LONDON SHIPPING LAW CENTRE

THE SECOND CADWALLADER MEMORIAL LECTURE

"The Civil Justice Reform, its Impact on Maritime Litigation, the Maritime Industry and London"

Given by Lord Justice Clarke and Mr Justice Rix

Introduced by the Chairman of the London Shipping Law Centre, Lord Mustill of Pateley Bridge

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Lord Mustill of Pateley Bridge (Chairman of the Centre and of this event)

Ladies and gentlemen, the former head of a foreign friendly nation, who was extremely proud of his ability to communicate with large audiences on a personal basis, once began an address by saying that it gave him a very warm feeling to appear before such a dense crowd.

How dense the members are, I can't say, but it's immensely gratifying that numerically this should be such a large crowd; there are some 320 people present to hear this lecture, given in honour of the memory of Professor Cadwallader and also in honour of the continuing presence of the London Shipping Law Centre, that marvel of levitation with no visible means of support – although I hope that it will gain some in the not too distant future. It has gone from strength to strength in putting together a vigorous and inspirational programme, combining the practicalities of the maritime law, of maritime commerce and of the actual activity - without which it would be an empty shell - that moves ships, goods and people from place to place. It is in this combination of expertise that the London Shipping Law Centre is not only unique in the City of London in what it does but I believe that it is probably unique or at least it is in the forefront of any kindred association of its kind anywhere in the United Kingdom. We owe this partly to the inspiration from the past of Professor Cadwallader, about whom you may read in the booklet, and also to the inspiration and vigour of Dr. Aleka Mandaraka-Sheppard and her devoted band of followers, who have put in an immense amount of work to get the London Shipping Law Centre up and running.

Because the Centre melds these disparate disciplines of the practice of academic law with maritime commerce and the actual business of shipping, it is appropriate that we should have here tonight as speakers two judges because, in maritime law, the lawyers have always been extremely close to practitioners; more so than in any other field of law in which I've had experience, as I have had of quite a number. So that we have here as judges two men who have given their working lives to the maritime law and, as it were, passed over to the other side; if I were allowed by the Lord Chancellor to fall into Latin, I would have expanded the letters C.V.; let me just say that the continuing high spots of their lives are also listed in the booklet.

Mr. Justice Rix has until, I think, very recently been the Judge in charge of the Commercial Court, that body charged all those years ago with the prompt and speedy resolution of the disputes of commercial men - if you added the words "up to a point". But it is not a matter for jest; the Commercial Court is renowned throughout the world and the position of leading it is one of great importance and it's an honour that we should have Mr. Justice Rix here tonight.

Lord Justice Clarke is a member of the Court of Appeal; the function of that court is, as we all know, to shoot the wounded when the war is over and it's very

appropriate that, having been Admiralty Judge dealing with wrecks and strandings and sinkings, he should come to the place where the wreckage of litigation is to be found.

But enough of jest; what we're going to hear about tonight – and I hope that we shall hear from the floor too, after the addresses have been given – is extremely important, probably the biggest convulsion in civil justice since the Common Law Procedure Act of 1854. Nobody knows, I believe, where it is leading and we all want to hear. It is almost a bow drawn at a venture, it seems to me: the boldness of an enterprise which can set out to bring about this revolution without a pilot scheme being floated first seems to me a remarkable exercise in faith. But we shall now hear from those who know; alas, I have gone to that bourn from which no traveller returns but am viewing with interest, hope and apprehension what's going to happen in the next decade and that's what we're going to hear about. Lord Justice Clarke will, I believe, speak first and then give way to Mr. Justice Rix who will, in turn, cede the floor back to Lord Justice Clarke.

Lord Justice Clarke

The title of this lecture is "The Civil Justice Reform, its Impact on Maritime Litigation, the Maritime Industry and London". I'm not sure if you can have two people giving one lecture, nor am I sure that the topic could be described as inspirational; moreover, I have to tell you that you have before you the second team, *pace* the last speaker, because the lecture was originally to be given by Lord Woolf – who would perhaps have been described as the *fons et origo* of the reforms, if he had not abolished Latin.

Things have changed, indeed, a good deal since Peter Cook told the story of the juror who sat through a trial and found it interesting. He noticed that the judge seemed to be having an easy time of it – everyone was nice to him and he seemed to do what he wanted. He thought he would like to be a judge so, after the case, he went round to the back of the building and the judges' entrance. The door was opened by the usher. He said he'd like to be a judge and what should he do ? The usher said, "You can't be a judge; you haven't got the Latin." Now, it's not like that.

I'm not sure that Mr. Justice Rix and I are the right people to talk about the impact of these reforms on the maritime litigation, the maritime industry and London. We shall try to give some idea of how we see the reforms working which will perhaps begin to address the impact on maritime litigation; however, you are the representatives of the maritime industry and, as such, you are the customers or their representatives. It's you who use the Admiralty and Commercial Courts and, as the Admiralty Judge until recently, I like to put the courts that way round, having regard to the 600-year history of the Admiralty

Court (born 1360), as compared with the hundred-year history of the Commercial Court (born 1895). However, I also had the privilege to sit in the Commercial Court and both courts regard themselves as existing to serve the customer and not the other way round.

Speaking for myself – as I have learned to say in the Court of Appeal – I very much hope that this will continue to be the case. Some have regarded the civil justice reforms as being too authoritarian, encouraging judges to throw their weight about to the disadvantage of the parties. I very much hope that that is not, and will not be, a fair criticism of the approach of the Admiralty or the Commercial Court. We hope that the impact of the reforms on maritime litigation in London will be to the benefit of the parties and thus to the benefit of both the maritime industry and, indeed, London.

Both Bernard and I have been engaged in maritime arbitration and litigation in London for very many years; perhaps too many, although I see some present this evening, including of course my Lord, who have much greater experience than us. We like to think that London has flourished as a centre for maritime dispute resolution in that time and we see no reason why it should not continue to do so in the future. It will, however, only do so if such disputes can be resolved by lawyers and judges with reasonable skill and experience, within a reasonable time and at reasonable cost. To this end, the new reforms can do little, I'm afraid, to add to the skill or expertise of the lawyers or judges or, indeed, arbitrators. They can, however, play their part in ensuring that disputes referred to the Admiralty or Commercial Courts are resolved within a reasonable time and at reasonable cost.

Excessive cost and excessive delay are surely the twin evils of any system. Both the courts and their users have a part to play in eradicating both and ensuring that the new rules are operated to that end. In particular, I hope that they will enable cases to be resolved on their merits, as quickly and cheaply as possible, either by settlement or by judicial determination.

