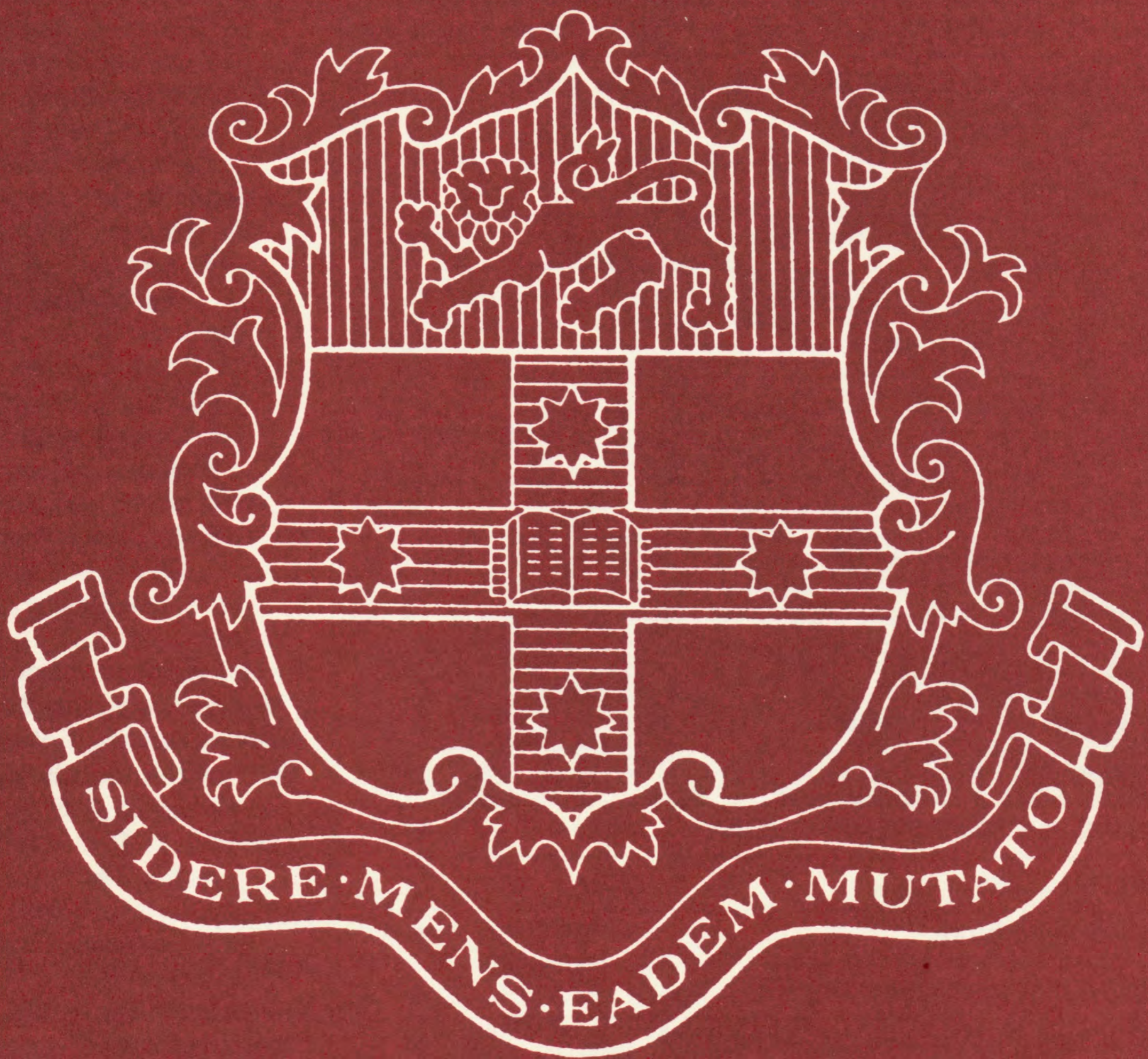


# THE SYDNEY LAW SCHOOL REPORTS



**VOLUME 2, NUMBER 3, 1993**



# CONTENTS

## CONTENTS

CONTENTS & CONTRIBUTORS	2
SYDNEY GETS A NEW DEAN	3
WOMEN IN LAW	4
GRADUATION ADDRESS	6
PRELIMINARY EYEWITNESS REPORTS	8
PROFESSOR PATRICIA APPS	9
DEAN'S REPORT	10
ALLEN ALLEN & HEMSLEY VISITOR	11
SPONSORS	12
SYDNEY LAW SCHOOL FOUNDATION	13
LEGAL RESEARCH AT SYDNEY UNIVERSITY	14
AUSTRALIAN FEMINIST ANALYSIS OF LAW	15
ENVIRONMENTAL LAW	16
ADMIN STAFF ON EXCHANGE	17
A NATIONAL VOICE FOR YOUTH	18
POSTGRADUATE STUDIES	20
CENTRE FOR ASIAN AND PACIFIC LAW	21
CRIMINOLOGY MONOGRAPHS	22
ASSISTING THE DEVELOPING WORLD	23
TAXING MATTERS	24
SYDNEY LAW REVIEW	25
CENTRE FOR JURISPRUDENCE	26
VIETNAMESE LAWYERS VISIT LAW SCHOOL	28
PLACEMENTS	30
WAR VETS RECEIVE DEGREES IN GREAT HALL	31
CONTINUING LEGAL EDUCATION	32
SPANOS & MELROSE SCHOLARSHIPS	33
ON THE MOVE	34
VISITORS	35

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# SYDNEY GETS A NEW DEAN

**A**t the beginning of 1994, Professor David Weisbrot, Sydney's newly appointed Dean, will take up office.

Selected from an international field, Professor Weisbrot has an established reputation as a scholar in criminal law, legal education and the legal profession and Pacific Islands legal systems. He is the joint author of a widely acclaimed casebook on criminal law and process and the author of the book *Australian Lawyers*, published in 1990.

David Weisbrot was educated at Queens College, City University of New York and at the University of California, Los Angeles. In 1976, he joined the Law Faculty of the University of Papua New Guinea and from 1978 to 1979 was Dean of the Faculty. He left Papua New Guinea to join the Faculty of Law at the University of New South Wales where he was promoted to Associate Professor in 1988. Since August 1990, he has been the full-time Commissioner on the New South Wales Law Reform Commission where he has been responsible for references on Scrutiny of the Legal Profession; Criminal Procedure; Neighbour and Neighbour Relations; Blasphemy; Common Law Crime; Defamation; Anti-Discrimination Law;

Persons with Intellectual Disabilities and the Criminal Justice System and the community Law Reform Program. For the last two years he has also been a Professorial Fellow in the Faculty of Law at the University of Wollongong.

Over recent years, his law reform work and his expertise in the laws of Pacific Island countries have led to his

Papua New Guinea Law Reform Commissions and will be one of four foundation part-time Commissioners on the newly formed Fijian Law Reform Commission. He was also recently appointed a member of the Access to Justice Advisory Committee which will report to the Commonwealth Attorney-General and to the Minister of Justice.



*Professor David Weisbrot, Sydney University Law School's new dean.*

appointment to a number of important advisory and consultancy positions. They include membership of the Aboriginal Justice and Law Reform Committees of the New South Wales Law Society and the Justices Act Review Select Committee. He has been a consultant to the Victorian and

After an international selection process, the Faculty looks forward to David Weisbrot's arrival and to a period of energetic leadership which he is sure to bring to the Deanship.





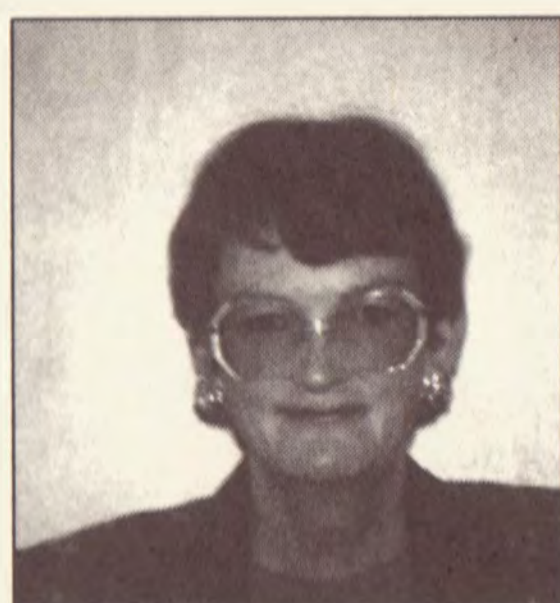
*An Occasional  
Address by Justice  
Jane Mathews of the  
Supreme Court of  
New South Wales, at  
the Faculty of Law  
Graduation  
Ceremony, Saturday  
1 May 1993.*

**I** should first like to congratulate all of you who have just received your degrees and to say how delighted I am to have the opportunity to address you today. I am reminded immediately of my own graduation, in this same Great Hall approximately thirty years ago. It is a memory which, I am afraid, is dominated by my recollection of the very long and extremely boring occasional address delivered, coincidentally, by a Supreme Court judge. I shall try on this occasion to save you from a similar memory.

The intervening years have seen some extraordinary changes, in society generally and in legal studies in particular. The most obvious one, which is of particular interest to me, relates to the number of women now

studying law. When I graduated there were, as I recall it, four or five of us women in quite a large graduating class. And all of us faced extraordinary difficulties in obtaining employment. No anti-discrimination legislation to protect us then: prospective employers would and did openly announce that they would have a woman solicitor employed in their office over their dead bodies — and they meant it.

Because the position of women in law is an area of particular interest to me, I hope you will forgive me if I say a little more about it.



*Justice Jane Mathews*

It is a very positive and encouraging sign that so many women are now choosing to study in previously male dominated fields such as the law. But it is not enough to study a subject. You must also work in it — indeed in the centre of it — in order to make any impact upon it. One matter which disturbs me considerably is that in spite of the number of women graduating in law, very few are choosing to go to the bar. Career paths in the law have diversified greatly in recent

years, but nevertheless the bar remains the traditional track through which lawyers tend to achieve prominence either as practitioners or as judicial officers. Whether this will continue to be so remains to be seen, but I would like to see more women involved in the decision as to whether it does continue. As it is, there are virtually none. And the fact is that in the last twelve months, whilst many women have become admitted as solicitors, only fifteen of the one hundred and two new entrants to the bar have been women.

Obviously the reasons for this are numerous and complex. Times are hard generally at the moment, and they are particularly hard at the bar. It is a considerable risk for a young lawyer to take, particularly when the whole future of the bar hangs in the balance. And one has to work at it very hard indeed — it is not easy to combine the bar with domestic responsibilities. I am certain also that many women are discouraged because they perceive this male dominated domain to be a hostile working environment. Many, I have no doubt, disapprove in principle of the highly structured hierarchical system which characterises the bar and indeed such characterises the legal profession generally. These structures are entirely the making of men, with no female input whatsoever. What's more the preferred style of advocacy at the bar often seems to place a premium on competitiveness and aggressiveness — traits which many women find offensive.

There is no doubt that women are capable of making a



difference, both in the substance and the structures of the law, whether as practitioners or as judicial officers. But they have to be there first. Just speaking for a moment of the differences which women can make to the substance of the law: in the United States, where there is a sufficient number of women judges to enable a comparison to be made between men's and women's judgments, they have found that most areas of the law are gender neutral, in that there is no significant difference between the decisions made by men and women. This is as you would expect it to be, for the law is generally based upon common sense. However there are certain areas, which I shall describe as "gender charged", where feminist issues are involved and where women have indeed been shown to give significantly different judgments from men. They are much more likely in these cases to understand the feminist issues involved and to tailor their judgments accordingly. And the interesting thing is that these gender charged areas, where women judges do make a difference, are precisely those areas where numerous task forces in the United States and Canada have uniformly found women litigants to be at a disadvantage within the legal system. I speak here of areas such as family law, domestic violence and sexual assault; although it would be a mistake to attempt any complete categorisation, for gender charged issues can always arise in cases which on their face

appear to be entirely gender neutral.

*You cannot have any impact upon the values or the substance of the law, let alone its structures, from a distance.*

This then becomes a much wider issue — of concern to all of us. If there are pockets of the law where fairness and justice are not being achieved then it is no longer a matter of a sectional or feminist interest but a matter of concern for all lawyers.

It is very easy for me to talk about this. But we really must all be doing something about it. And that is where you new graduates come in. And I am talking here not only to the females amongst you but to all of you who care about issues of fairness and equality under the law.

You cannot have any impact upon the values or the substance of the law, let alone its structures, from a distance. You must get there into the centre of legal practice before you can exert any true influence on the future of the profession.

One of the many advances which have been made over the last thirty years is that we are now much more concerned

about these issues. Not only gender issues, but questions of fairness and equality under the law. Human rights were not even thought about in my student days, let alone being the subject of legislative protection. Learning the law was a black letter exercise, in which you literally learnt what the latest authorities provided and then set about applying them. There were no subtleties, except occasionally intellectual ones. Certainly there was no questioning as to whether the law was achieving its desirable ends, or even — except in an abstract sense — what those ends might be. Imagination was stifled out of us.

You who have graduated today have been much more fortunate. You have had the benefit of an education which has encouraged you to question everything at all stages, and particularly to question whether the law is justly and fairly achieving the ends to which it aspires. You are much more enlightened than we ever were. Please maintain that. Please maintain your idealism and your questioning. Do not let the profit motive, or — perhaps an even greater danger — the humdrum, beat you into acceptance of the status quo.

I am sure that you will all have most satisfying and fulfilling professional lives no matter how you choose to use the degrees you have now received. I wish you all every success for the future.

As you rise to that challenge, my best wishes and congratulations.



*Occasional Address  
by Professor Ronald  
Clive McCallum,  
Blake Dawson  
Waldron Professor in  
Industrial Law,  
delivered at a  
graduation ceremony  
held on 1 May 1993.*

**M**ay I begin this address by offering my hearty congratulations to our graduates in both law and in business administration. May I also congratulate all parents, spouses, children and friends who are assembled here today to bear witness on this special occasion. I know that without the backing of my late mother, I would not have made it through my years of tertiary education. So, may I give a special salute to all the mums and dads in the audience.

