shall be pronounced publicly**". So if the courts won't do it then the citizen must be free to do it himself. So now the whole world can read the Judgment via the Internet – just email [paulmw@ji-net.com](mailto:paulmw@ji-net.com) and ask for a copy – and we are also producing it in this Issue of **CONTACT**. ■

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## LOCAL CASE REPORT: CONTACT ENFORCEMENT *WALTERS v. SHAW (PRINCIPAL REGISTRY) FD00P11390*

### DJ BERRY IMMEDIATELY ENDORSED PENAL NOTICE

In September 2001 help was sought from *East London Families Need Fathers* by their first "non-Resident" Mother, Ms Karlene Walters. In March 2001 in the Principal Registry of the Family Division District Judge Waller had awarded Residence of Karlene's two young children Khadiyjah and Daniel to their Father Mr Roland Shaw, with a substantial Contact Order to Karlene including 3 weekends out of 4 and an overnight staying Contact one day every week. Sadly, Mr Shaw refused to abide by this Order and Contact terminated. With *ELFNF* help Karlene applied for enforcement and without any argument District Judge Berry on 9 November 2001 immediately endorsed a Penal Notice on the Contact Order, warning Mr Shaw that he must obey the Order otherwise he would be guilty of contempt of Court and could be sent to prison. DJ Berry said he "*expected to hear that Contact resumes immediately*".

### COMMITTAL HEARING IN OPEN COURT

Father's reaction was to then apply for Variation and asked for Contact to be supervised in a Contact Centre. At the first Directions Hearing on this application on 14 December 2001 DJ Million summarily dismissed it on the grounds that the reasons given in support were all appeal points against the original March Order. He affirmed the existing Contact Order and ordered that Contact must resume on 21 December. Mr Shaw did not comply so Karlene applied for his committal to prison. The Committal Hearing took place in open court before Mr Recorder P.A.B.Jackson QC on 24 January 2002. And because it was in open court there are no restrictions by way of contempt law on reporting it all, including the necessary background.

Mr Shaw was represented by Elisabeth Brann of counsel and Karlene was represented, by kind permission of the Recorder, by Dr M.J.Pelling, then Chairman of *ELFNF*.

### SUSPENDED PRISON SENTENCE

Counsel objected that Mr Shaw had not been duly served with the Order endorsed with Penal Notice, as required by the Rules. She said it was not good service for Dr Pelling to have given Mr Shaw the Order in the precincts of the Principal Registry when at Court on 14 December 2001. But Dr Pelling recalled a Note in the Supreme Court Practice [SCP 1999 Vol.I n.65/2/10] to the effect that while this may have been the law once it was no longer a good objection, to which Ms Brann had no answer. The Recorder therefore ruled that Mr Shaw had been regularly served and the case could proceed. Since the facts could not be disputed, all the Father could do was plead justification for breaking the Order, and in the witness box accused the Mother of being violent, and harmful to the children. But on cross-examination by Dr Pelling he had to admit that he had no evidence of the Mother harming the children. The Recorder found Mr Shaw guilty of contempt and sentenced him to 2 months in prison, suspended for 1 year on condition the Order was complied with. He also gave leave to the Mother, in the event of further breach, to apply for reversal of Residence, the application if made to be referred immediately to a Judge.

### NO FURTHER PROBLEMS

Contact resumed the very next day and Karlene has had no further problems. Dr Pelling marvelled at how smoothly and successfully the whole enforcement process had gone. It was in strange contrast to numerous other experiences he'd had in trying to get Contact orders enforced, with judges

consistently refusing to attach penal notices to their orders. One can only speculate why Karlene's case was different. What is not speculative is that prison works. In France, for example, there are very few violations of access orders – but statistics quoted by the Lord Chancellor's Department say that in the period from 1996 to 1998 inclusive some 57% of all cases in France of non-compliance were dealt with by imprisonment. So why not follow that example here? The trouble is that there too many fingers in the Family law pie, too many people in the Family law industry who are committed not to introducing swift effective and cheap solutions because they'd be left without anything to do and out of a job.

### THE FAMILY LAW BUSINESS

Take away judicial discretion, introduce new simple laws giving minimum statutory Contact rights, with

strict enforcement procedures, and half the business of Family law would disappear overnight. But what would all those lawyers too dim to do anything else do for a living? What would happen to all those lovely schemes for information meetings, parenthood classes, family mediation, family therapy, Contact Centres, psychiatric advice, separate representation for children, and all the rest? Why, we might not even need so many judges!

Recently Andrew McFarlane QC, Chairman of the Family Law Bar Association, said that the *"issue of Contact was an enormous and difficult problem and one that was becoming increasingly complex"*. Yes, Andrew, but **only because people in the Family law business want it to be so.**



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## JUDGE SUED FOR CRIMINAL CONTEMPT

### *An OfJudge Report on Judge Simon A. Goldstein*

**Mr Simon Alfred Goldstein** was appointed as one of Her Majesty's Circuit Judges in December 1987 and in due course became the resident Judge at Bow County Court where he sat until around the end of 1998. Many members of the East London Branch of *Families Need Fathers* [ELFNF] had experience of Judge Goldstein in their Residence and Contact cases and sometimes Ancillary Relief as well. He could safely be relied upon to support wives and mothers in these cases. Like most judges he was not prepared to enforce Contact orders and in cases of persistent Contact denial by the mother he was willing to take the ultimate step and terminate the father's Contact in order to solve the problem (no more Contact, so no more denial of it, no more distress to mother, no more distress to child, and no more court appearances). The writer recalls one particularly tragic case where this happened to a Branch member around 1993/4.

### ASSESSING EVIDENCE

Judge Goldstein has a very cavalier attitude to evidence in Family proceedings and is prepared to twist it any way he wants in order to reach or justify his desired conclusion. For example, in your Chairman's Ancillary Relief case with his first ex-wife in 1993 His Honour rubbished the considerable sacrifice and expense of the Respondent on his daughter's school fees by categorising it as, *"money which really is nothing more than some form of self-indulgence on the part of the Respondent, wishing to bring up his child intellectually in a manner which would far outstrip that of the Petitioner"*. Later, in the Chairman's Residence trial with his second ex-wife in 1996, part of Dr Pelling's case was that he had superior educational plans for his son Alexander which

included private education. He offered to give detailed evidence about how this would be financed but Judge Goldstein waved that aside and said he had every confidence that the fees could be paid. Yet when it came to Judgment he said, *"I have grave reservations in any event about whether either of the parties will ever be able to afford the sort of education they would like their son to have. I say this even if he were to win a scholarship. The fees and extras are usually beyond the reach of people, regrettably, on this scale of income"*. Events proved Goldstein was wrong since Alexander did go into private education.