There are, I understand, signs that there has been less in the way of interlocutory activity since the new rules came into force on 26th April. It seems to me that the less tactical skirmishing, the better. I sometimes think that, if I conducted a survey of how much time on the Bench - or, indeed, at the Bar - I spent seeing or listening to the merits of cases and how much time I spent on interlocutory activity, I would find that very little was spent discussing the merits. I hope that the CPR [the Civil Procedure Rules 1999] will help to reverse that trend.

In a moment, I propose to ask Bernard Rix to say a word about the reforms as they affect the Commercial Court. I shall then say a much shorter word about the reforms in the Admiralty Court and a little about the Court of Appeal. We hope then to have a discussion during which we hope that you will freely state your views and make suggestions as to how the new system might be used and

perhaps improved for the benefit of what is sometimes called maritime London. But, most importantly, let us not be negative. The Rules are here to stay and it is up to us all to make them work.

Bernard Rix needs no introduction from me. As you all know, he continues for a short period longer to be the Judge in charge of the Commercial Court this year. In that capacity, he has almost singlehandedly produced the new Commercial Court Guide, which deals comprehensively with the correct approach in the Commercial Court and, indeed, in the Admiralty Court. He also devised the idea of holding surgeries about the new reforms once a week or so which, I understand, have been very successful. I give you the honourable Mr. Justice Rix.

Mr. Justice Rix

Someone told me recently that tonight's lecture by Lord Justice Clarke and myself was the most eagerly-awaited double act since Laurel and Hardy were last in London. I told that person that I was too young to remember Professor Laurel and Professor Hardy but that we would do the best we could to emulate them !

This last year, with the introduction of the Woolf rules, has been a fascinating one in which to have been Judge in charge of the Commercial List. The Commercial Judges have had to assimilate the new rules and to draft a new Commercial Court Guide to give effect to them. I would emphasise the words, "to give effect to them". I have heard reports, some indignant, some gleeful, that the Commercial Court has gone its own way and legislated its way out of the new rules. Both the indignation and the glee are totally amiss and the reports are, in my personal judgment, wholly mistaken. The new rules and practice directions, together with the parts of the old rules which have been incorporated in them and scheduled to CPR Part 50, cover some 790 closely-printed pages in what I call "the new White Book". Some of that but not, I would imagine, more than about a hundred pages or so, are notes, leaving some 700 pages of text. The Commercial Court Guide, most of which is concerned with expounding those of the new rules which have particular importance for the Commercial Court, or with addressing in that context particular points of Commercial Court practice, is a comparatively brief document. If we were starting again, with hindsight, we would probably want to condense it further.

The truth is, in my judgment, that in drafting the Guide we have sought above all to do three things: first of all, to give effect to the new rules and to their spirit; secondly, to take account of the special features of the work in the Commercial Court and to make allowances for them; and, thirdly, to make the practice of the Commercial Court as efficient and flexible as possible and to that end to develop effective and flexible tools of case management.

In achieving or attempting to achieve these goals, the Commercial Judges have had considerable assistance. I would like to pay tribute to that assistance tonight. It embraces the judges' own consultative committee of judges and practitioners, the Commercial Court Committee, the Commercial Bar Association's consultative and drafting committee and the Vice-Chancellor and Lord Woolf himself. I would stress, however, that all errors and misjudgments - and I am resigned to think that, on the edge of a secular (one might even say, a millennial) change in civil procedure, there are bound to be errors and misjudgments – are mine and mine alone.

I would begin then with the primary aim in which the Guide has been written: to give effect to the new rules and to their spirit. CPR [Part] 49 permits specialist proceedings, such as those conducted in the Commercial Court, to be conducted according to practice directions to which the rules themselves are subject. This is, of course, a recognition of the specialist needs of such specialist jurisdictions but it is, at the same time, a generous tribute to the work done in such jurisdictions and the placing of trust in them that, given this power, they will respect the aims and spirit of the new rules. That trust, in my view, must be respected. In drafting the Commercial Court Guide, we have sought to respect that trust and to give effect to it.

Following on Lord Woolf's Access to Justice reports, the new rules have sought – I don't think it's too large a thing to say – to change the culture of civil litigation in this country. We are asked to put at the forefront of our thinking, where procedure is concerned, the consideration that justice – which remains, of course, the primary objective – looks, among other things, to the use of resources in a way that ensures, so far as possible, that parties play on a level field and that such resources are proportionate to the interests involved, including the interests of civil litigation as a whole.

There is also an unwritten subtext to the new rules, updating the old maxim which, expressed in forbidden Latin, stated *interest rei publicae finis sit litium* – it's in the public interest that there's an end to litigation - so as to become, in the vernacular, "Is your litigation really necessary ?"

Among the tools that the new rules engage to promote this overriding objective and subtext are, of course, case management; that is to say, a greater degree of court control of litigation and, in that context, a more sceptical and challenging attitude to the spending of resources on disclosure and expert evidence. Moreover, costs sanctions and procedures are employed to encourage the parties to be as realistic as possible about their expectations.

Next, however, it seems to me that the special features of work in the Commercial Court have to be borne in mind and allowed for. What are those features?

First, all the plaintiff litigants in it are volunteers: they need not come to the Commercial Court but they choose to enter their claim in our list.

Secondly, a very high proportion of all litigants in the Commercial Court are foreign. That reflects in part the use of consensual passports such as London arbitration clauses or English jurisdiction clauses but it also reflects the fact that London is a world centre of trade and finance and the home, in one sense or other, of many entrepreneurial individuals and companies. It's sometimes due to nothing more than the willingness of defendants to litigate in the Commercial Court in London, although there's nothing at all to compel it, rather than to litigate elsewhere in the world. On the other hand, because our work is so international, challenges to our jurisdiction are inevitably very frequent. It's primarily for this reason but also because of the complexity of much of the litigation that we have, contrary to the rule in the CPR, required that acknowledgments of service be filed in response to service of claim forms, whether or not the claim form contains particulars of claim. This is to enable both challenges to jurisdiction and case management to commence at as early a time as possible. It's true that a defendant may await particulars of claim before challenging jurisdiction, but he is encouraged to show his hand early.

Thirdly, litigants in the Commercial Court are, for the most part, experienced litigants. They also employ experienced and highly professional legal representatives. By and large - but not of course always - the litigants are well matched, well advised, know what they are doing and why they are doing it.

Fourthly, much of the litigation in the Commercial Court is heavy and complex. While that is true, it must also be recalled that the Commercial Court has no monopoly on heavy and complex litigation and that there are important areas of our work where the considerations are different: for instance, supervision of arbitration or standard cargo claims of the smaller variety.

Fifthly, the judges do all the pre-trial work. This is, I believe, regarded as a most valuable feature of the Commercial Court. It means, I would like to think, that the procedural judges (that is to say, the Commercial Judges) can be trusted to use their powers imaginatively, seeking to do justice in the particular case, but also - because they are a cohesive group - in a way which litigants can recognise and anticipate as part of a rational and coherent approach.