I am greatly honoured to have been asked to give this occasional address; especially here in the Great Hall of our University. As Sir Winston Churchill once remarked, we first shape our buildings, and then in turn they shape us. For more than one hundred and forty years, this fine building has shaped the graduates who have sprung from this seat of learning. Its magnificent stained glass windows remind us of our British and European heritage. After almost a century and a half, however, this Great Hall has become a heritage in its own right. It sits at the apex of a major university and its features are well known to both Australian and foreign graduates who are sprinkled throughout our globe.

One of the reasons why I have been asked to speak today, is that I am the latest professorial appointment to the Faculty of Law. My title is rather a long one; for I am the foundation Blake Dawson Waldron Professor in Industrial Law. When I tell friends and acquaintances that I hold the first specialist chair in industrial law at any Australian law school, they are often a little surprised. "Well", they respond, "haven't we had a rather legalistic and highly regulated mechanism of labour law since the turn of this century?" They go on to say: "surely the federal arbitration court was filled with lawyers when Henry Bournes Higgins handed down his basic wage principles in the early 1900s." The truth is that although lawyers have been involved in industrial law matters for more than one hundred years, it was only in the 1960s that specialist industrial law courses took root in Australian law schools. To some academic and practising lawyers of earlier years, industrial law was a lesser form of law. Now there is a proliferation of industrial law courses at Australian law schools because it is recognised that lawyers need to know how the employer/employee relationship is governed by federal and state law. The chair which I now hold marks the coming of age of industrial law in our nation. This professorship at Australia's oldest university, is eloquent recognition that industrial law is a significant subdiscipline of legal scholarship in its own right.

I am called the Blake Dawson Waldron Professor because this Chair has been sponsored by the law firm Blake Dawson Waldron, which for more than ninety years has had an industrial law practice. The cooperation between the University of Sydney and Blake Dawson Waldron is another link in the strong chain which has been forged between the academic and commercial communities. Indeed, given the lessening of government funding to the universities, without support from industry and



*Professor Ron McCallum*

commerce, much of the academic research in this country would grind to a halt.

The *raison d'être* for industrial law is to ensure fair dealing and to do justice between employees and employers. At the turn of this century, industrial courts and tribunals were established largely to prevent sweated and unjust working conditions which were the products of free market forces. At the present time, there are some who argue that industrial law should play an abstentionist role in society. In their view, the law should be confined to enforcing contracts between employers and individual employees, no matter how unfair, provided such bargains are above a rather sparse safety net of minimal employment conditions. Whether or not our nation cuts itself adrift from arbitration tribunals and embraces collective bargaining, industrial laws should continue to play a pivotal role. After all, it is one of the hallmarks of a civilised society for the law to provide that employees receive fair wages; that employers are able to manage their undertakings free from unfair collective pressures; that workers have a remedy against unfair dismissals; and that everyone's



# GRADUATION ADDRESS

workplace is safe and free from discrimination and harassment.

I am honoured to be the foundation holder of this Chair, not solely for myself, but as a member of Australia's disabled community. To the best of my knowledge, I am the first blind or visually impaired person to hold a full professorship in any field at any Australian university. Over the years, there have been quite a number of blind professors in various disciplines in Europe and in North America. Again, to the best of my knowledge, the late Sir Rupert Cross who was Professor of Law at Oxford (and who was a visiting professor at this Law School), was the first blind person to hold a full professorship in law in the United Kingdom, in Canada, in Australia or in New Zealand. From the evidence available to me, it seems that in the lottery of life I am the second totally blind person to have been appointed to a law professorship in these countries.

I perceive my appointment at the University of Sydney to be a further step along the road of equal opportunity for disabled people. It is fitting to remember another disabled professor, namely the late David Benjafield who was, to use disabled parlance, a "wheelie". From his wheel chair, he taught law at this University, and although we never met, he was an inspiration to me when I first began my studies in law at Melbourne's Monash University.

Many people ask me how I cope with all the reading which is a necessary part of my job. As a small child I learned braille. Then when I was a teenager, tape recorders had sufficiently developed for me to use them as a reading tool. Throughout my university studies, and as a young lecturer and senior lecturer, my only source of legal information was through tape recorders. Friends, colleagues and especially many of my students read me copious amounts onto tape. Mrs Lois Doery, who is in the audience today, gave up much of her time to

read to me and to help in my research when I taught law at Monash University. Without the help of such persons, I would not be standing before you today.

*You should be excited  
and ready to turn to  
the next challenge  
which lies ahead of  
you.*

Since 1987, two revolutions have occurred in my life; one noisy and one quiet. The noisy revolution has been the three children which Mary and I have had during this time. While they are a special joy, it is the quiet revolution of adaptive technology on which I wish to comment. In September 1987, I gained access to my first computer which could read out, in synthetic speech, material which I had typed into it. For the first time in my life, I could actually read over my own material and do my own editing. The computer has become the hub around which my technology revolves. Now, my students here at Sydney hand me in their papers on computer disk. I slip in the disks, listen to the essays and then type out my comments. I also have on my desk a scanner which gives me instantaneous access to much printed material. I place a book on the scanner, which looks like a photocopier. The material is then scanned, the computer software works out the words and punctuation, and then the computer reads it out to me in synthetic speech.

When I was about two and a half years old, it suddenly dawned upon me that I was different from my brothers because I could not see.

Ever since then, my dream has been to read. This technology is a dream come true. When the blind Greek story teller Homer had to commit his Odyssey and Iliad to memory, I am sure he wished he could read and write. Similarly, when Nicolas Saunderson taught physics with Sir Isaac Newton at Oxford, I have no doubt that he was frustrated because he could not read. He was one of the most remarkable blind people who has ever lived. Although Diderot wrote about him in his famous encyclopaedia, little is known of Saunderson today.

As part of my appointment package, the University of Sydney has given me access to this new adaptive technology. Excluding the price of my computer (which is pretty much standard issue to most senior academics), the cost of my technology package is around \$13,000. I am of course grateful to our University for purchasing this equipment for my use. What gives me greater satisfaction, however, is that this University is acting as a model employer, by spending a relatively small amount of money to enable cutting edge technology to facilitate my productivity, so that I can play my part as a member of its Law Faculty.

May I conclude by saying a few words to our graduates. You have just received the degrees and diplomas which are your just rewards. You should be excited and ready to turn to the next challenge which lies ahead of you. I am also excited, for my new adaptive technology package has just fulfilled a dream which is the envy of all my predecessor generations of blind intellectuals. As you stand on your thresholds and as I stand on mine, I hope I can give to you some of the excitement which is coursing through my veins. I wish you well in your futures; in your occupations; parenthoods; and in your citizenship in our great country. May God bless you, one and all.



**You're at your local shopping centre when you witness a violent and dramatic gun battle between rival gangs. At the police station you make a statement and six months later you're asked to give your eyewitness account in court.**

How accurate will your court testimony be? Would it be more accurate if, before entering court, you were permitted to refresh your memory by reading your initial, written statement? If you read someone else's statement or media reports, would that affect your evidence in any way?

Answers to these and other pertinent questions should emerge from a project undertaken by Eilis Magner, Senior Lecturer in Law, and her co-researcher, Roslyn Markham, Senior Lecturer in Psychology. Funded under a University of Sydney research grant, their empirical psychological study was commenced in 1992. It was the first of a series of experiments which will examine the effect on memory of the preparation and review of preliminary eyewitness accounts. It relies substantially on the participation of Psychology students (first year) and Law students (first and final years).

In the study conducted in 1992, under the University of Sydney Research Grant, 150 participants were divided into groups of not more than 20 participants and shown a video of a bank robbery. The robbers were shown both before and after they donned masks. Guns were used in the robbery but were not fired and no one was injured. The effect of these

features of the video have been the focus of other psychological studies.

All participants then wrote their own reports of what they had seen, their eyewitness accounts. Two weeks later they returned: one group were allowed to read their initial report made the previous fortnight; two groups read accounts presented to them, one of these was accurate one inaccurate; two groups were not given any documents to review.

All groups were requested to again write a free account of the video they had seen two weeks ago. On their return, Eilis Magner and Roslyn Markham tried to duplicate what happens in a lawyer's office before a witness gives evidence in court. The students were then asked a series of nonleading questions phrased in a typical court style. Their accounts are currently being analysed in terms of details left in and out, when the three accounts are compared.

It is expected that reading a previous statement could refresh the memory thereby leading to greater accuracy; reading another's statement could lead to the incorporation of misleading details; and absence of exposure to statements one's own or others' could mean poorer recall of the original incident. Even if these predictions are borne out, statistical data would be an important step forward in the understanding of these outcomes.

The analysis of the results obtained in 1992 is still incomplete but it appears that a complete analysis may reveal some surprises. Specifically it appears that witnesses who have read a misleading account do not incorporate the misleading information in a free narrative of the event although they do include the information when asked questions.

The aim of the work together with other psychological studies is to lead to greater consciousness of and more concern about the control of procedures in police stations.

Eventually the use of a documentary aid to refresh a witness's memory may be more carefully controlled than has been the practice in the past.

The focus of this study is on the memory of the normal lay witness who is not expected to have been involved with other similar incidents. The actuality of a witness's involvement in a criminal incident would tend to make the incident unforgettable. The witness would possess what Canadian academic John Yuille referred to as a "remarkable memory".

The researchers suggest that, the nature of the event, and the witness' involvement in that event determines the quality of the recall. Regrettably, they admit that this cannot be duplicated by showing videos. People tend not to forget what's going on here and now. They are striving to create a similar, though weaker, stimulus.

The researchers chose the timespan of two weeks as the delay period because they viewed that as a realistic period; a longer period would have weakened their contact with and control of the participants. A fortnight is at least seven times longer than any time period previously selected by researchers in this field. Most studies have been done over a 24-48 hour period. The researchers acknowledge that the two week delay is a much shorter delay than will occur between an event and a subsequent trial. The weaker nature of the stimulus may be balanced by the shorter delay period.

The analysis of the results obtained in 1992 is continuing in 1993. Additional studies, using the same methodology, and funded by a grant from the Australian Research Council have been commenced. The work is expected to continue into 1994 and possibly 1995.

■  
[Reprinted in part from a report by Dr Anne Sarzin, *University News*, 4 May 1993.]



**In 1992, Professor Patricia Apps became the most recent Professor in the law school. Previously an Associate Professor, she was promoted to a Personal Chair in Public Economics in Law. As the title of the Chair suggests, Professor Apps is an economist who specialises in public policy.**

The appointment of Professor Apps to the Law School places Sydney at the forefront of major changes underway in law schools throughout Australia, and reflects trends already apparent in prestigious international universities. As legal debates become more focussed on the role of law in the context of broad social and economic concerns, it is no surprise that Sydney University Law School should seek to develop a stronger interdisciplinary approach to the teaching of law and public policy. Of her teaching within the Law School, Professor Apps explains that her objective "is to encourage a more rigorous approach to policy analysis and, at the same time, ensure that students recognise the conceptual differences between formal legal reasoning and the analytics of public policy decisions so that they can readily appreciate the appropriate roles of each in practice".

Rather than being a small sub-specialty, the areas where her skills are in demand extend over almost the entire curriculum. Professor Apps often finds herself being asked by colleagues to participate in law courses in taxation, company law, restrictive trade practices, industry regulation, and business finance. In addition to

this, she has developed her own courses on Economics for Lawyers, Taxation and Social Policy, Economics of Public Policy and Environmental Economics, for the Law School's increasingly varied curriculum.

Consistent with developments in modern economics, her courses emphasise the significance of social institutions in shaping behaviour and the way markets work in practice. Professor Apps stresses the dangers of evaluating law reform and public policy on the basis of simplistic notions of competitive markets. Her students leave her courses possessing analytical and empirical skills for assessing the role of government in modern economies in which "market failure" is the norm.

Professor Apps has concentrated her research and publications in the field of public economics, focussing particularly on taxation policy, welfare, labour market reform, and housing and investment. As in teaching, her research emphasises the most recent developments in economics. Her work therefore rejects a simple competitive approach for one which is consistent with available empirical evidence on the structure of markets and the incentive effects of reforms. One of the major themes of her research has been to demonstrate the superiority of a "second best" approach to policy analysis which takes account of market failure. Consequently it is not surprising that her research often reaches results which are contrary to those of proponents who believe in the efficiency of unregulated markets and the efficacy of laissez-faire policies.

Professor Apps holds a Masters Degree from Yale University and a PhD from Cambridge University. At Yale she studied under Professor Joseph Stiglitz, currently advisor to President Clinton, and one of the



*Professor Patricia Apps.*

most influential US economists. Professor Apps has previously worked in the United States, Germany and England and from 1986-89 was a Visiting Fellow at the Research School of Social Sciences at the Australian National University. She has close links with the Institute for Fiscal Studies in England and the Australian Tax Research Foundation, and has been engaged as a consultant by the federal government to undertake major projects in housing and the labour market.

Her work for the federal government was published in 1992 as *The Role of Home Ownership and The Contribution of Product Market and Workplace Characteristics to Differences in Intra-Occupational Earnings*. Her recent work includes *Tax Reform, Population Ageing and the Changing Labour Supply Behaviour of Married Women* and *The Impact of Fightback! Tax-Mix Change on Working Families*. She now spends much of her time engaged in the various research projects for which she has received funding from the Australian Research Council.



**1993 has been a year of adjustment. Changes within the University, generated from internal initiatives and imposed by rapid shifts in government policy, have required corresponding changes within the Faculty.**

The University has been overhauled, producing four divisions each under an administrative head responsible to the Vice-Chancellor. The academic units (Faculties and Colleges) have been organised into groups to permit more effective academic management in an institution which had grown too large and unwieldy to be able to be administered from the centre. The Law Faculty has joined the Faculties of Architecture, Economics and Engineering as well as the Graduate School of Management in what is known as Academic Group B. In searching for a rationale for the grouping, it has been suggested that Group B is the "professional group". This is not entirely convincing since, Accounting aside, the Economics Faculty lacks the professional cohesion attributable to Architecture, Engineering and Law. Perhaps a more pragmatic explanation is that the site chosen for the new law school building on campus lies adjacent to all three of the other Faculties in the Group. To the extent that management resources are shared within the Group, geographical proximity

will make that process much easier.

Against this background at the University level, the Faculty has undertaken a review of its own administrative structure which will now be organised into four divisions: Student Services; Publications and External Relations; Finance and Administrative Services and Personnel and Academic Support Services. Each division has a manager who in turn will be responsible to a Faculty Manager.

