The past year has been one of real accomplishment. The Faculty has made substantial gains on every front. It is well positioned to build on those gains in coming years.

Undergraduate Program

At the undergraduate level, our UAI cut-off has increased for the fourth successive year to stand at 99.4. In the last two years, first preferences for Combined Law have increased by almost 36%. Our cut-off is the highest in the state and, although comparisons are difficult, we suspect the highest in the nation.

Simultaneously, our admission standards have increased for all other classes of student. Our Graduate Law class is stronger. And this year we were unable to maintain our 5-point spread from the general UAI cut-off in Broadway admissions (for students who suffer educational disadvantage); we filled our quota (and then some) with only a 3-point spread.

Our international enrolments have increased substantially. This is despite the fact that we have higher language requirements than those at Melbourne or UNSW. We require a score of 7.0 on the English-language test now primarily used, compared to 6.5 at Melbourne and 6.0 at UNSW. We have consciously decided not to chase international dollars by lowering standards. This allows all of our students, domestic and international, to enjoy high-quality classroom interaction.

These results are founded upon the ability and commitment of our staff and the dramatic improvement of our teaching culture. The crucial step was taken in 1997, when we began the move towards small-group teaching.

Financial pressures have caused a modest increase in class sizes, but the great majority still have numbers under 45.

Class sessions are much more interactive than they once were. Student assessments are more varied, weaving argument, analysis and dispute settlement together with the substantive material.

Student satisfaction has improved dramatically. The survey known as the CEQ measures graduate satisfaction. In 1997, our average on the Good Teaching Scale was -6.7 in comparison to a national average of +3.8. In the most recent figures (for 2001), our score had risen to +5.4 (compared to a national average of –0.4).

Even more revealing are the figures from the SCEQ, which takes the CEQ categories and surveys existing students, thus eliminating the time lag. In 2001, our score was +8.9 on the SCEQ’s Good Teaching Scale.

Postgraduate Coursework

We have made similar strides in postgraduate coursework. We already had the largest program in the country, with more than 100 specialised postgraduate units. In 2001 alone, new enrolments increased (from our high base) by more than 50%. We now have more than 1000 postgraduate coursework students.

A number of factors lie behind this increase. We have worked very hard to make our program more flexible. Students need not commit to a Masters. They can do a single unit, if that interests them. If they accumulate four units they qualify for a Graduate Diploma. If they accumulate eight they qualify for a Masters.

On 20 February, the Faculty’s Health Law program held a seminar, chaired by Justice Michael Kirby, on the challenges and controversies surrounding the process of dying and death’s aftermath.

The first speaker was Mr. Bret Walker SC, President of the NSW Bar Association. He spoke about his inquiry into forensic practices at the Glebe Morgue, and his report’s proposals for reform.

He spoke of the difficulty in balancing the complex personal, religious, and cultural meanings of death with the very real benefits to be gained through a regular practice of autopsy. He noted the problem of obtaining meaningful consent at a time when people are most fraught.

He proposed a series of paths through these difficulties, in an attempt to be honest about the challenges and clear on the benefits.

CONTINUED INSIDE BACK COVER…

THE HON. JUSTICE MICHAEL KIRBY CHG AC
PRESIDES AT THE SEMINAR
DEAN’S MESSAGE
CONTINUED

At the same time, we have moved increasingly towards delivery in intensive mode. Rather than being taught week by week, many units are delivered over four or five intensive days, with reading in advance and assessment afterwards. The units function as the equivalent of high quality professional development seminars (indeed, if people wish, they can be taken simply for the CLE points).

The intensive mode also enables us to bring in the finest international and interstate expertise. Last year, for example, Professor John Coffee of Columbia Law School delivered a unit on US Securities Law; Ian Freckleton delivered one on Expert Evidence. This year, Zhu Lange is teaching International Protection of Intellectual Property, Malcolm Gammie, UK International Taxation and Geoffrey Miller (of NYU), International Banking Regulation.

We offer taxation units in-house at the major accounting firms, as part of those firms’ internal system of professional development. We are trialling an IT platform to support this delivery (see page 6).

Increasingly clusters of postgraduate units are developed as programs, supported by advisory boards, and combining CLE activities and conferences with the units themselves. For example, for several years our labour lawyers have organised an annual conference. This not only serves a stand-alone function; it provides a refresher for those long associated with the program.

This year the keynote speaker was Professor Harry Arthurs, Canada’s most distinguished labour lawyer.

Postgraduate Research
One of our core activities is postgraduate research at the masters and doctoral levels. We have had a distinguished presence in this field, but many of our students have been part-time. This has meant that their progress is slow and the students have lacked participation in a strong community of research scholars.

We have therefore worked to build a vibrant community of full-time PG research students. We have created a dedicated workroom for PG research students, with good computer facilities. We have also raised funds for scholarships.

All research students are encouraged to participate in seminars designed to support them in their thesis. Every student has an annual review, so that problems can be identified in a timely way.

The result has been a significant increase in completions. In 2001 we conferred 13 doctorates and can be identified in a timely way.

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International Activities
In all of this, we remain among the most international of law schools. This is not just a matter of international student numbers; other schools have more than we do. It is evident particularly in the scholarly engagement of our Faculty members.

We have consciously developed working partnerships with the best universities overseas. For example, our US undergraduate exchange partners are all in the top tier of US law schools. They include NYU, Cornell, University of Texas (Austin) and Duke.