Against the background of these features of the Commercial Court, it seems to me that, in our case management and in the important areas of disclosure and expert evidence, we should aim for what I have identified as the third main feature of our goals in drafting the Guide: a combination of efficiency and flexibility. It should be the ambition of the litigants, their lawyers and the Court to deal with matters as efficiently as possible and to that end in a way which most closely matches the particular needs of the individual case. Our directions, in

other words, should be bespoke, tailormade. In drafting the Guide, we have therefore sought to achieve room for flexibility and efficiency without, I hope, being prescriptive.

I'll now seek to illustrate these goals of flexibility and efficiency under four headings: case management, disclosure, expert evidence and costs.

First, **case management**. Practitioners and judges in the Commercial Court can, I think, permit themselves a modest touch of pride as something that they have helped to pioneer is now being taken up in the new rules. The question remains, how much change will there, should there, be in the matter of case management and how much continuity ? I don't know the answer and the Guide does not seek to prescribe one. Rather, what the Guide tries to do is to encourage or to set the scene for three things which I would regard as of central importance in the preparation of a case for its future, whether that future is settlement or trial. Those three things I would express as follows: firstly, the defining of the issues; secondly, the provision of tools for the job; and, thirdly, flexibility.

The <u>defining of issues</u> is perhaps the single most important task at the pre-trial stage for litigators and judge. Of course, one might expect that it's the job of what we used to call pleadings to define the issues, but the truth is that, too often, pleadings – especially in larger cases – can be and have tended to become adept at obscuring, rather than revealing, the issues. There the issues lie, jumbled, spread between different documents, not in only claim, defence and reply but also in further and better particulars of claim and of defence and further and better particulars of further and better particulars of claim and defence. The draftsman perhaps knows his or her way around these documents but no-one else does and the court, last of all. But without really understanding the issues and the way they're structured or shake themselves down, it is impossible to get a grip on a case. The issues, therefore, have not only to be pleaded but defined and analysed and their structure understood. How's that to be done ? The Guide seeks to provide tools for the job; for instance, in the form of Appendix 4 which gives guidance as to best practice in drafting statements of case and the requirement that lengthy pleadings of 25 pages or more should be summarised and in the requirement that a list of issues be developed and agreed to be provided, first of all, for the purpose of the case management conference.

As for the theme of <u>tools for the job</u>, there is, for instance, the case memorandum which should contain "a short and uncontroversial description of what the case is about and a very short and uncontroversial summary of the material procedural history of the case." This is a sort of case passport which goes wherever the case goes and is kept up to date as the case progresses. That, together with the list of issues, will enable any judge or litigant to obtain a fast insight into the structure and history of the case.

Under the heading of tools for the job, I would also like to mention what the Guide has developed in relation to the matter of what used to be called heavy applications; that is to say, applications estimated to last more than half a day. Sometimes, of course, such applications may last many days and are very heavy indeed. The diagnosis here was that such applications could benefit from a more focused preparation in at least two respects. First of all, chronologies may be even more important for such applications than at trial; their use is encouraged. Secondly, bundling: all too often, a vast amount of bundling of affidavits and exhibits is prepared and is in a form which is very awkward indeed to manipulate. The critical documents are often spread, repeatedly spread, between various exhibits and bundles in a way which makes reading into the application and deploying argument for the advocates and giving judgment all extremely difficult. The Guide therefore gives detailed guidance as to the way in which evidence bundles and documents bundles should be prepared. This documentation is to be limited to what is necessary and should be reassembled in chronological order. Given the importance and frequency of heavy applications work in the Commercial Court, I'd like to think that these new procedures would repay the thought - and, therefore, I accept the expense - that will have to go into them, and repay them many times over.

Thirdly, flexibility. One of the critical questions is, when does the case management conference occur ? In the past, the summons for directions has taken place after disclosure and there is, of course, much to be said for that. After disclosure, much more may be known about a case and where it's going. Nevertheless, under the CPR there will now be much greater flexibility than of old as to the type of disclosure which will be ordered. In the days when it was automatic ***Peruvian Guano*** disclosure - in effect, anything that may lead you to a train of inquiry to anything - there was nothing to decide about disclosure. That's no longer the case, however. Therefore the case management conference should take place before disclosure. However, that's not to say that it might not take place almost as soon as a claim form has been issued, as may be necessary in that sort of case where the trial has to take place within a matter of weeks or, indeed, days. Nor does it mean that a reconvened case management conference might not take place again after disclosure.

Also under the heading of flexibility in case management, I would place great store on an appropriate use of the preliminary issue, or what might be called a staged approach to trial. That's not so much or merely a question of a preliminary issue or issues taken ahead of all others, although there's nothing wrong with looking out for that animal. There is, however, especially in complex cases, something more that can be done and that is to analyse the critical path of the total aspects of the dispute to see whether what is needed is a single big bang of a trial – which has been the traditional approach – or whether it might not be better to take the case in bite-sized chunks. Moreover, sometimes the critical issue which divides the parties is not so much a preliminary issue but something further down the menu of issues. It may be said that, if that issue were decided,

then the parties thereafter could help themselves. In the right kind of case, it could even be a question of quantum which divides the parties and which could appropriately be taken first, such as a question of limitation.

Another tool of case management where I would stress the concept of flexibility is an appropriate use of ADR [alternative dispute resolution] orders, especially if timed in such a way as to fit into the pre-trial timetable at the right moment and in a way least disruptive to its progress. Here again, the Guide has been drafted with flexibility in mind. It is right in my judgment that the question of ADR should come up initially at the case management conference, early as that is, and (on occasions) early resort to ADR may be highly beneficial. It may be just what the parties need in order to start talking to one another. But that doesn't mean that any ADR order made at a case management conference should necessarily take effect then and there at the time the order is made. If ADR is appropriate at all, the judge should - in my view - with the assistance of the parties, try to find just the right moment for it in the pre-trial directions, such as after the exchange of witness statements or after the exchange of expert reports. Moreover, although the court has the power to stay proceedings pending an attempt at ADR, my personal view is that it's better, in the majority of cases, to build a time for ADR into the pre-trial directions so that it is part of the pre-trial process as a whole, rather than a block or impediment or delay to it.

I've heard concern expressed that the provisions of the CPR reflected in the Guide will push cases through faster and lead to front-end loading of costs. We shall have to see. My personal view is that it's delay and the failure to concentrate on the real issues and, therefore, the real strengths and weaknesses of a case that ultimately lead to greater cost and client frustration. If a case can be settled, then definition of the issues at an earlier stage ought to lead to settlement at an earlier stage. Often, cases which could and should have been settled reach trial for the very reason that one party is always behind the pitch of things. And, if a case cannot be settled, then it's as well that it reaches trial earlier and in good order.

