

The Australian National University
Faculty of Law
and
National Institute of Social Sciences & Law

Australian Lawyers & Social Change
CONFERENCE BOOKLET



National Museum of Australia, Canberra, 22 - 24 September 2004

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Faculty of Law
and
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CONFERENCE BOOKLET

National Museum of Australia
Canberra
22 - 24 September 2004

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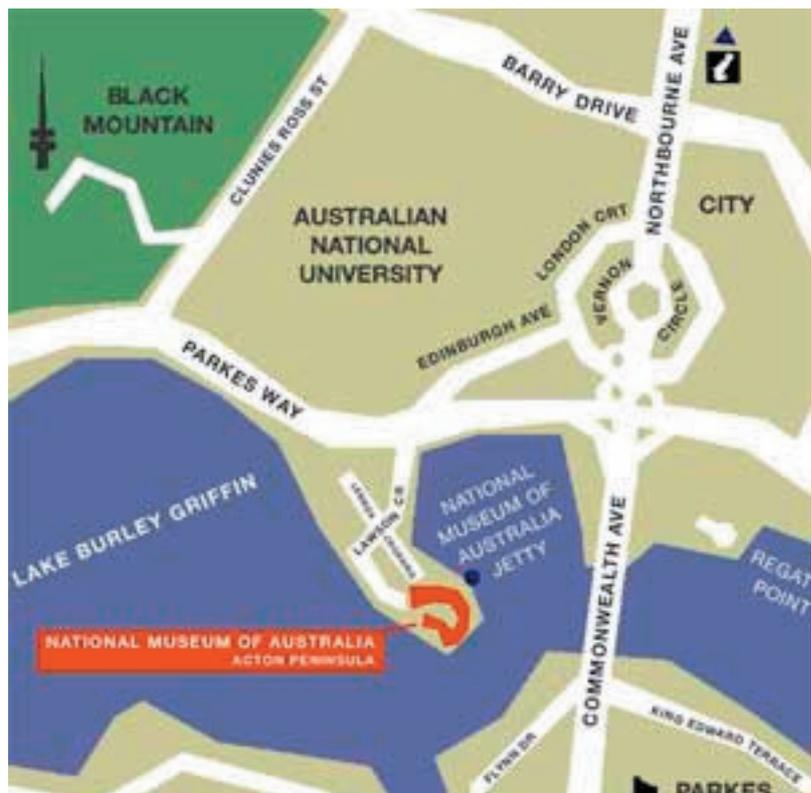
National Europe Centre
The Australian National University
1 Liversidge Street
Canberra

Organising Committee

Stephen Bottomley, Simon Bronitt, Jennifer Clarke, Michael Coper, Christine Debono, Russell Hogg, Michelle Mabile and Kavitha Robinson.

Venue

The National Museum of Australia
Lawson Crescent
Acton Peninsula
Canberra



Evening Reception Movie Clips

Lawyers, trials & videotape

- The Ligouri case in which Miss Bridget Partridge sued Bishop Dwyer for illegal arrest for insanity (Sydney, 1921)
- Tears of Sorrow (1916)
- The Petrov Inquiry (1954)
- Black and White (2003) – David O'Sullivan argues Max Stuart's appeal in the High Court in 1959
- Consider your Verdict (1961) – "The Lawton Case"
- The Killing Times (1985)
- Rafferty's Rules (1987) – "Solidarity"
- The Castle (1997)

Acknowledgements

We would like to express our gratitude to Gillian Drew and Screensound Australia for generous cooperation and assistance in assembling this compilation.

We also thank the following for permission to use material: Channel 7; Crawfords; Duo Art Productions; Film World; Georgina Plasto; Screensound Australia; Working Dog Productions.

Conference Program

Wednesday 22 September 2004

Evening Reception & Registration

Time: 5.30pm - 7.00pm (6.00pm - Welcome to Country by Ngunnawal elder & speeches)

Venue: National Museum of Australia Hall, Lawson Crescent, Acton Peninsula

Speaker: Ronald Sackville, Justice, Federal Court of Australia

Thursday 23 September 2004

Breakfast & Registration

7.30am - 8.00am: Breakfast at National Europe Centre (NEC), 1 Liversidge Street, Building 67C, ANU Campus

8.00am - 8.10am: Welcome from ANU Vice Chancellor, Ian Chubb

8.30am - 9.00am: Registration at National Museum



↙
to National Museum of Australia

Conference Program (continued)

Thursday 23 September

PLENARY 1: LAW REFORM

9.00am – 10.30am

Venue: *SAS Visions Theatre*

Chair: Michael Coper, ANU

Speakers:

- Tim Costello, CEO, World Vision, Australia
- Julian Disney, Director, Social Justice Project, Law Faculty, UNSW
- Kathy Laster, Executive Director, Victoria Law Foundation
- David Weisbrot, President, Australian Law Reform Commission

10.30am – 11.00am Morning tea (Peninsula Room)

11.00am – 12.30pm CONCURRENT SESSIONS

Session 1: A less 'white' Australia?

Venue: *SAS Visions Theatre*

Convenor: Jennifer Clarke, ANU

Speakers:

- Samia Baho, Working Women's Health, Melbourne
- Beth Gaze, Law Faculty, Monash University
- Parastou Hatami, Refugee Advice & Casework Service, Sydney
- Noel Pearson, Director, Cape York Institute for Policy & Leadership, Qld

Session 2: Gender & law reform

Venue: *Friends' Lounge*

Convenor: Juliet Behrens, ANU

Speakers:

- Jenny Morgan, Law Faculty, University of Melbourne
- Zoe Rathus, Women's Legal Service, Brisbane
- Christine Forster, UNSW & Vedna Jivan, UTS

Session 3: Poverty & social justice

Venue: *Studio*

Convenor: Tony Connolly, ANU

Speakers:

- Nicola Howell, Director, Centre for Credit & Consumer Law, Griffith University
- Denise Scott, Policy Officer, Australian Association of Social Workers
- David Tennant, Director, Care Inc. Financial Counselling Service & Consumer Law Centre, ACT

12.30pm – 2.00pm Lunch (Peninsula Room)

PLENARY 2: THE JUDICIARY

2.00pm – 3.30pm

Venue: *SAS Visions Theatre*

Chair: Stephen Bottomley, ANU

Speakers:

- Kylie Burns, Law School, Griffith University
- Kathy Mack & Sharyn Roach Anleu, Magistrates Research Project, Flinders University
- Ronald Sackville, Justice, Federal Court of Australia

3.30pm – 4.00pm Afternoon tea (Peninsula Room)

4.00pm – 5.30pm CONCURRENT SESSIONS

Session 1: Criminal justice issues

Venue: *Studio*

Convenor: Russell Hogg, ANU

Speakers:

- Eileen Baldry, School of Social Work, UNSW
- Hugh Dillon, Magistrate, NSW
- Gail Wallace, Project Officer (Circle Sentencing), Nowra Local Court & Roslyn Barker, Project Officer (Circle Sentencing), Dubbo Local Court

Session 2: Bypassing the courts

Venue: *SAS Visions Theatre*

Convenor: Simon Bronitt, ANU

Speakers:

- John Braithwaite, RegNet, ANU
- Kathy Mack, Law School, Flinders University
- Richard Refshauge, Director of Public Prosecutions, ACT

Session 3: Using the system

Venue: *Friends' Lounge*

Convenor: Peta Spender, ANU

Speakers:

- Stuart Clark, Clayton Utz, Sydney
- Andrea Durbach, incoming Director, Australian Human Rights Centre, UNSW
- Tanja Kovac, Ryan Maloney Anderson, Melbourne

CONFERENCE DINNER

Time: 7.00pm for 7.30pm

Venue: Great Hall, University House, Balmain Crescent, ANU Campus

Pre-dinner entertainment: Jazz trio

Speaker: Noel Pearson, Director, Cape York Institute for Policy & Leadership, Qld

Conference Program (continued)

Friday 24 September

PLENARY 3: THE LEGAL PROFESSION

Venue: *SAS Visions Theatre*

9.00am – 10.30am

Chair: Richard Refshauge, Adjunct Prof, ANU

Speakers:

- **John Basten**, QC NSW Bar
- **Simon Longstaff**, Director, St James Ethics Centre, NSW
- **Margaret Thornton**, Law School, La Trobe University
- **Nicola Roxon MP**, Shadow Attorney-General (Cth)

10.30am – 11.00am Morning tea (Peninsula Room)

11.00am – 12.30pm CONCURRENT SESSIONS

Session 1: Access to justice

Venue: *SAS Visions Theatre*

Convenor: Daniel Stewart, ANU

Speakers:

- **John Corker**, Director, National Pro Bono Resource Centre
- **Judy Harrison**, Director, Clinical Programs, Law Faculty, ANU
- **Kathleen McEvoy**, Law Faculty, University of Adelaide
- **Liz O'Brien**, National Association of Community Legal Centres

Session 2: Lawyers as activists

Venue: *Studio*

Convenors: Tom Faunce & Hugh Selby, ANU

Speakers:

- **Terry Connolly**, Justice, ACT Supreme Court
- **Fiona Game**, Law Student, ANU
- **Sarah Keenan**, Arts/Law Graduate, ANU
- **Ritchie Hollands & James Prest**, Save the Ridge
- **Patricia Randal**, Policy Officer, Public Interest Advocacy Centre, NSW

Session 3: Diversity in the profession

Venue: *Friends' Lounge*

Convenor: Hilary Charlesworth, ANU

Speakers:

- **Mick Dodson**, Law Faculty, ANU
- **Margaret Thornton**, Law School, La Trobe University
- **Sumitra Vignaendra**

12.30pm – 2.00pm Lunch (Peninsula Room)

PLENARY 4: LEGAL EDUCATION

Venue: *SAS Visions Theatre*

2.00pm – 3.30pm

Chair: Michael Coper, ANU

Speakers:

- **Richard Johnstone & Mary Keyes**, Law School, Griffith University
- **Bill MacNeil**, Law School, Griffith University
- **Anne Macduff**, Law Faculty, ANU
- **Mike Robertson**, Law School, Griffith University
- **Lyn Weathered**, Director, Innocence Project, Griffith University

3.30pm – 4.00pm Afternoon tea (Peninsula Room)

4.00pm – 4.30pm CLOSING REFLECTIONS

Venue: *SAS Visions Theatre*

Speaker: **Hal Wootten**, former barrister, law dean, law reformer & judge.

4.30pm – 5.30pm BRINGING IDEAS TOGETHER

Venue: *SAS Visions Theatre*

Chairs: Michael Coper & Stephen Bottomley, ANU

5.30pm Conference concludes

Evening Reception

Ronald Sackville

Ronald Sackville has been a Judge of the Federal Court of Australia since 1994.

Ronald was formerly Professor of Law (1972-1985) and Dean of the Faculty of Law (1979-1981) at the University of New South Wales. He was Commissioner for Law and Poverty on the Australian Government Commission of Inquiry into Poverty (1973-1975); Chairman of the South Australian Royal Commission into the Non-Medical Use of Drugs (1979-1981); and Chairman of the New South Wales Law Reform Commission (1981-1984).

From 1985 until his appointment to the Federal Court, Ronald practised at the New South Wales bar, principally in the fields of administrative law, constitutional law and equity. He was appointed Queen's Counsel in 1991. From 1985 to 1989 he chaired (part-time) the Victorian Accident Compensation Commission.

Ronald chaired the Commonwealth Access to Justice Advisory Committee, which presented its report, Access to Justice: An Action Plan, in 1994.

He has published articles and papers on a wide range of subjects, including migration law. In recent years he has been a Visiting Scholar at Cornell University, New York University, McGill University and Cardozo Law School.

Ronald is the Deputy Chair of the Judicial Conference of Australia.

Breakfast

Ian Chubb

Ian Chubb was appointed Vice-Chancellor of the Australian National University in January 2001, having previously been Vice-Chancellor of Flinders University for six years (1995 to 2000). He was the Senior Deputy Vice-Chancellor at Monash University from 1993 to 1995, for part of that time simultaneously holding the position of Foundation Dean of the Faculty of Business and Economics. From 1986 to 1990, Professor Chubb was Deputy Vice-Chancellor of the University of Wollongong.