## *Changes in government policy will have lasting effects on our educational programmes ...*

Implementation of the review is taking place in stages and it is hoped that in the first two or three months of 1994, what changes remain to be made will be completed and the Faculty will have a much improved administration. Predictably the implementation has not been entirely without its problems but more often than not interruptions have provided opportunities for refinement and improvement of the original plan.

Changes in government policy will have lasting effects on our educational programs, both undergraduate and postgraduate. In particular, the

introduction of "double HECS" for students undertaking the "graduate" LLB degree will inevitably change the quality and composition of those admitted to that degree. It will take some time (at least two years) to know the nature and extent of such change. The emphasis in future government funding on post HSC undergraduate students and postgraduate research students poses very obvious questions about our pioneering and highly successful postgraduate coursework program. Will it need to be more "market-oriented"? Will fees higher than the current modest level have to be charged? These questions require answers but they are being approached cautiously in order to ensure an outcome which is in the best interests of the Faculty, its students and legal education in the State of New South Wales.

It is necessary to mention here the impact of budgetary constraints on the work of the School. Our staffing levels have declined, thus eroding some of the advances of recent years. We have to continue to monitor our course offerings very closely, search for imaginative ways of enhancing staff development on less money and, of course, look for alternative sources of revenue on the assumption that direct funding from government will decrease rather than increase in real terms.

It is not only the University and the Commonwealth Government whose actions have called for a Faculty response. The practising profession and the State Government have embarked on a range of initiatives which will have their effect on what and how we



# DEAN'S REPORT

teach. The Uniform Admission Rules, the new Legal Practitioners' Act and the Law Society's "blue-print" for practical legal training (or whatever may be adopted in its place) combine to provide an entirely new professional framework for legal education.

While all of these outside developments have required attention, and will continue to do so, it would be very wrong to conclude that Sydney Law School has lapsed into reactive mode. The Faculty continues to move steadily ahead with its strategic plan, members of staff

continue to lead research and publication in their fields of specialisation and a number of events of significance have taken place in the past twelve months which lay the foundations for diverse and challenging initiatives over the next few years. Some of these are described at greater length in this issue of the *Reports*: the very successful mid-year training course for Vietnamese lawyers; the establishment of the National Children's and Youth Law Centre and, more recently, the University of Sydney Centre for Asian and Pacific Law and,

most importantly, the appointment of a new Dean. We can look forward in 1994 to a fresh impetus and an injection of new and exciting ideas. It is expected that the move to campus, which has languished in the wake of a collapsed commercial real estate market, will gather renewed momentum.

I confidently predict that 1994 will be a year worth watching at Sydney Law School.

Colin Phegan  
*Acting Dean, 1993*

## ALLEN ALLEN & HEMSLEY VISITOR



*Left to right: Professor Colin Phegan, Acting Dean of Law, Professor Fritz Juenger, Allen, Allen & Hemsley Visiting Fellow, Professor Terry Carney, Head of the Department of Law, and Professor David Weisbrot, Dean-elect. Photo courtesy of University News.*

Faculty welcomed Professor Fritz Juenger, the Edward L Barrett Professor of Law at the University of California, Davis and President of the American Society of Comparative Law, with a reception in September 1993. Professor Juenger is the Department of Law's Allen Allen & Hemsley Visiting Fellow for 1993, and has taught comparative law and given a seminar on the conflict of laws during his stay at the Law School. Professor Juenger has written widely on comparative law, conflict of laws, international transactions, law and institutions of the European Community and tort law. The Law School appreciates the valuable contribution he has made to our teaching and research during his stay in Sydney.



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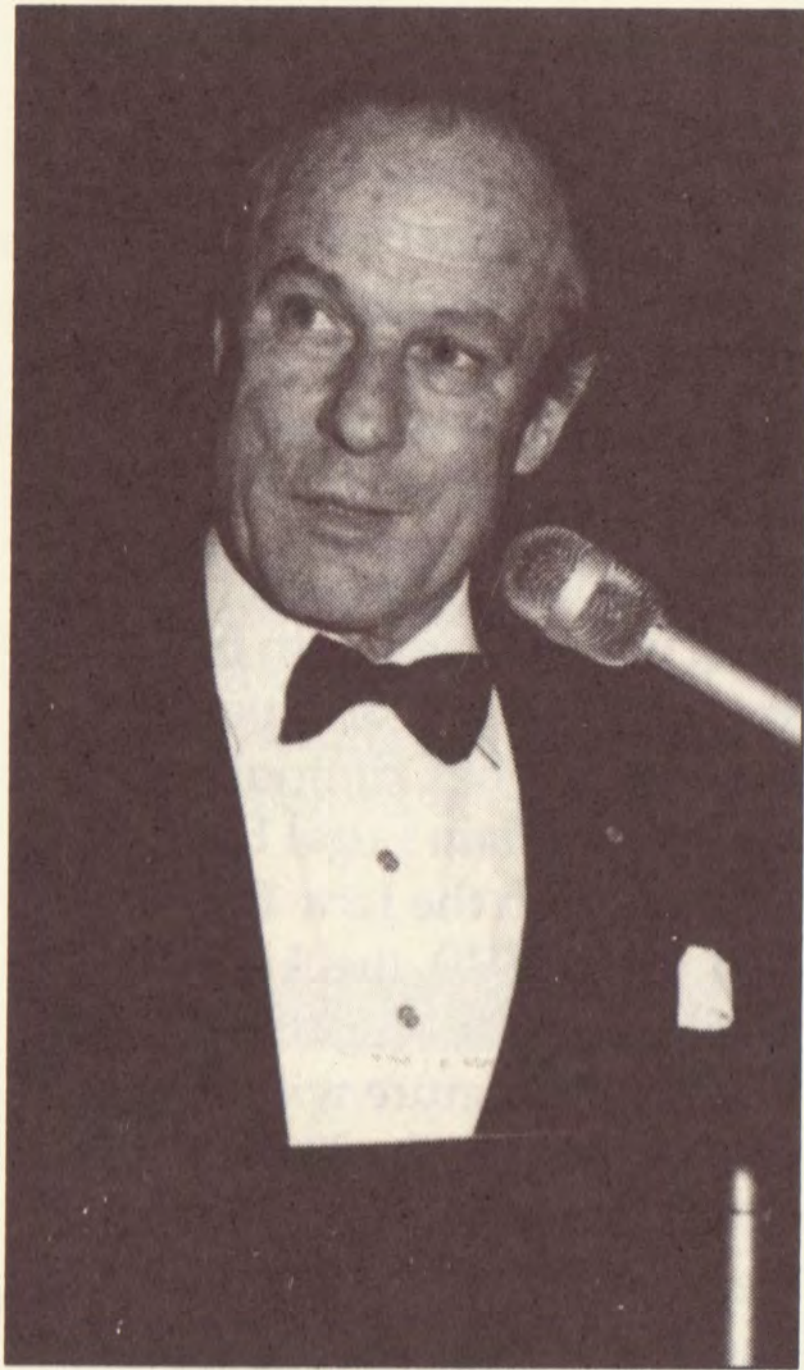
*Mr R J M Tolhurst*

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# SYDNEY LAW SCHOOL FOUNDATION



*Sir Laurence Street, President,  
Sydney Law School Foundation*

The Sydney Law School Foundation was established in the Law School's Centenary Year, 1990. The Foundation's principal objectives are to raise funds both to support the construction of a new Law School building on the main campus and to support the teaching and research activities of the Faculty.

Its further objectives, as set out in its Constitution are:

- to build up a corpus of assets to enable the establishment of Chairs and other teaching, research and other support positions in the Law School
- to assist in bringing to the University visiting scholars to participate in and stimulate teaching and research in Law and in sending Law School staff to participate in visiting programs in other institutions
- to provide scholarships for undergraduate and postgraduate students

In its first three years, the Foundation has received generous support for the new building from Allen Allen & Hemsley, Freehill Hollingdale and Page, and Minter Ellison, as well as an anonymous donor.

Sponsorship of academic positions has resulted in the appointments of Professor Ben Boer as the Corrs Chambers Westgarth Professor of Environmental Law and Professor Ron McCallum as the Blake Dawson Waldron Professor of Industrial Law. Sponsorship from OTC, Ebsworth & Ebsworth, Greenwood Freehills and Ernst & Young has supported academic positions in a variety of other areas.

The Foundation is appreciative of the support which has been so readily given and seeks to continue its work in the future both by the continuing involvement of the legal profession and the support it receives from individual members of the Foundation.

Donors to the Fund are entitled to classification as set out below:

Governor	\$10,000 pa
Donor	\$5,000 pa
Supporter	\$2,000 pa
Friend	up to \$2,000 pa

If you wish to support the Foundation or would like to obtain further information, please write to the Secretary, Sydney Law School Foundation, 173-5 Phillip Street, Sydney NSW 2000. Cheques should be made out to the Sydney Law School Foundation. Donations to the Foundation are tax deductible.

We thank you in advance in anticipation of your support.

SIR LAURENCE STREET AC KCMG  
*President, Sydney Law School Foundation*



## LEGAL RESEARCH AT SYDNEY UNIVERSITY

### Quality and Innovation

Recently the Chancellor, Professor Leonie Kramer, was quoted in the press endorsing a consolidation of the role of Sydney University as a premier international institution noted for its research output and the quality of its post-graduate training.<sup>1</sup>

Sydney Law School has a long and proud reputation in this area, having led the way through the depth, range and quality of its legal scholarship over many decades. That research is held in high standing both locally and by the international legal communities. It is evidenced mainly by the regard in which the work is held within the profession and the academy, but continues also to be reflected in the statistics on the numbers of publications and grants.

Thus the last complete year shows that members of the Faculty authored (or contributed to) the publication of 19 books and monographs, contributed 19 chapters in books, published 94 journal articles and 6 papers, and delivered 54 conference papers. It also saw the Faculty obtain 7 major and 2 smaller grants from the Australian Research Council (initials and renewals), and 27 from other bodies such as industry sources or the NSW Law Foundation.

This is the reputation which we seek to maintain and indeed to enhance.

### Specialisation and Diversity

Funding for Universities remains very tight, however. Traditional sources of funds continue to contract in real terms. Research at levels of excellence cannot be sustained without an adequate funding base: it makes significant demands on staff time; and it calls for strong library and research assistance. Each of these areas is under strain: budgets do not allow staff to devote the periods of time required, and support staff and services have been affected by general cut-backs.

### *Faculty has been very successful in building specialist centres of expertise*

The Faculty has been very fortunate however in the generous support provided by external bodies. The NSW Law Foundation has recently determined to renew for another 3 years the 'Legal Scholarship Support Fund' scheme which has proved an invaluable source of funds for projects. The three externally funded specialist

chairs have helped to provide a national focus for research and teaching: the Landerer Chair in Technology Law, the Corrs Chambers Westgarth Chair of Environmental Law, and the Blake Dawson Waldron Chair of Industrial Law.

In addition the Faculty has been very successful in building specialist centres of expertise: the Institute of Criminology, the Centre for Plain Legal Language 'CPLL' (with the Law Foundation of NSW), the Australian Centre of Environmental Law (a tripartite structure with ANU and Adelaide), the National Children's and Youth Law Centre (with UNSW and PIAC), and the pending establishment of a University Centre for Asian and Pacific Law. The funds attracted from grants by the Law Foundation of NSW and the Australian Youth Foundation have been instrumental in allowing initiatives such as CPLL and NCYLC to reach fruition.

This makes it more possible for the Faculty to adequately support the wide range of research taking place outside these fields. Indeed the strength of the Faculty is the width of the spectrum of research undertaken by individuals and groups. The work on feminist legal scholarship, legal philosophy, intellectual property, commercial law, equity, international trade law, taxation, social security, restitution, land law, international law, conflicts of laws — the list is very diverse and is too long to print in full.

1 "Kramer's vision: a university for the elite", *Sydney Morning Herald*, 11 Aug 1993.



Readers will already have mentally added to it: 'What about X's authoritative writing on Y'? This makes the point about the excellence and breadth of the work of our colleagues.

But it also reinforces how dependent the Faculty has become on attracting grants and other forms of financial support if this work (and the excellent staff researching these issues) is to be maintained at current levels.

*"There is just one other possibility — greater support from the profession, the alumni of Sydney Law School, and the community."*

## The Pressure of Declining Resources for Research

This is no idle debating point: 1993 saw the Faculty shed 4 positions from the full time teaching staff — one chair, an Associate Professor and two senior lecturer level posts. The research unit which supports staff research has been halved in size from 4 to 2 members. The consequent damage to our research effort has been minimised to some degree,

thanks to the generosity of many firms and organisations, such as those mentioned above (and other donations which have been listed previously in these Reports).

But as was the case in last year's item in the Reports, the task of preserving the reputation for research excellence remains a challenging one. A challenge which the Law school can only continue to meet with external assistance: we already win one of the largest shares of external competitive grants (such as the Australian Research Council grants). We can strive for even greater success in winning grants, but realistically it will be difficult to do better.

As was said last year:

"There is just one other possibility — greater support from the profession, the alumni of Sydney Law School, and the community."

## What can I do?

We are determined to maintain the reputation and profile of Sydney Law School as one of the great national (and international) centres of legal scholarship and research. But we cannot do this alone. If you have ideas about ways in which research might be supported, please contact one of the following:

- Professor David Weisbrot (Dean): (02) 225 9218 (Sally Spence)
- Professor Terry Carney (Research Committee): (02) 225 9225.

## AUSTRALIAN FEMINIST ANALYSIS OF LAW

*Australian feminists are world leaders in research into the gender bias of international law that traditionally favours men; and the main impetus for change in the international law arena has come from Sydney University's Faculty of Law.*

*"Australian feminist international lawyers got the ball rolling," said Ms Shelley Wright, Senior Lecturer in Law. Ms Wright is part of a three-person international law research team comprising Professor Christine Chinkin, who left Sydney to take up a chair at the University of Southampton; and Professor Hilary Charlesworth at the University of Adelaide. The team has been assisted by University of Sydney Researcher, Ms Suzanne Leal. Last year they commenced work on their project, "a feminist analysis of international law", which has been supported by ARC grants of \$44,800 for two years.*

*At a meeting of the American Society of International Law held in April in Washington, for the first time ever organisers set aside a day for feminist analysis of international law. Ms Wright and her co-researchers participated in a range of sessions. "It was quite revolutionary to have a full day to discuss these issues," said Ms Wright. "We find that suddenly we are at the forefront of a major change in thinking among international legal scholars. These issues are being discussed in a way unheard of three to four years ago."*

[Extract from an article by Dr Anne Sarzin in the *University News*, 14 September 1993.]