Disclosure

I accept that, in commercial actions, this is a most important subject. There is, on the one hand, the Scylla of unnecessarily large, sometimes overwhelming, hugely expensive disclosure and, on the other hand, the Charybdis of the difficulty of extracting the critical documents from a recalcitrant party. I am sure that everyone in this room has experienced both dangers.

Here, above all, I would for myself be an advocate of flexibility. It seems right to me that, in accordance with the spirit of the new rules, we respect the new regime of standard disclosure - that is to say, the disclosure of documents on which a party relies or which adversely affect his or another party's case or support another party's case. Anything different from standard disclosure is something that an applicant will have to make a case for. On the other hand, the

court will - I think - want to be sensitive to the particular needs of each case. Is it a case for limited disclosure - something less than standard disclosure - or even no disclosure ? Is it a case for early disclosure ? Is it a case for disclosure by sample ? Is it a case for further, specific disclosure ? Is it a case for a special disclosure order, i.e. an order requiring a thorough search for all relevant documents, including all documents which may lead to a train of inquiry enabling a party to advance his case or damage that of his opponent ? Is it a case for a special disclosure order in a certain, particular field but for standard disclosure in other areas ? In the past, we've been stuck, willy-nilly, with ***Peruvian Guano*** discovery; in the future, we will have to be much more tailored.

I'm well aware, from the consultation process that the Guide went through, that this is a most controversial area. There are those who argue strongly for no change at all, on the basis that justice can only be done by a special disclosure order in every case. I don't, myself, subscribe to that view. The critical documents ought always to emerge on standard disclosure alone. If there is good reason for thinking that standard disclosure has not been properly carried out, there will be an opportunity to persuade the court that that is so. If a court is persuaded that a party is defaulting on its disclosure obligations, I assume that the court will know how to promote justice. The Guide recognises that a special disclosure order may be appropriate where fraud, dishonesty or misrepresentation is an issue or where knowledge or lack of knowledge or, in the insurance context, disclosure or non-disclosure is an issue. In summary, I am confident that the much wider menu of disclosure orders that the CPR and, in particular, the Guide invites litigants to select from is a move in the right direction.

Expert evidence

The new rules' push in favour of the greater use of single experts is one that I think in the Commercial Court we must respect but, obviously, it's one that is much easier to sanction in smaller cases than in bigger and more complex ones. Even so, there are many relatively small cargo claims in the Commercial Court which, although they don't take up much time of the Court, are not unnumerous and which can probably make profitable use of single experts. Even in larger cases, there may be some disciplines in which single experts can be usefully employed while separate experts are used in other disciplines.

There's an attempt at balancing these considerations in the passages on separate and single joint experts in the Guide; see, for instance, H2.3, .4 and .5. These passages are not intended to be prescriptive but to allow for appropriate flexibility. The emphasis is on the words "in an appropriate case". I've heard it suggested that these provisions are out of tune with the CPR's emphasis on single experts. I don't think so. They encourage the use of single experts where appropriate but recognise that, in other situations, the appropriate order may be otherwise and, in at least one respect, the Guide has a provision which goes beyond anything in CPR Part 35 or in its Practice Direction and that's in paragraph H2.12, which requires an expert to state if any of the facts or

assumptions on which his opinion is based are unreasonable or unlikely. That said, it's my personal, anecdotal experience that the use of experts in the Commercial Court is, on the whole, much more restrained than in some fields elsewhere. It's a comparatively infrequent case where experts in more than two disciplines are involved.

The area of expert evidence is, of course, another highly controversial area; perhaps the most controversial area of the new rules. Will the push in favour of using single experts mean that parties retain their own experts in addition to the single court expert ? If so, there'll be not one, but three, experts in any discipline. Will the new rules relating to the disclosure of instructions and the removal of privilege and such matters mean that parties will instruct their own consultants, with whom they'll be entirely frank, as well as their court experts, whom they instruct with much greater caginess ? I'm told that that is what already happens in the United States. If so, then there'll be not two experts in any discipline, but four.

Are the new rules, therefore, a recipe for greater expense and even less transparency ? It's impossible to ignore such concerns. On the contrary, there is, I believe, a very real understanding that, in this area, there's much to be said on both sides of the argument and no solution is without its merits or minuses. Nevertheless, if one asks the question, which I would suggest is the essential question, "What will bring a greater chance both of justice and of less expense - is it greater transparency or greater confidentiality ?" I venture to think that the odds are in favour of greater transparency. I believe we must try to encourage a culture where there's greater transparency in the deployment of expert evidence and greater candour and independence on the part of the experts. Of course, if the proof of the pudding is to show, as pessimists have forecast, that the attempt at greater transparency leads, in practice, to less candour and less assistance to the court and greater expense to the parties, as the number of experts and consultants multiplies, then no doubt the thinking-cap will have to be back firmly on all our heads - but I would, myself, expect to find that we'll be pleasantly surprised at the benefits which the new ideas about expert witnesses will bring.

Fourthly, something about **costs**. The new rules, as a whole, teach us in many different ways to pay a new regard to costs in the course of litigation. This was always, no doubt, a feature of practice in the solicitors' branch, which has always had to justify the spending of costs to clients. That said, the new rules will make the incurring of costs during the pre-trial progress of the case a much more transparent feature of litigation because of the much extended power to order immediate payment of summarily-assessed costs arising out of hearings of up to one day's length. Part 36 claimants' offers to accept less than the claim and provisions for estimation of future costs to be provided to the court are other features of the new rules. Of course, such future costs estimates are not unfamiliar in the Commercial Court, due to the frequent incidence of security for costs orders there.

I now turn to ask **how the new rules and Guide are working in practice**. One innovation is that Mr. Justice David Steel, in the Admiralty Court, and I, in the Commercial Court, have made ourselves available at the early hour of 9.15 every Friday morning for our so-called "Friday surgeries". Any practitioner who wishes to raise a query on the rules or Guide may do so for a provisional and informal view. This facility has been designed for genuine practice queries not, of course, for raising issues in current litigation on a one-sided basis. I believe this restriction has been observed and I also believe that the surgery has proved to be a useful facility. I said it would be done as an experiment for six weeks and I have recently been persuaded to agree to continue it for the rest of the term.

John Connolly from the Registry has also been in attendance because many of the queries arise out of and therefore reflect procedures which have been adopted in the Registry in response to the new rules and the new court forms. The facility has proved, I think, particularly useful in identifying problems arising out of the transition from the old to the new rules and also in bringing to the court's attention *lacunae* or difficulties about the new rules.