While Judge Goldstein had exaggeratedly found the first ex-wife *"utterly truthful"* (ignoring conclusive evidence to the contrary), in the course of the second proceedings he commented at one point on the second ex-wife's evidence when being cross-examined, that, *"I am wondering whether anything she says is true"*. Of course, it didn't make the slightest difference to the decision, which Goldstein based on our old friend *"the status quo"* rather than who would make the best parent for the next 15 years. Judge Goldstein doesn't like expert evidence either: your Chairman had cited Professor Warshak's U.S. research that children do better with the same-sex parent after separation and also produced correspondence with Professor Warshak – but it was all ignored. Another high point in the proceedings was when Goldstein waxed lyrical about the glory of motherhood and how wonderful it was when Mother was there to make tea when the child comes home from school. He seemed to be on some emotional play-back trip from his own childhood. Goldstein is a past master in weighing up evidence to fit his preselected conclusion and *OfJudge* believes he has never been, and probably



never will be, found "*plainly wrong*" on that count by the Court of Appeal.

## LANDLORD AND TENANT

**OfJudge** has also observed Goldstein assessing the evidence in civil proceedings, particularly Landlord and Tenant possession cases. While not emotionally driven as in Family proceedings he is extremely inconsistent and erratic, almost as if he were tossing some internal coin in his head – heads for the landlord and tails for the tenant. However, when it comes to points of law, Goldstein does much better and will address the case rationally and usually correctly. Thus in 1995 he allowed an appeal against District Judge Mullis at Bow who had refused to order a hearing and review of taxation in open court, and held that as nothing in the relevant rules of court authorised taxations of costs in private, then, although such hearings were conventionally held in private, any party who wanted a public hearing in open court was entitled to it. The review and other taxation proceedings were accordingly held in open court by the District Judge. Goldstein is also more willing than most judges to grant Leave to appeal to the Court of Appeal on points of law.

## BIAS AND BIGOTRY

Regrettably, **OfJudge** reports that Judge Goldstein's attitude and conduct to **litigants in person** leaves much to be desired. He has demonstrated bias and even racism and religious bigotry, as well as denying the assistance of a McKenzie friend. In May 1995 ELFNF member Azmi Jibeili appeared before Judge Goldstein on a Contact application in regard to his daughter Natalie. Azmi is an Israeli Palestinian, his former wife native English. When giving evidence Azmi said, "*I wish to have the opportunity to introduce my daughter to my culture and as part of that introduction I would teach her Arabic*". The Judge immediately reacted: "*Spending time with a child is all about fun, going to McDonalds, etc, not jamming her throat with Arabic text books and Holy Book*". These remarks were later criticised by the Court of Appeal as "*unfortunate*".

In April 1997 Judge Goldstein reacted to the wife's counsel Mrs Wehrle's complaint about some remarks made by Azmi outside the courtroom (arising from Mrs Wehrle's disclosing a "without prejudice" discussion to a previous judge) by forcing Azmi to appear before him without his McKenzie friend Dr Pelling, to consider punishing him for contempt – the Judge said Mrs Wehrle was an officer of the court and that he could hold Azmi in contempt. Judge Goldstein ordered a bailiff and security guard to be present. Yet barristers are not officers of the court and the County Court had no power to punish for the alleged contempt (see ss.118,147 County Courts Act 1984). This was intimidation by a Judge who, if he had been fair,

should rather have rebuked counsel for her own professional misconduct.

The hearing that day then took place and concluded with an adjournment to a mutually agreed date; a few days later Azmi received a letter stating that counsel had re-addressed the court after he had left and got the date changed, to one impossible for Azmi to meet. When he applied *ex parte* for the date to be changed Goldstein kept him waiting 3 hours before telling him to return another day, and when he did he was then told by Goldstein that, "*I can't adjourn the hearing without all parties present*". So with Judge Goldstein it's one law for learned counsel and another for litigants in person.

## MORE BIAS AND THREATS

This wasn't the end of Judge Goldstein's biased behaviour towards Azmi in 1997. At a directions hearing on 15 August Goldstein attacked both Azmi and Dr Pelling as "*troublemakers*" and accused Azmi of being "*on a selfish crusade*". The Contact trial was fixed for 28 August 1997 but it was plain by now that a fair trial would not be possible with Judge Goldstein so Azmi complained to the Presiding Judges on the S.E.Circuit and the Lord Chancellor's Department Judicial Appointments Division, copying the complaints to the Judge with a request to transfer the case to another judge. Goldstein's reaction was to hold a preliminary hearing on 28 August 1997 to consider citing Azmi for contempt! Once again Azmi was denied his McKenzie friend and this time Goldstein arranged for two policemen to sit in court. Goldstein absurdly accused Azmi of attempting to pervert the course of justice, interfered with his right of audience by constant interruptions and sometimes denied it altogether, ignored his case authorities, and threatened: "*I am going to cite you for contempt of court: you will need a lot more help than Dr Pelling for that*". Goldstein then ruled that the substantive Contact hearing would go ahead and Azmi in disgust refused to take part, except to ask for Leave to Appeal at the end. This was refused and Goldstein then threatened Azmi again, saying:-

*"There is one more matter. Why did you want Dr Pelling present when I was merely dealing with your letter? You will need more than your friend when I find you in contempt. You haven't heard the end of this; after the Presiding Judges and the Judicial Appointments Division have responded to your letter I may cite you for contempt. If you think I am going to sit and listen to your rantings and abuse about my bias you have got another think coming. I may well cite you for contempt; you will need proper representation; I will not stand for this".*

Subsequently Judge Goldstein was interviewed by the Islamic Press and said: "*Mr Jibeili is a maniac; he spends most of his life making complaints about judges like myself*"- see the report "*Quran Bad For Kids Says Judge*" in the Muslim magazine Q-News

November 1998. For another report (with names) see *"Is Blood Thicker Than Borders"* in *The Independent* 2 May 2000.

