

# jurist · diction

A MAGAZINE OF THE SYDNEY LAW SCHOOL FOR ALUMNI AND THE LEGAL COMMUNITY  
AUTUMN 2010



SOCIAL JUSTICE CLINICAL COURSE — STUDENT ACTIVISM PAST AND PRESENT



THE UNIVERSITY OF  
SYDNEY



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# Students Lead Curriculum Change — Social Justice Program

Professor Gillian Triggs, Dean

In this issue of *JuristDiction* we introduce our new Social Justice Program. Since its commencement in July 2009, the program has provided students with an opportunity to undertake clinical legal training with an emphasis on social justice.

I should acknowledge at the outset that the idea for a social justice-based clinical training program was first proposed to me by the Social Justice Committee of our law students' society, SULLS. I responded cautiously, for the Sydney Law School is a research-based program for legal education that has not traditionally offered practical legal training. I decided to do what Deans usually do in such situations. I established a working group, in the hope that the idea would ultimately wither under the weight of tedious meetings! This was to underestimate both the force of an idea whose time had come and the tenacity of our students. In fact the students assiduously attended meetings, consulted public interest groups and, now joined by my colleagues on the academic staff, the makings of a viable program took shape.

We hope that a clinical experience working with those who are socially disadvantaged in our society will ensure that our law graduates will understand their professional responsibility to work for social justice as an integral part of their roles as lawyers, not just as an occasional pro bono 'add on'.

The success of an idea often depends on serendipitous timing. The move to our new building opened up the opportunity to use some of the office space in the old Phillip Street building to house the Public Interest Law Clearing House and the Refugee Advice and Casework Service. By offering accommodation to these groups we gained the benefit of expert legal training for our students.

In developing the Social Justice Program we have also been delighted that the Hon Justice Virginia Bell generously agreed to accept the role of Patron. We are pleased that, in her first year


on the High Court of Australia, she should agree to support us.

The success of the Social Justice Program owes much to the inspirational support of the family and friends of the late Hon Kim Santow AO, who was Chancellor of the University of Sydney from 2001 to 2007. At the time of Kim's death, it was decided to establish a Memorial Fund in order to support activities in Kim Santow's name. Given the strong commitment to social justice that Kim demonstrated throughout his life, donations to the fund initially will be directed to support scholarships and research funding within the Social Justice Program.

David Gonski, Chancellor of the University of New South Wales, has provided leadership to secure significant gifts to establish the Memorial Fund. It is a mark of the man, that his deep respect and love for Kim Santow prompted him to promote a fund at another institution. I sincerely thank him and all the thoughtful donors who have contributed to the fund over the last few months.

The University Senate also agreed to give me, as Dean, the discretion to name a Chair in the Faculty of Law the Kim Santow Chair in memory of Kim and in recognition of his contributions to the law and to the University. Professor Peter Cashman, foundation Director of the Social Justice Program, has been named the Kim Santow Professor in Law and Social Justice.

Peter is an outstanding social justice practitioner and has been the leading class action lawyer in Australia for many years. Peter was the founding director of the Public Interest Advocacy Centre, founder of the law firm Cashman and Partners, a Commissioner with the Victorian and Australian Law Reform Commissions and has been involved in major public interest litigation in the courts of Australia, England and the United States.

The Social Justice Program has been an instant 'hit' with students and I wish Peter every success to develop the program over the coming years. 

## CONTESTING THE EASE OF LEGALESE



Sydney Law School congratulates Emeritus Professor Peter Butt on his lifetime achievement award from the Plain Language Association InterNational.

The award was presented to Professor Butt at the Plain Language Association InterNational conference, held in Sydney in October. Professor Butt shared the award with Dr Robert Eagleson, a linguist from the English Department in the Faculty of Arts at the University of Sydney, in recognition their work to raise awareness of the need to use plain language in the legal and commercial world.

Professor Butt's award also recognises his efforts to help found the Centre for Legal Language at the University of Sydney, and his past presidency of Clarity (an international organisation, with over 1000 members in 30 countries, which aims to influence positively the way that lawyers and legislators write).

At the conference, Professor Butt chaired a keynote address presented by Dr Robert Eagleson titled 'The Underlying Obstacles to Lawyers Writing Plainly'. The address discussed the use of plain English in legal contexts to '(try) to get rid of legalese among lawyers', Professor Butt said.

From 24-8 May 2010 Professor Butt will teach a four-day intensive course titled 'Plain English in Legal Writing' in Cambridge, United Kingdom, as part of the Sydney Law School in Europe program. The program includes guest lectures by leading specialists.

All courses in the Sydney Law School in Europe Program are open to both postgraduate students and to lawyers as legal professional development.

[www.law.usyd.edu.au/parsons/slse/index.shtml](http://www.law.usyd.edu.au/parsons/slse/index.shtml)

# Faculty News



### Plain Language Resources

The Plain Language Association InterNational has made available a comprehensive range of materials from the conference, including speeches, conference papers and videos: <http://www.plainenglishfoundation.com/tabid/3276/Default.aspx>.

To learn more about Professor Butt's work with the Centre for Legal Language, visit: <http://www.plainlanguage.org/>.

To learn more about Clarity, visit: <http://www.clarity-international.net/index.htm>

### AUSTRALIA DAY HONOURS

Nine Sydney Law School alumni were among this year's Australia Day Honours. Sydney Law School would like to congratulate the following alumni:

#### Officer of the Order of Australia (AO)

- **The Hon David Daniel Levine**, AO, RFD, QC (BA 1965, LLB 1969)
- **The Hon Mr Justice Murray Rutledge Wilcox**, AO (LLB 1960)

#### Member of the Order of Australia (AM)

- **Mr Ezekiel Solomon**, AM (LLB 1959)
- **Mr Robert Tong**, AM (LLB 1969)
- **The Hon Lloyd Dengate Stacy Waddy**, AM, RFD, QC (LLB 1962)

### NEW FINANCE LAW COURSES AT SYDNEY LAW SCHOOL

Sydney Law School has welcomed many new academics this year. A number of the new academic appointments have expertise in the areas of corporate, commercial, finance, and taxation law. New appointees Professor Sheelagh McCracken and Professor John Stumbles bring their formidable joint experience of the applied discipline of finance law to new postgraduate courses. ►

# Faculty News

As Professor McCracken notes, she and Professor Stumbles have an 'interesting combination of skills' that they will bring to the development of new courses in the postgraduate program at Sydney Law School.

Professor McCracken has lectured about finance law in Australia and throughout Asia, and recently was an Associate Professor of Macquarie University's Master of Applied Finance program. The third edition of her book, *The Banker's Remedy of Set-Off*, is scheduled for publication this year.

Professor Stumbles is a leading Australian finance practitioner with 20 years' experience at Mallesons Stephen Jaques. His dual expertise in banking and insolvency law has been drawn upon by banks in structuring workouts for distressed corporate borrowers.

The cornerstone of the new courses is one taught jointly by Professors McCracken and Stumbles titled 'Key Legal Concepts in Finance Law'. Describing the course, Professor McCracken said that it is 'an introductory course to help lawyers and people in the finance industry'

whether local or international 'in actually coming to terms with what finance law is about and using that as a broad base for developing a further specialisation in the area'. The course looks 'in detail at the basic legal concepts in finance law'.

Professor Stumbles will teach undergraduate and postgraduate courses in insolvency law. Speaking of the perception that insolvency law is a boutique area of practice, Professor Stumbles acknowledged that 'its relevance fluctuates with the fate of our economy, but even in good times certain companies, because of mismanagement, get themselves into financial difficulties'.

More than this, learning insolvency law is a robust education in statutory interpretation and the 'fundamental importance of statute in the practice of the law'.



Together, Professors Stumbles and McCracken have also worked to develop a 'more technical course in financial risk allocation in equity', targeted at lawyers, that analyses the impact of old equitable doctrines such as contribution, subrogation, marshalling and set-off to show that they are 'very much alive' in modern commercial contexts.

In general terms, the wake of the global financial crisis shows the great importance of financial literacy. Taking the example of the collapse of Opes Prime, Professor Stumbles said 'people thought they were entering into a mortgage, and, in fact, they were entering into a very different form of transaction'. As a result, Professor McCracken observed, there is currently

'considerable focus on improving financial literacy in the community'. The education of lawyers and practitioners in the finance industry is critical to this task.

Because the courses provide the opportunity to discuss transactional

examples, there is also the opportunity to benefit from the experience of local and international peers. 'There's a fascinating interplay there' Professor Stumbles said. 'Different experiences, whether from the regulatory side or practitioner side' can make sizeable contributions to the discussion, Professor McCracken said.