Perhaps the single most important issue which has arisen in this context arises out of the new requirements for statements of truth and disclosure statements. All pleadings have to be verified by a statement of truth. This can be signed by a party or its legal representative; where the litigant is a company, the rules define who may sign on behalf of the company - essentially, a proper officer. Where the statement is signed by a legal representative, he represents by signing that he has been authorised to do so by his client and that the client believes in the truth of the alleged facts. In the case of disclosure statements, no practice direction yet allows a statement to be made by a legal representative, as distinct from the party itself.

But, in maritime litigation, who is the proper person to sign or authorise such statements? Take the nameplate Liberian or Panamanian company with nominee directors, which is really operated by agents or managers in Greece or even agents of the Greek managers in London. Or take a cargo claim, generated by mishap to a general cargo or container vessel: there are dozens of bill of lading holders, all of whom have been paid out by their insurers and they have no further interest in the litigation, which is really being run by their insurers. In such circumstances, the real client is not the named litigating parties but someone else. It seems to us in the Commercial Court that the rules should take these situations into account and provide for greater flexibility. Essentially, where insurers have the substantial conduct of a case, the rules should allow for statements of truth or disclosure statements to be signed or authorised by a senior individual with responsibility for the case at the leading insurer and, where the party is a nameplate company and the conduct of litigation is in its managers' hands, the rules should allow and, indeed, require statements of truth and disclosure statements to be signed or authorised by a suitable person in the

organisation which is the effective client. There are problems here yet to be worked out but the matter is under consideration.

I turn next to ask how case management is working in practice. There are some who have suggested that the Commercial Court is quite used to case management and the new rules will make no difference. It's still early days, but I beg to differ. I'll deal separately with disclosure, experts and costs and address myself, for the moment, to case management in its most general form.

It seems to me that, on the part of both the litigants/litigators and on the part of the court, there's a new awareness of their responsibilities. The court is giving itself more time to read the papers to that degree of thoroughness where it can exercise an independent mind on the best way forward, and is making more time available for the parties for a case management conference, as compared with the old-style summons for directions. There's a new willingness to try new ways to achieve the most efficient and cost-effective solution to the procedural tangles of litigation. For instance, in an extremely complex piece of multi-party litigation arising out of competing claims to oil, I've ordered that pleadings be exchanged as they were meant to be when the expression "points of claim" was first invented. Nowadays, we use the expression "bullet points" and bullet points is what I ordered. It remains to be seen which are deadly and which are dud. Another example: parties and their legal representatives are becoming much more alive to the possibilities of ADR in all its forms. It's taking place earlier or at least is having provision made for it in the timetable of pre-trial directions.

The new documents which are being created for the purpose of case management are, I believe, proving useful. The case memorandum is becoming the case passport it was designed to be. The list of issues could become even more useful if the parties would also indicate what are likely to be the real issues in the case and, even if they can't agree on that, they could indicate the menu of real issues. In some lists of issues which I have read, the real issues still lie buried.

Disclosure

So far, this is not causing any trouble but it is, perhaps, early days. It appears generally to be recognised that, in the first instance at any rate, a standard disclosure order should be made. I've not yet made or been asked to make a special order; the nearest I've come to being asked to make a special order was a request in the case management conference information sheet for special orders on certain, limited issues - but, when the parties came to court, it was common ground that, in the first instance at any rate, standard disclosure would suffice. One utility of the flexibility which the Guide advocates is that the parties are using the case management conference information sheet to indicate to other parties the particular areas of disclosure in which they are interested and this is, I think, a helpful way of proceeding and should obviate the need for requests for specific disclosure in due course. Therefore, in disclosure - so far, so good.

Experts

Here, above all, it's far too early to get a feel on how the new rules are working. Starting from the 26th of April, when the new rules came into effect, I don't suppose that directions regarding experts have yet borne fruition in their reports. Even so, I can report a new willingness to consider a flexible approach to such directions. For instance, parties are agreeing orders for single experts in certain areas. One example I can cite has occurred in some very large-scale litigation, involving the alleged contamination of liquid CO2 supplied to soft-drink manufacturers. The CO2 and the bottled product needed to be sampled. There are only three laboratories in England which are equipped to perform the necessary tests; the parties number many more than three; but they will, in the absence of agreement on test results, submit all the tests to a single laboratory.

Costs

Here, there has been more experience, because we've been practising summary assessments since the beginning of March. The judges are finding that this is less difficult than they feared. It is capable of being what it is intended to be and must be, namely summary; and the court is best assisted where it is provided with statements of costs from both parties and cross-assessments from both parties.

But I don't know what the litigants think about our assessments. Ideally, we'd like to know what they say to one another in court after we've gone out the door ! We've discussed the matter in the Commercial Court Committee recently. Some concern was there expressed by solicitors and Counsel as to how costs assessments were going - but the concern related mainly to exceptional cases where the costs claimed were very high, usually because they related to proceedings which were lasting for longer than the single day which is the real field for summary assessments. So I don't, myself, think that that's a problem. The very fact that parties are willing to ask the court to assess the costs of a three- (or more) day hearing illustrates a sort of confidence in the procedure. But, if the court feels that it cannot or shouldn't summarily assess costs of that magnitude, it can and does order detailed assessment and it can also order, as it has done on occasions, an interim payment [of costs] meanwhile.

Personally, my concern about summary costs assessment is somewhat different. My experience is that there is often too little dispute as to the costs claimed; the danger in such a case is that, without intending to, the court is led into making an assessment which is closer to indemnity costs than the sort of order that a detailed assessment would produce.

The summary order is also having another sort of effect. Ever since 26th April, we've experienced a marked fall-off of pre-trial applications on the Fridays which are set aside for them. Why is that ? Possibly because everyone is being cautious until they feel more familiar with the new rules. One suggestion,

however, is that solicitors and their clients are much more wary about making procedural applications; it's not clear if this is because of suspicion of the new regime or fear of paying the other party's costs. Paying one's own solicitors' costs is one thing and has long been familiar, but paying the other party is anathema. If the consequence of this caution is that unnecessary applications have been dispensed with at a stroke; well, that's an achievement. This is a space we'll be watching with particular care.

And, finally, what's **the impact of these reforms in particular for maritime litigation, the maritime industry and London** ? In one sense, maritime litigation in the Commercial Court is like any other kind of litigation in the Commercial Court and needs no special comment. That is, I think, broadly true - subject, however, to the following points which, in their way, amount to a substantial qualification of my first statement.

First, much of the maritime industry's dispute resolution goes to arbitration rather than litigation. To that extent, the critical reform is not the Woolf rules but the 1996 Arbitration Act. As to that, another topic entirely, all I'd say is that, in many ways, by stressing party autonomy, the effect of the new Act is to render judicial supervision less likely than before. It remains to be seen whether maritime arbitration procedure keeps up with the court's ideas on case management; or will there be a stampede from litigation to arbitration ?

