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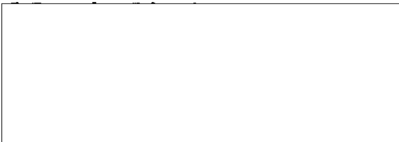
1st June 1989

W.C. McKeag, Esq., B.A. (Cantab),



Dear

Hillsborough Inquiry

Thank you for your letter of the 31st May.

Your comments and suggestions are most helpful and are being considered in detail. I will come back, if necessary, in due course.

Yours sincerely,

Secretary.

31st May 1989

Dear David,

Hillsborough Inquiry.

Thank you for your letter of the 26th May and its enclosures.

I have, of course, seen you since your letter was written. You told me the composition of the F.A. Sub-Committee and of the possibility of there being joint rather than separate submissions to the Inquiry, is still being considered.

With regard to the recommendations of the Anti-Hooliganism Committee, I would comment -

a) that the proposal to appoint structural engineers to advise about the relationship between seating and standing at grounds did not necessarily envisage an inspection of each ground. It would almost certainly be impossible to inspect each ground and prepare a Report in time to incorporate it in the submissions to the Taylor Inquiry. There is a danger, too, that such a Report could be confusing in its detail and would be hedged round with exceptions and qualifications. What I, personally, had in mind, was a Report from structural engineers based no doubt upon visits to a select number of grounds (to support the League's contention that standing in paddock areas is perfectly safe. That Report would no doubt make recommendations about the depth from the pitch perimeter of paddock areas, the possibility of lateral barriers to limit the number of spectators in any particular area, and questions of access and egress.

   Any proposal for separate paddock areas in parts of the ground which are now wholly standing areas, poses a problem about the terracing behind the paddock area. One possibility is that this should be 'all seater' accommodation. An alternative which I think structural engineers might consider is that standing should be permitted providing that the area is 'penned' as is, or used to be the case at Wembley with separate access to and a numbers limit on each pen. It may be that structural engineers will advise that 'penning' in this way would be impractical and expensive and we could forget about it as an alternative to seating.

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b) Medical Facilities:

(i) I think that the Club returns (whether on the local plan or otherwise) should show the distance from the ground of the nearest hospital/hospitals with a full-time casualty department and the nearest ambulance station.

(ii) I am sure that our own Club Doctor, Dr. Keith Beveridge, would be happy to co-operate in any discussions or recommendations.

Video Screens:

You may be interested to learn that we wanted to instal a video screen at St. James' Park on the day we played Middlesbrough away to reduce the problem of visiting supporters. The local authority refused to allow it as it wasn't incorporated in our Safety Certificate.

Is this an area that Trevor Phillips has looked at?

Your own topics for discussion seem to cover most of the ground. I note that at clause 5 you include a recommendation that we institute discussions for Central Government re funding and planning permission. Despite the fact that we are unlikely to get any tax concessions or other financial help from Government, I think that this is a door on which we ought to beat as persistently and publicly as we can. The comparison between the treatment of horse-racing and football should be continually stressed. in case you do not have it, I enclose a copy of an article from the New Law Journal of 21st April 1989 by Edward Grayson. I think that Taylor L.J. might be reminded of words of Neill L.J. in 1987 -

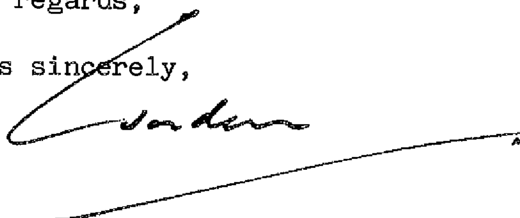
> "One can feel considerable sympathy for the Club authorities who are faced with falling gates and a grave escalation of costs to meet violence which they deplore and do their best to prevent. One can only hope that some accommodation can be reached, perhaps on a national scale to meet a threat to the finances of the Club and other Clubs in a similar situation."

I wonder whether our Accountants might be asked to examine the balance sheet and accounts of all 92 Clubs and produce a Report to show how far League Clubs are financially able to meet substantial increased costs. Perhaps the F.A. might be persuaded to meet the costs of commissioning such a Report.

These are difficult times indeed.

Kind regards,

Yours sincerely,



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SPORT AND THE LAW

The lessons of Hillsborough

by Edward Grayson

Sheffield Wednesday's Hillsborough horror story will change the face of British football forevermore. Yet it will progress in the right direction positively only if the right legal lessons are learned from the tragedy. For the mythology perpetuated perversely by so many sources in sport, and also from those outside its areas, that the law has no place in the sporting calendar, was destroyed for all time hereafter last weekend. Most significantly, however, it is the last in a l[illegible] of soccer situations which have produced successive British Government knee-jerk reactions to topical trauma from Wembley Stadium in 1923, via Bolton Wanderers in 1946, Ibrox, Glasgow in 1971 and Bradford in 1985, without the slightest awareness at any time of what Lord Hailsham of St Marylebone, who created the role of Minister with responsibility for Sport, in 1962 called a need "for a coherent body of doctrine, perhaps even a philosophy of government encouragement".