We have also worked hard to develop units that students can pursue overseas. The oldest of these is our Shanghai Winter School, which introduces students to Chinese law each January in Shanghai. 2003 will be the program’s 9th year. Last year it attracted 62 undergraduate and 14 postgraduate students.

Prospects
We are very well-placed to build upon these achievements. Over the past four years we have reorganised our Faculty to manage our affairs more effectively and give our students better support.

Our finances are in good shape, although inadequate funding remains a real constraint. When I arrived as Dean in 1998, our operating deficit was 10% of the Faculty’s budget. Since that time our government grant has remained static and salaries have increased by something like 12%.

But as the above account makes clear, we have continued to pursue strategic initiatives. Those efforts have paid off. In 2001, we balanced our budget — one year ahead of schedule. The forces that allowed us to do that will continue in 2002 and beyond.

There are dangers. The increasing gap between the quality of our staff and our funding means that we are continually susceptible to losing staff, as academics tire of poor rewards and high demands. Our very international character exposes us to erosion. Other countries are investing heavily in higher education. This year alone we are liable to lose three Faculty members to Canada Research Chairs and another to a research chair in the UK. We are no longer able to hire internationally. We are acutely aware, then, that although we are succeeding, we are doing so under adverse conditions.

New Dean
The coming year will bring further changes to the Faculty. My term as Dean comes to an end at mid-year. I will not accept a second term. I wish to revive my life as a scholar. At the time of writing the process of selecting a new Dean is under way.

That Dean will succeed to a very fine institution — one that has a well-deserved reputation for rigour, public service, and the extension of knowledge. It has a marvellous staff — sometimes fractious but always vital, dedicated, and insightful. Thanks to their efforts, this Faculty continues to make the imaginative and rigorous contributions that are its best tradition.

Professor Jeremy Webber
Dean
A draft master plan for the campus has been developed, which identifies a site for a new Law building and proposes that building as one of four immediate priorities for the University.

The proposed site is a magnificent one — the entire space between the Fisher Library and Carslaw buildings, between Eastern Avenue and Victoria Park. The site would look out over the park to the city. Two existing buildings would be demolished to make way for the new building.

The proposal will be out for consultation during the month of April. If you wish to see the plan, please visit the website at www.usyd.edu.au/campus2010 The plan will be presented for approval about mid-year.

There are still many steps to be accomplished before we can say that the project will definitely go ahead. This is, however, an important beginning.

The Faculty supports a new building for a number of reasons.

First, the existing building is simply too small. Our current operations are severely cramped. We have been unable to pursue worthwhile initiatives because of lack of space.

The space is also inflexible. The most unfortunate aspects of the building — the physical separation of students and Faculty members, inadequate air-conditioning, poor public space, inadequate classrooms — would be immensely expensive to fix.

But beyond these, there are very good reasons for us to develop a new facility on campus. Currently, our undergraduate class is divided. Three-quarters of that class spends its first three years on campus, with limited connection to the Law School and limited access to law lecturers.

Bringing our entire class together in one building would dramatically improve student-Faculty and student-student interaction. Extra-curricular activities would flourish. The student experience would be greatly enriched.

We would obtain a purpose-built facility, which could take full advantage of advances in information technology. We would be able, for example, to design a new Library. We would be able to improve student space. We would develop dedicated areas for our many research centres, which are now poorly housed.

Interdisciplinary work is now impeded by distance, yet there are many areas of actual or potential collaboration — in medical law and bioethics; in environmental law; in international trade and e-commerce; in media law and many other areas. These would be fostered by a strong presence on campus.

We do not want to cut ourselves off from the profession. Two features are crucial in the development of the proposal.

First, we must retain an extensive base in the city. This is especially necessary for our postgraduate programs, where we serve the profession directly and rely most upon professionals in the delivery of our programs. That requirement is now accepted within the University. The existing building would not simply be sold. A base would be developed, either in the existing building or elsewhere, for the expression of the University in the CBD.

We have also sought to develop the building plan so that we can include the profession more fully in the life of the Faculty.

Educating undergraduates is a crucial dimension of our activity, but our role goes well beyond that. Any great Law Faculty also serves as a forum for interaction and reflection for policy-makers, professionals, judges and academics on the themes, trends and principles that run through the law.

We therefore plan to put great emphasis on the inclusion of excellent public space within the Faculty, so that lectures, seminars and conferences will continue to draw our communities together. Indeed, the lack of such space is a primary shortcoming of the existing building.

That space would also allow us to take full advantage of our remarkable alumni, who have made enormous contributions to the law and public life in Australia, and who should have a much larger role in our school.

These are the reasons for the Faculty’s strong commitment to obtaining a new building, in a manner that retains strong links to the profession and lays the foundation for future accomplishment. The current proposal would clearly do that, if it can be brought to fruition. The impact on our Faculty would be incomparable.

It is early days yet, but we will keep you posted as the process develops.
Helen Irving on History, the Constitution and the Courts

Prior to joining the Faculty in mid-2001, Helen Irving researched and published on constitutional and federation history, exploring in particular the political culture of the nineteenth century from which the Australian Constitution emerged. She also wrote on the history of citizenship in Australian culture and law, and was very active in the celebrations surrounding the Centenary of Federation. This research included questions about the way in which an understanding of history informs and shapes our current political and legal institutions.