Secondly, maritime litigation - above all classes of litigation - involves foreign parties and often requires speedy resolution. It's therefore the archetypal class of litigation which has caused the Commercial Court to develop procedures of hands-on case management, whether it's the instantaneous call for freezing orders or other ancillary relief or the need to work out the complexities of challenges to jurisdiction and other problems of conflicts of laws or the need to assist parties to resolve their dispute while a cargo is still at sea or a ship is lying off a port. To that extent, the maritime industry and the maritime litigation to which the industry gives rise have been the originators of a style of dispute resolution requiring speed and flexibility which has now been adopted more widely.

Thirdly, the maritime industry is an industry well experienced in litigation. Unlike other kinds of modern litigation - such as, for instance, medical negligence or judicial review, (which are practically no more than a generation old) and family law litigation (which would now, by and large, be unrecognisable to a practitioner of thirty years ago) or even insurance litigation outside the marine insurance field (which, when I came to the Bar in 1970, was something rarely come across) - unlike all those fields, maritime litigation is hundreds, if not thousands, of years old. It seems to me that the court would be wise to acknowledge that the maritime industry's experience of litigation is almost as great as their experience of ships.

And, fourthly, so far as London is concerned, I am told that Britain has, by and large, lost its ships but that London is still a centre of shipping. I am also given to understand that, among many other reasons why London has its attractions for the maritime industry, is that there is a modicum of faith reposed in London's lawyers and in English law and even in the Commercial Court. If that's so, then it would be well if London's courts, among the many changes which concern them, managed to retain that trust.

In conclusion, I'd say that experience teaches that change often brings unexpected results; if so, some of those unexpected results may be good and others may be bad. It's as well that the Commercial Court Guide will be printed, as the rules have been, in looseleaf form. Thank you very much.

Lord Justice Clarke

Now, just a word about **the Admiralty Court**. The impact of the reforms on the Admiralty Court is unlikely to be markedly different from the impact in the Commercial Court and so I'd just like to highlight one or two aspects of them - although you will be pleased to hear that I've crossed out most of my notes.

David Steel - now happily released from oil pollution in Milford Haven and manslaughter in Sheffield - has, like Bernard, been conducting regular surgeries and he tells me that, by and large, there has been a relatively seamless transition (as he puts it) into the new regime, even though the transitional provisions in Part 51 are not terribly easy to follow.

Just a word about summary assessments of costs which he says, in the Admiralty Court at least, have progressed without prolonged argument and hopefully, as he puts it, without injustice. Having attended a recent meeting of the Commercial Court Users' Committee, I know that some solicitors have expressed reservations about the court adopting too broad an approach without properly focusing on the detail of the work done and the hours worked - and so on and so forth. It seems to me, however, that the interests of the users of the court will be best served overall by the application of robust common sense. At that meeting, the view was expressed by an experienced solicitor and, indeed, advocate that it is a good thing if a party who has lost an application is ordered to pay the successful party's costs immediately. It concentrates the parties' minds on what is being done in their name and brings home to them the true cost of litigation. We will be interested to know, at the end, whether you agree with that or not.

As judges gain more experience in the summary assessment of costs, it will surely become easier for them to apply broad common sense to the problem. One might hope that judges will apply common sense to all aspects of their functions and I say that, despite an observation which Lord Justice Oliver once made to me when I was conducting a case in the Court of Appeal on behalf of respondents. I had listened to my opponent opening his appeal for what seemed an age. When it came to my turn, I began by saying, "My Lords, common sense and justice suggest that the judge was right." Lord Justice Oliver said, "Mr. Clarke, common sense suggested that the world was flat." I could think of nothing to say, by way of riposte. However, on reflection, it seemed to me that common sense did not suggest that the world was flat. The reason that visibility is limited by a horizon is surely that the world is not flat, but curved. However that may be, in my view, at least, common sense has an important part to play in the application of the new rules.

The old Order 75 of the Rules of the Supreme Court [1965], has now been abolished and replaced by Part 49 of the CPR and a number of changes have been made which it is hoped will improve the system. All arrests, for example,

now take place in the Admiralty Court but I am pleased to be able to report that the action or, at least, the claim *in rem* and *in personam*, is still alive and well - perhaps because the expressions "*in rem*" and "*in personam*" are used in primary legislation.

One or two problems have arisen and I will just mention a very few. The first is - and we would indeed welcome any views you may have as to this or, indeed, others (provided, of course, suggestions are constructive and not destructive) - one problem is this: it's been the practice of solicitors involved in the sale and purchase of vessels, particularly where acting on behalf of purchasers, as part of the due diligence exercise, to conduct a search in the Admiralty Registry to see whether there are any outstanding claims *in rem* issued against the vessel concerned. But Part 5 of the CPR provides that members of the public may only search for claim forms which have been served. That change was introduced, we understand, at the insistence of the Rules Committee in order to try to limit the prejudicial impact on credit facilities of the mere issue of proceedings, however ill-founded, against the person or company seeking credit. That may be a desirable aim but it should surely not interfere with the legitimate interests of the shipowning community, especially bearing in mind that the issue of the writ creates a right of action *in rem* against the relevant vessel. It thus seems appropriate to allow an exception to the rule in the context of ship sales. Is it, however, so clear where the purpose of the search of issued writs or claims is so that a shipowner may know whether there is any risk in bringing his ship into the jurisdiction ? These are, perhaps, matters which require further consideration.

I understand that there are some who have had the effrontery to suggest that one of the new Admiralty Practice Directions is *ultra vires* ! It is the rule which gives the court power to order that the claimant be permitted to arrest or re-arrest property proceeded against for the purpose of obtaining <u>further security</u>, with one proviso. It has been suggested that the power to order the increase in the security was drafted in order to reflect Article 5 of the new Arrest Convention, as approved by diplomatic conference in March 1999.

Speaking for myself - and without prejudice to my right to decide the opposite in a live case - I see no reason why the court should not have the power to order an increase in security in an appropriate case. It always did have the power to do so, although not enshrined in rules of court. Such a power was only exercised in the past (and presumably would only be exercised in the future) in very limited circumstances. An important consideration would, of course, be the terms of any agreement which had been reached when the original security was put up.

I understand from Holman Fenwick & Willan that there's a suggestion that this power may give rise to problems arising out of the standard form of ASG [standard Arrest and Salvage] guarantee or club letter. It's not, of course, for me to give legal advice - especially when I'm no longer paid for it - but it seems to me to be important that any agreement by which the claimant promises not to re-

arrest a vessel in return for security should expressly be not only between the claimant and the entity providing the security but also between the claimant and the shipowner. I thought that the standard forms of guarantee and club letter did expressly have that effect. If they do not, perhaps it's time that they did. As I see it, that power is a sensible addition to the court's armoury; only, of course, to be exercised in appropriate circumstances.