## **POSTGRADUATE LAW AT SYDNEY — NEW FINANCE LAW OFFERINGS**

Courses taught by Professor Sheelagh McCracken and Professor John Stumbles include, 'Key Legal Concepts in Finance Law', 'Corporate Insolvency Law', 'Financial Risk Allocation in Equity' and 'Personal Property Securities'.

Consult the postgraduate course work page at Sydney Law School's website to learn more about the new offerings in finance law: <http://www.law.usyd.edu.au/fstudent/coursework/>.

### **IN SEARCH OF ORIGINS: BLINDNESS IN HISTORY AND LAW**

Professor Ron McCallum AO will deliver the Inaugural Matt Laffan Lecture in Social Justice on 27 April. Titled 'In Search of Origins: Blindness in history and law', Professor McCallum says that the lecture 'will unpack the lives of some extraordinary blind people in history from the time of the Gospels to the present day'.

'The theme of this history is one of acceptance of persons with disabilities; however, much of this history is unknown to the general public. Of all the professions, law has attracted disabled persons like Matt Laffan and myself because it is housed in the mind as a way of thinking and of problem solving', Professor McCallum said. The lecture also will detail 'the contributions of blind persons to the law, whether as lawyers, as academics, as judges or as litigants'.

Matt Laffan, who passed away on 1 March 2009, is the inspiration for the annual lecture. 'Matt Laffan's tenacity and courage is an example to me, to my sisters and brothers with disabilities, and to all persons who strive for acceptance and for social justice', Professor McCallum said.

To reserve your place at the Inaugural Matt Laffan Lecture in Social Justice, visit: <http://sydney.edu.au/news/law/456.html>.

### **ACCEL 2010 SEMINAR SERIES**

Following the success of this month's seminar series, 'Employment Relations and the Law', directed by Professor Ron McCallum AO and Professor Joellen Riley, the Australian Centre for Climate and Environmental Law (ACCEL) will host a seminar series commencing 14 April. The seven seminars in the series cover a diverse range of current issues in climate and environmental law.

Speaking of the impetus for the series, Dr Andrew Edgar said 'environmental law throws up many challenges for lawyers, administrators and environmental scientists.

Among these challenges is its complexity and constant change.' Dr Edgar will deliver the first of the series' seminars, titled 'Environmental Planning Law'.

The series draws together the expertise of ACCEL members 'in all the important areas of environmental law' Dr Edgar said. It is planned that the series will be run annually 'to shed light on recent changes in environmental law — from environmental impact assessment to climate law'.

To reserve your place at the ACCEL Seminar Series, visit: <http://sydney.edu.au/news/law/456.html?eventcategoryid=36>.

### **AUSTRALIAN AND NEW ZEALAND CRITICAL CRIMINOLOGY CONFERENCE**

The Sydney Institute of Criminology, in conjunction with the School of Social Sciences at the University of Western Sydney, will host the fourth Australian and New Zealand Critical Criminology Conference on 1 and 2 July 2010.

'The inaugural conference was held at the Sydney Law School in 2007 and the conference themes are central to the work of the Institute', Dr Murray Lee, Co-Director of the Sydney Institute of Criminology, said.

'Previous conference papers have focused among other topics on prisoner's rights, the treatment of asylum seekers, torture in contemporary times, environmental crimes of the state, the war on terror, alternative forms of justice and domestic violence.'

Attracting criminologists from across Australia as well as distinguished visitors from abroad the conference will showcase 'criminological work that draws on human rights and social justice agendas as well as alternative theoretical frameworks' Dr Lee said.

For further information about the Australian and New Zealand Critical Criminology Conference, visit: <http://sydney.edu.au/law/criminology/>.



# Upcoming Events

### **DISTINGUISHED SCHOLARS LECTURE SERIES 2010**

The successful distinguished speakers lecture series returns in 2010 to draw attention to the ideas and scholarship of Sydney Law School's leading academics. Highlights of the program from April onwards include lectures from:

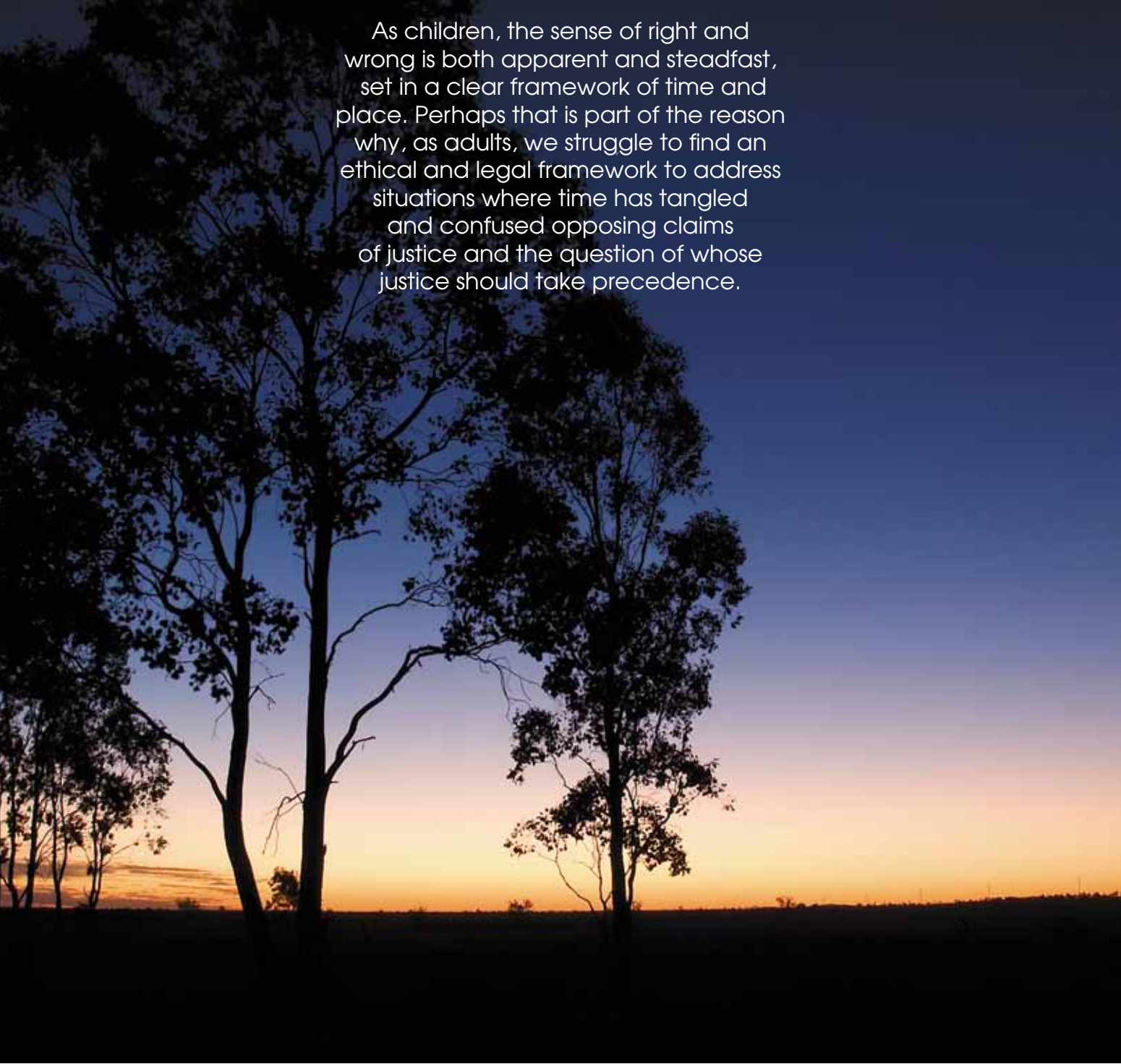
Professor Patrick Parkinson AM — 20 April  
Professor Michael Dirkis — 27 July  
Professor Peter Cashman — 10 August  
Professor Sheelagh McCracken — 24 August  
Professor David Kinley — 7 September  
Professor John Stumbles — 21 September  
Professor Rosemary Lyster — 12 October  
Professor Barbara McDonald — 26 October

To learn more about the series, or reserve your place at one of the lectures, visit: <http://sydney.edu.au/news/law/456.html?eventcategoryid=86>.

# Reconciliation and Injustice

by Belinda Lawton

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A photograph showing the silhouettes of several trees against a sunset sky. The sky transitions from a deep blue at the top to a bright orange and yellow near the horizon. The trees are dark and detailed, with their branches and leaves clearly visible against the lighter background.

As children, the sense of right and wrong is both apparent and steadfast, set in a clear framework of time and place. Perhaps that is part of the reason why, as adults, we struggle to find an ethical and legal framework to address situations where time has tangled and confused opposing claims of justice and the question of whose justice should take precedence.