Her most recent research project has emerged from these particular questions. Supported by an Australian Research Council Large Grant for 2001-2003, her project, ‘Constitutional history, federation and judicial review’, examines the use made by the Australian High Court of Federation history (both secondary and primary) in its judgments.

“My research seeks to identify the patterns of historical interpretation and methodologies of historical research adopted by the Court, and explores the extent to which trends in the writing of Federation history have influenced these patterns,” she says.

“It also considers debates about the role of history in methodologies of constitutional interpretation, and explores whether there is the potential for reaching a balance between ‘originalism’ and ‘non-interpretivism’, for example.

“Furthermore, using Federation history as its point of departure, I wish to demonstrate that a systematic, methodologically informed approach to history is critical for constitutional interpretation.”

Although the project is principally concerned with Australian history and the High Court of Australia, it also draws on studies of the use of history in constitutional interpretation by the United States Supreme Court.

The research reflects Irving’s commitment to a historical and cultural understanding of the law, and to a profound inquiry into Australia’s own distinctive legal culture.

Brett Williams On China and the WTO

Brett Williams joined the faculty in 2001 after spending two years at the Australian National University (ANU) working on the accession of China to the World Trade Organization.

One of the outcomes of that research will be a collection of essays assessing how China will be changed by WTO membership (jointly edited with Deborah Cass of LSE and George Barker of ANU).

Three specific studies by Williams will also soon be in print:

• The impact of the WTO upon the regulation of services in China
• The way that accession will affect the use of state trading companies to restrict imports
• Speculation on how China may influence future directions of the Agreement on Trade Related Aspects of Intellectual Property.

“From a position where a few state trading companies controlled all foreign trade, where there simply was no legal infrastructure for the regulation of business entities and where intellectual property law barely existed, China has raced into the modern international market,” Dr Williams argues.

“The impact of the WTO upon China is a clear illustration of international law helping a domestic government to make changes that would be difficult in the absence of the international legal regime.

“However, the changes will flow both ways — we can expect China to have an impact on the future evolution of the legal rules for world trade.”

Dr Williams believes that this is not just because the WTO will have to mediate the enormous economic adjustments between China and the rest of the world, but because China will now become a major player in every WTO decision.

“After having rejected ‘western economics’ for so long, China will now play a role in determining the theory applied by the WTO — which leads to another subject of my research: the way in which economic theory is embodied in WTO law.”

Now that the new ‘Doha’ trade round has begun, Dr Williams has also returned to the topic which was the subject of his PhD, the application of the GATT to agriculture.

“The European Union can’t avoid major change this time,” he says, “but that’s a whole other story”.

Patricia Loughlan on Intellectual Property and the Public Sphere

Patricia Loughlan’s research focuses on the interaction between intellectual property and the public communicative sphere.

She is especially concerned with the negative impact of intellectual property on freedom of communication.

“Freedom of communication serves,” according to Loughlan, “at least three social goods, namely, the creation of autonomous and self-fulfilled individuals; ‘market-place of ideas’ (which in turn leads to the discovery and promulgation of truth); and a democratic dialogue, by which a representative government informs and is informed.

“Each of these goods is encroached upon and threatened by recent — and possibly unjustifiable — expansions of intellectual property regimes.”

Loughlan’s research aims to track and evaluate the consequences of this encroachment.

In one recent paper, “Copyright Law, Free Speech and Self-Fulfilment”, Loughlan explores the operation of copyright law on parodies.
or appropriative activity where a person cannot express herself without using another person’s work.

In another paper, "The Marketplace of Ideas and The Idea/Expression Dichotomy of Copyright Law," she argues that because the idea/expression dichotomy is indeterminate and largely without legal function or efficacy, it cannot ensure what it purports to, namely the free circulation of ideas or a dynamic, abundant public communicative sphere.

Patricia Loughlan is currently writing a book which applies public sphere theory specifically to areas in which that sphere is put most at risk by existent or emerging intellectual property doctrines, such as:
- Copyright on factual compilations and other databases
- Exclusive rights to make works available on-line
- The expansive definition of confidential information
- The commodification of the celebrity’s persona
- The effect of patent law's novelty rules upon the potential for reparations for Indigenous people in Australia.
- The patenting of computer software

"This aspect requires a consideration of law, policy or practice which might give rise to claims for reparations, distinct from claims arising from the removal of Aboriginal children.

"International experience will assist in rethinking Australian law, policy and practices. For example, there have been instances of reparations for racist atrocities against African Americans that occurred in various states of the USA.

The research is funded by the Australian Research Council and will continue over three years.

**Chris Cunneen: Reparation Schemes for the Gross Violation of Human Rights**

Reparation schemes for the victims of gross violation of human rights have developed significantly over the last 25 years in many jurisdictions worldwide.

In Australia there has been a call for reparations for Aboriginal victims of forcible removal from their families (the Stolen Generations).

So far claims for compensation through the courts have been unsuccessful and neither State nor Federal Governments have provided reparations.

Chris Cunneen’s research analyses the international experience of reparations.

Responses to human rights violations include truth commissions, inquiries, apologies, statements of reconciliation, memorials and site preservation, national monuments and commemorative holidays, educational programs, scholarships, compensation funds, healing funds, medical services, access to land and resources, and so on.