Between 1990 and 1993, Ian was the full-time Chair of the Higher Education Council, and concurrently Deputy Chair of the National Board of Employment, Education and Training. He served as a member and, subsequently, Chair of the HEC in a part-time capacity from 1994 to 1997. He also served as Interim Chair, then Deputy Chair, of the National Committee for Quality in Higher Education from 1993 to 1994.

Ian was a member of a 1989 Ministerial Task Force, and between 2000 and 2002 he served on the Prime Minister's Science, Engineering and Innovation Council. He is a serving member of the Foreign Affairs Council, and is a Director of the Australia-New Zealand School of Government.

Ian Chubb is active in the Australian Vice-Chancellor's Committee - as a member of AVCC committees, on its Board,

as Deputy President and then in 2000 and 2001 as President. He is presently the Chair of the Group of Eight universities. He also served in various capacities on the National Health and Medical Research Council and the Australian Research Committee.

Ian began his university career as a neuroscientist. The recipient of a number of academic awards and named fellowships at the University of Ghent and Oxford University, he returned to Australia to take up a position in human physiology at Flinders University in 1977. He has published widely and has taught science and medical students at undergraduate and postgraduate level, and supervised research students.

In June 1999, Ian Chubb was made an Officer of the Order of Australia for his services to "the development of higher education policy and its implementation at state, national and international levels, as an administrator in the tertiary education sector, and to research, particularly in the field of neuroscience." In April 2003 he was awarded the Centenary Medal for service to Australian society through tertiary education and university administration.

Plenary 1: Law Reform

Tim Costello

Tim Costello, one of the nation's leading campaigners on social justice issues, commenced as Chief Executive of World Vision Australia in March 2004. In July, Tim was awarded 'Victorian of the Year 2004', by the Victoria Day Award for Public and Community Service.

After studying law and education at Monash University and obtaining his Masters in Theology at the Melbourne College of Divinity, Tim was ordained a Baptist Minister in 1986. He established a vibrant and socially active ministry at St Kilda Baptist Church between 1986–1994 and was elected Mayor of St Kilda in 1993. In 1995 Tim was appointed Minister of Collins Street Baptist Church and Executive Director of Urban Seed, a Christian not-for-profit organisation that provides outreach services and hospitality to the urban poor. He held this position until his move to World Vision.

Tim is recognised for articulating the social conscience of many Australians on tough domestic issues such as urban poverty, homelessness, problem gambling, reconciliation and substance abuse. For nine years he was the spokesperson for the Interchurch Gambling Taskforce and a member of the National Advisory Body on Gambling. He is the former national president of the Baptist Union of Australia. Currently Tim is Chairman of the National Australia Bank external Stakeholder forum, a member of the AMP Sustainable Funds Committee, the Aid Advisory Council and the Alcohol Education and Rehabilitation Foundation.

Tim's passion for justice has compelled him to experience the lives of the poor in the Philippines, Sudan, Cambodia, Brazil, Indonesia and East Timor. What he saw and felt on these trips compelled him to challenge global poverty in the name of his fellow Australians. He has also written several books including: *Streets of Hope: Finding God in St Kilda*; *Tips from a Travelling Soul Searcher* and *Wanna Bet? Winners and Losers in Gambling's Luck Myth*, which was co-written by Royce Millar.

Tim and his wife of 25 years, Merridie, have three adult children, Claire, Elliot and Martin.

ABSTRACT

Lawyers and Social Justice Change in a Global World
It is a truism that the rise of global markets, technology, ideas and people movements serve to enrich the lives of people. We have become one big village. Yet, this interdependence between people and nation states have not resulted in a rising social consciousness to challenge increasing levels of poverty among some of the most vulnerable people in our society and overseas. We are currently fighting the war on terrorism and have neglected the war against poverty. In the face of global terrorism and increasing poverty, we should be asking ourselves what happened to the civil rights movement of the 70's and what can lawyers do to contribute to a social justice movement within and outside Australia. Lawyers, as part of civil society should seek to promote economic and social justice for the poor and for the well being of children. Tim will argue that the law should be looked upon as a tool to protect the marginalised rather than to oppress them. Within Australia, Tim will highlight how procedural complications serve as barriers to discourage the poor, especially women and other marginalized people from seeking justice through the courts. Tim will provide an insight into how lawyers can reach out to the community and explore effective ways to engage with excluded groups and contribute to the social inclusion and the realisation of human rights of people not only in Australia, but also across our borders. Australian lawyers cannot remain passive observers of global movements affecting refugees and other disadvantaged people. They can play a significant role in providing formidable skills of legal analysis, knowledge and understanding of the role of law towards the creation of a strong civil society.

Julian Disney

Julian Disney is a social justice activist who currently heads projects on improving the circumstances of low-income families (the Families on the Edge Project) and on strengthening engagement with neighbouring countries (the Neighbours Program). He is the national Chair of Anti-Poverty Week and Director of the Social Justice Project at the University of New South Wales. He is a former President of the Australian Council of Social Service (ACOSS) and World President of the International Council on Social Welfare (ICSW), which represents thousands of social welfare organisations in more than eighty countries. He has been Coordinator of the NSW Welfare Rights Centre, Director of the Centre for International and Public Law at the Australian National University, a NSW Law Reform Commissioner and chair or member of government advisory committees on economic planning, social security, education, employment and training, housing and other matters.

ABSTRACT

Many lawyers and some law reform agencies have contributed notably to social justice. More could be achieved by greater focus on the underlying causes of social injustice and on far-reaching responses. This includes key "economic" issues, including taxation, where many lawyers could help to expose the current array of injustices, delusions and hypocrisies. It is also essential to focus on achieving practical and substantial improvements rather than the illusory victories that occur when new rights or institutions are largely irrelevant or inaccessible to most disadvantaged people. Over the longer term, social justice in Australia will be greatly affected by the circumstances, laws and practices of our neighbours in the South East Asia and Pacific region. Greater emphasis on sustained and respectful engagement would be of greater mutual benefit than lecturing or patronising.

Kathy Laster

Kathy Laster is currently the Executive Director of the Victoria Law Foundation. Kathy has a long career in academia, policy and law reform and has taught, researched and published extensively on diverse topics including gender and law, multiculturalism and law, legal education, the history of crime and punishment and public policy.