This reluctance to provide coherence raises a constitutional issue in addition to three others which surface from this latest disaster; the others affecting the police, personal liability and taxation.

Police: The supreme irony emerges from a test case brought to establish the extent to which "special police services" under s 15(1) of the Police Act 1964, beyond the ordinary role of law and order, were chargeable to clubs in the Sheffield area who had refused to pay for them at occasions between August 1982 and November 1983. The other famous local professional Sheffield club, United, was chosen for the claim. The Plaintiff was the same South Yorkshire Police Authority at the heart of the present position. Litigating representatively it obtained £51,699.54. The judge had recorded the famous Bramall Lane ground to be "one of the safest of soccer grounds", but the sting was in Neill LJ's closing words, "One can feel considerable sympathy for the club authorities who are faced with falling gates and a grave escalation of costs to meet violence which they deplore and do their best to prevent. One can only hope that some accommodation can be reached perhaps on a national scale to meet a threat to the finances of the club and other clubs in a similar situation (*Harris v Sheffield United Football Club Ltd* (1987) 2 AER 838).

That sombre hope has built in to it two crucial questions for the current Government Inquiry under Lord Justice Taylor. First, did this award for "special police services" expenditure inhibit the numbers of police personnel ordered for deployment both *inside* and *outside* the ground by the Sheffield Wednesday and Football Association authorities. Well publicised evidence on television and in the press at least justifies an answer to this question. The second arises out of Neill LJ's hope for "some accommodation ... perhaps on a national scale". For that leads to the crucial taxation element buried in a decision affecting the Burnley Football Club which arguably could have inhibited ground developments at other professional football stadia.

Taxation: A grandstand built in 1912 at the famous Turf Moor ground was condemned in 1969 by the club's architect to be unsafe. Resulting from this almost £210,000 was expended on a replacement and the club appealed to the Special Commissioners of Income Tax that this amounted to repairs as a deductible revenue expenditure for deduction of corporation tax against profits under s 130(b) of the ICTA 1970. The then Presiding Tax Commissioner, the late Hubert Monroe, QC, and his successor, present President, Mr R H Widdows, decided *on the evidence* that the cost was an allowable revenue item. On appeal Vinelott J in a sentence which has a potentially perverse favour to it today, reversed the Commissioners, saying of the stadium and the new replacement stand. "No part except the football pitch itself, was necessary to the performance of the club's central activity of arranging professional football matches as a spectacle. The club could have continued its activities without affording covered seats for those of its supporters prepared to pay for that amenity". (*Brown v Burnley Football and Athletic Co Ltd* (1980) 3 AER 244 at Page 255j)

Now that the issue has reached the "national scale" identified by Neill LJ, the accommodation for not only "special police services" but also for the Government support for replacement of concrete terraces with seats for safety purposes, may receive the attention it has merited for nearly a decade since the Burnley club's reversal by Vinelott J. Indeed, the consequences of that decision are inextricably linked at least *indirectly* with the Bradford City grandstand's fire disaster, and the consequential litigation.

Personal liability: The facts of that sad occasion are all too fresh in mind to require detailed recollection here except for two relevant factors, one of which belongs to Lord Hailsham's overriding need "for coherent body of doctrine", ie that because the Club was in the Third Division at the time of the fire it was thereby excluded from being designated with First and Second Division Clubs under the Safety of Sports Grounds Act 1975 which followed the 1971 Ibrox Stadium deaths. The other element was that the ancient Valley Parade stand with its combustible roof was due for demolition and replacement work to begin on the Monday following the fire, upon the Club's promotion from the Third to the Second Division. To what extent that decision was delayed by the taxation issues flowing from the Burnley result never emerged during the Popplewell Inquiry or the litigation conducted by Sir Joseph Cantley at the Leeds Crown Court during the end of 1986 and early 1987. His judgment in two test cases brought by bereaved relatives and an injured police officer concluded that the club was two thirds to blame for failing in its duty of care to spectators; and the local West Yorkshire Metropolitan Borough Council when the local fire authority had failed in its duty under the Fire Act 1971, and was one-third to blame. A powerful claim against the Health and Safety Executive was dismissed.

Just over a decade earlier in 1974 an earlier test action on behalf of deceased relatives in the Ibrox disaster resulted in a damages award for negligence against the Rangers Football Club because it had failed to provide sufficient care to spectators in egress and handrail facilities on the staircase where fans collided, resulting in 66 fatalities, *prior* to The Safety of Sports Grounds Act 1975 which followed a year later. (*In Dugan v Rangers Foot-*

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ball Club (1974) *Daily Telegraph* October 24 1974, p 19)

A less agreeable aspect of that litigation was an attempt (which it is anticipated will never be repeated) by the advisers to the Rangers Club to block the plaintiff's claim on the specious basis that funds coming from the national Disaster Fund which had been raised would be an adequate substitute for damages. It was rejected by Sheriff J Irvine Smith as inequitable and contrary to public policy [1974] Scottish Law Times: Sheriff's Court. P 34.