“The extent to which these processes are seen as legitimate either by victims or commentators varies widely,” he says.

“My research considers the effectiveness of the approaches and the applicability of these models to the Australian context.”

The final area of his proposed research concerns itself with expanding the horizons of the potential for reparations for Indigenous people in Australia.

“This aspect requires a consideration of law, policy or practice which might give rise to claims for reparations, distinct from claims arising from the removal of Aboriginal children.

“International experience will assist in rethinking Australian law, policy and practices.

“Recent actions by coastal states suggest that greater constraints are being imposed on international shipping passing through coastal waters as a result of states’ concerns for the impact of shipping on national and environmental sovereignty.

“This has significant ramifications for Australia and my research seeks to resolve the competing interests of coastal states and maritime states.”

The recently established International Tribunal on the Law of the Sea has also become an important focus of Rothwell’s work.

In November 2002, Rothwell, in conjunction with colleagues from the Netherlands Institute for the Law of the Sea (NILOS), is convening an international workshop on dispute resolution to be held in Sydney.

The workshop will highlight the jurisprudence of the new Tribunal and its implications for the region.
LEADERSHIP IN TAXATION

Under the leadership of Richard Yann, the Faculty of Law at the University of Sydney has had a remarkable presence in the field of taxation. There are few, if any, universities in the world that can match it in terms of depth of expertise and comparative perspective.

That tax team has just become stronger.

In mid-year, Graeme Cooper joins us from the University of Melbourne in the Faculty’s second Chair in Taxation Law. A member of Faculty from 1987 to 1997, Professor Cooper has a remarkable publication record and is a well-respected scholar and teacher of taxation law.

He also has strong international credentials. Among other things, from 1995–97 he worked in the Fiscal Affairs Division at the OECD in Paris, providing technical assistance and training to former socialist countries in Europe and Asia.

He has also worked as a Consultant on tax matters for the International Monetary Fund and the Australian Taxation Office.

In other related staff appointments, Lee Burns has been appointed Sesquicentenary Associate Professor in Taxation. Lee’s specialist areas are international taxation law and policy and the tax systems of developing countries. His research on globalisation and tax law was featured in a previous issue of the Law School Reports.

Rebecca Millar has also joined the Faculty following several years at Ernst & Young. Rebecca specialises in the GST and the R & D tax concession.

Our taxation units are now delivered in-house at the major accounting firms. Deloitte Touche Tohmatsu is set to join Andersen and PricewaterhouseCoopers in taking advantage of this unique opportunity.

Furthermore, the Faculty is developing online delivery as an adjunct to face to face teaching, using the Taxation area as the model upon which to base future efforts in other areas of our postgraduate program. Jenny Gage, who previously consulted for KPMG, is a newly appointed lecturer for this project. Celeste Black, who previously undertook this role, is now teaching on a fractional basis in the tax program and will progressively become full-time over the next few years.

CONTINUED INSIDE BACK COVER...

JULIUS STONE INSTITUTE OF JURISPRUDENCE

The Julius Stone Institute is preparing a strong program of activities this year. The Julius Stone Address for 2002 will be delivered on August 1st.

The speaker will be Professor Patricia Williams, from Columbia University, who for twenty years has been one of the central figures in the development of critical race theory in the US.

“The Alchemy of Race and Rights, in particular, was a book whose careful scholarship and personal narrative profoundly influenced a generation of law students and academics,” said Director of the Julius Stone Institute of Jurisprudence, Associate Professor Desmond Manderson.

“Professor Williams is a major figure in legal theory and her lecture is sure to attract a diverse and appreciative audience.”

“That address will also serve as an occasion to celebrate the endowment of the capital sum to support the Julius Stone Address in perpetuity. We are very grateful to the Education Heritage Foundation for its generosity.”

The second half of the year sees the debut of the Macquarie Bank Lectures, a major series of lectures which the Institute anticipates will be given national publicity and broadcasting by the ABC.

This year’s theme is on the subject of Biotechnologies. While the speaking list has not yet been finalised, it is set to include Dame Marilyn Strathern, Professor of Anthropology at Cambridge and a major figure on law and reproductive technologies (who will be visiting in September); and Professor Peter Singer, one of the best known and indeed controversial of modern philosophers (whose visit to the Institute is scheduled for November).

“This series will strongly promote the Julius Stone Institute as a home for public intellectual activity in law,” Associate Professor Manderson said.

The Institute will continue to encourage and introduce new work in law and philosophy. With the generous support of the Faculty’s Parsons scheme, in June, the Institute will host Professors Jeanne Schroeder and David Carlson from Cardozo Law School, New York.

Both are leading writers on the work of Lacan and Hegel respectively. Professor Schroeder will present a seminar on her latest work on Lacan and legal practice, and the Institute is also planning a one-day symposium on Psychoanalysis and Law to be led by its visitors.

“This is a controversial and misunderstood area of legal research, and the event will attract graduate students and academics interested in grasping these themes from throughout the Sydney region.

“It follows in the tradition of similar specialised and highly successful symposia, built around previous visitors to the Faculty, including the workshops on Levinas (2000) and property theory (2001).”

For further information, please contact Mr. Greg Sherington, +61 2 9351 0202
CLAYTON UTZ LECTURE IN INTERNATIONAL COMMERCIAL ARBITRATION

The inaugural Clayton Utz International Arbitration Lecture will take place on Tuesday, 11 June 2002 at the Banco Court, Supreme Court of New South Wales.