Two other, related problems have given rise to considerable discussion. They have already been referred to by Bernard. They are the problems relating to statements of truth and disclosure statements. It seems to me that, if these statements of truth and disclosure statements are to have any real significance, they must be signed by those who can be expected to have some real knowledge of their truth but, if the problems to which Bernard has referred are resolved by some suitable amendment (which I am sure they can be), the requirements for statements of truth and disclosure statements will surely be beneficial. So, too, the more limited rules of disclosure. They will surely enable us to navigate safely between his Scylla and his Charybdis.

Dr. Mandaraka-Sheppard suggested to me that I might say a word about the impact, if any, of the disclosure requirements of the CPR upon the disclosure requirements in the ISM Code. I can only say that, as I see it, they don't alter the position. She sent me a copy of the Code which contains some provisions about disclosure of documents and keeping documentation on ships. One says, "The company should ensure that valid documents are available at all relevant locations ... [that] changes to documents are reviewed by authorised personnel and obsolete documents are promptly removed" - and so on. In the copy of the document she sent me, someone had written in manuscript, "Will be available in litigation !" I agree that that is the position, both now and before, and, I would add, a good thing, too.

If there were time, I'd like to say a word about collision actions - but I'll refer to only one point. The revised Practice Direction requires that skeleton arguments in collision actions should be accompanied by a plot of the party's case - or, even, alternative cases - as to the navigation of the vessels. This seems to me to be a most sensible suggestion because the true strengths and weaknesses of each side's case can usually be seen from a plot. As Mr. Justice Sheen used to say, "If you can't plot it, it won't work and, if it won't work, it can't be the truth !" The question, "How many plots make a conspiracy ?" has yet to be resolved.

I am authorised by Mr. Justice Steel to say that, as he sees it, these reforms - while, no doubt, requiring some changes, here and there - are generally beneficial to the working of the Admiralty Court and the interests of its users. I respectfully agree and there is nothing I can usefully add. I await with interest to learn if you also agree.

I therefore turn finally and shortly to the **Court of Appeal**. It's getting late, so I've crossed out what the Court of Appeal is doing, since you can all read the Practice Direction - indeed, you've probably all read it already - and I'll only say this. The Court of Appeal has for some time had a system of supervising Lords Justices. Until recently,
the supervising Lord Justice for commercial appeals was Lord Justice Waller but he has become chairman of the Judicial Studies Board and the baton has been passed to me. The purpose of having such a person is to co-ordinate Commercial appeals and Admiralty appeals and to ensure that appropriate directions are given. They will include bringing on an appeal expeditiously, if required, and ensuring that the appeal is conducted as quickly and sensibly as possible. So, if any problem arises in connection with a particular Commercial or Admiralty appeal, we would like to know about it as soon as possible so that we can try to iron out any problems without delay. Please note, however: all communications to the office, not me personally.

In conclusion, I'd just like to say this. These reforms will no doubt have their problems but the signs are that they will make a significant contribution to the resolution of all types of litigation within a reasonable time, at a reasonable cost. Their impact on maritime litigation will, I hope and believe, be beneficial. I have no doubt that parties to maritime disputes - whether they be charterers, shipowners, P & I clubs, hull underwriters, cargo insurers or anyone else - in principle, have the same aims. They are the aims to which I have already referred, namely the speedy, efficient and cost-effective resolution of their disputes.

The problem is that, while that is (no doubt) their general aim, it is not always so obvious in the particular case. The charterer, shipowner or underwriter - or, indeed, anyone else - with a feeble case will often see interlocutory skirmishing and delay as his twin allies. I hope that these reforms will make it difficult for him in the future, while making London a more - not less - attractive place for the maritime industry to resolve its disputes. We like to think that the courts and (I am sure) the arbitrators, too, are ready. We hope that you, the users, are too. Bernard and I thank you for your attention and look forward to any questions and constructive comments which you may have. Thank you very much.

Lord Mustill of Pateley Bridge
Thank you both very much. I shall offer formal thanks in due course. Subject, however, to being vetoed by the organisers, I would like to open up the possibility of some questions from the floor. The evening is wearing on and I'm afraid they'll have to be quite limited but there must be people who have something that they would like to say or to ask. I've actually written down five questions that I would like to ask but I'm not going to ask any of them because I want to give other people a chance. So although - even wearing my driving glasses - I can't even see, let alone identify everybody at the back, would somebody give us a start,

please ? Everybody in the room is interested, touched by these reforms; everybody must have views on them.

Dimitri Capaitzis
You mentioned Scylla and Charybdis twice, so I think Ulysses merits a mention because, after all, he survived. So I am speaking for Ulysses and other navigators. It was a delightful presentation and we are always happy to hear from our legal colleagues who explain things so lucidly and to the point. I am delighted to see, this evening, that there are a number of other disciplines in the audience: I see people from underwriters, from the clubs, even some naval architects like myself. I'm a technical consultant and a member of the London Shipping Law Centre. I'm reading from the mission statement of the Shipping Law Centre and it says here, "Forging links both nationally and internationally between academia, maritime institutions, government institutions, the shipping industry, judiciary and legal profession." So, after having heard this and other most interesting lectures, I would like to stress the point that perhaps there should be a little bit more contribution to the events of the Centre from the other disciplines who form part of the Centre.

Lord Mustill of Pateley Bridge
Thank you. It has always been the aim of the Centre to draw the disciplines together. Sometimes it's quite hard to tempt people into participation in the way that we would like but it's encouraging to hear what's said and we hope we will have more people from the practical side. We've always endeavoured not to let the proceedings be dominated by lawyers. Does anybody have a point on what we've heard about the new rules or is it too early ? I'm fascinated to learn how it's going: I mean, there are conceptual problems like: why did nobody mention, in the Woolf documents, the fact that the client quite likes the tribunal to get it right, as well as to be quick and cheap ? It struck me as a very surprising omission. There is a trade-off between objective correctness of decision and speed and economy. I wondered if those on the platform would say something about that.

Lord Justice Clarke
I don't see that there's any real conflict. Obviously, surely the overriding objective is to do justice between the parties, which involves doing one's best to arrive at a right conclusion on the merits, but the truth is that there's a limit to the amount of investigation that can be carried out in real life.

Lord Mustill of Pateley Bridge
Some might think, though, that the punter - if I may so characterise him or her - has an interest in the appearance of justice as well as the objective correctness of it. Is it possible - is it just possible - to go too far, too fast, or to be seen to go too fast ? I sat in a court - probably the most overworked in England, that's the Criminal Division of the Court of Appeal - which just managed to do justice by working all night. I don't think it looked like justice.