**T**he Australian Centre for Environmental Law is the first nation-wide endeavour by tertiary academic institutions in the field of environmental law. It was established in August 1992 at a time when the environment rated highly as a key concern of Government, business and the wider community, after the United Nations Conference on Environment and Development, "The Earth Summit", held in Rio in June 1992.

The Australian Centre for Environmental Law — ACEL — is a collaborative effort between the Law Faculties of the University of Sydney, The University of Adelaide and the Australian National University, with a Letter of Agreement signed by the Vice-Chancellors of the three universities.

ACEL promotes teaching and research in environmental law between the three universities and is establishing itself as a resource base in this field for Australia, Asia and the Pacific. It has made submissions to Government on law reform to protect and enhance the environment, and promotes appropriate mechanisms for the resolution of environmental disputes.

ACEL maintains close links with other related institutions, relevant industry and conservation groups and practising environmental lawyers.

## ACEL'S Structure

As a national structure ACEL is managed by a committee comprising representatives from each of the participating Universities. Each branch of ACEL

is supported by a Director and members of the teaching staff from each Faculty. The Director of ACEL-Sydney is Professor Ben Boer, with Deputy Directors Bernard Dunne and Brian Preston.

An Advisory Board comprised of leading judges, lawyers and representatives of non-government conservation organisations and industry representatives was established in 1993.

## Teaching — Master of Environmental Law

In 1993 Sydney University Law Faculty offered the first Master of Environmental Law (MEL) course open to both law and non-law graduates alike, 33 students being enrolled on a full or part time basis, each taking eight one unit courses selected from the courses on offer. Judith Preston became the first MEL graduate this year.

The courses offered in 1993 were:

- Environmental Law and Policy
- Planning Law
- Natural Resources Law
- Environmental Economics
- Environmental Dispute Resolution
- Pollution Law
- Comparative Environmental Law
- Environmental Impact Assessment

For further information on the Master of Environmental Law, see the Postgraduate Studies report on pp 20-21 of this issue.

Environmental Dispute Resolution was run in Sydney as short intensive course ("ACEL Course") during the July vacation. Environmental Impact Assessment was also taught in Adelaide in this way. This is an innovative part of MEL teaching, and will be continued in the 1994 program.

Guest Lecturers at ACEL-Sydney in 1993 included Ms Donna Craig (Baker and McKenzie), Professor Mark Squillace (University of Wyoming), Professor Brian Jones (University of Nottingham), and Ms Ros Sultan, Australian

Conservation Foundation Aboriginal Liaison Officer.

ACEL-Sydney maintains a comprehensive resource library funded in part by a grant from the Law Foundation of New South Wales for use by students and others. Access to the library is by arrangement with the ACEL librarian, Ms Robyn Murphy.

## Current ACEL Research Initiatives and Projects

### ■ Australian Research Council Project (ARC)

Sustainable Development Law — Legal Frameworks For Implementing Sustainable Development in Australia and the Asia Pacific Region. The grant, held jointly by Donna Craig and Ben Boer, attracted a \$40,000 renewal grant for 1993. The present phase of the project is focussing on Thailand.

### ■ Heritage Book

Australian Heritage Law looking at all areas of heritage law in Australia, including Aboriginal natural and cultural heritage.

### ■ The Yearbook of International Environmental Law

ACEL recently completed country contributions for Australia, New Zealand, Nepal and Bhutan.

### ■ Business Council of Australia

The three ACEL Directors carried out a consultancy for the Business Council of Australia, reporting on the implications for business of the 1992 United Nations Conference on Environment and Development.

### ■ Board of Studies: Curriculum

ACEL-Sydney completed a consultancy with the New South Wales Board of Studies in November 1993. The consultancy involved the preparation of the syllabus, course materials and resource package for the "International Environmental Law" component of a 3 unit Legal Studies subject for HSC students to be offered for the first time in 1994.

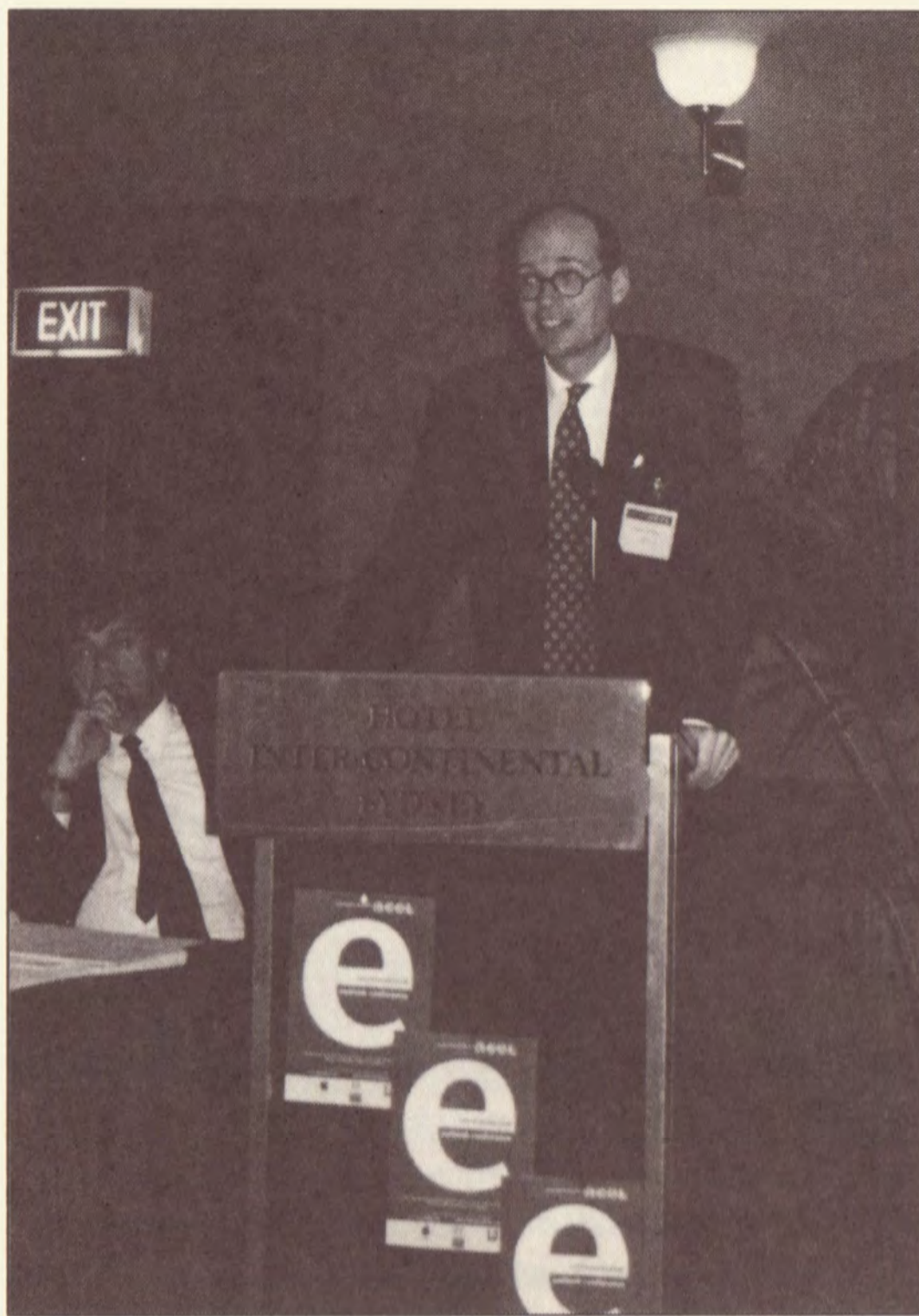


## ■ Biotechnology and Law

Nicola Franklin and Conita Leung won a grant from the Law Foundation Legal Scholarship Support Scheme for a *Biotechnology and Law Project*.

## ■ The ACEL Environmental Outlook Conference:

The inaugural ACEL Environmental Outlook Conference held at the Inter-Continental Hotel in Sydney on 10 and 11 November 1993 attracted over one hundred participants from industry, government, academia and the legal profession, Australia wide. Officially opened by Federal Minister for the Environment, The Honourable Ros Kelly MP, the two days included speakers from Australia, the USA and Europe: Ms Penny Wensley, Australian Ambassador for the Environment, on Global Trends: The emergence of International Environmental Law; Mr James Cameron, a Barrister and Director of FIELD, London on Regional Trends: Environmental Law and Policy Developments in the European Community; Dr Robert Repetto, Vice President of the World Resources Institute in Washington on Efficient Flexible and Responsible Environmental Regulation; and Professor Alan Miller from the Centre for Global



*Overseas speaker James Cameron, Director of FIELD, addresses the ACEL Environmental Outlook Conference, November 1993, while Chair for the day Philip Toyne looks on.*

Change in Maryland on US Regional Trends on Environmental Law and Policy Development. ACEL-Sydney Director Ben Boer spoke on Regional Trends: Environmental Law and Policy

Developments in the Asian and Pacific Regions, ACEL-Adelaide Director Rob Fowler spoke on New Australian Directions in Environment Protection and Conservation and contributed to a workshop on Brown Issues, with ACEL-ANU Director Neil Gunningham presenting a paper on Towards Efficient Flexible and Responsible Environmental Regulations. ACEL-Adelaide Deputy Director Mr John Bradsen spoke on Biodiversity Law in Australia.

Positive feedback from all those attending has ensured that the ACEL conference will become an annual event.

The ACEL Conference was followed by a one day seminar for Secretaries and Deputy

Secretaries in Canberra, and a separate presentation to representatives of non-government organisations.



## ADMIN STAFF ON EXCHANGE

**I**n 1993, as part of the former Registrar's staff development program, Ms Natalie Downey, Senior Administrative Officer, was granted an exchange to the University of Sussex (which happens to be her alma mater). Ms Downey spent six months in the Personnel Offices of Sussex University, and returned to the Law School in September.

**M**s Rosemary Adams, from the central administration of the University, was seconded to the Faculty during Ms Downey's absence. Amongst other responsibilities, Ms Adams oversaw the administrative changes within the Faculty which are occurring due to the central administration review.



**T**he National Children's and Youth Law Centre, the first national law centre in Australia specialising in issues affecting children and young people, opened its offices on level 4 (entrance level) of the University of Sydney Law School on Tuesday 15 June 1993. While there are a number of organisations doing good work at state and territory level providing advice and advocacy for children and young people, there has not been a national body covering the whole range of children's rights.

The Centre has, after three and a half years of planning and consultation, become a reality as a result of funding provided by the Australian Youth Fund and support given by the University of Sydney, the University of New South Wales and the Public Interest Advocacy Centre. Private law firms have given additional support: Blake Dawson Waldron have seconded a staff solicitor to work with the National Centre in a pro bono capacity and Gadens Ridgway have assisted with the incorporation formalities. It is hoped that other law firms will offer support for the Centre.

The National Centre aims to:

- facilitate greater involvement of children and young people at all levels of decision-making
- promote through education and advocacy the implementation of the United Nations Convention on the Rights of the Child and other international human rights instruments as to the rights of children
- act as an independent advocate for the interests of children and young people at a national and local level

- seek to change or influence laws, regulations, policies and practices in a way which will benefit and protect children and young people and enhance their rights
- create a centre for research, training and policy development on children's issues
- work with other agencies to facilitate a co-ordinated approach to children and their rights.

Robert Ludbrook, who has worked with children's rights agencies in England and New Zealand, was appointed to the position of Director of the National Centre in late April. A Research Officer and Administration Officer have recently been appointed, and with students on placement and a solicitor on secondment the Centre now has a staff of six.

Over the last ten years, says Robert Ludbrook, there has been a growing acceptance of the view that children are people with independent rights. Earlier, the view that prevailed in polite society in Victorian England that "children should be seen and not heard" has shaped the way in which children were regarded in our legal system. In an influential decision a Victorian judge declared that "The father has control over the person, education and conduct of his children until they are 21". On this view children were little more than parental property. Later, mothers were accorded equal parental rights and the age of majority was reduced from 21 to 18 but the common law continued to support the notion that children remained under the control and direction of their parents until they reached adulthood.

Then, in a landmark decision in 1986, the House of Lords in England aligned the common law with common sense in accepting that children could make decisions for themselves provided they had sufficient maturity and understanding to weigh up the

advantages and disadvantages of any proposed course of action.

*The legal shackles that denied Australian children a say in decision making — whether in the family, the school, in court or with government agencies — have been removed. Children must be listened to and taken seriously.*

Parental powers dwindled as their children grew older and developed the capacity to make more and more important decisions for themselves. The Gillick decision rescued children from a state of legal powerlessness and recognised that they have an evolving capacity to make choices for themselves.

Even where children do not have the intellectual and emotional maturity to make decisions for themselves they may often have an important contribution to make if their views are sought and considered before a decision is reached. The United Nations Convention on the Rights of the Child adopted by the General Assembly in 1989 and ratified by the Australian government in 1990 makes a strong statement about the right of children to participate in decisions which affect them. Article 12 obliges parties to the Convention to ensure that any child who is capable of forming his or her own



# A NATIONAL VOICE FOR YOUTH

views shall have the right to express those views freely and that the views shall be given due weight according to the child's age and maturity. In all administrative or judicial proceedings affecting the child there must be provided an opportunity for the child to be heard either directly or through a representative.

The legal shackles that denied Australian children a say in decision making — whether in the family, the school, in court or with government agencies — have been removed. Children must be listened to and taken seriously.

The notion that children should have an opportunity to make their own decisions or to have a direct input into decisions which affect them is not universally accepted. Some people believe that giving rights to children may undermine the family. Others are so used to deciding for children that they cannot believe that a child would have anything useful to contribute. Still others see children's rights as dangerous nonsense.

Michael Freeman, a strong advocate for children's rights, has written: "There has been a tendency to assume that the rights of children are not important because concerned adults have children's best interests at heart, and direct their attention towards the children's welfare". Freeman makes the point that "rights enable children to stand with dignity — if necessary to demand what is their due, without having to grovel, beg or plead".