This lecture has been instituted by Clayton Utz and the University to promote the study and practice of International Arbitration. The first of these annual lectures will be delivered by The Right Honourable Lord Mustill.

Following a distinguished career as a Commercial Court Judge of the High Court and as a Lord Justice of the Court of Appeal, Lord Mustill sat as a Lord of Appeal in Ordinary in the House of Lords from 1992 until his retirement in 1997.

As well as delivering many opinions on leading cases, Lord Mustill has, over the course of his career, been a leading figure in the development of commercial arbitration - in particular, international arbitration.

He is the co-author of one of the leading textbooks on the subject, Mustill and Boyd on Commercial Arbitration. He was the British delegate to UNCITRAL (United Nations Committee on International Trade Law) in its drafting of the UNCITRAL Model Law on International Commercial Arbitration 1985 and he sat as the Chairman of the Departmental Advisory Committee to the Secretary of State for Trade and Industry when it drew up a report on reform of English arbitration law in 1989.

The report was one of the influences behind the ultimate adoption of the 1996 Arbitration Act in England. Amongst many positions he currently holds, Lord Mustill is the President of the British Maritime Law Association, the President of the UK branch of the International Law Association and a visiting professor in the Law Faculty of Cambridge University.

ROSS PARSONS ADDRESS IN TAXATION, CORPORATE & COMMERCIAL LAW

This year, The Ross Parsons Address will be delivered by Professor Richard M. Buxbaum, Jackson H. Ralston Professor of International Law, University of California at Berkeley School of Law. Professor Buxbaum publishes in the fields of corporation law and comparative and international economic law, and since 1987 has been editor-in-chief of the American Journal of Comparative Law. Buxbaum founded and was the first chair of UC Berkeley’s Centre for German and European Studies and the Centre for Western European Studies. From 1993 to 1999, he was dean of international and area studies at UC Berkeley.

Professor Buxbaum was one of the five defense counsel in the criminal proceedings against the 773 members of the Free Speech Movement from 1964 to 1967, represented various campus organizations and individuals in cases arising out of Vietnam War protests, and was defense counsel in a large number of criminal proceedings that accompanied the Third World Strike of 1969-70, which was a factor in the development of affirmative action programs for student admissions on the campus.

He has served on various state and national committees engaged in the drafting and review of corporate and securities legislation. He holds honorary degrees from the Universities of Osnabrück and Eötvös Lorand Budapest and was awarded a 1992-93 Humboldt Award for Humanities and Arts by the Alexander Von Humboldt Foundation in Germany. He was elected to the American Academy of Arts and Sciences in 2001.

“We are enthralled to have a visitor of Professor Buxbaum’s stature delivering this year’s Parsons Address,” said Professor Richard Vann of the Law School. “His experience and knowledge will no doubt equate to an entertaining and significant address.” The Address will be held on July 23rd. For further information, please contact Greg Sherington, +61 2 9351 0202.

ENTREPRENEURIAL BUSINESSES & THE LAW

A leading scholar in the areas of entrepreneurial businesses and venture capital in the information age, Professor D. Gordon Smith of Vanderbilt University Law School, USA, visited the Faculty in November 2001. A visitor under the University’s International Faculty in Corporate, Securities and Finance Law, Professor Smith delivered an intensive course and spoke at a Conference on Entrepreneurial Businesses and the Law. “Entrepreneurial businesses have many interesting legal implications that involve securities regulation, intellectual property, trade practices, corporate governance, employment practices, remuneration, and tax,” said convenor, Professor Jennifer Hill. “Despite recent difficulties in the technology sector, the rise of high technology companies in the US has provided a blueprint for entrepreneurial activity in a wide range of areas, including telecommunications and biotechnology. We were very fortunate to have an expert like D. Gordon Smith to provide the latest commentary.”

THE HON. JUSTICE KEITH MASON QC PRESENTS THE TROPHY TO THE SYDNEY TEAM

JOHN PEDEN MOOT

The University of Sydney narrowly defeated Macquarie University in the 2001 John Peden Moot held in October. While the Macquarie team secured judgement for its side, Sydney won the moot. The Hon. Justice Keith Mason QC, President of the New South Wales Court of Appeal, and Professor Rosalind Atherton, Dean of Law at Macquarie, presided.

CONTINUED OVER...
NEWS UPDATE CONTINUED

VISITING GERMAN JUDGE AGREES WITH TAMPA DECISION

The Federal Court of Australia was correct in its ruling on the “Tampa Case” that the Howard government was not obligated to release Afghan refugees onto the mainland of Australia, according to German magistrate, Harald Dörig, who visited Sydney in December under the auspices of the Australian German Lawyers Association (AGLA).

Justice Dörig, of the Federal Administrative Court of Germany, believed the German courts would have handed down the same decision. “The German Asylum Procedure Act gives the government similar powers to the Australian Migration Act to detain and remove foreigners without a right of entry,” Justice Dörig explained. “Human rights are of high value, but are granted only to people who are already on the territory of the state where they are seeking asylum. A minimum human rights standard is only guaranteed to refugees at the border of a state if there is actual danger to life. The Australian government fulfilled this standard when they granted medical care to the refugees and safely brought them to Nauru Island,” Justice Dörig argued.