In Australia, arguably the most enduring and vexed question of justice surrounds the issue of land ownership in Indigenous and non-Indigenous relations. Recent research by Professor Jeremy Webber focuses on the problem of how to respond to the dispossession of indigenous peoples in settler societies. He recently shared his research as part of the Sydney Law School's Distinguished Speakers Program.

Drawing a parallel between the experiences of Canada and Australia, Professor Webber highlighted a paper by Professor Michael Asch of the University of Victoria, Canada, which advanced the theory that non-indigenous settlers had to be prepared to leave their land if negotiations around land rights were to occur on a fair basis.

'I don't think that Michael meant it literally. Rather it was a way of emphasising precisely what indigenous peoples have lost in the process of settlement,' Professor Webber said.

'They have lost control over their own destiny and control over their own homes. They have, in very large measure, lost the continent itself. Realising that loss should sober us up.

'It should galvanise us to find some way of doing better. It should help us summon the will to pursue the objective that Noel Pearson formulated in these terms: "a fair compromise between our original ownership of the land and the colonists' irreversible accumulation of rights."<sup>1</sup>

One of the key elements of Professor Webber's 90 minute presentation was a focus on the emotions that surround this issue, the inimitable connection to land and place that Indigenous and non-Indigenous Australians share.

'How can non-Indigenous Australians acknowledge the injustice of Aboriginal dispossession and do something significant about it without, at the same time, denying their own presence, their own legitimacy, in the land?' Professor Webber said.

'How can one value a country that is founded on the dispossession, expulsion and murder of the original inhabitants?

'A sense of exclusivity is embedded in the very concepts we use to think about these issues, an exclusivity embodied in the focus, in the law of property, on the priority of claims. Either the indigenous people are the rightful owners of this

land or we are. The two cannot co-exist.'

Reflecting on the limitations of the law in this situation, Professor Webber spoke of the enduring emotional connection of Indigenous Australians to the land which, despite the assumptions inherent in general property law, hasn't waned in the years since dispossession.

'The people that was in possession retains its attachment to the land with all its vigour, at the same time as the new people is consolidating its own presence on the land. Thus, both end up with intense attachments to the very same land', he said.


'How can one respond to dispossession effectively, given the apparent conflict in the considerations of justice?'

Professor Webber explored five strategies to deal with these conflicts of justice, starting with the investigation and acknowledgement of past harms, including legal mechanisms such as commissions of inquiry. His second strategy focused on responding to injustices, to allow non-Indigenous Australians to hear Indigenous Australians and gain a shared perception of specific wrongs. Professor Webber argues this focus on injustice allows the participants to find a common ground rather than the more complex task of trying to find a common ideal vision of what justice would look like.

His third strategy involves breaking down general conflicts into more specific claims, and he cites the example of dealing with the specific issue of the protection of sacred sites rather than land rights issues more generally.

Acknowledging the limitations of the initial strategies, Professor Webber then posed two further strategies, 'the pursuit of a conception of justice that aims for some compromise between the conceptions that affect each party; and the use of practices designed to correct for the inherent bias towards the status quo.'

'For me, the powerful arguments are those that draw on the intense personal cost that settlement has meant and continues to mean for indigenous people, until they manage to regain some control over their lives, including control that allows them to draw on their indigenous heritage in their social institutions,' Professor Webber concluded.

To find out more about Sydney Law School's Distinguished Speakers Program events go to <http://www.usyd.edu.au/news/law/456.html> 



Professor Jeremy Webber holds the Canada Research Chair in Law and Society, University of Victoria, Canada, and was recently awarded a prestigious Trudeau Fellowship. He taught at McGill University from 1987 to 1998 and was Dean of Law at the University of Sydney from 1998 to 2002. Professor Webber publishes widely in the fields of legal and political theory, comparative constitutional law, and indigenous rights.

<sup>1</sup> Noel Pearson, *Up from the Mission: Selected Writings* (2009: Black Inc) 2.

# Women, Crime, Custody and Beyond

How can the criminal justice system respond more effectively to the complex needs of women offenders? **Professor Julie Stubbs** reports from the recent Institute of Criminology conference, 'Women, Crime, Custody and Beyond'.

**W**omen who are imprisoned commonly have experienced multiple forms of social disadvantage and have complex needs. Inmate health surveys confirm that women inmates have very high rates of mental illness and of dependency on alcohol and/or other drugs, and that a history of sexual and/or physical abuse is common. Many have had limited access to education and employment, and have been homeless or in insecure housing. The lack of safe, affordable housing is frequently an obstacle for women returning to the community from prison.

Prison is clearly costly in human and financial terms. Many women in prison are mothers and the implications of their imprisonment are far reaching, including across generations. Children who have been in and out of home care, and the children of prisoners, are substantially over-represented in juvenile and adult detention.

The number of women in custody in NSW has increased substantially over the past decade and recent projections suggest that this trend is likely to continue. At the end of 2009 there were 740 women in NSW prisons; 218 of them were Aboriginal (CS NSW 2009). Projections indicate that there are likely to be as many as 900 women in prison in just four years. These

developments have occurred at a time when crime rates for many offence categories are stable or even falling.

Recent figures indicate that 190 women (about 26%) are on remand awaiting trial. Of those who have been sentenced, the largest group is those serving sentences related to illegal drugs. Women often are sentenced to relatively short terms of imprisonment, and yet women remanded in custody or serving short sentences have little or no access to programs. Research by the NSW Bureau of Crime Statistics and Research confirms that prison sentences do not necessarily deter further offending (Lulham, Weatherburn and Bartels, 2009).

These were among the issues examined during a recent seminar hosted by the Sydney Institute of Criminology at Sydney Law School, 'Women, Crime, Custody and Beyond', held on 19 November 2009, and sponsored by Corrective Services NSW. The conference marked 25 years since the Report of the NSW Task Force on Women in Prison, the first comprehensive study of women's imprisonment in NSW. Ann Symonds, a former member of the NSW Legislative Council and Deputy Chair of that task force, spoke of her frustration that so much remains to be done to reduce the numbers

of women incarcerated, to provide alternatives to incarceration and appropriate services within the community, and to prevent young people in state care and the children of prisoners becoming enmeshed in the criminal justice system.

The seminar was opened by Justice Lucy McCallum of the NSW Supreme Court. Six women who are currently serving sentences of imprisonment and two former prisoners made very significant contributions; they spoke eloquently on behalf of women incarcerated in NSW, and drew on their experiences to illustrate concerns in current laws, policies and practices, and to acknowledge the sorts of services and support that they had found helpful.

While there are a number of good initiatives, such as the Mothers and Babies unit at Emu Plains Correctional Centre, or mentoring offered by the Community Restorative Centre to women being released from custody, access to these programs is limited. These programs are also only accessible when women reach prison. For women facing court, few community-based alternatives to prison are available. Women with multiple needs, for example, drug-dependence, mental illness or children in their care, encounter particularly difficult problems.

Two examples given by women prisoners at the

conference particularly were illustrative of difficulties that women prisoners face in maintaining connections with family and accessing assistance to prepare for their return to the community. One inmate spoke of the effect limited telephone access to her children had on her relationship with them. Because families cannot phone in to an inmate, and inmates have restrictions on the number and timing of calls that they can make out, 'when my little boy is hurt he wants to talk to his mum but he can't call me'.

Another inmate spoke of the problems created because case work to prepare women for their parole hearings does not commence early enough. Nearing the end of her sentence, she knew that securing accommodation ahead of her parole hearing was important, but had little support in resolving this problem. This was confirmed by Mr Ian Pike, Chair, State Parole Authority, who noted that inmates were frequently not sufficiently prepared in time for parole hearings.

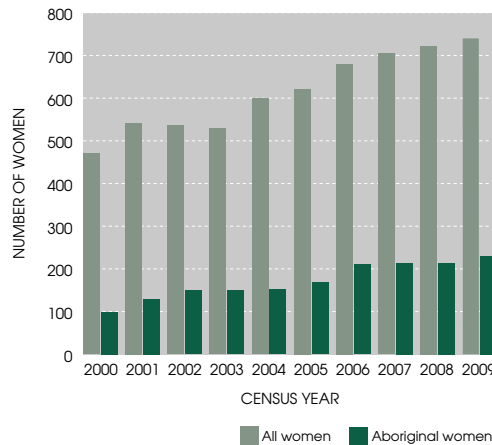
Other speakers included: the Honourable James Wood (Chair, NSW Law Reform Commission), the Hon Graeme Henson (Chief Magistrate), Mr Ian Pike (Chair, State Parole Authority), Dr Don Weatherburn (Director, BOCSAR), Jane Woodruff (Director,



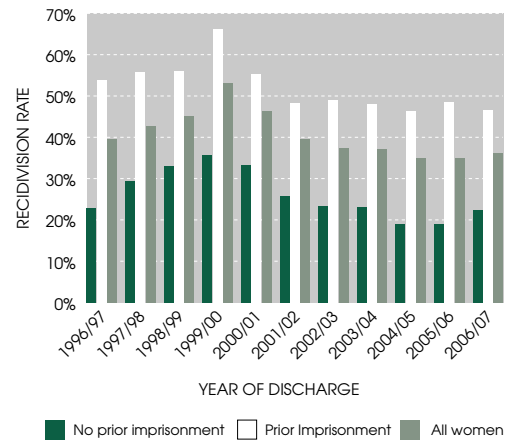
UnitingCare Children, Young People and Families; and CEO Burnside), Gerry Moore (CEO, Aboriginal Legal Service), Jennifer Mason (Director, General Department of Human Services NSW), Alan Kirkland (CEO, Legal Aid NSW), other representatives from the justice sector and from key non-government sector agencies, and academics.