There is another reason for involving children in decision-making. Any decision is likely to be a better decision if made with the involvement and support of the child. Those working in this area can give many examples of decisions made over the heads of children being thwarted by the actions of the children themselves.



Left to right: Suzie O'Toole (student placement), Robert Ludbrook (director), Janina Jancu (solicitor placement), Christine Flynn (research and information officer), Robert Sullivan (student placement) and Madeleine Bennison (Administrator).

Giving children independent rights will not necessarily improve the situation of individual children or children generally. Patriarchal and authoritarian attitudes will not change overnight. There remain many laws, policies and practices which fail to recognise the rights of children. This is where the National Centre has a role: to work for change of laws, policies, attitudes and practices in all areas where children suffer disadvantage.

Early priorities for the Centre will include scrutinising the Australian government's draft report to the Committee of Experts in Geneva on the steps taken to harmonise Australian laws and policies with the principles set out in the Convention.

The National Centre aims to put out a series of National Factsheets for young people on various aspects of the law including their rights in education. The Centre also hopes to look at the situation of young people in detention centres and other institutions and to draft a model code setting out minimum

acceptable standards of care and treatment. The Centre will press for greater uniformity of care and protection laws and will look at the various models of legal representation of children both in this country and overseas. The Centre will produce discussion papers on procedures in the children's court and their relevance to and impact upon children and the role of adults asked to be present during police interviews of children.

In addition, the Centre will make submissions on Bills, draft regulations, policy documents and reports. It is hoped that the National Centre will quickly gain acceptance as a national voice for youth.

For further information contact:  
National Children's and Youth Law Centre  
173-175 Phillip Street  
Sydney NSW 2000  
Phone (02) 221 4361  
Fax (02) 221 5635  
DX 983 Sydney.



## POSTGRADUATE STUDIES REPORT

**The 1993 academic year has seen a further consolidation in the post-graduate area.**

The Faculty now offers five specialist coursework degrees: Master of Criminology (MCrim), Master of Environmental Law (MEL), Master of Jurisprudence (MJur), Master of Labour Law and Relations (MLLR) and Master of Taxation (MTax). 1993 saw the introduction of the Faculty's first specialist research degree, the Master of Criminology by Research. The introduction of the specialist degrees has proved a great success for the Faculty with healthy enrolments in all degrees. Admission to the specialist degrees is open to those who have an undergraduate degree of sufficient merit (although not necessarily in law) or a completed tertiary qualification which is deemed by the Postgraduate Studies Committee to be an equivalent qualification.

The LLM by Coursework continues to be Sydney's, if not Australia's, premier postgraduate law program. The subjects offered for the LLM continue to expand. In 1993 the Faculty offered 60 subjects with the following subjects offered for the first time:

- Issues in the Law of Copyright
- Comparative Environmental Law

- Drugs, Drug Policy and the Law
- Environmental Economics
- Environmental Impact Assessment Law
- Environmental Law and Policy
- Law, Ageing and Disability
- Modern Corporate Governance
- Natural Resources Law
- Planning Law
- Pollution Law
- Seminar: European Community Taxation
- Seminar: Goods and Services Tax
- Theories of International Law.

In 1994, the Faculty expects to offer 55 subjects, with the following subjects offered for the first time:

- Advanced Forensic Psychiatry
- International Law and the Use of Armed Forces
- Discrimination in the Workplace

There was also an increase in the number of students undertaking research degrees in 1993. The Doctor of Juridical Studies (SJD) continues to be an important part of the Faculty's postgraduate research program. The SJD is a law doctorate involving an integrated program of coursework and supervised research.

1993 saw some innovation in the teaching of courses in the postgraduate program. Morning classes (8-10am) were offered for the first time in some of the taxation subjects and several subjects were taught as short courses.

The Master of Environmental Law program began in 1993. Thirty-three students enrolled in the initial cohort. Of these, 15 were students with non-law

backgrounds, while 18 were lawyers. In 1994, it is hoped to maintain a similar balance. A total of 7 subjects were offered, one of which was an ACEL (Australian Centre for Environmental Law) short course, Environmental Dispute Resolution. This will again be offered in July 1994.

Also of interest will be a new course in Wildlife Law, offered by Mr Brian Preston, Barrister and part-time Lecturer in Law. That course will include a three day field trip, consisting of lectures and practical demonstrations by foresters, national park rangers and soil conservationists. Other new subjects will be Heritage Law, to be taught by Professor Ben Boer, and International Environment Law, to be taught by Mr Don Rothwell.

In 1994, the Master of Environmental Law program will also be enriched by the visit by Mr David Sive, a Fulbright Senior Scholar who will be visiting ACEL-Sydney and the other ACEL branches at the ANU and Adelaide to participate in ACEL short courses. Mr Sive has been a Visiting Professor in Environmental Law at Columbia Law School since 1976. He is regarded as one of the "parents" of Environmental Law in the United States, having been involved in some of the most important environmental litigation under the US National Environmental Policy Act since its enactment in 1970.

In the tax program, two seminar courses were offered which were taught by visiting professors over a six week period for two nights per week. In first semester Goods and Services Tax was taught by



# POSTGRADUATE STUDIES

Professor Ben Terra, Professor of Law, University of Amsterdam and tax consultant to Moret, Ernst & Young, Amsterdam. He is an international authority on the operation of value added taxes and is the editor of the *VAT Monitor*, as well as the author of *Sales Taxation, The Case of Value Added Tax in the European Community*.

In second semester EEC Taxation Law was taught by Professor Frans Vanistendael, the Greenwoods & Freehills Professor of Law, Katholieke Universiteit, Leuven, Belgium. He has studied and taught in Europe and the United States

and was a member of the Ruding Committee on the harmonisation of company taxation in the European community. In the first six weeks of second semester 1994, Professor Hugh Ault of Boston College Law School will teach a seminar course on US International Taxation.

In addition to the sponsorship of visiting professors by Ernst & Young and Greenwood & Freehills, the postgraduate program also benefited in 1993 from the generous sponsorship of Telecom.

Anyone with an enquiry concerning the Faculty's postgraduate program should consult one of the Postgraduate Associate Deans — Professor Patricia Apps in relation to research degrees and Mr Don Rothwell in relation to the coursework degrees. The Faculty's postgraduate administrator, Mrs Noelene Griessel, is also available to answer any enquiries on postgraduate matters.

■  
Lee Burns  
Convenor

*Postgraduate Studies Committee*

## CENTRE FOR ASIAN AND PACIFIC LAW

**O**ne of the Law School's most generous benefactors, Mr John Landerer of Landerer & Co, Solicitors, has lent his financial support to yet another exciting initiative. On this occasion it is a University Centre for Asian and Pacific Law whose stated objectives are "to encourage, promote and support . . . scholarship, teaching and research in Asian and Pacific Law and in other aspects of Asian Pacific and international affairs as they relate to the legal culture of the Asian and Pacific region".

John Landerer's commitment to fund the Centre has been supplemented by funds from the University made available in connection with Professor David Weisbrot's appointment as Dean, in view of Professor Weisbrot's interest in Pacific Islands law. The funds will be sufficient to carry the general administrative costs of the Centre over its first three years during which time it is hoped extensive contacts throughout the Asia/Pacific area will be consolidated, exchanges promoted and important teaching and research projects established.

The Centre promises to become a focal point for the development of local expertise in Asian and Pacific Island law and a link with institutions and legal scholars in the countries in the region.

The impetus for such a centre owes much to the energy and determination of Professor Alice Tay, Professor of Jurisprudence, who has most appropriately been appointed the Centre's interim Director. An interim Associate Director has also been appointed. She is Ms Conita Leung, who is currently working as a Research Associate to Professor Tay on a major research project funded by the ARC on changes to the laws and constitutions of Australia's communist and ex-communist trading partners.

The Board of Management is yet to be established but this is underway and the Board is expected to meet for the first time early in 1994. Readers of the Reports can expect to hear about the Centre's achievements in future issues.

■



## The Institute of Criminology within the Faculty of Law continued its monograph series in 1993 with the publication of two further issues.

In July 1993 the Institute released a monograph on the use of psychiatric evidence in court, which suggests that psychiatric evidence is often used inappropriately in court proceedings in Australia. Entitled *Psychiatry in Court: The Use(fulness) of Psychiatric Reports and Psychiatric Evidence in Court Proceedings*, and authored by Dr Peter Shea, lecturer in forensic psychiatry at the Law Faculty and distinguished New South Wales psychiatrist for over thirty years, the book proposes we abandon the unquestioning acceptance of the advice of "experts" and adopt a more critical and informed approach.

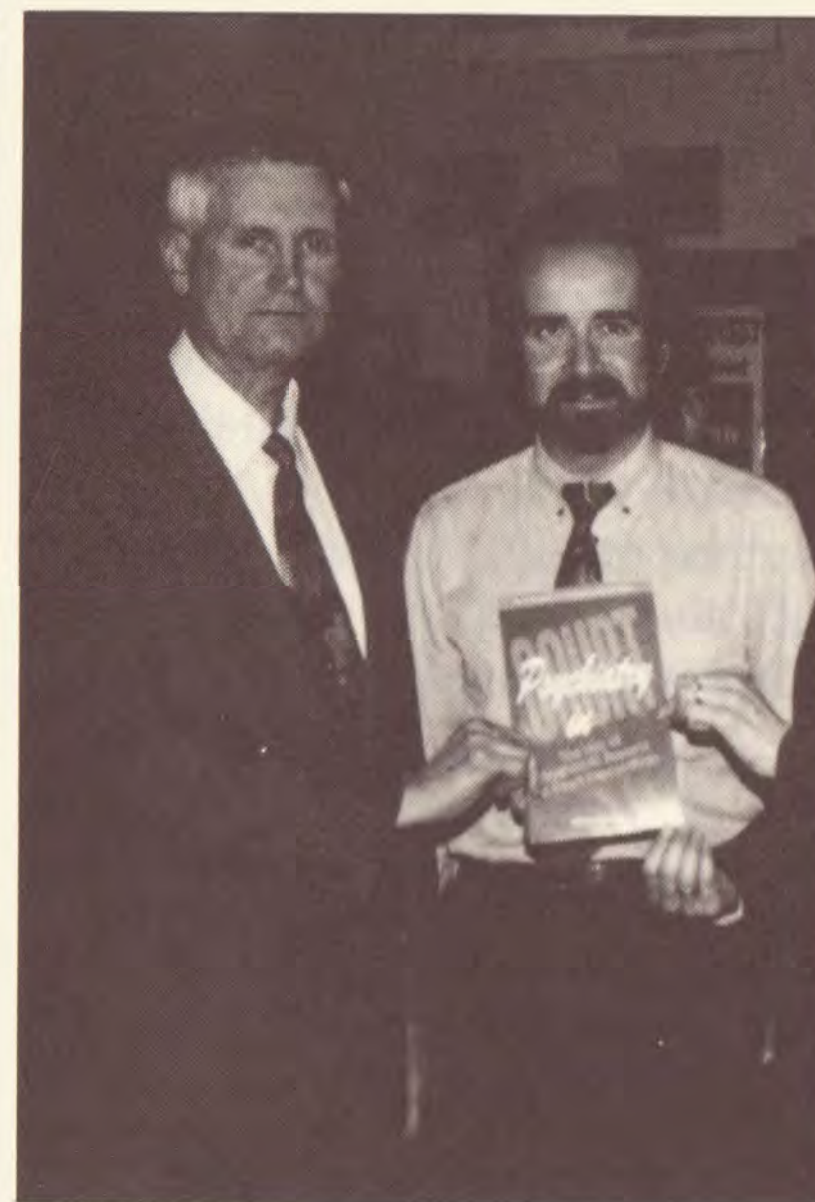
Dr Shea argues that for many years the courts have assumed that if someone commits an offence while suffering from a mental disorder, the two are necessarily connected in some way. The practical and judicial consequences of this assumption have been profound. They have led, on the one hand, to some extraordinary legal and legislative decisions and, on the other, to psychiatrists at times being used (and allowing themselves to be used) in professionally inappropriate ways. He sees part of the problem in the confused state of the discipline of psychiatry itself, and also points out that psychiatry is not a science at all, its language is confused and behind each word in it there are multiple theoretical constructs competing for control of the language.

The problems surrounding the use of psychiatric evidence in court are illustrated by the author in an exploration of the "language of psychiatry", methodically examining the classification of psychiatric disorders, the major theoretical schools of psychiatry and three of the principal diagnostic groups — schizophrenia, depression and psychopathy — that pose significant definitional problems. The book also deals with the assessment process and those involved in it, the connection between mental disorder and criminal behaviour, and the concept of dangerousness, its relationship to mental disorder and its predictability.

*Psychiatry in Court* was launched by the Institute of Criminology at the Harold Park Hotel on 23 July 1993. The launch was well attended by professionals in the psychiatric and legal fields, and the book, which is distributed by the University Co-operative Bookshop, is a prescribed text in Dr Shea's course in Forensic Psychiatry at Sydney University.

In November 1993, the Institute launched its second monograph for the year, entitled *The Man in White is Always Right: Cricket and the Law*. Assisted by a publications grant of \$2,500 from the University, this publication was written by David Fraser, senior lecturer in law and criminology and serious cricket enthusiast. The book examines the interconnections between cricket and law — two apparently distinct discourses — and demonstrates the complex ways in which we construct "communities of understanding". From the origins of "it's not cricket" to the international controversies of underarm bowling and allegations of racism, cricket, ethics and law share meanings and are shown to be intimately connected to popular culture.

Offering chapters such as "Cricket, Law and the Meaning of



Dr Peter Shea (left), author of *Psychiatry in Court*, with Associate Professor Mark Findlay, Director of the Institute of Criminology, at the launch of the book.

Life", "Mankad, Javed, Hilditch, Sarfraz and the Rule of Law", "The Chucker as Outlaw" and "Bodyline, Postmodernism, Law and the Meaning of Life", *The Man in White* is aimed at lawyers and academics interested in the legal and ethical issues posed in cricket, as well as a wider audience of cricket enthusiasts, and is available from the Institute of Criminology or Federation Press.

Previously published monographs of the Institute are *Aboriginal Perspectives on Criminal Justice*, edited by Chris Cunneen, and *Doing Less Time: Penal Reform in Crisis*, by Janet Chan. Both are available from the University Co-op Bookshop. The Institute also publishes the journal *Current Issues in Criminal Justice*.