## McKENZIE FRIEND JUDICIAL REVIEW

Goldstein had his revenge on Dr Pelling at least when he refused to allow him to act any more as a McKenzie friend in proceedings before him. When ELFN Secretary Bernard Greenwood needed Dr Pelling's advice and support on an *ex parte* Children Act application in December 1997 Judge Goldstein refused to allow him in the courtroom, saying that *"there was some outstanding matter in the Lord Chancellor's Department"*. Dr Pelling brought Judicial Review proceedings over the refusal – the reported case of ***R v. Bow County Court ex parte Pelling [1999] 2FLR 149, 2AER 582 DC***. Although it could never be proved, and Goldstein refused to give evidence, almost certainly the *"outstanding matter"* referred to Azmi Jibelli's complaints about the Judge. Readers may study the case report for themselves, in which Lord Justice Otton and Mrs Justice Steel refused all relief, and the report of the subsequent appeal to the Court of Appeal – ***ibid. [1999] 2FLR 1126, 4AER 751, 1WLR 1807 CA*** – in which Lord Woolf MR *et al* ruled that a judge should give his reasons for refusing a litigant in person the assistance of a McKenzie friend. What we are concerned with here is the criminal behaviour of Goldstein, and his solicitor James Blake Matthews from the Treasury Solicitor's Department, in the way they conducted the Judge's defence in the Judicial Review.

## ABUSE OF OFFICE

A few days before the Judicial Review hearing in December 1998 Dr Pelling was served with a bundle of transcripts of judgments and proceedings of cases in which he had been involved. These weren't all complimentary and Goldstein's intention was to discredit Dr Pelling before the Divisional Court and make a case that he was not in any event fit to be a McKenzie friend. The transcripts included 3 from Dr Pelling's own Residence case in 1995/1996, and 2 from his Ancillary Relief proceedings in 1993 and 1998. Two of them, including the Residence Judgment of August 1996, carried Fax legends showing they had been faxed from Bow County Court to the Treasury Solicitor on 1 December 1998.

Goldstein was abusing his privilege and office as a Judge, with access to all the court files, to copy and use without leave of the court confidential legal documents from Family proceedings in the County Court, for his own purposes in his defence to the Judicial Review in the High Court. This was a criminal contempt of court by virtue of Section 12(1) Administration of Justice Act 1960, Family Proceedings Rules 1991 Rule 4.23(1), and FPR 1991 Rule 10.20(3). Dr Pelling pointed this out at the hearing on 8 December 1998 and the Crown

did a rapid volte-face, telling the Court they would not use the transcripts after all.

## CRIMINAL CONTEMPT PROCEEDINGS

At the time Dr Pelling did nothing. However, the last straw was when the United Kingdom Government, with the collusion of Goldstein and the Treasury Solicitor's Department, illegally obtained his 1996 Residence Judgment without leave of the court for use in the European Court of Human Rights open justice proceedings *Pelling v. United Kingdom* 35974/97. To be sure, the Government's lawyers did apply in February 2000 for leave of the court to receive and disclose the Judgment to the European Court, but when Dr Pelling was served from Strasbourg in April 2000 with the copy Judgment filed by the Government he discovered it was the same copy held by the Treasury Solicitor from the Judicial Review case but now with an *additional* Fax legend showing it had been faxed from the Treasury Solicitor on 21 December 1999 to the Government's lawyers. That was a second criminal contempt. The application for leave was a sham because in reality the Government already had the Judgment.

Accordingly, on 8 May 2000 Dr Pelling instituted criminal contempt proceedings, *Pelling v. Hammond & Others* CO/1603/2000, covering all the contempts, against Judge Goldstein, James Matthews, and others then thought to be involved, including the Treasury Solicitor Sir Anthony Hammond. Because the contempts related to Family proceedings in the County Court, and the County Court has no power to punish for this kind of contempt, the application was made in the Queens Bench Divisional Court under RSC Order 52. Leave was required to proceed: at the *ex parte* Leave hearing before Lord Bingham LCJ and Morison J on 17 May 2000, the Lord Chief Justice ordered the proceedings be put on notice to the Respondents, who duly filed evidence and appeared by counsel at the adjourned hearing on 7 June 2000 before Otton LJ and Smedley J.

Matthews's affidavit admitted the obtaining of the transcripts on Goldstein's instructions for the Judicial Review, and an affidavit by one Jonathan Solly from the Lord Chancellor's Department admitted the obtaining of the Residence Judgment on 21 December 1999 on Goldstein's own telephone suggestion to the LCD. Solly also exhibited a letter dated 27 January 2000 disclosing advice the LCD had from Andrew Moylan QC (who represented the UK Government at Strasbourg) saying that leave of the court should be obtained for disclosure of both Dr Pelling's and Mr Bayram's [*Bayram v. UK* 36337/97] Children Act Judgments because *"such documents should not be disclosed without the court's permission because of the Family Proceedings Rules and s.12 of the Administration of Justice Act 1960: in addition it would undermine our argument if we were seen to*

*be acting outside that structure in relation to ECHR proceedings".* Mr Bayram's Judgment had also already been illegally obtained from Brighton County Court by the Government's LCD lawyers, and a similar sham application was later made to that Court for leave.

## OFF THE HOOK

Despite the Respondents' own evidence proving the case, Otton LJ (with whom Smedley J agreed) perverted the law to let Goldstein and Matthews off the hook and gave a completely bogus judgment on 9 June 2000 refusing Leave. He deliberately confused the type of contempt involved, pretended any supposed contempt was technical and trivial, and held there was no evidence of *mens rea* – i.e. Goldstein, a Circuit Judge, and Matthews, a Solicitor, did not know they were breaking the law and had no guilty intent! He also advanced absurd *ad hominem* arguments about the *"unlikelihood of a Judge seeking to interfere with the administration of justice"* and *"to find the 3<sup>rd</sup> Respondent [Judge Goldstein] guilty of contempt is counter-intuitive in the extreme"*. Anyone who has talked to members of the Litigants in Person Society will know that this is typical – there is plenty of corruption and criminal misconduct by the English Judiciary but the judges always protect each other. Never mind, British Justice is the best in the world, isn't it?

Naturally, Dr Pelling sought to appeal to the Court of Appeal, and his application C/2000/2363 for Leave duly came up before Lord Justice Laws on 22 September 2000. Anticipating (correctly) that Laws LJ would simply rubber-stamp Otton & Smedley Dr Pelling addressed the Court unconventionally. Laws LJ then read out his already prepared judgment, departing from it only to say that Dr Pelling's speech was *"a tirade of abuse against the English Judiciary"*. Readers may judge for themselves.

## "TIRADE OF ABUSE AGAINST THE ENGLISH JUDICIARY"

"My Lord, I begin with a parable. I as a McKenzie friend assist a litigant in person, Smith say, and have access to all his Children Act and Ancillary Relief legal papers. Later we fall out and Smith sues me in civil proceedings. I want to use his Family proceedings papers to discredit him in the civil case. I go to the Court Office and obtain copies of some of them, presenting myself falsely as Smith's McKenzie friend to the staff. I instruct a solicitor who by another deceit obtains the rest. We know we need leave of the court to obtain and use these documents but we do not apply for it. Now we have both Children Act and Ancillary Relief Judgments and Transcripts from Smith's Family proceedings, and we file and serve these in *Smith v. Pelling*. At the trial we are about to use them when Smith objects, alleging contempt of court as

no leave has been given: we withdraw the documents but do not hand them back either to Smith or the Court where his Family proceedings took place.