Participants at the seminar urged a renewed commitment to action in response to the needs and interests of women who are the subject of criminal justice intervention. As a first step in that direction, the Women's Advisory Council of Corrective Services NSW has met in response to the issues raised at the seminar to draw up a plan of action. *jd*

Trends in the full-time imprisonment of women in NSW



Trends in recidivism rate by prior imprisonment status for women



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R Lulham, D Weatherburn, L Bartels, 'The Recidivism of Offenders Given Suspended Sentences: A comparison with full-time imprisonment' (2009) *Crime and Justice Bulletin*, No 136 (NSW Bureau of Crime Statistics and Research: Sydney).  
 Corrective Services NSW, *Offender Population Report 13 December 2009* (2009) (Corrective Services NSW: Sydney).

**Julie Stubbs** is Professor of Criminology, and Deputy Director of the Institute of Criminology at the University of Sydney. She is a member of the Institutional Ethics Committee of Corrective Services NSW and an advisor to the Victorian Health Promotion Foundation concerning its research program on violence against women. She recently served as a member of the NSW Domestic Homicide Advisory Panel and was a member of the NSW Criminal Justice Sexual Offences Task Force. She has a longstanding interest in violence against women and in how the criminal justice system responds to women victims and offenders.



## CrimNet

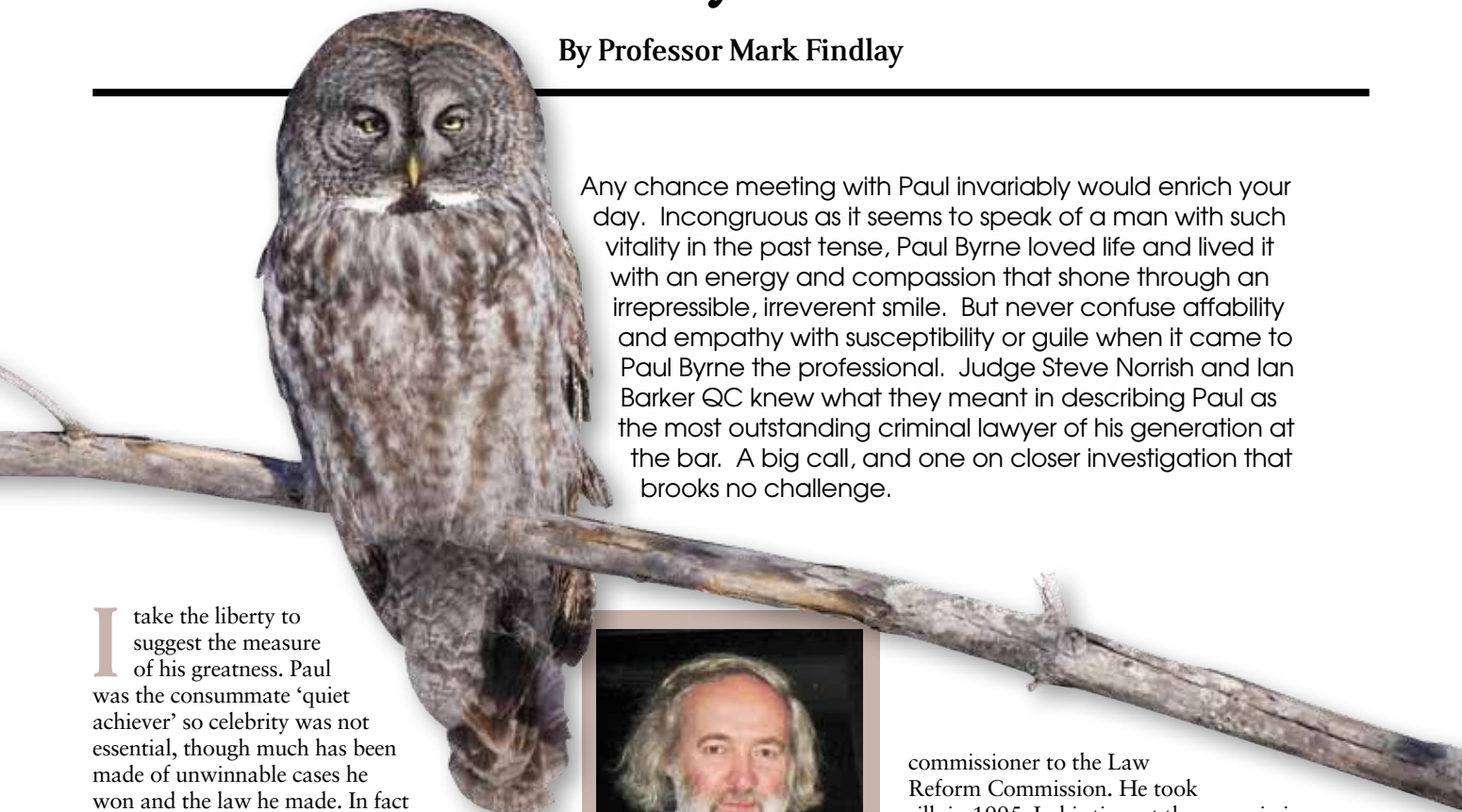
Are you interested in criminology, criminal law and criminal justice? Join CrimNet — Sydney Institute of Criminology's electronic criminal justice information network — to receive updates on jobs, events, reports, research and debates. You can also post messages directly to criminal justice professionals and institutions throughout Australia and internationally.

For more information, visit:  
[www.sydney.edu.au/law/criminology/](http://www.sydney.edu.au/law/criminology/)

# An Outstanding Defender and Scholar

## Paul Byrne SC

By Professor Mark Findlay



Any chance meeting with Paul invariably would enrich your day. Incongruous as it seems to speak of a man with such vitality in the past tense, Paul Byrne loved life and lived it with an energy and compassion that shone through an irrepressible, irreverent smile. But never confuse affability and empathy with susceptibility or guile when it came to Paul Byrne the professional. Judge Steve Norrish and Ian Barker QC knew what they meant in describing Paul as the most outstanding criminal lawyer of his generation at the bar. A big call, and one on closer investigation that brooks no challenge.

I take the liberty to suggest the measure of his greatness. Paul was the consummate ‘quiet achiever’ so celebrity was not essential, though much has been made of unwinnable cases he won and the law he made. In fact Paul’s success as a defender is better measured in the lives he influenced, and not just the hit list of cases in his favour. ‘He approached the toughest cases with commitment and enterprise and novel thinking’ said the *Sydney Morning Herald*.

More than this, he respected the power of knowledge over persuasion. Often I would receive a call from Paul on the eve of a case wanting to know where research and critical scholarship could inform his argument. He led the charge to challenge, by independent scientific evidence, the reliability of experts in sciences usually the preserve of the police, such as fingerprint and ballistics evidence. Paul was tireless in confronting the Court of Criminal Appeal with comparative data on sentencing trends until even the most luddite judge could not say ‘lies, lies and damned statistics’.

This recognition of knowledge as the advocate’s reason came from Paul’s exceptional scholarship. In 1983, the year he obtained a Sydney University masters degree in law with first class honours and the University Medal, he was appointed director of the Criminal Law Review Division. In 1984 he became



### The Paul Byrne Memorial Fund

Gifts to The Paul Byrne Memorial Fund will support activities of the Sydney Institute of Criminology and other activities in the field of criminology at Sydney Law School, in memory of the late Paul Byrne, SC.

For further information, or to make a gift to the Paul Byrne Memorial Fund, please contact Demelza Birtchnell, Development Officer, Sydney Law School, phone: +61 2 9351 0467, email: demelza.birtchnell@sydney.edu.au.

commissioner to the Law Reform Commission. He took silk in 1995. In his time at the commission Paul authored one of the most persuasive and prevailing arguments for jury trial as we know it and, despite the subsequent mendacious meddling of politicians, it remains as true today as the day he wrote it.