Enquiries regarding publications should be directed to Fiona Wright, Institute of Criminology, Sydney University Law School, 173-175 Phillip Street, Sydney; tel: (02) 225 9239, fax: (02) 221 5635.



**One interesting by-product of increasing growth in the developing world is the need for public infrastructure financed by strong and effective tax systems.**

This is evident not only in developing countries but also in the reconstruction of those countries formerly part of the Soviet Union and Eastern bloc. In a centrally planned command economy, taxes play virtually no part. Since the State expropriates most production, there is no need to finance its activities by taxes upon individuals or enterprises. But when the State abandons central planning, the need for a well-developed taxation system is apparent and immediate. But so is the lack of expertise in the country. In the countries of the former Soviet Union, three generations without tax systems means that the expertise in developing, implementing and administering taxes has gradually been forgotten.

While it may seem strange to those who are familiar with the Australian tax system to suggest that it has much to offer to the developing world, nevertheless, over the last five years, Professor Richard Vann and Lee Burns from the Law School's tax staff have engaged on a series of consulting ventures designed to bring assistance to developing countries in various parts of the world.

In early 1988, Professor Richard Vann began acting as a consultant to the Legal Department of the International Monetary Fund. This work involved providing technical

advice and assistance on taxation matters to countries in many parts of the world: countries in the Pacific Ocean, Indian Ocean, Northern Europe and Eastern Europe received the assistance of Professor Vann. In 1990, he spent a year working full-time for the International Monetary Fund in Washington DC and during that time visited a large number of countries with a variety of different cultures. The common thread to this travel was the countries' desire for assistance in drafting and implementing taxes. Professor Vann assisted the governments of various countries with drafting income taxes, value added tax and customs laws.

His most recent venture has taken Professor Vann to Paris for three years. In September 1992 he was seconded to the OECD to be the Head of the Central and Eastern Europe and Newly Independent States Unit in the Fiscal Affairs Division of the OECD. In this capacity he manages four OECD Multilateral Tax Training Centres in Ankara, Budapest, Copenhagen and Vienna. He will be in Paris until the end of 1994. In this new role, Professor Vann is still engaged in education. The centres that he runs offer training to senior tax officials from over 20 countries, mostly Newly Independent States that were formerly part of the Eastern bloc. The scale of the project is large. In 1993 about 60 weeks of courses will be offered for the participants. As well as organising and teaching many sessions himself, Professor Vann draws on the assistance of international tax scholars from around the world and, in doing so, extends the Law School's connections internationally.

In addition to training, Professor Vann also manages the technical assistance program of the OECD in this area. From his base in Paris, he often finds himself travelling to different countries to offer training and technical assistance to governments and their tax officials.

Lee Burns, another member of the Law School's tax staff, has been involved in these projects as well. He has been a consultant to the Legal Department of the International Monetary Fund since 1991. During that time he spent six months full-time in Washington DC in 1992, where he was engaged in a major project for countries in the Indian Ocean and in Africa. Mr Burns has been advising governments on drafting income tax laws and assisting the local officials in training and administration. He was also able to renew his acquaintance with Professor Alex Easson of Queens University in Canada. Professor Easson had been a visitor to the Law School in 1990, teaching in the Law School's international tax program.

More recently Associate Professor Graeme Cooper has been engaged as a consultant by the Legal Department of the International Monetary Fund, assisting Lee Burns. Associate Professor Cooper has also been teaching in training sessions organised by the OECD in Copenhagen and Ankara.

These activities clearly add a further dimension to Sydney Law School's international reputation. Its tax program not only contributes to tax teaching and reform in New South Wales and Australia, but is now extending to developing countries and newly emerging market economies in other parts of the world.





**T**he tax program at Sydney Law School has been expanding over recent years with the introduction of new courses and new staff. Many who remember Professors Kenneally and Parsons offering one and then two postgraduate courses in tax may be surprised to learn that there are now nine postgraduate tax courses offered each year, ranging from international tax to the new wholesale sales tax to customs duty. These courses are offered in addition to the two undergraduate tax courses in the LLB program.

In addition to these regular offerings, the expansion of the postgraduate program has allowed new specialist seminars to be offered, taught by distinguished visitors brought from overseas. In 1993, tax students at the Law School had the opportunity to study under Professor Ben Terra from the University of Amsterdam, and Professor Frans Vanistendael from Katholieke Universiteit in Leuven, Belgium.

Professor Terra was appointed by the University as the Ernst & Young Visiting Professor in Indirect Taxes during his visit in first semester 1993. Professor Terra is an international expert on value added taxes and an extremely

busy international traveller. In addition to teaching at the University of Amsterdam, and being a partner in Moret, Ernst & Young in the Netherlands, he is a regular consultant to the EC and OECD on value added taxes. This work has taken him to many of the countries of the former Soviet Union and to South America to advise their governments on implementing a VAT. In his spare time he has written many books on VATs and edits *VAT International Monitor*. We were very pleased to be able to lure him to Sydney for two months.

*Future topics will explore US international taxation, Trans-Tasman tax issues and the domestic tax systems of several countries in southern Asia and the Pacific*

During his stay, which coincided with the 1993 federal election, Professor Terra taught a course on the proposed Goods and Services Tax. It was, understandably, a very popular course both with the postgraduate tax students and with the large number of practitioners who enrolled in it. In order to teach the course, he first examined the Australian

Wholesale Sales Tax in order to contrast the Coalition's proposed tax, and then proceeded to elaborate the principles underlying the GST. In the class on Monday 15 March 1993 — the significance of the date is immediately apparent — in a display of remarkable versatility and mental agility, he then changed the direction of the course to refocus its attention. Rather than pursue the defeated proposal, he turned his attention instead to examining the position of Australian industries exporting to countries with a VAT. The course then focussed on what happens when a WST country and a VAT country collide. As he pointed out, Australia is surrounded by countries with VATs, not only in Europe but also in Asia. The importance of being able to advise clients what to expect when they export goods or services to these countries was not lost on the participants.

Professor Frans Vanistendael arrived in July to take up his appointment as Greenwoods & Freehills Visiting Professor of Taxation. Professor Vanistendael has visited Australia before on several occasions to give conference papers and teach, and as consultant to the Australian government. He is perhaps best known for his work on the Ruding Committee on European corporate tax harmonisation — one of the most influential international EC committees.

Professor Vanistendael is a distinguished academic and practitioner. He is a member of the Belgian Bar and, apart from his teaching in Leuven, he has taught in the United States and Japan. His resume lists a large



number of publications — like many Europeans, in several different languages. The paper he presented to one conference on a previous visit was published as "Trends in European Tax Reform" (1988) 5 *Australian Tax Forum* 133. He has served as a consultant to the Secretary of Treasury of Belgium and was a member of the Belgian Royal Commission for Tax Reform.

Professor Vanistendael visited the Law School for eight weeks in July and August 1993. During his stay he taught a postgraduate course on Taxation

in the European Community, concentrating on international and corporate tax issues. He was also sought out by several postgraduate students writing theses in the area of Trans-Tasman tax harmonisation. The opportunity to discuss with Professor Vanistendael his work on corporate tax harmonisation in Europe for the Ruding Committee was understandably very valuable to them as Europe has already worked through (and resolved) many of the problems that still perplex the governments of Australia and

New Zealand, not to mention the students.

Further special seminars like these are planned. Future topics will explore US international taxation, Trans-Tasman tax issues and the domestic tax systems of several countries in southern Asia and the Pacific.

Funding for these visits was made possible by generous donations to the Sydney Law School Foundation by Ernst & Young and Greenwoods & Freehills. The Foundation and the Law School are grateful for this assistance.



## SYDNEY LAW REVIEW

**In June 1993 *Sydney Law Review* published its first ever single-topic issue: a Symposium on the *Mabo* case.**

This issue coincided with the escalation of public debate about *Mabo*, and about proposed *Mabo* legislation, and our volume received some very positive comments from our readers. Judging by a number of requests for copies from Aboriginal groups, government departments, and private companies, Volume 15 No 2 of *Sydney Law Review* was a real success. In this issue, we managed to line up a group of leading academics and activists, including Garth Nettheim, Michael Detmold, Frank Brennan and Michael Mansell. It is a measure of the success of this special issue that our publisher, the Law Book Company, decided to publish a

volume which will incorporate the contents of the *Sydney Law Review* special issue, with the addition of one or two new essays. This volume, produced with the permission of the Board of our Review, should be out shortly.

*Sydney Law Review*, the only Australian university law review published four times a year, and with a circulation of 1,000 copies (a number of which are subscribed to by overseas libraries and universities), has published a number of important articles lately, apart from the special issue on *Mabo*. While it is perhaps unfair for the Editor to single out any particular paper, I would like to mention at least four papers contributed by overseas scholars and published over the last few months: an article on the liability of professionals, by David Partlett (Vanderbilt University), on gender equality in legal aid services, by Mary Jane Mossman (Osgoode Hall), on children in the

witness box, by Graham Davies (University of Leicester), and on interdependence between economics and law, by Hans-Peter Schwintowski (Humboldt University).

While since the beginning of 1991 the *Review* has been edited by a Faculty Editorial Board, we also have a student Editorial Committee which plays an important role in the editorial process. Indeed, a combination of the Faculty and student involvement in the production of the *Review* is one of its unique characteristics. We have recently fine-tuned the procedures of interaction between Faculty and student editors, and we hope — perhaps somewhat immodestly — that it has been one factor in achieving our aim: to produce the best law review in Australia.



Wojciech Sadurski, Editor,  
*Sydney Law Review*



## JURISPRUDENCE AND THE INTER-CULTURAL PORTABILITY OF LEGAL IDEAS

**The unusual organisational structure of Sydney**

University Law School with its two departments is seen by some as a historical accident. However, a more thorough examination of the actual history of Sydney University Law School, and a look in the remarkable account of this history given by John and Judy Mackinolty,<sup>1</sup> tells a more complex story.

This is the story, not of an isolated incidence, but of a broad stream of developments under the pressure of processes and forces which typically come to bear on legal education and legal research in a changing society. It is also the account of fundamental conflicts of interests, stemming from the divergent pulls of different audiences, which remain typically unresolved in the generalist law school in the common law tradition.

A comparative glance beyond common law territory, that is England and its historical imperial outposts, can quickly show that everywhere else, that is, starting with Scotland and comprising all legal families apart from the Anglo-American legal family, different audiences have been served uniformly by academic legal education and legal research. Here, legal education has been promoted over centuries by a rich growth of the specialities of legal knowledge and a variety of specific approaches,

in keeping with the teaching and research in all the other academic disciplines. The historical accident, then, is the English generalist law school following, at each turn, the pull of the professional practice audience rather than the pull of the scientific community audience and the public interest in legal knowledge at large which academic legal research represents.

*the fields of jurisprudence and international law referred, then as they do now, to the "soft" edges of legal expertise which defy knowledge which is primarily and traditionally derived from and reproduced by (local) legal practice*

In this light, it was a dramatic and bold exposure of the problems of traditional law school teaching in the environment of a significantly changed Australian society at the end of the Second World War which brought about the structural change in the organisation of the Law School, and departmentalisation was a corresponding necessary step for the Challis Professor of

International Law and Jurisprudence to take legal education in the Faculty of Law from professional legal training closer to academic legal teaching and research.

The historical analysis shows further that, in the context of Australian society after the Second World War, also the combination of International Law and Jurisprudence cannot be understood as a mere accidental whim, more related to personal reasons than to structural rationale. Rather than just being "exotic" in the perspective of everyday legal practice, the fields of jurisprudence and international law referred, then as they do now, to the "soft" edges of legal expertise which defy knowledge which is primarily and traditionally derived from and reproduced by (local) legal practice and in which references to jurisprudence and international law appear only marginally. The brief of a law school, reinforced again and again and throughout the years of controversy, was law and not jurisprudence.

However, it was clear to informed observers in those years after the Second World War that — in the wider perspective of a changing legal system of a society on the move — jurisprudence and international law provided important and necessary contributions to the understanding of the local and national operation of law. Above all, teaching and research in these fields constituted the crucial link between traditional local legal practice and the international context of law and legal ideas, which needed further, more detailed investigation and special attention through approaches which were not normally associated with legal training, like philosophy, anthropology, history, political science and social science approach-

1 John and Judy Mackinolty, eds, *A Century Downtown: Sydney University Law School's First Hundred Years*, Sydney 1991.



es and a broader knowledge of foreign languages and cultures. In order to develop such approaches to the wider understanding of law, they had to be established as scientific approaches in their own right and as such they needed protection from the pull of the professional practice audience and its tendency for pragmatic shortcuts and eclectic compromises.

Today, the wider perspective on law as a changing legal system in the historical context of a society on the move has become mainstream, and jurisprudential, comparative and international law approaches have been pulled from the "soft edges" of legal thought and integrated into the legal teaching and research of many traditional and many new core areas of state and national law. On the one hand, this has met with an increasingly more widely interested and better prepared student audience in a degree structure which now makes it compulsory to combine the law degree with another degree. As a result of such diversion processes — not all of them an effect of legal education — a law degree is now a much more versatile certificate of qualification than what it was a few decades ago.

On the other hand, and in fact, this change in the academic culture of studying law has not changed the structure of legal education, nor has it reduced the difficulties which traditional legal education has in accessing foreign legal culture and foreign legal thought on their own terms. On the contrary, the very process of "integration" — embracing now as well the new law schools and their originally rather progressive mission statements — testifies clearly to the undiminished force of the pull of the professional practice audience to sequester all legal thought on the familiar and

powerful terms of local legal practice. At the same time, the pressure on Australian society, including everyday legal decision-making, to recognise different internal and external cultural settings and to open up to intercultural, regional and international contexts of exchange relations are as acute as ever and new political concepts like internationalisation and multiculturalism have added further dimensions to this pressure.