"Later, Smith brings a case in the European Court of Human Rights. The Government wants to submit to Strasbourg one of Smith's Children Act Judgments. Instead of applying to the Court for leave to disclose and use it, they telephone me and I refer them to my solicitor who faxes them a copy from his file in *Smith v. Pelling*. Subsequently the Government applies for leave.

"These acts of myself and solicitor would constitute the most flagrant criminal contempt for which we would justly suffer condign punishment if the aggrieved Smith brought contempt proceedings, There would be manifest violations of s.12(1) Administration of Justice Act 1960, FPR 1991 Rule 4.23(1), and FPR 1991 Rule 10.20(3). It would be a gross violation of the confidentiality of the Court in Family proceedings. No one would have any confidence in the privacy of proceedings in that jurisdiction if such contempt went unpunished.

"BUT if a Judge and his solicitor in the Treasury Solicitor's Department do exactly the same thing, apparently it is not a contempt! This is what has happened in the case of Judge Goldstein and his solicitor James Blake Matthews.

## MICKY MOUSE JUSTICE

"My Lord, this is Mickey Mouse Justice and Lord Justice Otton's Judgment of 9 June 2000 was a Mickey Mouse Judgment which had one and one object only – not to do justice impartially but to save a Judge and a Solicitor, both manifestly guilty of criminal misconduct, from punishment and public disgrace. In so perverting judgment and dishonouring their judicial oaths, Lord Justice Otton and Mr Justice Smedley have shared in that corruption and criminal misconduct. They are guilty themselves of misfeasance, in fact malfeasance, in public office.

"The English Judiciary have one major fault: their blindness and willingness to cover up for the faults, sometimes criminal faults, of their own members. This is exemplified by Lord Justice Otton's attitude to the 3<sup>rd</sup> Respondent in Paragraph 33 of his Judgment where he refers to the *"unlikelihood of a Judge seeking to interfere with the administration of justice"*, and, *"to find the 3<sup>rd</sup> Respondent guilty of contempt is counter-intuitive in the extreme"*. In Logic these are called *ad hominem* arguments. It is a moral and logical fallacy to think that the Judiciary are more righteous than the rest of humanity. In other jurisdictions that is recognised. In New York State last year, according to the State's Commission on Judicial Conduct, there were 242 investigations

into New York's Judges, resulting in 14 resignations and 36 arrests. Are the English Judges so much more righteous than those of New York? No, they are simply better at covering up for each other. Nor do we have a genuinely independent Commission to investigate judicial misconduct.

"The reality is that Judge Goldstein abused his power as a Judge to gain access to my Family proceedings files and copy and use documents in them for his own purposes, without the necessary leave of the court. In order to give himself time to search the files he even held up for 4 months the transfer of one of my cases to the High Court as ordered by Recorder White on 2 March 1998 at Bow. The letter dated 3 July 1998, in the Bundle, from the Court Manager states that, *"In the case of 89D0098 and the order transferring this matter to the High Court, His Honour Judge Goldstein required access to this file. However, I have now spoken to him and the file has been released to the High Court"*. This is a further interference with the administration of justice. Unless the Judge was actually exercising his Family jurisdiction in the relevant proceedings he needed leave of the court

like anyone else and plainly he was disqualified from granting himself leave to copy and use the documents in his own interest.

"Everyone knows the famous quotation from Lord Acton about power corrupting, but the full quotation is less well known. Lord Acton said: *"Power tends to corrupt, and absolute power corrupts absolutely. ... There is no worse heresy than that the office sanctifies the holder of it"*.

[Dr Pelling then briefly addressed Laws LJ on the legal defects in Otton LJ's Judgment and ended his speech with the following reference to the judicial oath:-]

"In matters of Justice there is no respect of persons and that includes Judges, and Solicitors employed by the Crown. The real question for YOU today, My Lord, is whether you *'will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'*."

Lord Justice Laws duly favoured his brethren and dismissed the Leave application. ■

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## **McKENZIE FRIEND LAW REPORT**

### **HILL v. HESTER (COURT OF APPEAL)**

The right to a McKenzie Friend in open court was established by the original *McKenzie v. McKenzie* and by *R v. Leicester City Justices ex parte Barrow [1991] 3WLR 368 CA*. The position for chambers proceedings remained controversial until the leading case of *R v. Bow County Court ex parte Pelling [1999] 2FLR 1126, [1999] 1WLR 1807 CA* which held that a litigant in person should not be deprived of assistance save for a reason, which might arise more readily in chambers, but if a judge did refuse the assistance of a McKenzie Friend then he should give reasons for that decision. That put an end to the practice of some judges arbitrarily refusing a Friend for no reason or patently unsustainable reasons. This case was an important step in the evolution of the Common Law since bad reasons can be appealed against and so gradually the right to a McKenzie Friend becomes more firmly defined.

An example of this process is *Hill v. Hester*, reported as *Re H (McKenzie Friend: Pre-Trial Determination) [2002] 1FLR 39 CA* where the

Court of Appeal overturned Judge Worsley's decision to exclude Dr Pelling as Mr Hill's McKenzie Friend at his forthcoming Contact trial. This was the first time a judge has ever been ordered in advance to accept a McKenzie Friend.

Judge Worsley thought Dr Pelling too adversarial and legalistic at the McKenzie Friend hearing but the Court of Appeal said that was not a good reason to infer that Dr Pelling would be excessively adversarial and legalistic at the trial, because the McKenzie Friend issue WAS adversarial and legalistic and the Respondent Ms Hester in opposing a McKenzie Friend had been equally adversarial. The Court also held that: *"It is very important in Family proceedings that litigants in person ranged up against solicitors and counsel should have the assistance that they think appropriate, particularly if it is going to contribute to their sense of confidence in the proceedings. .. The presumption in favour of permitting a McKenzie Friend is a strong one"*. ■

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## **THE JUDGMENT THAT DAME ELIZABETH BUTLER-SLOSS AND THE EUROPEAN COURT OF HUMAN RIGHTS DO NOT WANT YOU TO SEE**

In the public interest and by virtue of Article 6(1) of the European Convention on Human Rights, **CONTACT** and its Editor now publish the Children Act Residence Judgment of His Honour Judge Goldstein of 21

August 1996 in *Pelling v. Bruce-Williams* 94JS0001 (Bow County Court). The ECHR has no powers to punish for contempt but if her Ladyship the President, or the Attorney-General or Official Solicitor, wish to take contempt proceedings then we have a very simple defence: Article 6(1) states unequivocally and without qualification that "**Judgment shall be pronounced publicly**" and that is now the law of England by virtue of the Human Rights Act 1998. Further, if proceedings are brought, then the Act is retrospective.