Paul rightly has been commended for dogged courage at times when the defender’s task was anything but easy or fashionable. His mentor at the Public Defender’s office (and long-time Institute of Criminology advisor) Howard Purnell QC would have been justly proud of Paul’s tenacity. But rigor more than redoubtability characterised a Byrne defence. And moral integrity as well as ethical reasoning imbued its powers of persuasion.

Michael Kirby is right. Paul Byrne was a lovely, loveable and loving man. A renaissance man in the truest sense. However, Charles Waterstreet, writing for the *Sydney Morning Herald*, can have the last word as it encapsulates the choir voice of Paul’s army of friends; ‘He leaves this planet with less prisoners than it would have had but for his magical thinking. His pixie spirit has more legal miracles to perform for those who call on it to help them transform and transfix judges and jurors.’ *jd*

# Enthusiasm and Light

The Annotated Life of Kim Santow.

In the Autumn 2008 issue of *JuristDiction*, we reported on the death of the Hon GFK Santow AO (BA 1961, LLB 1964, LLM 1971, Hon LLD 2008).

**D**ominant in the tributes published to mark the exceptional life of Kim Santow were recollections of his enthusiasm for reading and classical music, devotion to his family, and commitment — as Dr Pierre Ryckmans remarked in his eulogy — to ‘the twin lights of reason and justice’.

These twin lights have been recognised through establishment of the Kim Santow Chair in perpetuity in honour of Kim Santow’s energetic and outstanding contribution to the University in the time of his Chancellorship (2001–07). During his service as Chancellor, Kim Santow displayed ‘physical and mental determination and capacity’ that ‘was a wonder to behold’, observed Chief Justice Spigelman in a speech marking his retirement from the Supreme Court of New South Wales in 2007.

The Kim Santow Chair also honours his intellectual curiosity — as Chief Justice Spigelman fondly describes, Kim Santow was an ‘intellectual omnivore’. Reflecting that his father ‘lived a much-annotated life’ during a memorial service held in April 2008 at the University, Edward Santow said, ‘Dad read voraciously, and always actively: scrawling in




Hon GFK Santow AO in the 1980s.  
Photo courtesy of University Archives.

For further information, or to make a gift to the **Kim Santow Memorial Fund**, please contact Demelza Birtchnell, Development Officer, Sydney Law School, phone: +61 2 9351 0467, email: demelza.birtchnell@sydney.edu.au.

the margins, entering a kind of conversation with the author’.

Professor Peter Cashman, Director of the Social Justice Program was appointed to the Foundation Chair, and named Kim Santow Chair in Law and Social Justice in July 2009. In the following pages, you can read about the activities that this appointment has inspired through the establishment of the Social Justice Program.

A Memorial Fund has also been established in order to support activities at the Law School in Kim Santow’s name in perpetuity. The Fund will endow activities and projects at Sydney Law School, with initial income from the fund directed to support the Social Justice Program. Indeed, it continues the mentoring work that Kim Santow undertook throughout his life. As wife Lee Santow said, ‘I have been inundated be wonderful letters from a great many people, many of whom enjoyed Kim as their mentor. I am delighted that he inspired so many in their chosen field.’ 




# The Future of





# Social Justice



In second semester 2009, 10 students completed the new Social Justice Clinical Course. At the course's launch on 19 November 2009, Professor Peter Cashman, Director of the Social Justice Program and Kim Santow Chair of Law and Social Justice, reflected on the role played by current and former Sydney Law School students to create the program.

**E**meritus Professor Tony Blackshield knows well the power of student petition. In the late 1960s he and Upendra Baxi were approached by a determined group of students — including Geoffrey Robertson, Alan Cameron, Eddy Neumann, Mel Bloom, Denis Harley and Susan Armstrong — who wanted Sydney Law School to run a subject on poverty law.

The idea met some resistance, but Dean Professor Ross Parsons brokered a solution. On a trial basis, a subject called 'Law and Social Justice' was offered in 1970. When advertised in the *University Calendar* of 1971, the subject was described as a 'detailed study of different ways in which social inequality may call for legal action'.

Professor Blackshield's recollection that students agitated to bring to life the first incarnation of a dedicated social justice subject in the LLB program was drawn on by Professor Peter Cashman to introduce the Social Justice Clinical Program in his speech at the program's official launch. This highlights, as Amy Kilpatrick, CEO, PILCH, observes, that 'the future of social justice lies *entirely* with young lawyers'.

The idea that many forms of social inequality may call for legal action is echoed in the current Social Justice Clinical Program. "Social justice" is not bounded by any particular area of substantive law or doctrinal straitjacket' Professor Cashman said. 'Many if not most of my colleagues in this law school are keenly concerned about matters of social justice, however that term may be defined. This is reflected not only in their teaching and research, but also in their engagement with the real world of law, law reform and policy, both within Australia and also in various parts of the world, and in particular in developing countries.' ►



Students in the 2009 program completed clinical placements at the Public Interest Law Clearing House (PILCH) and the Refugee Advice and Casework Service (RACS).

For Anna Payten, a clinical placement at RACS was her 'first opportunity to engage in the law practically'. Practical engagement in the law included watching a Refugee Review Tribunal hearing, sitting in on client interviews and completing research work.

Students at PILCH worked on projects concerned with a number of social justice issues, including: predatory lending, advocacy for children in detention, the establishment of a legal service for cancer patients, and PALS@PILCH, a pro bono animal law service.

The launch also included a warm and entertaining keynote address from the patron of the Social Justice Program, the Hon Justice Virginia Bell of the High Court of Australia. The late Hon Justice Kim Santow provided much inspiration to the program's development, and son Edward Santow addressed the 250+ audience to highlight his father's dedication to social justice. A formal thank you was also made to Lee Santow, wife of the late Hon Justice Kim Santow, in recognition of the family's contribution to the program. [jd](#)



Launch photos by Professor Mary Crock  
 1. Hon Justice Robert Austin, Hon Justice Virginia Bell, Prof Gillian Triggs, Melissa McAdam, Prof Peter Cashman. 2. Lee Santow. 3. Prof Peter Cashman and Prof Ben Boer. 4. Deputy Chancellor Alan Cameron, Robyn Banks. 5. Emeritus Prof Tony Blackshield, Prof Regina Graycar, Hon Justice Robert Austin. 6. Edward Santow delivering his address. 7. Social justice supporters and friends. 8. Prof Duncan Chappell and Hon Justice Jane Matthews. 9. The Bar Choir performs.





# Challenged to recognise injustice

Kristy Fisher comments for *JuristDiction* about her experience of the Social Justice Clinical Course.

This semester I had the opportunity to participate in Sydney Law School's first Social Justice Clinical Course. The placement-based course is an exciting new clinical program focused on social justice.

Students spend one day each week working in a social justice organisation, such as the Public Interest Law Clearing House (PILCH) or the Refugee Advice and Casework Service (RACS), and attend a seminar at university each week to discuss their experiences.

I was placed at PILCH and worked on an assignment within that organisation's Predatory Lending Project. A joint initiative between PILCH, the Consumer Credit Legal Centre and Legal Aid NSW has led to a pilot Duty Solicitor Service at the Supreme Court of New South Wales to assist unrepresented litigants in house repossession matters. My classmate, Neela Shearer, and I observed the Possession List at the Supreme Court of New South Wales each Thursday. Our task was to observe how unrepresented litigants interact with the court system and to assess how the Duty Solicitor Service assisted them.

There were several unrepresented litigants in the Possession List each week. Most of them appeared before the court without having had legal advice. Many were confused and intimidated by the courtroom environment. They did not know where to go, when to sit or stand or when they should speak. For most, the threat of losing their home was not the only challenge they faced. Several had physical or mental health issues, some had poor English language skills, had experienced family violence, had children involved in the juvenile justice system, were on disability support pensions or were experiencing employment problems. Furthermore, many unrepresented defendants simply did not understand the proceedings. When orders were made or instructions given, on many occasions they simply asked, 'What does that mean?'

It was frustrating to watch unrepresented defendants in the courtroom, knowing they were struggling to participate in a system that is characterised by rules, jargon and customs that are ordinarily known only by those who have trained for many years to become effective advocates. Most of the defendants sought a stay on the writ of possession served upon them but failed to produce any supporting evidence for their application. On many occasions, the Registrar refused to grant the orders sought, noting that he sympathised with their position but there was simply no evidence before him on which to grant their application.

The experience of participating in the Social Justice Clinical Course highlighted several things for me. First, I witnessed the real disadvantage that poorly resourced, unrepresented litigants experience when the other party, in this case a bank or other large financial institution, has expert legal representation. The unrepresented defendants we witnessed were on nothing vaguely resembling a level playing field. To suggest that it is 'empowering' for such people to represent themselves in our court system as it stands is simply insulting.