## *Sydney University Law School is well placed in this new challenge to legal education.*

Sydney University Law School is well placed in this new challenge to legal education. Here, the long years of establishing legal scholarship in the Department of Jurisprudence with reference to the international community of legal scholars and of forging links with that community on the basis of the international reputation for scholarship have prepared the ground for an approach to legal teaching and research which is crucial in the light of the internationalisation of both legal education and university education. Today all members of staff speak three or more languages, apart from English, among them Cantonese, Mandarin, Russian, French, Polish, German, Danish and Swedish. A majority of members of

staff have received their doctoral degree from a university in a non-English speaking country. All research conducted in the Department has a comparative or international perspective and straddles common law, civil law (European continental) law and socialist law developments. Because of the nature of the subjects taught in the jurisprudence courses, all of these courses can be and are taught, from time to time, by foreign legal scholars, many of them distinguished experts in their home countries. On the basis of such international co-operation new courses like European Community law and Modern Chinese law could be pioneered by the Department and members of staff have taught legal theory overseas in countries as diverse as Russia, the USA, the PRC, Germany, Poland, Sweden or the Netherlands, or have been seconded to international organisations, like UNESCO. Most significant for the teaching and the research in the Department of Jurisprudence is the fact that all courses which are offered here are open for exchange students from overseas in the framework of the "Study Abroad" scheme while only first year law courses are available to international students.

All of this would not have been possible without the vision of making legal theory and the fascination of its portability the practice of legal education, and of securing their place in the Faculty of Law against the pull of the professional practice audience precisely for the benefit of this audience and the many others.

■  
Alex Ziegert  
Associate Professor and Head of the  
Department of Jurisprudence



## A REPORT ON THE VISIT BY THE FIRST GROUP OF VIETNAMESE LAWYERS TO THE LAW SCHOOL

**T**he University of Sydney was honoured to be chosen by the Vietnamese Ministry of Justice and the Swedish State Agency for the Institute for International Development (SIDA) through the University of Umeå in Sweden (sponsors), to provide an introductory course for Vietnamese lawyers on the Common Law system. (To do this in a three year full time course is difficult. To achieve it in two months was a challenge). As well, our visitors asked that all lectures and tutorials be given in English.

Professor Alex Ziegert, then the Acting Dean, had negotiated the original arrangements. The Challis Professor of Jurisprudence, Alice Erh-Soon Tay, was asked to organise the academic program.

Soon volunteers were conscripted from all parts of our legal system. Famous authors of legal texts and articles were requested to distil the essence of their wisdom in two hour lectures using simple sentence structure as well as speaking slowly and clearly. Staff at the Law School were enthusiastic and supportive. (see box)

Course outlines appeared, thanks to Ms Conita Leung and Professor Alice Erh-Soon Tay. Copious notes were produced.

There were two parts to the program. In the morning there were lectures and tutorials. In the afternoon there were visits to people and places in the legal

system. Judges, barristers and solicitors were invited to help. The directors of regulatory agencies explained their role and function (Trade Practices Commission, Australian Securities Commission and Land Titles Office). Colourful markets were seen in action at the Sydney Futures Exchange, where the regulatory side was outlined by Mr Tony Dreise. At the Australian Stock Exchange the less colourful but more arcane screen trading was described. At the Australian Law Reform Commission, Mr Chris Sidoti explained the contents of their programme. The Judicial Commission showed some of their recent work on sentencing.

At the Administrative Appeals Tribunal, Justice O'Connor described the way in which tribunal decisions improve the quality of administrative decisions. On the visit to Sly & Weigall, Justice Pearlman introduced our visitors to legal concepts involved in the Land & Environment Court. The President of the Court of Appeal, Justice Michael Kirby (on the eve of His Honour's departure for Cambodia) described the role of judges. Matters in the jurisdiction of the Federal Court were explained by Mr Justice Lockhart. His Honour's interest in Asian antiquities created much interest. The Chief Judge of the Commercial Division of the Supreme Court, Justice Barry O'Keefe, described a very busy and efficient jurisdiction. His Honour explained the function that the commercial court may fulfil in the Asian region. (There was spontaneous applause for Justice O'Keefe at the concluding ceremony. It expressed our visitors' thanks for the thoughtful way he ensured that they should visit Taronga Park Zoo). The Research Director of the Zoo told us about his work with endangered species for the Zoo in Hanoi. By this time, our guests themselves were in danger of

becoming similarly endangered. The regime was all work and not enough play.

Other diversions included an official dinner sponsored by Blake Dawson & Waldron at the University Club. Our 'serious' students were transformed. The women wore their elegant high necked, full length, hand painted silk tunics worn over long pants — 'ao dai'.

From the first week the legal profession was extremely hospitable. The President of the Law Society, Mr John Nelson, a recent visitor to Hanoi, was host at a reception. This was the first time that our visitors met officials from the Law Society and were able to



*Left to right: Mr Bron McKillop (lecturer in law), Mrs Dao Thi Zuan Lan, (visitor), Associate Professor John Mack (Chair of Academic Board) and Professor Alice Tay, at a dinner honouring the visitors to Faculty.*

enjoy an informal occasion. The President of the Bar Association, Mr John Coomb QC, asked Mr John West QC (a former student of Professor Tay's) to organise a reception at which our guests met practising barristers. The Senior Vice President, Mr Murray Tobias QC, spoke. He provided our visitors with a gracious and warm welcome. On another day the President and Committee of Sydney University Law Society, Mr Andrew Gee, invited our visitors to his much less salubrious quarters on the lower



# VIETNAMESE LAWYERS VISIT

ground floor in Phillip Street where he provided Law School sample bags filled with T-shirts and copies of *Polemic* together with a jolly good luncheon on level 5.

Law firms wished to help. Some provided formal talks. Some chatted in festive surroundings. Some did both. All were generous and considerate hosts. They included Blake Dawson Waldron, Corrs Chambers Westgarth, Mallesons Stephen Jaques, Michel Sillar, Minter Ellison, Phillips Fox and Sly & Weigall. We were grateful to all and to those whose kind invitations we were unable to accept — this time.

The Eastern Suburbs Law Association invited our visitors to dinner at the Ramada Hotel at Bondi. (Among the multi-lingual practitioners there was one who was Polish by birth and a graduate of the Sorbonne and Sydney University. He was fluent in many languages including German and Russian. So he was able to surprise our 14 Russian speaking visitors with his conversation.)

Our visitors wished to see how our legal system communicates with citizens in everyday life. So we chose the Community Justice Centre to demonstrate one of the many ways in which this happens. Wendy Faulkes and her merry band of mediators were a great success. An excellent film was shown to demonstrate one version of the process of mediation. (Many neighbourhood disputes seem to be universal.) As well, some members of the group visited the Law Foundation where Mr Terence Purcell outlined their activities.

The representative from the State Bank of Vietnam visited Mr David Emanuel (Secretary), Ms Judith Butlin (Deputy Secretary), and Mr Terence Grady (Legal Department) of the Reserve Bank of Australia. The Director of the legal department described the surprising

variety of legal work undertaken in the Reserve Bank of Australia.

Unfortunately, I was unable to go with our guests to Canberra where they visited Mr John Tucker and the Attorney General's Department. They saw the High Court. They visited the Vietnamese Ambassador. It was extremely cold. After this trip their health was never the same. Viruses plagued the group.

The epidemic was at its worst when we visited the College of Law. There was a universal request to see how the procedural aspects of law were taught. Nevertheless, those who were strong enough voyaged to St Leonards and took copious notes in a lecture given by Associate Professor Kay Smith. Tea was taken with the Director Professor Richard Godfrey Smith.

Sir Laurence Street kindly agreed to speak at the concluding ceremony. All participants were presented with certificates. Then Sir Laurence and Professor Tay were photographed with each graduate. The Acting Dean, Professor Colin Phegan, presided. University staff, guest lecturers, judges and officials from regulatory agencies attended.

There were many happy occasions I shall not forget. Almost every moment of their visit was photographed. Thanks to the generosity of the Law Society, Blake Dawson Waldron, Corrs Chambers Westgarth and Phillips Fox, each visitor has a life-long record of their visit to Sydney University Law School 1993. At the airport, Mrs Minh said "they will keep the record close to their hearts forever."

Was this course a success? I shall suggest a new measure for the effectiveness of the teaching-learning process. Tears, not ticks in boxes. At the airport departure gate there were buckets of tears; not a discrete trickle. It was an epidemic (amongst the women). The men said they felt it in their hearts but they must not cry. I cried. Suzy Ander-

son (tutor) cried. Suzy's mother (who helped assemble photos and gave a sit down dinner for 24) cried. It was a grand farewell after a six hour delay at the airport.

In these few weeks our visitors learnt something about how our legal system functions. Many wish to return to do postgraduate courses. I hope it can be arranged. It was a wonderful experience to work closely with such delightful and charming people every day for two months. I recommend to future students to enrol in courses run by Professor Tay and Professor Ziegert. You never know what may happen or whom you shall meet.

Karin Lemercier  
27 October 1993

*Many University staff contributed. The International Development Office coordinated the visit and Professor Graeme Watts and Ms June Pearson arranged travel and accommodation. They provided a cheerful welcome when our guests arrived. Then for one month Ms Diana Iles organised intensive English language training at the ELICOS Centre at the University. Lecturers included Professor Alice Tay, Ms Conita Leung, Ms Bronwyn Morgan, Ms Shirley Rawson, Ms Nicola Franklin, Professor David Harland, Associate Professor John Carter, Professor Robert Austin, Mr Bohdan Bilinsky, Associate Professor Mark Findlay, Ms Ellis Magner, Mr Bron McKillop, Professor Ben Boer, Associate Professor Jane Swanton, Associate Professor Graeme Cooper, Mr Lee Burns, Mr Ravi Kewalram and Ms Donna Spears (from Judicial Commission). Mrs Colleen Woodbury and Mrs Gwen Watters provided necessary administrative assistance and good humour. There were many others who helped. The list is long. We thank them all.*



**T**he Placements Office is responsible for the administration of the Law School's student employment activities. Some of the activities undertaken in 1991 are as follows:

## Employment Interview Scheme

The Employment Interview Scheme is a major component of this office's work. There are eight participating bodies in NSW and ACT — Australian National University, Bond University, Macquarie University, Solicitor's Admission Board, University of New South Wales, University of Technology, Wollongong University and ourselves.

The scheme is run in conjunction with approximately 24 law firms and four government departments. Each year one of the law schools acts as Coordinator of the program and this year Sydney University fulfils this role.

The Graduate Employment Program places final year students in full time positions once they have completed their practical training at the College of Law. The Summer Clerkship Program places penultimate year students in employment during the approaching summer vacation.

As part of the program most firms gave lunchtime presentations at the Law School and spoke to the students about their firms and their involvement in the scheme. In 1993 we held 22

such sessions. These proved to be popular and informative for the students and the speakers. They provide an excellent opportunity for intending applicants to gain an understanding of the firm.

*the program is being reviewed in an attempt to expand the Scheme to give more students and firms an opportunity to participate*

The students see the Summer Clerkship Scheme as a great chance for experience in a legal practice and, in most cases, the first step in their legal careers.

At the commencement of the year, a presentation was held for the impending Summer Clerks, outlining the Scheme to them and the realities of the fierce competition they could expect.

This seems to have made some impact on the Summer Clerkship applications as the numbers were less than the number of applications received last year.

This year, we received and processed 1200 Graduate applications from 119 students; and 2118 Summer Clerkship applications from 155 students whereas last year we received and processed 1136 Graduate applications from 93 students; and 3027 Summer Clerkship applications from 181 students.

Although the program has been running extremely well and the places offered are prized by the students there are some problems; many firms do not participate and many students miss out.

As a result of this, the program is being reviewed in an attempt to expand the Scheme to give more students and firms an opportunity to participate. A working party has been established to undertake this review and is in the final stages before being presented to the Annual General Meeting in December.

## Professional Observation Program

This is conducted by the Law Society of NSW and the law schools. It provides work experience in a practitioner's office throughout the year (except January). This program has been very popular in 1993. For the six months to June 1993, twenty-eight students from this university were placed with firms, corporations and barristers.

## Judges Associates' Register

This is a register of graduands and recent graduates who are interested in appointment as a judge's associate. Details of the students are sent to judges when they contact the Law School in search of an associate. Our current register stands at twenty-eight people with approximately fourteen places being offered each year.



## Commercial Employment Program

In 1993, the Placements Office in conjunction with the Student Law Society and the Careers and Appointments Service organised a Commercial Employment Program. The aim of this program was to forge closer ties between law students and business and to provide an opportunity for students to work over the summer in a commercial environment. The launch of this program was held in August and sponsored by Macquarie Bank. The number of companies who participated was limited but as this was a pilot scheme it is hoped that next year this will be expanded to include many other employers.

## Careers Advice

A representative from the University's Careers and Appointments Service visits the Law School once a week, to offer careers advice to law students. An interview/resume writing workshop was held at the Law School in May of this year by the Careers and Appointments Service.

Crowe Legal, legal recruitment consultants conducted a resume/interview workshop for students in mid October 1993 in order to improve their marketability for employment.

## Other Presentations

College of Law — this presentation was held in August to discuss with final year students procedures for entry to the College of Law.

Law Society of NSW — this presentation was held in mid October to discuss legal careers.

## Careers Night

The Students' Law Society with the assistance of the Placements Office held its annual Careers Night in May this year. This function had in attendance a cross-section of employers not limited to law firms.

Because of the variety of work that is undertaken by the Placements Office, there is a constant traffic of students through this office. Due to the increasing competition for employment places and the increasing number of Law students, the role of the Placements Office has changed considerably and taken a careers counselling slant. As well, many

"other" positions have come to light through this office for notice of the students. We welcome this, and any extensions of this, in the interests of giving our students experience and placing them in employment.

Felicity Halloran  
*Placements Officer*

Rosalind Atherton  
*Senior Lecturer in Law & Director of Graduate & Professional Relations*

## WAR VETS RECEIVE DEGREES IN GREAT HALL

Wars disrupt lives — and rob students of the chance to graduate, other than *in absentia*. University of Sydney graduates from World War II and the Korean and Vietnam wars were at last given the opportunity to graduate at a ceremony held on Tuesday 4 May at 11am in the Great Hall. There were 33 of these special graduates, one of whom was awarded a degree posthumously.

Amongst those who graduated was Ross Parsons, former Challis Professor of Law at Sydney University. Robert Hope, currently the Chancellor of the University of Wollongong, a former judge of the New South Wales Supreme Court and Fellow of the University of Sydney Senate for five years, graduated twice — firstly, his LLB, and secondly, he was the recipient of an honorary Doctorate of Laws. Mr Hope began his Law degree at Sydney in 1937. His studies were interrupted when he enlisted in May 1940 in the Australian Infantry Forces, serving in the Middle East and New Guinea. On his return to Australia he was hospitalised but this did not deter him from successfully completing his exams. He was, however, unable to attend the graduation ceremony.