## **MICHAEL JOHN PELLING v. VERONICA BRUCE-WILLIAMS: JUDGMENT**

1. This is in many ways a strange case. The Father is a D.Phil. Oxon (Mathematics) with an impressive CV. The Mother is from Ghana - reasonably well educated there, but, with no academic qualifications. She is now permanently resident in Britain.

2. They have one child – the subject of these cross-applications: Michael Alexander Pelling-Bruce (known as Alexander) born 20/11/90, now 5½ - a healthy normal boy and a mixed-race child.

3. The father's personal circumstances are unusual. He has had four marriages - all with women from Ghana or Malaysia, all of limited education. No marriage has lasted very long. There is one child from the previous marriage, a girl, Suzy, now aged 15, now living with him, a girl whose relationship with her father was dealt with at some length in previous proceedings.

4. Despite his academic achievement he has never held down a job for very long. There have been periods of employment abroad, the most recent being in the Oman for about a year in 1991-2. Income into his home is limited. He now has two regular sources of income:-

a) As paid employee of a Housing Association netting some £3000 per annum;  
b) As an unqualified Legal Adviser and McKenzie Friend working for his own business called Assistance to Litigants in Person or ALIP. His charges are £75 per day plus expenses. It is expanding, fulfilling a need particularly for those who are not eligible for Legal Aid. He also does a lot of work for and is Local Chairman of an organization called *Families Need Fathers*. No figures are available for this work because it is not yet full-time.

5. The mother clearly comes from a good family in Ghana. She had a child from a previous relationship about whom I heard very little. She has been living in England for a number of years and apart from a couple of years after Alexander was born has always worked. She is currently working as a secretary/PA for London Transport. Her salary is up for review shortly and she hopes to negotiate a new one between £18,500 and £19,000 per annum.

She has a claim for financial provision against the father, but that claim will be strongly resisted not only by him but by the previous wife who has a judgment in her favour secured on the matrimonial

home from this Court which she has never enforced but which the father says with a certain Machiavellian menace she will, if the mother seeks to allege some financial interest in it.

The father has paid very little by way of maintenance to his daughter Suzy and nothing for Alexander.

6. The parties met whilst the father was still married to his previous wife. It is not necessary to rehearse the details of what then occurred, but the mother was introduced into the matrimonial home and usurped the former wife's position leading to the obvious emotional upheavals. After the divorce the parties married in the Oman during the period when the father had well-paid employment there. Alexander would have been some 18 months old.

7. Unfortunately the marriage soon became unhappy, the father accusing adultery, the mother unreasonable behaviour (although it must be said that of a fairly minor kind). Cross-decrees of judicial separation were granted. Both parties issued applications for a Residence order in their favour in respect of Alexander. A Court Welfare Officer's report was ordered.

8. In September 1995 the position was as follows:  
a) Both parties were living in the matrimonial home;  
b) Both had made application for Residence orders for Alexander;  
c) The mother was working full-time, the father was at home;  
d) The father was proposing to give Alexander home tuition every day;  
e) The mother had acquired a flat in Pinner where she would spend her weekends, sometimes with Alexander;  
f) Things between them had reached the lowest ebb;  
g) The father claimed that he was being harassed and indeed assaulted by a male friend of the mother;  
h) He also claimed that his mental health was being seriously affected.

The father therefore took out an ouster application in this Court, coupled later with an application that an interim Residence order be granted to one or other of them. In his affidavit in support of the ouster sworn on the 26th September 1995 at paragraph 8 the father said as follows:

*"If the Court will not exclude the Respondent immediately then I would rather she be given an immediate interim Residence order so that she can*

*move out with Alexander to her Pinner flat which is what she has always said she wants to do. That would not be for Alexander's welfare and I should regard it as a final order and withdraw my Residence application, because from my knowledge of the way the courts work it is extremely unlikely that he would ever come back once he had gone and been settled in Pinner and put in a school".*

On the weekend before the ouster was due to be heard at Ilford the mother filed her affidavit in reply. To it she exhibited a number of letters written by the father to various members of the mother's family in Ghana.

The ouster hearing was due to take place at the Ilford County Court on the 4th of October 1995, but the father did not attend Court. Instead he telephoned and left a message with a member of the Court staff. This message has been the subject of much controversy as to its meaning and effect, but this much cannot be doubted: the Court interpreted it as a withdrawal of his application for a Residence order to Alexander, made an order in favour of the mother, as a result of which she left the matrimonial home with Alexander virtually immediately, and went to Pinner where she has lived ever since, enrolling Alexander in a local school. Contact to the father, although not without initial teething troubles is now satisfactorily established.

At the time he made his decision which resulted in the events described above, the father had not seen the Court Welfare Officer's first report which was certainly not unfavourable to him, but was influenced by what he described in the affidavit sworn on the 1st day of November 1995, in which he described the letters exhibited to the mother's affidavit in these terms: "I considered it irrelevant but felt it would prejudice my case".

He repeated in evidence his view as to the "irrelevant but prejudicial nature" of the letters exhibited to the mother's affidavit, but agreed that "my case" included not only the ouster but the application for Residence.

After a very short time the father made a fresh application for Residence. A preliminary objection by the mother that this was an abuse of process was not persisted in and the matter came before me some 9 months or more after the mother and child were settled in Pinner. A supplementary Court Welfare Officer's report was ordered to bring matters up to date.

9. It was accepted by the father that the onus was very much on him, given the previous history, to satisfy the Court that it was in the best interest of Alexander to uproot him again and transfer Residence to the father. The father pursued his case in person with great skill and tenacity and the greatest compliment I can pay him is to say that I was happy to treat him equally as an advocate as well as a litigant.

10. The father opened his case to me and pursued throughout the evidence seven grounds for saying it was in Alexander's interest to change Residence, and I can do no better than rehearse those grounds, the mother's response to them, and my own observations upon them, because most if not all of them relate to and are relevant to the Welfare Check-List.

i) *"Presumption of fact that a boy's best interests are served by his being with his father after separation/divorce of parents"*. The father pursued this vigorously, arguing that too much lip-service is paid to the belief that mothers are better carers for children than fathers; that the evidence is mostly anecdotal and that research, in America particularly, has proved conclusively that boys fare better when cared for by their fathers. He argued that although in our courts it is true that there is no rule of law which states that young children should be brought up by their mothers, it is almost a presumption of fact which invariably finds favour with the Judges.