Second, I was reminded that there is no substitute for real world experience of inadequate access to justice. The placement confirmed my view that it is incredibly important for law students really to experience, outside of the classroom, how underprivileged members of our society struggle in the justice system and to begin to imagine, as the next generation of young lawyers, politicians, policy makers, etc, how we might be able to do better.

Third, during the placement I was able to work with people who have devoted their career to improving access to justice. It was inspiring to work with people for whom social justice work is not merely a hobby, but is in fact an integral part of their personal and professional identity. It was an important experience as I embark upon my own career.

Finally, my experiences during the Social Justice Clinical Course caused me to reflect on the fact that in our society, holding a law degree goes hand in hand with holding power. A meaningful legal education should do more than confer power and reinforce a sense of privilege. It should challenge students to recognise and question injustice and provide opportunities that will contribute to producing skilled and compassionate lawyers with a genuine commitment to social justice. I was pleased to participate in the first Social Justice Clinical Course, a program that offers one such opportunity. *jd*

# Should Corporations Engage in Political Activities?

Belinda Lawton investigates.



The issue of whether corporations should be able to engage in political activities in Australia periodically produces a cacophony of debate generated by politicians, pundits, parties and shareholders. Unlike the United States, where restrictions at a federal level have been in place since 1907, restrictions on political donations in Australia are relatively new and legal reform is still an emerging issue in the Federal and State Government spheres.

To examine the issue from a legal standpoint, the Julius Stone Institute and Ross Parsons Centre for Commercial, Corporate and Taxation Law joined together to host a discussion at the Sydney Law School in December with a key presentation from Associate Professor Ian B Lee, University of Toronto, Canada.

Using the Canadian and United States experiences as an introductory point, Assoc Professor Lee framed his discussion in terms of proposed restrictions on activities in the political sphere that apply only to corporations. He specifically excluded measures that apply across the community, citing Queensland Premier Anna Bligh's proposed \$1000 donation cap as an example of the kinds of restrictions that would not be encompassed in his discussion.

Within these parameters, Assoc Professor Lee concluded that corporations should be permitted to lobby via political donations and advisors, arguing that a far more important issue for the future of large democracies is the issue of citizen passivity.

'In an ideal world, we would all attend town hall meetings, write to Members of Parliament ... but I don't think that is the world we actually live in.'

During the hour long debate, Assoc Professor Lee looked at the three main theoretical arguments in favour of the restriction of corporation's right to participate in political activity, being: managerial power; concession theory; and the separation of market and political spheres.

He said that the theory of managerial power was based on 'the premise that boards

of directors and the executive management of corporations enjoy extremely broad political freedom of action' and the perceived 'disconnect between the actions of management and the interests of shareholders'.

During questions, Assoc Professor Lee recounted one corporation's experience in the United States to refute the argument that giving control to shareholders is necessarily a better option than managerial power. He cited Warren Buffett, who opened up traditional charitable giving at Berkshire Hathaway in the early 1980s to give shareholders a say in the allocation of the funds. Among the many worthy causes, a significant number of shareholders also nominated organisations such as religious sects as beneficiaries for the funding.

'I don't think the most important thing, or even an especially important thing to know is how widely held a view is. What about the case where the most widely held view is incorrect or more people believe it to be correct than is justified? That is the worry with insisting majority views should be applied.'

During the discussion on concession theory, Assoc Professor Lee cited arguments contained in *The Corporation* (2004) by Joel Bakan and *Supercapitalism* (2008) by Robert Reich.

Concession theory argues that 'because of the fact they (corporations) owe their existence to the State, (corporations) in the normal order of things should be subordinate to the State. Corporate participation in politics reverses the proper hierarchy,' Assoc Professor Lee said.

'The problem flows from the redefining of corporations, treating corporations as a thing. But a corporation is not a thing, rather it is a collection of legal consequences. It's not a thing to be ranked higher or lower.'

While discussing the theory of the separation of market and politics, Assoc Professor Lee likened politics to a market for ideas.

'(This theory argues) politics is a market in which corporations are not appropriate

Ian B Lee is an associate professor at the University of Toronto Faculty of Law. He has a B Com and LLB from the University of Toronto and an LLM from the Harvard Law School. He clerked with Justice Claire L'Heureux-Dubé of the Supreme Court of Canada, and practised with Sullivan & Cromwell LLP before joining the Faculty of Law. During his visit at the Sydney Law School, he is working on a project on philosophical issues in corporate law.

To learn more about the Julius Stone Institute of Jurisprudence, visit: [www.law.usyd.edu.au/jurisprudence/](http://www.law.usyd.edu.au/jurisprudence/)

participants. Yet publishing and journalism are both businesses,' Assoc Professor Lee said.

'There are no barriers to entry in the market for ideas. (It is argued) it is difficult for other less well-funded participants to be heard. The metaphor of a megaphone is used. But in a big world when idea A is amplified it doesn't take idea B off the table. It doesn't even make it harder to find. It just makes idea A easier to find.'

Speaking as the official commentator on the presentation, lawyer Andrew Lumsden from Corrs Chambers Westgarth and former Chief to Staff to Joe Hockey MP, commended the paper by Assoc Professor Lee.

Mr Lumsden noted that usually corporations give donations fairly evenly to the major political parties and raised the question of why corporations should be treated differently from any other group that donates to political parties.

'Is the corporation somehow different to any other organisation? Why should trade union not be excluded from the political process? Is their input somehow more valuable than corporations?'

The event was co-chaired by Dr Kevin Walton and Professor Jennifer Hill. *jd*



Dr Kevin Walton, Assoc Prof Ian Lee, Prof Jennifer Hill, Andrew Lumsden



The Ross Parsons Centre publishes a monograph series on current issues in commercial, corporate and taxation law, visit: [www.law.usyd.edu.au/parsons/publications/](http://www.law.usyd.edu.au/parsons/publications/)

# Did Credit Derivatives Cause the Financial Crisis?

And what are they anyway? Viva Hammer explains their vagaries.

In ancient times, a Queen presiding over a financial crisis might distract the masses by launching a crusade, a pogrom or a courtship with a foreign king. Today, our elected leaders blame credit derivatives. One could say it's an improvement in morality, but not necessarily in sophistication.



The financial crisis is both simple and complex. At its root are mortgages that were issued to Americans who couldn't afford them. Those mortgages were sold and bundled, the bundles were sliced up and resold, and then derivatives were written on the slices. Pieces of those bad mortgages were cherished by banks, pension plans, hedge funds, governments, everyone. Derivatives meant that the exposure could be multiplied *ad infinitum*. When the bottom of the economic pile — the mortgages — turned rotten, the entire structure collapsed, *ad infinitum*.

Let's start at the bottom of the pile. In the early 2000s, interest rates were low and that made homes more affordable. In America, borrowers can get 30-year fixed interest mortgages, but they are only available to people with good credit. During this period, home loans became available to people with poor credit: the

government wanted to increase home-ownership, investors wanted higher yields, and new types of loan were being engineered.

When I worked for the US Treasury Department, we used to whisper in the corridors about the phenomenon of the NINJA loan. That is, home loans made to people with 'No Income, No Job, no Assets'. Shockingly often, the loans were made based on information falsified by greedy mortgage brokers. These loans had terms too complicated for borrowers to understand, with interest rates that reset after a honeymoon period. In the early 2000s, lenders weren't worried about loan repayments, because house prices were appreciating, and if you couldn't pay, you could always sell!

NINJA loans were then sold to institutions which pooled them and then securitized them. That means, they divided the expected cash

flows from the loans and sold the rights to the cash flows to investors. The cash flows were divided into ‘tranches’ so that the people buying the top tranche would get the first cash flows coming from the mortgages, up to a certain rate of return; the second tranche would get whatever was leftover after the first tranche up to a certain rate of return, and so on until the bottom tranche — that was called nuclear waste.

The tranches were given ratings by specialised agencies — an assessment of how likely they were to pay out what they promised. Banks, pension funds and regulators relied on these ratings in determining how risky the investments were.

Then, other financial institutions wrote credit derivatives on these tranches of bundles of mortgages. Credit derivatives are contracts which require one party to pay another party the exact replica of the payments on the tranches — in exchange for premium payments. Those same institutions wrote other kinds of credit derivatives, too. In particular credit default swaps, in which one party pays another party the face value of a bond if the bond defaults again in exchange for premium payments.

The credit derivatives allowed exposure to the mortgages to be multiplied infinitely. There is no requirement for anyone to own the bond or tranche in order to write a derivative on it. It’s just a financial bet.