Justice Dörig’s lecture, “Judicial Review of Public Administration in Germany”, presented three cases to illustrate how the system of judicial review operates in Germany. While the first example concerned the “Tampa Case,” the remaining instances dealt with the September 11th terrorist attacks on the United States and Germany’s reunification in 1990.

“With regard to the legal consequences of reunification, the evolving questions of property have been a great challenge to the German courts owing to Germany’s previous division along democratic and communist lines,” he said.

Justice Dörig is also Professor of Law at Friedrich-Schiller University, Jena, Germany. He has published extensively on questions of public law and has great expertise on a broad range of critical legal issues.

FACULTY CONSOLIDATES LINKS WITH CHINA

In March, the Faculty played host to two important Chinese delegations. The first was led by Luo Haocai, Vice-Chairman of the Standing Committee of the Chinese People’s Political Consultative Conference, former Supreme Court Justice and former Dean of Law at Beijing University. The second was a delegation from the China University of Politics and Law (CUPL). The Dean will visit CUPL in Beijing in May to speak at its 50th Anniversary celebrations.

PROPERTY LAW & THE ASIA PACIFIC

The Law School’s Associate Professor Peter Butt recently returned from the Far East where he has been involved in a number of property law-related projects.

“I returned from Mongolia, where I advised on amendments to the Mongolian Land Law of 1994,” Professor Butt said. “The Mongolian parliament is considering adopting a ‘perpetual lease’ system similar to that used in Australian pastoral leases, as a means of giving long term tenure to farmers (or, in Mongolia, herdsmen) without actually depriving the state of the underlying ownership of the land.

“The parliament is also considering granting ownership of land to people in cities and towns. Having been a communist country, for most Mongolians ‘ownership’ of the land is still a novel concept.”

Professor Butt advised on both the concepts and the way in which they could be incorporated into Mongolian law consistently with the Mongolian Constitution and the Civil Code.

“Most notably, I experienced first-hand what it means to live in the world’s coldest capital city, Ulaanbaatar.

Daytime temperatures were -15ºC, falling to -30ºC by night. And the Mongolians were saying that this was one of the mildest winters for many years!”

Professor Butt also visited Hong Kong in February, where he delivered a public lecture, the Eric Au Memorial Lecture, at the University of Hong Kong. His lecture considered the assumptions that lie behind the modern movements towards the use of plain language in law. He also presented a workshop to Hong Kong legislative drafters on the techniques of plain language statutory drafting.

Publications

Mary Crock and Ben Saul FUTURE SEEKERS: Refugees and the Law in Australia. Federation Press 2002

This book sets out in a clear and simple manner the legal, administrative and political procedures governing refugee claims made inside Australia. It collects statistics and other basic information relating to refugees, asylum seekers and illegal migration, placing Australia’s experience in an international context. It explores some of the common understandings about refugees and illegal migrants so as to assist people to make their own assessment of the facts and fictions that characterise the debate on refugees in Australia. It demonstrates how it is possible to balance Australia’s international commitment to protecting human rights against domestic concerns about safeguarding Australia’s borders.

Shelley Wright International Human Rights, Decolonisation and Globalisation-Becoming Human. Routledge 2001

The analysis of human rights to date has lacked a truly deep and complex awareness of historical context in which they developed. Examining the ‘humaness’ of rights, this book redresses the balance by demonstrating how the characterisation of this humanity from a Euro-American perspective shapes the content and implementation of international human rights law. Covering a diverse range of topics, case studies and theories, the book undertakes a critique of the principal assumptions on which the existing international human rights regime has been constructed. It argues that the decolonisation of human rights, and the creation of a global community that is conducive to the well-being of all humans, will require a radical restructuring of our ways of thinking, researching and writing.
THE LAW ACCORDING TO TAKEOVERS

Professor Robert B. Thompson is one of the leading scholars in the United States in the areas of corporations law, corporate finance and securities regulation.

A recent guest of the University of Sydney’s International Faculty in Corporate, Securities & Finance Law Program, he taught an intensive course on International Mergers & Acquisitions, and delivered the keynote address at a special Forum on Takeovers.

“This Forum provided an excellent opportunity to bring together a range of experts to assess current and future trends in takeover law, both at a national and an international level” said Convenor, Professor Jennifer Hill.

“The changes to takeover regulation under the CLERP Act 1999 and the new role of the Panel have been significant. In our evolving regulatory environment, it is inevitable that international takeover principles will have an impact on the future development of Australian law.”

“In delivering his paper, ‘Takeover Regulation After the ‘Convergence’ of Corporate Law’, Professor Thompson focused on whether corporate law was converging into one dominant model within a competitive global capital market. “There seems little doubt about the growing globalisation of competitive global capital market. “There seems little doubt about the growing globalisation of competitive global capital market. “There seems little doubt about the growing globalisation of competitive global capital market.”

According to Professor Thompson, two distinct sets of interests are woven into takeover regulation – “a relationship between the bidder company and the shareholders of the target, and a separate but necessarily overlapping relationship between the shareholders of the target and their own management”. A perennial question in takeover regulation involves the amount of discretion that should be accorded to corporate management in the face of a hostile takeover.

Professor Thompson expressed a preference for increased reliance on shareholder self-help in resolving disputes about the extent of takeover regulation.