He argued further that he would advocate a boy and girl close in age to be parted on the separation of their parents, the boy going to the father, the girl to the mother. As a proposition this is clearly, in my view, untenable because it eliminates entirely the considerations imposed upon the court by the Children Act and the need to look at the welfare of a child as an individual in the context of the Check-List.

If the father were right, in every case where there were no special circumstances the court starts from the position that a boy must be placed with the father unless.. . That is not a position I intend to adopt.

ii) *"Education (general and academic) and Values"*. The father's plan is to educate Alexander privately at home until he is 7; he then wishes him to take a competitive entrance examination to Chigwell School. If he is successful, father will finance the fees from his income, from ALIP and letting one or more rooms in the matrimonial home. His case is that the literature on the subject (some of which was presented in evidence) reveals that children who are privately educated are better educated and more socially adjusted and advantaged. He urges that it is vital that Alexander's educational progress is monitored by him at all stages. He complains about the new school mother has placed Alexander in, and says he has regressed since leaving Forest Gate. He made it quite clear, however, he will not pay a penny towards the boy's education if he remains with his mother. Both parties agree that Alexander is a bright child. The father thinks he is clearly gifted but it is too soon to be sure of that.

Mother too, would like if possible to send the boy to a public school, she has in mind Merchant Taylors or Haberdashers, but is conscious of the need for him to win some sort of scholarship; otherwise she says there are good state schools in the area. She does not believe the father will be

able to maintain private education because of all the other calls upon his time. That, anyway, he is only really qualified to teach Mathematics and Science and a boy of that age requires the company of children of a similar age at school. He is good at games and should be encouraged in all areas of education.

I think that it would be difficult for the father to maintain the 3 hours per day he says he would provide for his son by way of home education given his other commitments. Even if I am wrong about that, I am not persuaded that for Alexander the attractions and advantages the father claims for home education are sufficiently strong to compensate for the company of his peers which Alexander clearly enjoys at his present school. Nor am I satisfied that the intense bombardment of knowledge which I have no doubt the father, however well meaning, intends, is necessary or desirable for a boy of this age.

I have grave reservations, in any event, about whether either of the parties will ever be able to afford the sort of education they would like their son to have (even if they pooled their resources, which they clearly are not going to do). I say this even if he were to win a scholarship. The fees and extras are usually beyond the reach of people, regrettably, on this scale of income.

iii) *"Culture - Enabling Alexander to benefit from two Cultures"*. The father intends (whether as part of home-based education or not) to take Alexander to Ghana to sample and experience the culture of that country and to learn its language. He also says he will introduce him to his mother's family, although how welcome the father would be must be a matter of some doubt. This is a laudable aim, but the practicality of it (especially the financial aspects) would have to be looked at carefully. The mother states that she would be the obvious person to do this. She would be welcomed by her father and she will apply to do it one day in the summer holidays. She says that financially she is just as able to do it as the father.

On the broader aspect of culture and race the father insists that Alexander be referred to as and treated as a mixed-race child. This may well be politically correct but Alexander clearly looks from the photographs of him that I have seen to have a predominantly black skin, and in the troubled times in which we live is likely because of that to be the subject of racist taunts and abuse. The mother acknowledges this and says that as a black person herself she is better able to prepare him for racism and comfort him from experience, should it unfortunately occur.

I do think the mother has a more practical and realistic approach to Alexander's colour and although the father, from a purely logical and intellectual point of view may have a point, his approach will not assist his son.

It follows therefore that on this ground the father has not satisfied me that he has made out a case for change.

iv) His fourth point is *"Religion"*. This case is no different from so many cases. Both mother and father have religious beliefs (although not the same), both are regular church attenders and both will allow their son to make up his own mind about religion when he is old enough. The father complains that the Church that the mother attends has no other ethnic minorities worshippers save for one Asian gentleman (a fact denied by the mother but confirmed by the Vicar). Mother complains that the Church that the father attends with Alexander, the Aladura Church, is not a church at all but, as she describes it, an occult with practices allowed within it of which she disapproves. There she says, he would be the only white person. Father confesses an interest in the unusual, the mysterious, the supernatural and mother says that this interest in this particular Church is typical of this enquiry. In addition in some of the letters which the father described as prejudicial, the father was writing to the mother's family in Ghana enquiring about practices which can only be described as supernatural. The father sought to suggest the enquiries were on the mother's behalf but that is clearly not correct.

I do not consider that at this stage of Alexander's development that the vexed question of religious upbringing is of very great relevance. The greater I considered its relevance the lesser would I consider the father had made out any case for change.

v) The next point he makes is *"Environment and Financial Provision for Alexander"*. By environment the father means a straight comparison not so much between Forest Gate and Pinner as such but between the location of the accommodation available to Alexander. His main point is that his house is near a park in a quiet road whereas the mother's flat is on a main road. The mother says there are many green areas near her flat and that she who has first-hand experience of both areas says Pinner is by far the more attractive. I have no reason to disbelieve her.

As far as financial provision is concerned the father puts his case as boldly as this. If Alexander lives with his mother he will live in an atmosphere of debts and poverty whereas if he lives with him it will be in an atmosphere of comfort. He sought to prove in cross-examination that the mother was insolvent. The father's submissions must be considered in the context that he himself has never made financial provision for Alexander and boasts that he never will and also that there is bound to be the most acrimonious squabble over the house in Avenue Road. I would not like to predict the outcome but I am sufficiently satisfied about the mother's prospects as to reject his proposition stated above. The facts are actually quite different. Mother has (apart from the time she had off to have Alexander)

always worked, held down responsible positions and tells me that she is negotiating an increase in the salary which goes with her current position as a secretary/PA to a figure of between £18,500 - £19,000 per annum. She does have a lot of expense, it is true, but she seems to be coping adequately. Alexander is clearly a very well cared-for boy. If I were forced to speculate on who is likely to be in a better long-term financial position I would choose the mother.

vi) His sixth point is undoubtedly his strongest; it concerns the *"Mother's Hostility"* to him which she has at times manifested by being very difficult about Contact [access]. This hostility was commented upon by the Court Welfare Officer in his first report, although he found that by the time he came to make his second report a lot of that hostility had evaporated, mainly because the parents were no longer living together. This relaxing of tension was apparent during the hearing and although it would be foolish to suggest that these parties will be able totally to forget the past for the sake of Alexander and refrain from making hurtful remarks about the other in front of him I do not consider that the mother will now depart from what she clearly realizes is the importance of Alexander seeing a great deal of his father and enjoying not only his company but the enormous benefits the father can give him. Should she resile at all from this position she is aware that the father, as he describes himself, is a tenacious litigant and will certainly pursue her through the Court.

vii) His last point is entitled *"Justice Between the Parties and the Moral Welfare of the Child"*. He bases his moral welfare argument on the following:-

- a) The mother tired of him and resolved to bring the marriage to an end;
- b) She committed adultery which was found to be proved although she denied it;
- c) She waged a violent and vicious war of attrition on him which culminated in his health being affected and his judgment being impaired which resulted in his withdrawing his Residence application in October 1995.