ABSTRACT

Pro Micro Law Reform

Typically, 'law reform' is understood as big and weighty. Three-figure lists of recommendations usually countenance 'sweeping statutory change', although increasingly "cultural change" is also invoked as part of the 'radical' package. This paper looks at three case-studies of "micro" reform: systemizing police 'summary of offence' pro formas, lateral entry recruitment to the summary court bench and community legal education initiatives. These changes have had a major impact precisely because they were NOT presented or conceived of as 'law reform'. The law reform standpoint is, quite properly, independent. The downside of this position, however, is that change is resisted and often undermined. The conditions for encouraging 'self review' and 'self reform' by legal institutions are discussed as a neglected dimension of the law reform enterprise.

David Weisbrot

David Weisbrot has been President of the Australian Law Reform Commission since June 1999. He has presided over inquiries into the federal civil justice system (Managing Justice, ALRC 89, 2000), marine insurance; the federal Judiciary Act 1903, the use of civil and administrative penalties in federal regulatory jurisdiction, the protection of human genetic information (Essentially Yours, ALRC 96, 2003), the protection of classified and security sensitive information (Keeping Secrets, ALRC 98, 2004), and gene patenting and human health. He also chaired the Attorney-General's National Pro Bono Task Force (2001), and now chairs the Advisory Council of the National Pro Bono Task Force. David is an Honorary Professor in the Institute for Molecular Bioscience and the TC Beirne School of Law at the University of Queensland, and the Division of Law at

Macquarie University. He recently was elected inaugural Vice-President of the Commonwealth Association of Law Reform Agencies (CALRA). He has been a member of the law schools of the University of New South Wales and the University of Papua New Guinea, as well as Dean of Law and Pro-Vice-Chancellor of Humanities and Social Sciences at Sydney University. In 2003, he was awarded a Centenary Medal by the Australian Government for 'services to law reform'.

Michael Coper (Chair)

Michael Coper is Dean and Robert Garran Professor of Law at the ANU, and one of the co-organisers of this conference. His interest in law reform and social justice stems from his student days at the University of Sydney in the 1960s, the exciting challenge of being part of the creation of a new law school at UNSW in 1971, and his experience as a member of the Inter-State Commission in the 1980s, where he was involved in reform of the Australian waterfront and interstate land transport. He worked in private legal practice in Canberra in the early 1990s, before joining the ANU as Professor of Constitutional Law in 1995. In 1999, he was elected as a member of the American Law Institute, a unique law reform body comprising academic lawyers, judges and practitioners that has produced 'Restatements' of the law since 1923.

A less 'white' Australia?

Samia Baho

Samia Baho is statewide Family and Reproductive Rights Education program coordinator and Research Assistant at the Key Centre for Women's Health in Society, the University of Melbourne. She is the founder and secretary of the African Australian Welfare Council, as well as chairwoman of the Horn of Africa women's group. She has extensive experience in the area of women's health, family and domestic violence.

ABSTRACT

Despite constitutional guarantees of non-discrimination on the ground of race or gender, there are several areas of discrimination against Horn of Africa women in Australia. The understanding of Horn of Africa women refugee experience is rapidly growing. In addition to having limited English, many of these women have other problems that interfere with their ability to participate. These problems included poor role models, discrimination and vulnerability to abuse. However current models of intervention that assume overwhelming vulnerability are not constructive. In this workshop we will discuss the level of inequality, the effects of discrimination and the need to promote control for Horn of Africa women.

Beth Gaze

Beth Gaze teaches anti-discrimination law, feminist legal thought, and administrative law at Monash University. Her primary research interest is in equality law, including indigenous anti-discrimination rights and women's rights. For the past three years she has been working on a study of the enforcement process under Australian federal anti-discrimination law, and she is also working on the need for substantive updating of Australian anti-discrimination laws. She has been a member of the Social Security Appeals Tribunal.

ABSTRACT

While anti-discrimination law is not the whole story of equality for racial and ethnic minority groups, it is nevertheless an important tool for individuals and groups to use. There are reasons to be seriously concerned about the lack of effectiveness of Australia's racial discrimination laws in protecting equality rights, as the changes hoped for when these laws were introduced have not been achieved. In this panel I will outline some factors which have limited the contribution of the Racial Discrimination Act 1975 and equivalent state laws to advancing the legal equality and practical situation of indigenous people and minority ethnic communities in Australia, and suggest some avenues for change.

Parastou Hatami

Parastou Hatami is a solicitor and migration agent working with the Refugee Advice and Casework Service (Australia) Inc in Sydney. She is a caseworker and the coordinator of the Temporary Protection Visa Legal Project that provides free legal assistance to TPV holders.

ABSTRACT

Parastou will offer a legal perspective on the temporary protection visa regime, Australia's response to the plight of Afghani, Iraqi and Iranian boat people and how this reaction compares to Australia's response to the plight of Jewish refugees fleeing Nazi Germany during World War Two.

Noel Pearson

Noel Pearson holds degrees in history and law from the University of Sydney. He was involved in the establishment of the Cape York Land Council in 1990 and the other regional indigenous organisations representing the people of Cape York Peninsula, including Apunipima Cape York Health Council in 1994 and Balkanu Cape York Development Corporation in 1996. He chairs the board of the Cape York Partnerships Projects office and is a board member of Indigenous Enterprise Partnerships. He is now the Director of the Cape York Institute.

Jennifer Clarke (Chair)

Jennifer Clarke is a senior lecturer in the ANU Law School. She researches and teaches in several areas, including indigenous people and the law, race and the law, constitutional law and property law. Her background includes a period as an Aboriginal land rights solicitor, a field in which she has continued to advise. Jennifer is a co-author of the 7th edition of Peter Hanks' Australian constitutional law: materials and commentary (2004), to which she contributed chapters on indigenous people and territories.

Gender & Law Reform

Jenny Morgan

Jenny Morgan is a law professor at the University of Melbourne. She is also currently Deputy Dean of the law faculty. She is a co-author (with Reg Graycar) of *The Hidden Gender of Law*, the second edition of which was published in 2002. Jenny has done work on sexual harassment, homicide law, reproduction issues, sexual assault and domestic violence. She has been a part-time member of the Human Rights and Equal Opportunity Commission and the Social Security Appeals Tribunal. She is currently a member of the Victorian Government's Sentencing Advisory Council and the Advisory Committee of the Victorian Law Reform Commission's reference on defences to homicide.