“Any discussion of takeover regulation should protect existing shareholders and their companies against corporate raiders. For the most part, this purpose has been achieved in the various legal systems where takeovers are common, so that controls on managerial discretion now dominate discussion”.

According to Professor Thompson, the alternative regimes being developed in Australia, the United Kingdom and other common law countries do a better job in protecting shareholder space to make corporate decisions than the US model, which still accords managerial decisions a high level of deference.

“We may yet have convergence on one corporate law system, but at the moment the divergence in the discretion permitted to shareholders appears to be a notable characteristic of our global corporate law system.”

Professor Thompson holds the New York Alumni Chancellor’s Chair in Law at Vanderbilt University Law School. Prior to taking this position, he was George Alexander Madill Professor of Law and Director of the Centre for Interdisciplinary Studies at Washington University School of Law.

“We are looking forward to our next visitors in the International Faculty in Corporate, Securities & Finance Law Program,” Professor Hill said.

“Professor Geoffrey P. Miller, of New York University (NYU) is set to teach an intensive course on International Banking Regulation in July 2002, and Professor Donald C. Langevoort, of Georgetown University Law Center, Washington will teach a course in Securities Regulation the following year”.

Australian German Lawyers Association (AGLA)

“The purpose of AGLA is to encourage and promote understanding and collegiality among the legal professions in Australia and Germany,” said founder Associate Professor Alex Ziegert.

“As the boundaries between countries disappear, it’s vital for a discipline such as law to exchange ideas and discussion in an international as well as a domestic context.”

Formed in 1996 by a group of Australian and German lawyers, the Australian German Lawyers Association (AGLA) seeks to promote educational and work exchange programs between the two countries.

“We wanted to foster and deepen an interest in Australian law for German lawyers and equally an interest in German law for Australian lawyers,” Professor Ziegert said.

“AGLA provides a forum for dialogue and seeks to inspire transformation of the legal environment in both countries.”

AGLA provides a wealth of information for practitioners and students of law through the organisation of lectures, meetings and seminars, both in Germany and Australia, together with the co-ordination of exchange programs and job opportunities.

Most recently AGLA has welcomed an influx of “Rechtsreferendare” or German junior lawyers.

“We are all students who have completed our university studies in law,” said current Rechtsreferendar, Stephanie Ollmetzer.

“We enrol in a State sponsored program for two years where we receive practical training and then complete a final exam in order to qualify for admission as a legal practitioner. In the final months of the program, we are given a choice which includes placement overseas.”

“AGLA provides German junior lawyers with assistance in finding the

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most appropriate firms for an Australian internship,” said Associate Professor Ziegert.

“Along with the Referendar Service, AGLA deals with various other issues. For example, finding a lawyer in Germany who has been admitted to the legal profession in New South Wales or determining how to become a beneficiary of the recently enacted compensation scheme for victims of forced labour under the Nazi regime.”

For further information about AGLA, please contact Associate Professor Alex Ziegert on +61 2 9351 0276 or e-mail: alexz@law.usyd.edu.au

The most recent title is ‘Indigenous Human Rights’, which was launched in December 2001.

This is an edited collection of articles by Australian and international writers including James Anaya, Chris Cunneen, Elizabeth Evatt, Bill Jonas, Terry Libesman and Peter Yu. Sam Garkawe, Loretta Kelly and Warwick Fisher edited the collection, all members of staff at the Law School at Southern Cross University.

This publication can be purchased from The Federation Press or the Institute of Criminology.

The Monograph Series continues to grow with at least three publications scheduled for 2002.

The first of these is ‘When Police Unionise: the politics of law and order in Australia’. This is a critical appraisal of the politics of law and order in Australia, seen from the perspective of police in their role as workers and employees.

The book helps us understand why police have the voice they do in public debates about crime, justice and policing — and why their impact is nevertheless limited by the play of politics in contemporary Australia.

The book’s author is Mark Finnane, a Professor of History and a leading historian of Australian policing and criminal justice.

Mark’s previous books include ‘Police and Government: Histories of Policing in Australia’ (1994) and ‘Punishment in Australian Society’ (1997). He is currently Dean, Postgraduate Education at Griffith University.

The second title to be published in the Monograph Series in 2002 is ‘The Legal Regulation of Racial Vilification in Australia’ by Luke McNamara.

This book examines the range of models of legal regulation which have been adopted in Australia to deal with various forms of racial vilification—including criminalisation, civil liability via the human rights dispute resolution system.

It reviews the history and current operation of all relevant federal, state and territorial laws, via an examination of relevant reports, legislation, parliamentary debates, statistical data, and judicial and quasi-judicial decisions.

The factors that have influenced the choice of different legislative models for the regulation of racial vilification are identified, and the implications of the choices are discussed.

In particular, this book analyses the impact of free speech and values on the initial choice and subsequent modification of regulatory models by legislatures, and on the application and interpretation of relevant legislation by human rights agencies, prosecuting authorities, tribunals and courts.

Both these titles will be available in the first half of 2002. Check out our web site or contact us for further information on these or other activities of the Institute of Criminology.

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INSTITUTE OF CRIMINOLOGY

The Sydney Institute of Criminology Monograph Series was initiated in 1992. Since then 14 titles have been produced.
He suggested that a concept of “non-objection” to autopsy might be more appropriate than a full notion of consent by next of kin. He emphasised the continuing health benefits to be gained from the proper use of cadaveric tissue.