What happened when interest rates increased in the mid 2000s? People with floating interest loans couldn’t pay the increased rates, and when they tried to sell, found that the value

of their homes had not appreciated as much as expected. New homebuyers could only afford less costly homes because interest was a bigger part of their monthly mortgage payment. Loans started defaulting. Investors who had bought ‘safe’ tranches from securitizations found that they were not getting the cash they expected. Credit derivative sellers were making payouts they never expected to make. Interest rates continued to rise, defaults increased, home prices declined, and the effects were felt in a geometric fashion.

It was as if the bad mortgages had been reproduced and hung on the walls of every financial institution. When one went bad, all the reproductions fell too. Then panic set in and that’s the complex part. The basics, however, are simple: loans were made to people who couldn’t repay; the loans were sold and pooled and sliced and diced and shared around, then reproduced. One late payment reverberated everywhere.

The first rule of civilization is: tell the truth. If an entire economic system is built on making loans based on false documents to people who are never expected to pay back, that system will collapse. You can blame it on derivatives, or on any number of other things, but really it’s a natural consequence of bad business morals. *jd*



**About Viva Hammer (BEC 1988, LLB(Hons) 1990)**



copyright Robert H Dilworth

Viva Hammer emigrated to the United States two days after finishing her final law school exams. While living on friends’ couches, she studied for the New York Bar and found a job practicing US international tax (never having taken a tax law course). She also joined or started non-profit organisations to her heart’s content. Marriage and childbearing coincided with acceleration in her career, as well as semi-permanent housing. Advising on the taxation of capital markets transactions, she traveled constantly, often with breast-pump (or baby) alongside.

After 10 years in New York and at least as many homes, Viva was invited to join the Office of Tax Policy at the US Treasury Department, the only Australian to have done so. (‘You couldn’t find an American for the job?’ an admin complained, having to do extra paperwork for an Alien.) While there she wrote law and developed policy in the taxation of financial institutions and products. It was an exceptional job, for learning both patience and derivative products.

After six years at Treasury, Viva became partner at a Washington DC law firm. She

commutes between New York and DC, and her office is really on the Acela train that joins the two cities. The nomadic lifestyle compensates for the fact that in the nine years Viva has lived in the DC suburbs, she hasn’t moved house once.

When Viva is not drafting tax opinions or homeschooling her daughter (14) and son (11) she is writing a book called *Choosing Children*.

Viva welcomes comments on derivatives and the GFC, New York housing, homeschooling, etc. at vivahammer@aol.com .



# Life's Work

The life's work of Sydney Law School alumni involves many things besides legal analysis. As a regular feature, *JuristDiction*, with help from Viva Hammer (see page 21), would like to profile your work beyond the law. Contact [jurisdiction@sydney.edu.au](mailto:jurisdiction@sydney.edu.au)

**Elizabeth Gascoigne** (BA 1988, LLB 1991) has recently released her first novel, *Legally Blind*, a comedy about a young woman starting out in the legal profession.



Elizabeth always felt a writing bug nagging at her. It was strongest when she was reading modern novels in a comic vein, especially books like Helen Fielding's *Bridget Jones Diary* and Allison Pearson's *I Don't Know How She Does It*. After years of experiencing this bug, she relented and sat down to start writing and see if anything would happen. It did. She ended up writing the first draft of *Legally Blind*. She wrote one hour in the evening, three nights a week and the first draft took two years. Then she showed the draft to a few close friends and relatives and made changes according to the comments that they made. Eventually, she had a one hour consultation with a mentor from the NSW Writer's Centre about the book. In the manner of legal practice, she made a careful 'file note' of every recommendation the mentor made. Taking all of the mentor's comments on board, she restructured the novel, cut out 30 000 words and refined the plot. This made a huge difference. The final manuscript of *Legally Blind* emerged.

In terms of the subject matter of the novel, Elizabeth was interested in having a strong Sydney theme. However, before long a strong law theme emerged. Elizabeth was struck by the memory of what it was like starting out as a lawyer in her first year, when the legal profession appeared to her in the sharpest focus. This sense of first impressions then took hold in the novel.

*Legally Blind* was launched in July 2009 at Ariel Bookshop, Paddington, by Lisa Pryor, author of *Pin Striped Prison*. Elizabeth is currently working on her second novel, an historical novel about a shipwreck off the coast of Victoria in the 19th Century. Elizabeth worked as a solicitor for over 15 years and now is the marketing manager for Bay Coffee, a coffee roasting company that she owns with her husband, David Rosa. Elizabeth addressed students of the faculty about her book and her career at a SULLS event on 14 September 2009. Online purchases of Elizabeth's book can be made at [www.legallyblindthenovel.com](http://www.legallyblindthenovel.com). *jd*

**HONORARY FELLOWSHIPS****Hon John McLaughlin**copyright Memento  
Photography

The Hon John McLaughlin, Associate Justice of the Supreme Court of NSW, was awarded an honorary fellowship in recognition of 50 years of continuous service to the University's Alumni Council in November 2009. In citation for conferral of the fellowship, his service to the alumni council was noted to be 'unprecedented and unlikely ever to be equalled'.

His Honour's service to the university can be traced to his student days, when he served as a member of the Students' Representative Council, and as director of Sydney University Union. In 1972 and 1973 he was President of the Standing Committee of Convocation (now Alumni Council) and unstintingly has continued to serve the interests of alumni and the university since that time.

Beyond his service to the university, his Honour has given dedicated service to 'activities that reflect credit' on the university, it was said in his Honour's citation. This generous service — as President of the Society of Australian Genealogists for four years, and Councillor of the Royal Australian Historical Society — has helped to promote public understanding of Australian history.

**Bohdan Bilinsky**

copyright Liz Cartwright

Bohdan Bilinsky, Esquire Bedell of the University of Sydney and solicitor, was awarded an honorary fellowship of the University of Sydney in December 2009. The award recognised the many services Mr Bilinsky has assiduously performed to enrich the intellectual, student and sporting life of the university.

In contribution to the university's intellectual life, Mr Bilinsky was a Senior Lecturer in the Faculty of Law from 1971 to 1994. He worked diligently to develop relationships between the university and overseas institutions; in particular, the University of Cambridge where he held a visiting fellowship.

In service to the student and alumni communities of the university, Mr Bilinsky has served in a number of capacities for the Sydney University Union — in particular, as Director from 1964 to 1970 — and also as a member of the Alumni Council for over 30 years.

An eponymous room in the Holme Building marks the contribution Mr Bilinsky has made to the Sydney University Union.

Since retiring from the Faculty of Law in 1994, Mr Bilinsky has practised as a solicitor in Bowral; however, his dedication to his alma mater is undiminished.

# Alumni News

**RECENT JUDICIAL APPOINTMENTS**

Sydney Law School congratulates the following alumni on their recent appointments.

- **The Honourable Justice Robert Forster** (LLB 1970) Appointed Judge of the Supreme Court of NSW
- **The Hon Justice Monika Schmidt** (LLB 1979) Appointed Judge of the Supreme Court of NSW
- **The Hon Justice John Nicholas** (LLB 1966) Appointed Judge of the Federal Court
- **Magistrate Glenn Walsh** (LLM 2007) Appointed Magistrate of the Local Court of NSW
- **Magistrate Ian Cheetham** (LLB 1978) Appointed Magistrate of the Local Court of NSW

**SENIOR COUNSEL APPOINTMENTS:**

Sydney Law School congratulates the 11 alumni appointed Senior Council by the NSW Bar Association in 2009.

- **Peter Breerton** — LLB 1992
- **Robert Bromwich** — LLM 1993
- **Michael Christie** — LLB 1982, LLM 1988
- **Robert Dick** — LLB 1990, LLM 1996
- **Shereef Habib** — LLB 1989
- **Richard Lancaster** — LLB 1993
- **James Lockhart** — LLB 1988
- **Janet Manuell** — LLB 1985
- **Michael Meek** — LLB 1986
- **Judith Rees** — LLB 1976
- **Mark Richmond** — LLB 1981, LLM 1996
- **Laura Wells** — LLM 2002

**NOTICE OF ANNUAL GENERAL MEETING OF SYDNEY UNIVERSITY LAW GRADUATES ASSOCIATION**

Current members of the Sydney University Law Graduates Association are invited to attend an annual general meeting on Friday 16 April 2010, 1 pm, at the University of Sydney Law School level 4 common room, on Camperdown campus.

Nominations for President, two Vice-Presidents, Honorary Secretary, Honorary Treasurer, and five council members are due by 4 pm on 2 April 2010. All nominations must be signed by the proposer, seconder and nominee. Please mail nominations to Greg Sherington, Acting Alumni Officer, New Law Building F10, Eastern Avenue, University of Sydney, NSW, 2006.