ABSTRACT

Law reform: What's in it for women?

In this paper (written with Reg Graycar) we argue that formal legal reform processes have been, at best, of limited value to women and other disadvantaged groups. We discuss three separate ways in which the processes of these types of bodies might make them particularly unable to respond effectively to issues that affect women. First, we look at the ways in which law reform questions are asked (and answered); at the (generally narrow) way that 'terms of reference' are often framed or constructed. Next, we consider the overemphasis on formal outcomes (in particular, the 'implementation of recommendations', particularly in statutory form) at the expense of attention to process. Finally, we examine the rather problematic relationship with research, empirical data and socio-legal methods that formal law reform agencies have had, at least at times. We argue that insufficient attention is paid to the real lives of those who interact with, and are impacted by, the law and legal system.

Zoe Rathus

Zoe Rathus is a solicitor and has been the co-ordinator of the Women's Legal Service since 1989. Women's Legal Service provides advice and assistance to over 5000 women per year and specializes in domestic violence.

Zoe is a former chairperson of the Queensland Domestic Violence Council. She was one of the authors of *An Unacceptable Risk: A report on child contact arrangements where there is violence in the family*, published in 2000.

She is an advocate for law reform using formal submissions, committee membership, presenting papers and public comment.

ABSTRACT

In my paper I will discuss family law reform processes over the past 15 years, with a focus on the differences between what men ask for and what women ask for. I will examine the problems with legislation and infrastructure 'solutions' that try to respond to the claims of both groups.

I will particularly expose the obsession with 50/50 raised by men's groups and show how the long history of advocacy in this field has influenced the recent announcements made by the Prime Minister in terms of family law reform.

The emphasis will be on issues for women who have separated from violent men and how their needs have been taken up at times and ignored at others.

Christine Forster and Vedna Jivan

Christine Forster has been teaching in the law faculty at the University of New South Wales for seven years. She teaches Torts, Feminist Legal Theory and Health and Medical Law. Christine began her work with victims of sexual assault in 1993 where she assisted victims in accessing the Accident Compensation scheme operating in New Zealand. In 1996 she completed post graduate studies in Canada focusing on civil litigation by sexual abuse victims, before pursuing a PhD on sexual assault and criminal injuries compensation schemes in Australia.

Vedna Jivan has worked as a solicitor with community legal centres since 1996. She spent seven years at Kingsford Legal Centre, University of NSW, as an adjunct lecturer and clinical supervisor, practising predominantly in the areas of anti-discrimination law, refugee law and criminal injuries compensation. She is currently a lecturer at the University of Technology Sydney and was recently appointed Director of Practical Legal Training Programs at UTS. Her research interests include discrimination and human rights law and legal education. She is the co-editor of a digest of case law on the human rights of women in the Asia Pacific (with Christine Forster) and is currently pursuing a research project on the application of CEDAW in domestic litigation in the Asia Pacific Region.

ABSTRACT

Old lore/bad law; how criminal injuries compensation schemes fail victims of sexual abuse

There are currently fourteen criminal injuries compensation schemes in operation throughout Australia, each providing a potential avenue of compensatory redress for victims of sexual abuse. However, as illustrated by a recent case in the NSW Court of Appeal, such schemes in their current form are failing victims of sexual assault. The schemes have fallen short of providing adequate therapeutic assistance or compensation to victims as a route to economic freedom. In doing so, they have also fallen short of providing a symbolic statement of the unacceptability of sexual assault in the community.

This paper argues that the schemes fail victims of sexual abuse because they are premised on principles of formal equality. This approach does not recognise that sexual abuse is differently situated to other offences (because of community, police and judicial attitudes towards it), and consequently creates hurdles for victims of sexual abuse not faced by other victims. Further, the notion of 'injury' under the schemes is premised on a vision of crime as an isolated and unexpected attack by a stranger and fails to recognise the different nature of harms that typically ensue in cases of sexual abuse. Changes have been trialed in recognition of the limitations of the formal equality approach. However, despite the introduction of sexual assault provisions in three jurisdictions, the schemes en masse continue to represent a less than ideal model of compensation. This paper concludes by proposing a new model of sexual assault provisions.

Juliet Behrens (Chair)

Juliet Behrens is a Senior Lecturer in law at the Australian National University (Reader from January 2005). She is currently sub-dean of the Law Faculty, with responsibility for undergraduate student matters. She has been teaching, researching and publishing in the area of family law for thirteen years. She has a particular interest in feminist perspectives on family law. She is co-author of *Australian Family Law in Context*, and author of articles on domestic violence and family law and parenting disputes, particularly relocation disputes. She is a member of the editorial board of the *Australian Journal of Family Law* and chair of the ACT's Domestic Violence Prevention Council. She has three young children and tries to work part-time.

Poverty & Social Justice

Nicola Howell

Nicola Howell commenced as the first Director of the Centre for Credit and Consumer Law in March 2004. The Centre is a newly established academic centre, based in Griffith University's Law School.

Immediately prior to her appointment as CCCL Director, Nicola held the positions of Policy & Research Officer at the Consumer Credit Legal Service (Vic) and Policy Advisor at the Banking & Financial Services Ombudsman Scheme. She has also held senior policy positions – focusing on consumer protection issues – with the Consumer Credit Legal Centre (NSW), the Australian Securities & Investments Commission, and the Australian Competition & Consumer Commission.

Nicola is an Executive Member of the Consumers' Federation of Australia and a member of Australian Securities & Investment Commission's Consumer Advisory Panel.

ABSTRACT

Reform in credit and consumer law does not necessarily come to mind as a way to address issues of poverty and social justice. However, access to fair and non-exploitative products and services in credit and banking, telecommunications, energy and other sectors is an essential part of ensuring 'social inclusion' for all members of the community. Similarly, access to justice in credit and consumer disputes is an important part of a social justice response to consumer issues.

'Law' reform (in its widest sense) can therefore have a real and practical impact on the lives of consumers who might be in positions of low income, disadvantage or vulnerability in the market. This presentation will describe some of the current issues in credit and consumer law that are particularly relevant for low income and disadvantaged consumers. It will explore ways in which consumer lawyers and non-lawyer advocates can influence policy and law reform, the role of socio-legal research within this process, and the effectiveness of connecting research and academic functions with current casework experiences.