Lord Justice Clarke
There are risks.

Lord Mustill of Pateley Bridge
Will anybody respond to that?

Geoffrey Brice, Q.C.
Yes. It's a question for Mr. Justice Rix, really, and it's this. With regard to expert evidence and the single joint expert, my instinct is that, when experts begin to realise they are there to be independent and not to act as advocates for the parties, the system conceived by the Woolf report and the new rules should work - but I was just wondering in fact what Mr. Justice Rix's feeling is about this: that is, educating experts about what they really have to do to assist the court and whether he has some optimism that, in fact, the thing will in time work out better than some people anticipate.

Mr. Justice Rix
The rules and the Guide themselves give quite a lot of guidance as to what is expected of experts and I think that that will educate the experts and I think that the transparency of which I spoke - about instructions and so forth - is really going to assist in leading experts into really only one proper way (or one successful way) of conducting their discipline.

I had one experience of appointing a single expert, even before the new rules came into effect. It was in a very bitterly disputed case where the lawyers, as well as the clients, unfortunately had completely fallen out with one another. One side wanted every scrap of paper brought into existence over a three-year shipping joint venture to be disclosed; the other side wanted an accountant to be appointed - in the first place, at any rate - as a joint expert to take an account of the shipping venture. I heard, pre the Woolf reforms, extended argument on what I should do and I opted for a single expert. Despite the fact that the lawyers themselves had fallen out with one another, they were professional enough to do excellent work on agreeing terms of reference for the joint expert in what was a difficult case. They couldn't agree all the terms of reference but they could agree sufficient of them to enable me to deal with the rest and I ordered a provisional report from an expert as to how he would proceed. The expert was cross-examined in court by the parties on his provisional report. I heard further argument about whether he should be confirmed as a single joint expert to write a final report. I ruled that he should. Terms of reference for that final report were agreed. There was an appeal to the Master of the Rolls's court about the order for a single joint expert and, about a week before the appeal was heard, the parties managed to settle the whole of their case.

Lord Mustill of Pateley Bridge
Thank you very much. I think I saw a hand . . . yes, I did; please.

Tom Birch Reynardson (Dibb Lupton Alsop)
I think that what Mr. Justice Rix said was very interesting, but I also think that there is a major concern amongst many people involved in marine litigation concerning the front loading of costs, particularly with regard to the instruction of experts at a very early stage. I do hope that the Commercial Court will recognise this and realise that there must be a large amount of flexibility - particularly during the development of a case, where different issues do arise where experts are required. I think litigants must be enabled, in certain cases, to instruct different experts. Often, for example, after discovery, one sees that there are other aspects of the case which need to be investigated. But I do think that this major problem of front loading of costs is - I don't, of course, wish in any way not to be constructive, but I do think that we have to be very concerned about that and certainly our clients do seem to find this rather a shocking new aspect of the reforms.

Mr. Justice Rix
There is, rightly, concern about front loading of costs and you heard me speak about it in the lecture. I think, myself, that's a slightly different question from the problem of experts, which you heard me describe as the most controversial and the most difficult question in the rules. The problem, as I see it, of experts - the context in which you spoke - is that, when a dispute gets under way, the parties may quite naturally appoint their own experts to investigate the problem and to advise them but they don't know, at that time, whether the court is going to give them leave to call their own expert. It's only if they can call their own expert that they will presumably be able to recover, if successful, the costs of that expert and that, as I understand it, is the particular concern that you mention. Well, it's there. It is there. You heard me speak about the importance of flexibility in the Guide; I think for myself that, in the Commercial Court, that is the bell that I would like to sound most frequently: the importance of flexibility.

Lord Justice Clarke
I agree.

Lord Mustill of Pateley Bridge
That's the great thing about being third in the Court of Appeal: we're brought up to say that, if the man in front - or woman in front - of you had said, "I agree and there is nothing I can usefully add", you're not supposed to say, "I agree" - because it might be thought to apply to the "there's nothing I can usefully add", as well as to the agreement.

I would have liked to keep this meeting going for another hour, but it isn't practicable because there are things to follow. We've had most instructive and encouraging discourses this evening. As to the encouragement, it's early days

but the dawn looks tolerably rosy. I would like to hear in twelve months' time whether clouds have gathered on the horizon or whether the climate is still temperate. But it's also instructive, the lectures have been: not only in informing us about what's happening but, I believe, in letting us sense what I think is a continuing change in culture; that's to say, the cultural change of which Mr. Justice Rix spoke hasn't stopped with the inauguration of the rules.

He mentioned - it's an interesting point - the question of critical path analysis, which is only a posh way of describing a technique for finding out what really matters, what issues really matter. The idea that you don't take the logically first issue first but go for the jugular - by reaching down into the dispute and seeking out the issues which are going to determine success or failure and amount - is very attractive. The idea of doing it in bite-sized chunks, as he described, is attractive.

There is perhaps the whiff here of a psychological move to that most heretical of all thoughts, a civilian procedure with a moving dossier. Now, there's nothing really heretical about learning from foreign jurisdictions. It's been going on in English public law now for about fifteen years; we've been copying the French and other continental jurisdictions' administrative law and they've been copying ours. I would like to know; to come back in twelve months' time, to see whether the chains of our forensic presumptions have been shaken off and whether imagination and flexibility (which, as has been said, quite rightly, is the key to all this) are really taking hold. The Commercial Court - I can't speak for the Admiralty Court, never having sat in it - has always been innovative and I believe there is scope now for developing this new spirit.

But all that suggests that we need to look at how things are developing and to come back. It used to be said, in the days of the music-halls, that the turns had been brought back due to insistent, popular demand; I would like to suggest to those who have the governance of this Centre that perhaps we could bring the speakers back again in twelve months' time, "by insistent, popular demand"; and I say, "demand", not "request". It's hard work, giving lectures, but it's been worth it for all of us and we are most grateful.

The others whom I must thank, not only Aleka Mandaraka-Sheppard but also her invaluable coadjutor, Julian How; the Centre's administrators, Victoria Barrow and Diana Weir, who put the evening together - very efficiently, it would seem to me; our sponsors and members of the Centre and the members of the Steering Committee, too - with the exception of myself.

I would like to urge people to enable this conjuring trick to continue, to give visible support to the work of the Centre: it's growing; we've attracted a large audience; audiences are growing all the time. Please continue to support it. Come and join in; not just sit here but come and join in the discussions - put yourselves forward as panellists so we can have the biggest range of skills and

experience we can possibly manage. I believe that Professor Cadwallader ("Cad") who set a very high standard as a scholar and as a most talented teacher, would have been proud indeed to hear the proceedings this evening and perhaps you'll be kind enough to join with me in thanking them and the others who have made the evening possible.