He submits as a result of this that an adulteress who has been responsible for the break-up of a marriage should never have the full-time care of a child, on purely moral grounds.

This argument, which is very outdated in any event, has to be considered in the full context of the facts of this case, which are:-

- a) The father of course committed adultery with the mother during his marriage to the previous wife;
- b) The father admitted to the mother a sexual relationship with another woman whilst she was pregnant with Alexander;
- c) The father clearly made amorous advances to the mother's younger half-sister;
- d) The father during the marriage got himself involved with a very young girl in Ghana and appeared to make her think he would marry her;

e) In a proposed marriage contract sent to the mother's father, the father advocated his having junior wives and concubines as long as they were "overseas" but did not give the same rights to the mother;

f) The so called irrelevant but prejudicial letters reveal a distinctly lax sense of moral integrity on the part of the father.

There is no doubt in my mind that the mother would be a far greater influence for moral good on Alexander if one were viewing it under the Check-List.

11. It follows therefore that far from making out his case for change the father's case has had the effect of persuading me that the course of events which resulted from the father's actions in 1995 have brought about a situation which is entirely in Alexander's best interests.

I am encouraged in that view by the Court Welfare Officer. Although he was subjected to some criticism by the father I am bound to say, for my part, I found his reports well researched, totally objective and most important of all, exhibiting total understanding of the issues likely to confront the court if the hearing were contested. I derived great assistance from the reports. I quote two examples from his report of the 2nd of October 1995:-

*"Whilst there is a logic and orderliness about Dr Pelling, enabling him to systematically assess, plan and work through a course of action such as Alexander's home education there is also a lack of warmth in the way he relates. His cold and legalistic manner buys him few close friends, I suspect, and such a rôle model may not be a healthy one for Alexander to emulate. Furthermore, his assertion that husbands have an inherent dominance within the marital relationship seems to me to advocate women as second class citizens and Alexander's sometimes derogatory comments and behaviour towards his mother over recent months can perhaps, in part, be explained by this".*

*"My primary concern with Ms Bruce-Williams is what seems to be her almost complete disregard for Dr Pelling as a significant figure in her son's life. Whilst verbally acknowledging that Alexander loves his father, her own extreme negation of him as a person, coupled to her determination to win this battle will, I suspect, effectively mean that she would almost inevitably remain hostile to father-son contact and engender within Alexander a similar negative attitude towards his father. This will be damaging to Alexander's identity of himself, particularly as he grows up into manhood".*

This succinctly encapsulates the problems and prior knowledge of them was of great help to both parties and the Court in addressing them. In his second report the Court Welfare Officer correctly comments upon the marked lessening of tension between the parties since their separation, and upon the difficulty of deciding the case by reference to the Welfare Check-List. It is a credit to his insight



that both mother and father sought to address many of the issues raised in those two reports.

12. I should say a little about the mother. She is clearly a determined woman, not as easily dominated by the father as the Court was able to observe that the previous wife was. She has a work record in this country of which she can be proud.

As I have remarked earlier Alexander appears to be thriving since the making of the Order in October 1995 and the mother who works a considerable distance from Pinner manages to combine effectively her dual rôle as principal carer and sole supporter of Alexander. The father in a restrained cross-examination brought out one or two things which the mother will need to address in the future but failed to create any impression on the Court when he sought to establish her as an inadequate parent.

13. There was a great deal of paper-work in this case and the hearing lasted the best part of six days. I could not possibly deal with every allegation and cross-allegation. Counsel for the mother in her very helpful submissions attacked the father's attitude to women in general which certainly seems old fashioned, if not feudal, despite his vehement denial that he is in any way anti-woman.

She also described him as a manipulative individual and pointed to the obvious way his former wife and their daughter are completely under his domination. The father stated that the Children Act has destroyed the age-old concept that the father is the head of the household and insists that his orders be obeyed. Mother says he takes that to extremes and over-protects Alexander. Father too complains about her chastisement of the boy.

I quote these few typical examples of dispute to illustrate the enormous amount of time this case has taken up and the vast amount of paper it has generated to explain why I do not attempt to adjudicate on every complaint, which even if it were possible given that it is the father's word against the mother's would have extended this judgment to quite unacceptable proportions. It is also frankly unnecessary because my decision is clear and unequivocal. The best thing to happen in Alexander's best interests is that he should remain with his mother as per the order of the 4th of October 1995 and have generous access to his father which is to be alternate weekends Friday after school to Sunday 7pm and half the school holidays.

As far as costs are concerned, although in children cases it is often appropriate to make no order, in this particular case I am quite satisfied that this second hearing of the Residence application so soon after his abandonment of the first puts it into the category of costs following the event. However, given that it was the first time the applications were heard on their merits and the father had some valid points to put before the Court I have decided that the proper order is that the father pay one half of

the mother's costs, to be taxed if not agreed. There will be Legal Aid Taxation for the mother with Certificate for Counsel. S.A.Goldstein, 21 Aug.1996

## **COMMENT ON JUDGMENT**

Having read it, you may well be left wondering why the Courts all the way to Europe were so desperate to keep the Judgment secret. The secrecy laws are there not to protect children or the privacy of the parties but to protect the Judiciary, the Court Welfare Service [now CAFCASS], and their corrupt Family law system from scrutiny and exposure. They are there to protect the mother-custody default from being overthrown and to silence the voices of the growing ranks of embittered fathers. The above Judgment does illustrate the importance of public scrutiny to remedy the destruction of family life by the Judges, of whom Goldstein is typical.

Goldstein thinks that it is a *very outdated argument* that adulteresses who break up marriages should be held to account for their behaviour and should not be allowed to profit from it by walking out with children followed by large-scale property transfer.

Goldstein typifies the approach of the English courts to *expert evidence* in the way he ignored the US research of Professor Warshak and others which proves the benefit of children being in the custody of the same-sex parent after divorce/separation.

Goldstein is also typical in his *adulation of Welfare Officers*, who have no real training for their job and who nearly always recommend mother custody. These Officers can nearly always find some fault with a father and extrapolate it into an excuse to favour mothers. Thus in a context which was cold and legal Dr Pelling (who had published correspondence attacking the then Court Welfare Service) is attacked for being coldly legalistic and not showing enough warmth to the Welfare Officer, hence he is not a suitable male rôle model for his son.