Council members and all present members will decide on the disbursement of SULGA funds.

# A Great Sense of Opportunity and Responsibility

Over the past decade, 11 Sydney Law School students have been awarded the Rhodes Scholarship. The latest recipient, **Andreas Heger**, discusses with *JuristDiction* his influences and study plans.



**A**ndreas Heger was awarded the Australia-at-large scholarship in December 2009, and plans to complete a Bachelor of Civil Laws and Masters of Philosophy in law at Oxford focusing on anti-discrimination law and positive obligations.

News of the award was greeted with a phone call to mum and a sense of shock, 'but now that I have had time to think about it I feel a great sense of opportunity and responsibility' he said. It was less a shock, and more a delight, to the academic staff. Dr Belinda Smith, who recommended Andreas to the Rhodes selection committee, said that he 'is a charismatic young man with an open heart and mind', who has 'the drive to make the most of every opportunity'.

Dr Smith has every expectation that Andreas has the ability to make 'a sizeable contribution to regulatory reform of Australian human rights laws'. This assessment is backed up by Andreas' own hopes for his return to Australia. When he returns, Andreas says that he plans to 'contribute to reforming the Australian anti-discrimination regulatory system and practice at the Bar. In the longer term I plan to set up a

community centre combining legal, social and medical services in the one place. Most people's service needs are multi-dimensional and such a centre would better address them.'

Andreas is quick to acknowledge the support and inspiration that many people provided him as a student. Professor Ron McCallum AO was a particularly important influence to Andreas. 'Knowing that someone with a similar disability has gone on to make a significant contribution to the law was a great source of inspiration', he said. Andreas is legally blind.

'I wanted to be a lawyer because I liked the idea of representing people and the fundamental idea of justice for all. In addition, it gives me the opportunity to have a meaningful career despite my disability, which precluded me from studying medicine or service in the armed forces, which are two other careers I was attracted to.'

In true Aussie style, Andreas plans to stock up on Vegemite and spend time at the beach before his departure. For this, and all that Andreas will accomplish at Oxford, Sydney Law School wishes him every success.



### Support the Social Justice Program and Make a Difference

The Social Justice Program requires ongoing resources to ensure that students, partner organisations and their clients can participate and benefit as much as possible. Financial investment is sought from alumni, members of the profession and others in our community with a commitment to social justice. All donations of \$2 or more are tax deductible.

Supporters and organisations may become:

- a Social Justice Friend — up to \$1000
- a Social Justice Fellow — \$5000
- a Social Justice Stalwart — \$10 000 or more

Funds received will be used exclusively for the Social Justice Program. Support may include scholarships to allow students to spend additional periods of time on social justice

projects locally or internationally.

You can make a gift online at [www.law.usyd.edu.au/alumni/support](http://www.law.usyd.edu.au/alumni/support).

For more information on supporting the Social Justice Program, please contact the Development Officer, Demelza Birtchnell, on 02 9351 0467 [demelza.birtchnell@sydney.edu.au](mailto:demelza.birtchnell@sydney.edu.au).

## Recent awards and summer internships

The commitment of Sydney Law School students to social justice has been also recognised in the following awards:

Zelie Wood (BA 2006, LLB 2008) has been awarded a General Sir John Monash Award for 2010. She will shortly commence an LLM at Cambridge University, followed by a DPhil. Her research will focus on international and human rights law.

Alison Eveleigh (BCom 2009, final year LLB student) commences her internship with Reprieve Australia this month. Reprieve Australia is a sister organisation to Reprieve UK and Reprieve US, and works to assist persons facing the death penalty. Alison will be working in the southern United States to assist inmates on death row.

At the launch of the Social Justice Program, Professor Peter Cashman reported on a number of projects in Australia and internationally that Sydney Law School students participated in over the summer. These included work with

Bridges Across Borders in South East Asia and legal centres in the Middle East with a focus on human rights issues.

‘Closer to home, several students worked with Dr Luigi Palombi of ANU, PIAC, and law firm Maurice Blackburn on an important test case soon to be commenced in the Federal Court. The test case will be a challenge to the validity of the patenting of naturally occurring genetic mutations associated with the development of breast and ovarian cancer in women. It parallels a test case recently commenced in the Federal District Court in the United States by the American Civil Liberties Union and the Public Patent Foundation at the Benjamin Cardozo Law School in New York, with the backing of a large number of public health organisations and individuals’, Professor Cashman said at the launch. *jd*



# ‘Why are you here?’

SULS News by Hannah Quadrio, President

This was the first question I was ever asked at law school. The answers given by my fellow first years were inspiring, and surprisingly similar. For many of us, the decision to study law was based on a concern for others — for the poor, the homeless, the weak, and the oppressed. Having picked up the idea that law could be used as a tool for social justice, we concluded that legal study would be a worthwhile use of our hard-won school marks. To us, law was high-minded, and attractive for that reason.

Many have written and spoken about the commercialisation of the legal profession. Sadly, this trend has extended to law school. The number of students who take up public interest work upon graduating is far lower than the number who proclaim this as their intention in first year. There are several reasons for this. Some students develop an interest in commercial law that they didn’t anticipate in first year. Others are won over by the pro bono work done by the commercial firms. Others are attracted to the training offered, or the clarity of the commercial law career progression. But many graduates head down the commercial path because they have lost sight of the other options. Public interest work can seem vague, and out of reach, when faced with the active recruitment and clear marketing of the commercial sector.

As one of our alumni, Lisa Pryor, has suggested, the conservative nature of law students often exacerbates the situation. We are perfectionists. We are hard working. From high school we have done what is ‘safe’. We have done what we were told. And that’s basically how we ended up here. We are rule-followers, not rebels. We gravitate towards the road *well* travelled.


The Sydney University Law Society (SULS), the law faculty, and the alumni community should be alert to these patterns. Together, we need to cultivate the public-mindedness that students display in first year. Together, we need to illuminate the spectrum of options available

to law students, and give students the courage to do something different. Together, we need to show students that their first year aspirations were not naïve. Sure, there’s nothing wrong with graduates serving the commercial interests of a growing city. But if any community should be high-minded and idealistic, shouldn’t it be us? As the parable of the faithful servant — and John F Kennedy — reminds us, ‘From those to whom much has been given, much is expected’.

The new Social Justice Clinical Course is a step in the right direction. Not only does it bring a practical component to the undergraduate program, it gives students insight into the important work done by organisations like the Refugee Advice and Casework Service and the Public Interest Law Clearing House. It fosters a respect for the practise of law in the public interest. SULS has been actively involved in the development of this course, as well as other initiatives that serve similar purposes. The Women’s Mentoring Program helps female students connect with female lawyers working in areas that interest them. The lunchtime forum series, Perspectives, provides an opportunity for students to hear anecdotes from lawyers working in non-commercial areas of law. The *SULS Careers Guide* has been expanded to include information on social justice-related careers, and a Social Justice Careers Fair is planned for 2010.

Sydney University alumni are critical to the success of these initiatives. We are always in need of more speakers, mentors, and workplaces that share our vision and have something to contribute. We need people who can remind us of the value of the legal profession, and the impact of practise in the public interest.

We all have a part to play in helping students connect why they came here, with where they go next. Getting this right will not only help students, or our profession — it will improve our society.

*Hannah Quadrio is the elected President of SULS. She can be contacted via email, [president@suls.org.au](mailto:president@suls.org.au). *



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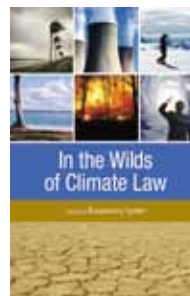
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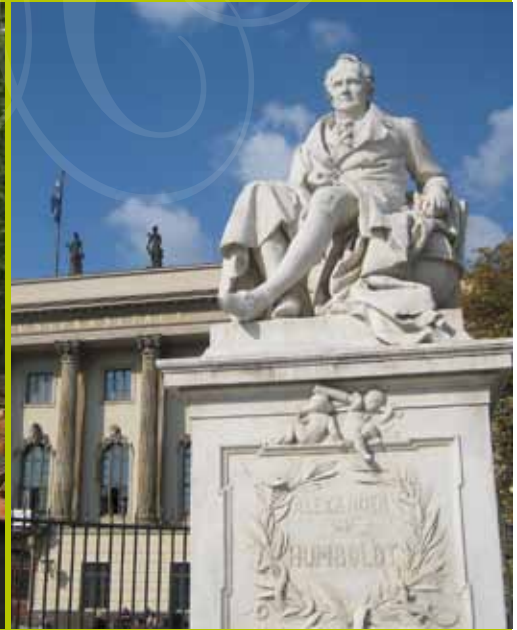
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