“Basic scientific values and statistical insights are current strong justifications for more compulsory taking and use of cadaveric tissue. [Thus] the decline in autopsy rate should be more alarming than it has been.

“The present generation should not be complacent as to the information yet to be gained for present and future good, for the living, from the dead.”

The second part of the evening launched Angels of Death: Exploring the Euthanasia Underground (Melbourne University Press) by Dr Roger Magnusson of the Faculty.

The book was launched by Justice Michael Kirby (who did double duty in chairing the evening). He praised Dr Magnusson’s book for its balance and its examination of the actual practice of euthanasia.

The book reports findings from interviews with people involved in what Magnusson calls the “euthanasia underground”. It gives the participants’ arguments, explores their motivations, and recounts the practice (the botched as well as the successful attempts).

There was vigorous discussion, especially following Bret Walker’s talk, which involved participation by people associated with the Glebe Morgue. The evening was rigorous, fascinating and profound. And as always, Justice Kirby chaired it with grace and wisdom.
1975 (LLB) Jim Robinson  
Admitted to practice in New South Wales, 1975. Admitted to practice in Victoria, 1977. Partner, Best Hooper, 1982 to present. UIA – Member, Australian National Committee, 1998 to present; Regional Secretary, Oceania since 2000. Jim married another University of Sydney student in 1973 whom he met as a member of the cast of Nick Enright’s SUDS production of Marat/Sade in 1971. They have two children, born in 1982 and 1985 respectively.

1988 (LLB) Paul Porteous  
Paul recently returned from the USA where he was working as a Leadership consultant on the US Education System through the Centre for Public Leadership at Harvard University. His international experience also includes a senior diplomatic position in the Australian Embassy in the Netherlands and representative to numerous international conferences including the United Nations and the International Court of Justice. He will be taking over the mantle of Director of the Sydney Leadership Program.

1990 (LLB), 1994 (LLM) Stuart Kaye  
In the last edition of the Law Reports, Stuart informed us that James Cook University appointed him as professor of law. In June of this year, Stuart will take up the post of Professor and Dean at the Faculty of Law, University of Wollongong.

1991 (LLB) Scott Nixon  
Scott returned to Sydney after almost a decade in Oxford. He has now reached the giddy heights of being a graduate trainee at Blake Dawson Waldron. Meanwhile, he pushes on with his plan to edit obscure seventeenth-century poets. Scott and his wife Jilliane Seymour (married 1993) are enjoying the novelty of Sydney sunshine, and are looking forward to meeting friends old and new.

1994 (LLB) Ben Powell  
Ben is an Indirect Tax Adviser for Andersen in the city of Bristol, United Kingdom

1995 (LLB) Athena Scott  
Athena is a solicitor at Gadens Lawyers.

1995 (LLB) Philippe Gray-Grzeskiewicz  
Philippe is a Barrister based at Wentworth Chambers.

1996 (LLB) (Hons.) Justin Hogan-Doran  
Justin returned from 5 years abroad, including 2 years in the Netherlands with the War Crimes Tribunal in The Hague and 2 years at Oxford University where he read the B.C.L. and M.Phil. in Law, focusing on international law and cyberspace regulation. He is currently working in the Financial Service Practice Area of the Boston Consulting Group in Sydney.

1996 (LLM) Pakorn Nilprapunt  
Pakorn is now Director of the Economic Law Development Institute (ELDI) in Bangkok, Thailand, responsible for research into economic law.

1996 (LLB) Deborah Siddoway  
Deborah is a solicitor for CMS Cameron McKenna in London.

1997 (LLB) Yi Lin Chua  
Yi Lin is an Attorney at Simpson Thacher & Bartlett in New York.

1997 (LLB) Kimberlee Weatherall  
Kim is now a Lecturer at the Faculty of Law, University of Sydney.

1998 (LLB) Donald Chan  
Donald is an Associate at ING Baring Securities (Japan) Ltd. He lives and works in Tokyo.

1999 (LLM) Mo Browning  
Mo works at Sidney Austin Brown & Wood in London.

2000 (LLB) Olivia Cheng  
Olivia works for Freshfields Bruckhaus Deringer in Hong Kong.

2001 (MHL) Ron Lalji  
Ron is a member of the medical staff at Royal Alexander Hospital in Edmonton, Alberta, Canada.

2001 (LLB) Kate Morton  
Kate is in the Sydney offices of Tress Cocks & Maddox.

IN MEMORIAM  
1927 (LLB)  
The Hon. Sir Richard Kirby AC  
One of the great figures of Australian industrial arbitration, Sir Richard Kirby passed away in October 2001.

Wayne Thomas Westling  
Former Senior Lecturer at the Faculty of Law, University of Sydney, Wayne Westling passed away in August 2001. Wayne’s association with the Law School commenced as lecturer in 1972. He taught Torts, Criminal Law, Criminology and Law and Social Justice during his time here. He was promoted to Senior Lecturer in 1975. He returned to teach in the United States where he held a post at Loyola University Law School before he joined the University of Oregon School of Law as Professor and Director of Trial Practice in 1979. He was an instructor for the National Institute For Trial Practice in the United States, teaching continuing education classes to lawyers from Seattle to San Diego. He visited the Faculty regularly during his sabbaticals and we remember him as a great colleague, upbeat, energetic and positive. His wife and two children, one of whom, Erika, is Australian-born, survive him.