Goldstein betrayed a *prejudice against home education*, repeating the myth that children taught in that way become socially disadvantaged. In his typically cavalier approach to evidence he ignored the expert evidence provided to the contrary. He also betrayed ignorance about the possibilities of access of children to private education when the parents' means are limited.

Goldstein is also what might be called an *inverted racist*, considering his approach to Alexander being a mixed-race child. Of course had the mother been white and the father black it would have been a very different story.

Goldstein finally took the easy way out adopted by so many judges of opting for the *status quo*. Whatever the long-term considerations for a 5½ year old boy being robbed of his father's upbringing

they can usually be minimised by the handy *status quo* argument if the child has been in the mother's care for some time.

Goldstein is also the subject of an *Of Judge Report* in this Issue of **CONTACT**. Critics may say that all this is the product of an aggrieved father's bitterness but all we would ask in the end is that you, the reader and member of the public, be

allowed to judge for yourself. Let the press and public go to the courts themselves and witness judges such as Simon A. Goldstein in action. The trouble is: you are not allowed to, not in Family proceedings. You'll only witness Goldstein in action there if you, poor sod, are on the receiving end of his justice. ■

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## THROUGH THE CHAIR - *Dr M.J.Pelling* A NEW SOCIETY

**CONTACT** is now under the new ownership of **East London Fathers**, a Society established in February 2003 with similar objects to the previous owners **East London Families Need Fathers (ELFNF)** but with an emphasis on publicising information about Family law in theory and practice. Previous Issues of **CONTACT** had attracted criticism from the Council of the national society **Families Need Fathers (FNF)** of which **ELFNF** is a Branch, and with the passing of new Rules and Bye-laws by that society it became impossible for **ELFNF** to continue publishing **CONTACT** save under emasculating restrictions. So **ELFNF** sold the legal title and all ancillary benefits to **East London Fathers**, which is a quite separate organisation and has no connections whatsoever with **ELFNF** or **FNF**. Responsibility for what is published in **CONTACT** rests solely with **East London Fathers**. Dr M.J.Pelling is Chairman of **East London Fathers** and Editor of **CONTACT**. He stood down as Chairman of **ELFNF** at its Annual General Meeting in February 2003.

### NO CENSORSHIP

**CONTACT** has a strict "no censorship" policy. We believe that the evil which English Family law has become will not be reformed while secrecy and anonymity are the norm in Family proceedings in the Courts. We believe that the words of old Jeremy Bentham – "**In the darkness of secrecy sinister interest, and evil in every shape, have full swing**" – have been fulfilled in the Family Division. Bentham went on to say:-

**"Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice".**

English Family law has become a racket designed to ensure that children and family life remain in the control of women, particularly after the break up of relationships, and that there is large scale transfer of assets from husbands and fathers to wives and mothers, with the legal profession taking its own substantial cut in the process. You

might not accept that thesis but what you will not be allowed to do under present law and practice is to go to the Courts and observe for yourself.

You will only get to see for yourself if you happen to be a party, and if you are a man you may well be so incensed at your experience that you want to publicise it and campaign for reform. Try that and you'll rapidly be hit with a gagging injunction, handed out automatically by the High Court and Court of Appeal in cases concerning children. You will not even be able to identify yourself, lest your children become identified, and the difficulties of campaigning anonymously are obvious. That's the object of course, not to protect children but to suppress dissent. It is even a criminal offence, under Section 97 of the Children Act 1989, to publish anything which might identify a child as involved in proceedings under the Act, so you can't even make a bare statement that your family is the subject of such a case.

The editorial policy of **CONTACT** is not to accept censorship and to contest all attempts by the Courts and State to impose it. Which is more than the pathetic pusillanimous English Press have ever done about censorship in Family proceedings.

### BUTLER-SLOSS, PRESIDENT

As I write this Chairman's piece I have in front of me a copy of the *News of the World* for 17 July 1988, with the headline "**CLEVELAND JUDGE SEX SCANDAL**" (report accessible at the Website [www.electromagnetism.demon.co.uk/zbbsloss1.htm](http://www.electromagnetism.demon.co.uk/zbbsloss1.htm)). In juicy detail it describes how the husband of **Dame Elizabeth Butler-Sloss**, now President of the Family Division, cheated on her with young black prostitutes while working as a Kenyan High Court Judge. Joseph Butler-Sloss confessed that he regularly paid for sex with local hookers, saying that he did not get lonely for his wife who came to visit him on holidays at Christmas and Easter. He said he'd go on till he got rumbled. The article has photographs of the Butler-Slosses, with caption "*He's cheating on her*".

Butler-Sloss was appointed to the Court of Appeal in 1988 and has used her position ever since to strengthen secrecy in that Court and the Family Division. Before her time it was not uncommon for children cases of special legal interest to be reported under the full names of the parties (example: **May v. May [1986] 1FLR 325 CA**): now it never happens and during her tenure in the Court of Appeal a practice was introduced by her, around 1997, of rubber-stamping, without any actual Order being made, all Court of Appeal Orders in cases involving children with an additional Injunction forbidding identification: see **Re Rhodes (Minor) (Court of Appeal: Order Against Identification) [1999] 2FLR 145 CA**.

Earlier, in 1996 in **Re Pelling-Bruce (Minor)(Child Cases: Hearings in Open Court) [1997] 1AER 58 CA**, which was the test case challenging the practice of trial courts of holding child cases in secret without public pronouncement of judgment, her Ladyship imposed an Injunction forbidding Dr Pelling identifying himself and child – a crude and deliberate attempt to suppress and stultify the very campaign against such practices which Dr Pelling and Andrew Bayram were conducting!

**We do not see why one obsessed woman and her dysfunctional family life should be allowed to wreck the sacred principle of open justice in English law.**

## HELP US

If you would like to support the battle to open up the Courts and to permit free reporting of Family law cases then send a donation to **East London Fathers**. Membership is only a nominal £5 per annum but if you can add to that it will help meet the cost of publishing **CONTACT**. We should also be interested in hearing about your experiences in the mad world of Family law, with a view to publication: but remember the golden rule – **no censorship**. Write to us at **East London Fathers, Ivy Hall Community Centre, Holly Park Estate, Crouch Hill, London N4 4BL**.

## COPYRIGHT WAIVER

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**"WHEN LAW BECOMES  
INJUSTICE THEN RESISTANCE  
BECOMES A DUTY".**

*Dr Michael J.Pelling, Chairman & Editor*

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