Denise Scott

Denise Scott is the National Manager, Policy and Professional Programs, for the Australian Association of Social Workers. She is a social worker and has worked in a range of practice settings including child protection, disabilities, individual, relationship and family counselling and refugee resettlement. She has published a children's book on postnatal depression from a child's perspective as well as a learning guide for social work students on cross-cultural social work practice.

ABSTRACT

Poverty and Social Justice: A Social Work Perspective

The Australian Association of Social Workers is the professional association representing social workers across Australia. This paper provides insight into the human face of poverty encountered by social workers in their everyday practice in Australia. Principles of social justice underpin social work practice, and this is evident in this paper's discussion of poverty within a human rights framework. It considers issues of poverty and social justice within a brief examination of Articles 6-15 of the 1966 Covenant on Economic, Social and Cultural Rights, to which Australia is a signatory, and concludes by suggesting ways in which lawyers could do more to address these issues.

David Tennant

David Tennant was appointed as the Director of Care Inc Financial Counselling Service in July 2000. Care has been the main provider of financial counselling and related services in the ACT since 1983. From 1995 to 2000 and prior to his appointment as Care's Director, David was the Principal Solicitor of Care's Consumer Credit Legal Service, the forerunner to the Consumer Law Centre of the ACT.

Some of David Tennant's other current representative roles include: Executive member of the Consumers' Federation of Australia, ACT Council member of the Australian Financial Counselling and Credit Reform Association, ACT Government Fair Trading Advisory Committee, Australian Securities and Investments Commission Consumer Advisory Panel, Australian Competition and Consumer Commission Consumer Consultative Council and Consumer Member of the Banking Code of Practice Compliance Monitoring Committee.

ABSTRACT

Many of the most important developments in consumer policy and law reform have come about as a result of connecting lobbying efforts to real and current consumer experiences. In the 2003-2004 financial year, Care Inc and the Consumer Law Centre responded to over 2200 new requests for assistance from ACT and regional consumers. Individually and collectively, those consumer contacts paint a picture of what is working and not working in a variety of consumer markets. This presentation will provide examples of how client experiences have influenced policy and law reform in the ACT, and how such information feeds into the work of national consumer networks.

Tony Connolly (Chair)

Tony Connolly teaches in the Faculty of Law at The Australian National University. His main areas of research are in legal philosophy, public law, native title and evidence. Prior to commencing at the ANU, Tony worked as a lawyer in both private and community practice in Western Australia. He is presently completing a PhD at the Research School of Social Sciences at the ANU on the topic of intercultural communication within legal settings.

Plenary 2: The Judiciary

Kylie Burns

Kylie Burns BA LLB (Hons) LLM is a lecturer at the Griffith Law School, a member of the Griffith Socio-Legal Research Centre and a solicitor of the Supreme Court of Queensland. Kylie researches and publishes in the area of tort law. Her current research focuses on an analysis of the use of social facts and social scientific evidence in tort cases in the Gleeson High Court, and the ramifications of this for the role of policy, the rules of evidence and procedure and the concept of judicial decision-making.

ABSTRACT

Reflecting Social Change? The High Court and Social Facts

The way in which the common law effects social change depends on how courts reflect social change. In many cases at appellate level, questions of social policy, the nature of Australian society, social values and the social effects of particular findings of liability are important concerns. There is often a gap in knowledge required to resolve matters, between the principles of law and the facts in issue in a case, that judges must fill with their own conceptions of the state of Australian society and social change.

This paper will explore, as a case study, the High Court's use of social facts in Australian negligence cases in 2003, particularly the novel case of *Cattanach v Melchior* (2003) 199 ALR 131. It will consider issues including the frequency of the use of social facts, the nature of social facts, the source of social facts and the use of social scientific evidence. It will argue that there is no coherent method in Australian law for determining reliable social facts, and that this results in the adoption of conflicting and potentially inaccurate assumptions in High Court cases about the nature of Australian society. The paper will also discuss methods that may improve the legitimacy of social facts used in judgments.

Ronald Sackville

Ronald Sackville has been a Judge of the Federal Court of Australia since 1994.

Ronald was formerly Professor of Law (1972-1985) and Dean of the Faculty of Law (1979-1981) at the University of New South Wales. He was Commissioner for Law and Poverty on the Australian Government Commission of Inquiry into Poverty (1973-1975); Chairman of the South Australian Royal Commission into the Non-Medical Use of Drugs (1979-1981); and Chairman of the New South Wales Law Reform Commission (1981-1984).

From 1985 until his appointment to the Federal Court, Ronald practised at the New South Wales bar, principally in the fields of administrative law, constitutional law and equity. He was appointed Queen's Counsel in 1991. From 1985 to 1989 he chaired (part-time) the Victorian Accident Compensation Commission.

Ronald chaired the Commonwealth Access to Justice Advisory Committee, which presented its report, *Access to Justice: An Action Plan*, in 1994.

He has published articles and papers on a wide range of subjects, including migration law. In recent years he has been a Visiting Scholar at Cornell University, New York University, McGill University and Cardozo Law School.

Ronald is the Deputy Chair of the Judicial Conference of Australia.

Kathy Mack and Sharyn Roach Anleu

Kathy Mack, BA Rice, JD Stanford, LLM Adel is a Professor of Law, Flinders Law School. Teaching and research interests include evidence, criminal procedure, dispute resolution and legal education. Kathy has frequently contributed to planning and presenting judicial education programs for courts in Australia and overseas.

Professor Sharyn L. Roach Anleu MA Tas, LLB(Hon) Adel, PhD Conn is a Professor of Sociology at Flinders University, and a past president of the Australian Sociological Association. She is one of three editors of the *Journal of Sociology* and is the author of *Law and Social Change* (Sage, London) and three editions of *Deviance, Conformity and Control* (Longman, Sydney).

ABSTRACT

Magistrates Research Project

Much of the discussion about law and social change focuses on decisions made by the higher courts and legislatures and their capacity to alter social institutions and practices. Relatively little attention has been paid to the magistrates' court, despite the fact that the vast majority of citizens who come into contact with the judicial system – whether for a criminal trial, a debt recovery action, a committal or some other matter – will have their case considered (and most likely only considered) by a magistrate. Often these citizens experience a range of personal and psychological problems that are social in origin, including precarious employment, welfare dependence, financial hardship, and various health, (including mental health and drug-dependency) problems. We suggest a dialectical view of social change – magistrates' courts must respond to a raft of social changes and their human fallout and in so doing can contribute to progressive social change in a local, personal and incremental way.