There was an enthusiastic response to this special graduation from both within the University and the community in general. The Governor of New South Wales, Rear Admiral Peter Sinclair, delivered the occasional address, commenting on periods of study undertaken in difficult and stressful conditions. Personal independence, careers and ambitions were sacrificed to preserve the national security and good.

[Extract from *University News*, Volume 25 No 11, 11 May 1993, page 1.]



**T**he year 1993 was another busy and successful one for Continuing Legal Education (CLE) at the Law School. The following courses and seminars were provided:

- GST, by Professor Terra from the University of Amsterdam;
- *Telecommunications and the Law*, in association with Teece Hodgson & Ward, Solicitors;
- *Legal Studies in Secondary Schools*, a course of 12 lectures;
- *A New Province for Legalism?: Legal Issues and the Deregulation of Industrial Relations*, in association with the Australian Centre for Industrial Relations Research and Teaching in the University of Sydney;
- *Industrial Relations and the Law*, a course of 10 lectures;
- *Legal Agreements in Plain Language*, by Peter Moore at Parramatta;
- *European Community Taxation*, by Professor Vanistendael from the Catholic University, Leuven, Belgium;
- *Relief Against Forfeiture and Penalties*, with Associate Professor Carter from the Law School, Professor Furmston from Bristol, John Lehane from Allen Allen & Hemsley, Solicitors, and Bret Walker, Barrister, as speakers;
- *Bills of Lading: Do They Have a Future?*, with Professor

Reynolds from Oxford and Stuart Hetherington from Ebsworth & Ebsworth, Solicitors, as principal speakers;

- *Localising Provisions in Transnational Contracts*, with Professor Juenger from the University of California at Davis and the 1993 Allen, Allen & Hemsley Visiting Fellow as principal speaker and Professor Nygh as commentator;
- *Current Issues in Restrictive Trade Practices*, with Neill Buck from the Trade Practices Commission, Charles Sweeney QC, Geoffrey Taperell from Baker & McKenzie, Solicitors, and Chris Hodgekiss, Barrister, as speakers;
- *What Do Judges Think of Plain Legal Language?*, by Associate Professor Kimble from Michigan;
- *Children's Rights in Family Law*, with Judith Walker from the Legal Aid Commission, Anne Rees, Barrister, Ann Ainslie-Wallace, Barrister, and Robert Ludbrook of the National Children's and Youth Law Centre, as speakers.

Papers presented at these courses or seminars can be purchased from the CLE office. Also those who would like to be included in our mailouts are invited to supply their name, address, DX and phone number to our office. Our address is:

CLE Office,  
Faculty of Law,  
University of Sydney,  
173-5 Phillip Street,  
Sydney NSW 2000;  
DX 983 SYDNEY

or telephone the office on: (02) 225 9238.

We would be happy to receive any ideas or suggestions for future courses or seminars.

I would like to record my thanks to Jenny Littman, the dedicated Co-ordinator of all our CLE activities.

■  
Bron McKillop  
Director  
Continuing Legal Education

## HELP!HELP!HELP!

We need to update our database. Having your details on our database means you are kept up to date with what is happening at the Law School. It also means that should a reunion be organised you will be one of the first to know.

Keep us up to date so we can keep you up to date. Notify us if you have changed address, or changed jobs. If you know of anyone who attended the Law School and no longer receives The Law School Reports, why not prompt them to drop us a line and give us their new address details.

Please take the time to fill in your name and address details in the space below and return it to:

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## THE SPANOS AND MELROSE SCHOLARSHIPS

**O**n 27 May 1990, two young Australian lawyers, Nick Spanos and Stephan Melrose, who at the time were working with the London law firm McKenna & Co, were murdered in Holland. The IRA admitted responsibility for the killings and said that the two had been mistaken for off-duty British soldiers.

Nick Spanos graduated from Sydney University in 1984 and Stephan Melrose from Queensland University of Technology in 1985. A scholarship fund has been established in their memory the purpose of which, by providing financial help, is to encourage recent graduates of the two universities to spend a year with a firm of English solicitors, to study English law and practice, and to experience English life. Mr Richard Malthouse of McKenna & Co, London, with whom Mr Spanos and Mr Melrose were employed, organised sponsorship of the award.

The first Spanos and Melrose Scholarship for a Sydney University Graduate went to Nicolas Augustinos late last

year. Nicolas, who is very well known in the Greek community, took up his scholarship just before Easter and is now in England, working with McKenna & Co. Nicolas has honours degrees in both Economics and Law and is continuing his masters studies at the University of London. The 1993 winner of the Spanos and Melrose Scholarship is Sarah Huggett, presently working with the NSW Director of Public Prosecutions.

Two scholarships are awarded annually, one to a graduate of each university, until the funds expire. Each scholarship holder receives 1500

pounds sterling payable in two equal instalments — one prior to departure from Australia and one six months later. In addition, Qantas has generously donated a return economy class ticket to London for each scholarship winner.

The respective law faculties nominate the candidate on behalf of the donors. The criteria for selection have been provided by the donors in general terms as follows:

- that the nominee would benefit from the opportunity to work in the office of a firm of London solicitors;
- that the nominee's presence would enrich the experience of the colleagues with whom he or she will work;
- that the nominee should be a good all-rounder.

The award is conditional upon placement with a firm of English solicitors; but arrangements for this are made by the Faculty's nominated awardee together with the English firm of solicitors co-ordinating the administration of the awards. Applicants should have graduated from the University with a law degree and be under 28 years of age in the year in which they apply.

The scholarships are publicised annually in the NSW Law Society Journal, in the Law School and University Publications. *Contact at the Law School:* Mrs Rosalind Atherton, Director of Graduate and Professional Relations, Faculty of Law, University of Sydney, 173-5 Phillip Street, Sydney, tel: (02) 225 9273.



*Winner of the 1993 Spanos and Melrose Scholarship, Sarah Huggett.*

## CORRECTION

In the 1992 Law School Reports, on page 15, Sam Anthony Ingui was listed as of the Graduating Class of 1986. Mr Ingui was, in fact, part of the graduating class of 1985.



## Appointments

Professor David Weisbrot, BA (CUNY), JD (UCLA) — Dean of the Faculty of Law and Professor of Law.

Professor Ivan Shearer, LLB, LLM (Adel), SJD (Northwestern) — Challis Professor of International Law.

Professor R McCallum, B.Juris, LLB (Monash), LLM (Queens) — Blake Dawson Waldron Professor of Industrial Law.

Dr Margaret Allars, PhD Oxf, BA, LLB, (Syd) — Associate Professor.

Mr Graeme Cooper, LLM (Ill, & Col), BA DipJur, LLM (Syd) — Associate Professor.

Dr Okezie Chukwumerije, DJur (York), LLM (UBC), LLB (Benin) — Fixed-term Lectureship.

Mr Bernard Dunne, BA, LLB (Macq) — Lecturer in Law.

Ms Kathryn McMahon, BEc, LLB (Syd) — Lecturer in Law.

Ms Isabel Karpin, BA, LLB (Syd), LLM (Harv) — Lecturer in Law.

Ms Therese MacDermott, LLB, BA (Qld), BCL (Oxf) — Lecturer in Law.

Ms Bronwen Morgan, BA, LLB (Syd) — Associate Lecturer.

Ms Rosalind Haskew, BEc, LLB (ANU) — Fractional Fixed-term Lectureship.

Mr Eric J Ghosh, BA, LLB (Syd) — Fractional Associate Lecturer.

Mr Richard Chadwick, A(Phil), LLB (Syd) — Fractional Associate Lecturer.

Ms Judith Lancaster, BA, LLB (Macq) — Fractional Associate Lecturer.

## Promotions

Professor Patricia Apps was promoted to Professor in Public Economics in Law (Personal Chair).

Dr Wojciech Sadurski was promoted to Professor of Legal Philosophy (Personal Chair).

Ms Jane Swanton and Dr Hilary Astor were promoted to Associate Professor.

Dr Patricia Loughlan, Mr Donald Rothwell, Ms Julie Stubbs, Mr Brian Opeskin and Ms Shelley Wright were promoted to Senior Lecturer.

## Resignations

Professor R P Austin, Visiting Professor in Corporation and Securities Market Law, resigned on 31 December 1993.

Professor Denis Galligan resigned on 31 December 1992.

Ms Jennifer Stuckey-Clarke resigned on 31 December 1992.

Mr Patrick Fazzzone resigned on 31 December 1992.

Mr Stanley Yeo resigned on 24 January, 1993 to take up a Chair in Law at the University of New England.

Associate Professor Christine Chinkin resigned on 1 February, 1993 to take up a Chair in Law at Southampton University.

Associate Professor Patrick O'Keefe resigned on 28 February, 1993.

Ms Irene Nemes resigned on 24 September 1993 to take up a Lectureship at the University of New South Wales.

Mr Colin O'Hare resigned on 20 November 1993.

## Retirements

Mr Bill Chappenden retired on 26 February, 1993.

## On Study Leave

(August 1992 – June 1994)

Professor David Harland — July 1992 to January 1993

Associate Professor K A Ziegert — 1 March to 31 August 1993

Ms Eilis Magner — July 1992 to February 1993

Mr Brian Opeskin — July 1992 to December 1992

Professor Patricia Apps — 1 September 1992 to 31 January 1993

Mr Lee Burns — 1 September 1992 to 31 January 1993.

Professor B Fisse — 18 January to 18 July 1993

Associate Professor J Carter — 4 January to 3 July 1993

Mr Bron McKillop — 5 January to 5 July 1993

Mr D Rothwell — 1 April to 31 December 1993

Ms B Bennett — 14 January to 5 November 1993

Associate Professor P Apps — 1 July to 31 December 1993

Associate Professor G McCarry — July to December 1993

Mr P Parkinson — 26 July to 26 December 1993

Professor A Tyree — July to December 1993

Mrs S Rawson — July to September 1993, and 1 November 1993 to 31 January 1994

Assoc Prof Mark Findlay — 1 January to 31 July 1994

Ms Jennifer Hill — 20 January to 20 July 1994

Ms Gail Evans — 1 January to 30 June 1994

Ms Kathryn McMahon — 1 January to 30 June 1994



## Staff on Leave

Dr Patricia Loughlan — 16 July 1992 to 31 May 1993

Professor Alice Tay — 10 August to 31 December 1993

Professor Richard Vann — September 1992 to 31 December 1994

Ms D Kingsford Smith — 15 February 1993 to 28 January 1994

## Visiting Fellowships

Professor Friedrich (Fritz) K Juenger, Edward L Barrett Professor of Law at the University of California, Davis, was the Allen & Hemsley Visiting Fellow for 1993 (5 July to end October 1993).

Professor Frans Vanistendael of the Catholic University, Belgium, was the Greenwoods and Freehills Visiting Professor of Taxation Law (19 July to 29 August 1993).

Professor Dr Ben J M Terra of the University of Amsterdam, was the Ernst & Young Visiting Professor in Indirect Taxes in the Department of Law (17 February to 10 April 1993).

Professor Rose Bird, formerly Chief Justice of California, will hold the Allen Allen & Hemsley Visiting Fellowship for 1994. She will visit from 23 January to 22 July, 1994.

## Visitors to the Faculty

(June 1992 to September 1993)

Professor Peter W Tague, Georgetown University Law Centre — 20 to 31 July 1992.

Professor Bonnie Tucker of the College of Law, Arizona State University — 18 to 20 August 1992.

Professor Nigel Gravells, Department of Law, University of Nottingham — 24 August to 5 September 1992.

Professor Frans Vanistendael, Katholieke Universiteit Leuven, Belgium — 31 August to 6 September 1992.

Emeritus Professor J K Mason, Professor of Forensic Medicine, University of Edinburgh — 31 August to 4 September 1992.

Professor Stanley Cohen, Professor of Criminology, University of Jerusalem — 5 to 9 October 1992.

Dr Carolyn Strange, Visiting Scholar in the School of History, University of NSW, and Postdoctoral Fellow, Division of Humanities, Griffith University — 26 October to 12 November 1992.

Professor Wolfgang Voegeli, Hochschule für Wirtschaft und Politik, Hamburg, Germany — 15 February to 25 June 1993.

Ms Mai Chen, Victoria University of Wellington — 18 to 26 February 1993.

Mr Yuan Tieming, Visiting Scholar from Northwest Institute of Political Science and Law, Zian, PRC — 1 March 1993 to 1 February 1995.

Professor George Trubow, Centre for Informatics Law, John Marshall University, Chicago — 23 March 1993.

Professor Ian Dennis, University College London — 11 to 25 March 1993.

Professor Alan Hunt, School of Law, Carleton University, Ottawa — 8 April 1993.

Professor John D Whyte, Queen's University — 3 May 1993

Professor J Bruce, Vanderbilt University School of Law — 8 May to 4 June 1993.

Professor Yan Cun Sheng, Senior Visiting Scholar from Northwest Institute of Political Science and

Law, Xian, PRC — 8 May to 20 November 1993.

Professor Richard Tur, Oriel College, Oxford — 5 to 15 July 1993.

Professor Rex Martin, Professor of Philosophy, University of Kansas, Lawrence, Kansas — 12 July to 12 November 1992.

Professor Rüdiger Voigt, Professor in Administrative Science, Faculty of Social Sciences, University of Armed Forces, Munich, Germany — 15 July to 31 August 1992.

Professor Grazyna Skapska, Department of Sociology, Jagiellonian University, Kraków, Poland — 18 July to 12 September 1993.

Dr Jane Stapleton, Fellow and Tutor in Law, Balliol College, Oxford — 21 July to 10 August 1993.

Professor Michael Furmston, University of Bristol — 24 July to 6 August 1993.

Professor Mark Squillace, College of Law, University of Wyoming, and Senior Fulbright Scholar in the Australian National University — 16 to 21 August 1993.

Professor B Kimble, Thomas Cooley Law School — 8 weeks from 25 October 1993.

Professor R O'Neill, Director, Thomas Jefferson Centre for the Protection of Free Expression, University of Virginia — 7 days in October.

Professor Dr Jochen Frowein, Max Planck Institute for Comparative Public Law & International Law, Heidelberg — 22 to 27 September, 1993.

Associate Professor Mark Gillen, University of Victoria, Canada — 18 & 19 October 1993.

Mr James Allan, City Polytechnic of Hong Kong — 1 to 11 November 1993.