Prima facie arguable claims appear to exist against the South Yorkshire Police Authority for apparent lack of crowd control, co-ordination, and, subject to the contractual arrangements for its "special police services" numerically, planning, too. The Sheffield Wednesday Club and the Football Assocation under whose overriding jurisdiction the fatal game was being played would appear to be on risk for at least lack of adequate medical facilities, ticket distributions and stewarding, apart from co-operation and co-ordination with the police. Consideration will doubtless be given to the position once more of the Health and Safety Executive and also the appropriate local authority, subject to any capacity to clarify the current statutory position of the latest legislation after the Bradford City Fire disaster.

Constitutional: The pattern of legislation in this area has been a sustained adhoc knee-jerk to situations as Wembley Stadium's crowd problems for the 1923 FA Cup Final and the Bolton Wanderers 33 deaths in 1946 produced legislation recommendations which were ignored. Only the Wheatley Report following Ibrox and the Popplewell Reports after Bradford produced Parliamentary action. Furthermore, whereas crowd safety is a matter for the Home Secretary in the Cabinet no Minister with responsibility for sport has ever held Cabinet Office, apart from the time when Lord Hailsham created the role while Minister for Science and Technology in 1982. He pointed out then "that recreation generally presented a complex of problems out of which modern government was not wholly free to opt, and which government funds were, in fact, and were likely to continue to be, committed in one way or another ... in matters of safety at ... football grounds". If anyone doubted that philosopy a quarter-a-century ago, who would dare to do so today? o

Edward Grayson is the author of *Sport and the Law*.

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there) as objective observers.

Sir Arthur, a former President of the Law Society, talked at length about conveyancing and high street solicitors firms, and opined that if contingency fees were introduced "solicitors will only take them if the cases are a cert or if they are desperate". His exposition of the Bar's position was ambiguous at times. On advocacy rights he felt there was "some justice" in the Lord Chancellor's proposals. On balance, however, he was worried about the "terrifying" power the changes would confer on future Lord Chancellors. While Sir Arthur would like to keep the present system, "for all its faults", attorney George Koelzer could hardly find any fault with the British system. A long analysis of post-Colonial north American history brought him to the brink of the twentieth century and the high watermark of the development of a split profession in the US. But instead, the Americans invented enormous law firms containing expensive in-house litigators. Now separation would be politically impossible. American law firms would find it "unthinkable" to hire an outside specialist to argue a case in court.

Mr Koelzer, who mainly acts for marine insurance companies, said that contingency fees would "vastly expand both the amount and complexity of litigation". A relevant example, he said, was the numerous suits brought by homeowners claiming environmental injuries against chemical companies also were alleged to have caused pollution. These claims were brought in the hope of quick settlements, regardless of liability, creating sufficient contingency fee income to enable the lawyers to finance further waves of litigation.

Mr Koelzer said that standards of advocacy were higher in Britain than in the US where advocacy training had only been available for 10 or 15 years. Like Sir Arthur Hoole, his presence at the meeting, arranged by the Bar's public relations representatives, was as an independent, impartial speaker. He did not propose "to give advice in an internal political dispute of the people of the UK".

Masons unmasked

The Government is requiring all 95 local advisory committees appointing magistrates to make public members' identities by 1992. Sir Nicholas Lyell, The Solicitor General, responding to Parliamentary questions on April 10 told Labour backbencher Graham Allen that about half of the committees had already revealed members' names. Sir Nicholas said that the Lord Chancellor is "encouraging the local advisory committees to publish their compensation without delay. But he did not explain why the 1992 dead line had been set.

Mr Allen's interest stems partly from his attempts to discover the membership of the local committee covering his Nottingham constitutency. A written answer from the Attorney General on March 7 indicated that it was secret. Shortly afterwards he was informed by the Deputy Clerk to the Nottingham Justices that a list would be published in April.

His supplementary question expressed concern at continuing secrecy in the selection of magistrates and the need for official efforts to ensure that local communities were "properly reflected by sex, ethnic origin and class". He also asked the Solicitor General to "ensure that he finds out how many freemasons are on the committees, so that they, too, have a fair share of local magistrates". Either the freemasons have found an unlikely Parliamentary consultant or Mr Allen's tongue was cemented firmly in his cheek. o

Society shuns Bar partners

The Law Society has been finalising its own position on the Green Papers. The Law Society Council met on Wednesday April 12 for the first of two closed sessions to debate its draft response, published in March. Council members are said to have come down firmly against multidisciplinary practices involving solicitors and barristers, and there are thought to have been objections to partnerships between barristers. Multidisciplinary practices themselves appear to be falling out of favour with leading members of the Society. o

Law Commissioner Appointed

The Lord Chancellor, Lord Mackay of Clashfern, has appointed Mr Jack Beatson to be a Law Commissioner for a term of five years beginning on July 3, 1989.