Stephen Bottomley (Chair)

Stephen Bottomley is Professor of Commercial Law and Director of the Centre for Commercial Law in the Faculty of Law at The Australian National University. He is co-author of *Law in Context*, a textbook that introduces law students to the social, political and economic contexts within which the law operates, emphasising issues of access to justice.

Criminal Justice Issues

Eileen Baldry

Eileen Baldry is a Senior Lecturer in the School of Social Work UNSW teaching social policy and coordinating the Social Development Postgraduate programs. She has researched and published in social action and change, child abuse, social housing, prisons, post-release housing and related social matters. She has been involved for many years with community development with public housing communities, with prison reform and post-release services and with a number of justice campaigns.

ABSTRACT

The closed loop – imprisonment–release–imprisonment

The past few years have seen renewed attention to the post-prison period as crucial to integration and rehabilitation for releasees in many OECD countries. It has dawned on governments that the massive growth in prison populations over the past two decades is resulting in equally large numbers of ex-prisoners (including remandees) returning to their communities. High recidivism rates indicate that most of these releasees have not slipped successfully back into their communities. On the contrary, many appear to become more disconnected from social and work life than previously. Recent research in Australia on the post-release experience highlights the socially negative impacts of imprisonment, especially upon those serving short sentences, with large numbers of ex-prisoners, many with alcohol or other drug problems, mental health and intellectual disabilities, having no stable accommodation, employment or helpful support. Multiple incarcerations are shown to be inevitable for many in this situation, creating a closed and negative loop in which periods of imprisonment, followed by short periods in the community before reimprisonment, could be characterised as 'serial institutionalisation'. The notion that this use of prison is in any form rehabilitative or therapeutic is shown to be unsustainable. New approaches to address the problem currently being tried are examined critically.

Hugh Dillon

Hugh Dillon has been a NSW magistrate since 1996. He studied at the University of Sydney (BA, LL.M), and worked for a District Court judge, the Federal AAT, the NSW Council of Social Services, the NSW Department of Youth and Community Services, the NSW Ministry of Aboriginal Affairs, the NSW Ombudsman and the Commonwealth DPP before his appointment to the Bench. He is consultant editor of the Local Court Criminal Practice (NSW). In his moments of spare time, he plays with his children, writes book reviews and the occasional article, plays baseball with old fat men, swims and follows disappointing sporting teams.

ABSTRACT

A Magistrate's view of the Law and Social Change

Three main topics will be raised. First, the NSW magistracy itself reflects social change. One of the most significant but unheralded reforms in the NSW criminal justice system has been the transformation of the magistracy from a pro-prosecution, public service body into a truly independent judiciary. Gender bias in the selection of NSW magistrates has been virtually eliminated since 1995. The selection of magistrates from ethnic minorities lags behind but can be expected to become more balanced as more members of those groups enter the legal profession. Second, while not developing social policy themselves, magistrates' courts are important instruments of social policy. Magistrates' courts are now at the forefront of "problem-solving" approaches to crime, child welfare, mental health, family breakdown, domestic violence and other issues which tend to coalesce in the criminal justice system. Third, examples of the types of approaches being adopted in NSW, such as circle sentencing, specialist drug courts and restorative justice will be discussed.

Gail Wallace and Roslyn Barker

Gail Wallace has been employed as the Project Officer (Circle Sentencing) since November, 2001.

Previously, over the past 24 years, she has been employed in a number of areas within the public service, providing either direct services to Aboriginal community or providing policy advice in regard to the specific service needs of Aboriginal people. These areas of employment included: the South Coast Aboriginal Legal service, the Commonwealth Departments of Education and Social Security, the Social Security Appeals Tribunal, the NSW Attorney General's Department and the Office of the Director of Public Prosecutions. Gail was the first Aboriginal Law Student to graduate from Wollongong University in 1996. She is a descendant of the Wemba Wemba and Durang Clans.

Roslyn Barker is Project Officer (Circle Sentencing) at Dubbo Local Court.

ABSTRACT

Circle sentencing is revolutionary in the way it's breaking down the barriers that have existed between the Aboriginal community and the criminal justice system over the past 200 years. The presentation will provide an overview of circle sentencing, how it operates, what the procedures are, and what makes it a successful crime prevention program.

Russell Hogg (Chair)

Russell Hogg teaches in the Faculty of Law at ANU. His principal research and teaching interests are in the areas of criminal law, criminal justice and criminology. He is the co-author (with David Brown) of *Rethinking Law and Order*.

Bypassing the Courts

John Braithwaite

John Braithwaite is a Federation Fellow and a member of the Centre for Restorative Justice at the Australian National University. He is interested in applying restorative justice ideas to international peacemaking, bullying, business regulation and family conflicts as well as to traditional criminal offending. Recent books include *Restorative Justice and Responsive Regulation* (Oxford, 2002) and *Global Business Regulation* (Cambridge, 2000, with Peter Drahos). He is active in community organizations and social movement politics.

ABSTRACT

Bypassing the Courts - Restorative Justice

Lawyers have played important roles as facilitators and obstacles to social change with respect to restorative justice. Richard Refshauge on this panel is a Canberra example of one of the facilitators. The ACT restorative justice legislation of August 2004 manifests that facilitation in its innovative whole-of-government approach to restorative justice. In other jurisdictions, notably New Zealand and Canada, it has been judicial leadership that has been decisive. The constructive role of legal critics of restorative justice will also be discussed, along with some of the evidence on the effectiveness and limitations of restorative justice.

Kathy Mack

Kathy Mack, Professor of Law, Flinders University, BA Rice, JD Stanford LLM Adel.

Teaching and research interests include evidence, criminal procedure, dispute resolution and legal education. Recent publications include *Court Referral to ADR: Criteria and Research*, a report for the Australian Institute of Judicial Administration. Before coming to Flinders University, Kathy taught at Adelaide Law School from 1984, and previously practised law in California and taught at Stanford Law School.

ABSTRACT

Resolution of civil claims and ADR

Since the publication of *Australian Lawyers for Social Change*, nearly 30 years ago, there have been several major initiatives in civil dispute resolution. One development which is often associated with progressive social change is the increased promotion of ADR, especially court-connected ADR. ADR proponents claim that ADR is quicker, cheaper, friendlier, more flexible and can better accommodate a variety of needs, interests and outcomes, in comparison with the adversarial legal system. This paper will give an overview of the empirical research which has attempted to evaluate ADR and the courts over the past 20 years, in the United States, Canada, Australia and the UK.

Richard Refshauge

Richard Refshauge SC BA LLB graduated from the ANU in 1975 and commenced practice with Macphillamy Cummins & Gibson, becoming senior litigation partner with emphasis on commercial and industrial litigation, constitutional law and insolvency. He also maintained a small criminal law practice and in 1998 was appointed the ACT's third Director of Public Prosecutions and, to date, the longest serving occupant of that Office. He is the editor and an author of Civil Procedure ACT and since 2000 has been an Adjunct Professor of Law at ANU. He is a member of the Councils of the ACT Bar Association and the Australian Institute of Judicial Administration and the Criminal Law Committees of the ACT Law Society and the ACT Supreme Court.

Simon Bronitt (Chair)

Simon Bronitt is Director of the National Europe Centre, and a Reader in the Faculty of Law at ANU. Simon's teaching and research interests span criminal law, criminal justice and comparative law. He is the co-author (with Bernadette McSherry) of Principles of Criminal Law (2001). Simon has a strong commitment to law reform and social justice. Prior to migrating to Australia he worked with the Law Commission in the UK (1989-1990). More recently, he chaired the ACT Domestic Violence Prevention Council (2000-2002), and is currently a member of the Board and Treasurer of the Conflict Resolution Service Inc (ACT), a community based mediation service in Canberra.

Using the System

Stuart Clark

Stuart Clark is a partner in Clayton Utz, based in its Sydney office, where he leads the firm's national Product Liability and Class Actions practice.

He graduated from the Macquarie University Law School in 1980 and subsequently practised both as a solicitor and a member of the NSW bar.

He has extensive experience in the defence of claims against drug and medical device manufacturers in Australia, New Zealand, Canada and the United States. He represented G D Searle & Co in its defence of the Australian proceedings involving the Gravigard (Copper 7) IUD which was heard by the Supreme Court of New South Wales in 1996/1997 - subsequently described by the trial judge as "the longest running and most complex product liability action yet heard in Australia". Stuart also represented the manufacturer of dexfenfluramine in the Australian Fen-Phen (diet drug) class action litigation.

Stuart represented the Sydney Water Corporation in the Special Inquiry/Royal Commission and class action litigation that followed the 1998 contamination of Sydney's water supply with cryptosporidium and giardia.

He has written and spoken extensively on the development of product liability law and class action practice and procedure in both Australia and overseas.

ABSTRACT

It is often suggested by those who represent plaintiffs that the law, and especially tort law, should be used to promote social change and control. These calls are most vocal when government has allegedly failed to act. It is argued that litigation, perhaps even the threat of litigation, keeps dangerous products off the market, promotes safety, and ensures laws are enforced where they otherwise may not be. This 'White Knight' view of the legal system has its attractions. However, the model also involves many social costs and contradictions. The reality is that litigation is a business and, like all of those in business, plaintiff's lawyers carry on that business to make a profit. In some instances the level of that profit is simply unconscionable. The social cost of litigation must also be taken into account: corporations have been destroyed, jobs lost, products withdrawn from the market, and development undermined as a consequence of speculative and unmeritorious litigation. This is especially true of life-saving drugs and devices. This raises an important question: with the stakes so high, who is the proper arbiter of such matters, the legal profession and the judiciary, or the elected government.

Andrea Durbach

After 12 years at the Public Interest Advocacy Centre (PIAC), 7 as Director, Andrea Durbach has recently taken up an appointment as Associate Professor at the University of New South Wales School of Law and Director of UNSW's Australian Human Rights Centre. Born and educated in South Africa, she practised as a political trial lawyer and human rights advocate, representing victims and opponents of apartheid laws. In 1988 she was appointed solicitor to 25 black defendants in a notorious death penalty case in South Africa and later published an account of her experiences in Upington (Allen & Unwin 1999). After leaving South Africa in 1989, Andrea worked as a solicitor at Freehills in Sydney and in 1991, she joined PIAC as Assistant Director, becoming co-ordinator of its Public Interest Clearing House (1992), Head of Legal Practice (1994) and Director in 1997. Andrea's work at PIAC concentrated on litigation and policy issues which had a distinct human rights and access to justice focus. Andrea is a part-time commissioner of the NSW Law Reform Commission and part-time judicial member of the Legal Services Tribunal.

ABSTRACT

The origins and strategies traditionally associated with public interest litigation are primarily informed by objectives which seek to use the law to attain justice for those who are frequently denied access to it - due to a lack of economic, political, social and/or cultural power. Allied to this enterprise, is the aim of exposing and addressing deficient or harmful laws, systems and practices in order to inform policy and effect social change.

The strategies invoked in public interest litigation are often selected because of their capacity to conserve costs, maximise resources and secure an expeditious outcome with long-term effects for marginalised classes of people and communities. This presentation will argue that public interest litigation - both in terms of the issues it advances and the legal procedures it adopts - serves, rather than uses, the legal system. In contrast, often those who agitate against or seek to dismiss the public interest, invoke strategies which use and exploit the system, defeating, rather than serving, the effective administration of justice.

Tanja Kovac

Since starting practice in 2000, Tanja has acted for several people who have had their human and civil rights abused, particularly as a consequence of Victoria Police misconduct. Her representation of a woman unlawfully strip searched by police for unpaid parking fines achieved a record jury verdict for exemplary damages in Victoria.

Tanja was part of the team of lawyers who acted for Amnesty International Australia in Victorian Council for Civil Liberties and *Ors v Minister for Immigration, Multiculturalism and Indigenous Affairs* & Ors (2001) 110 FCR 452 ("The MV Tampa case"). In conjunction with the Fitzroy Legal Service, she currently acts pro bono for a peace protestor charged with serious criminal offences arising from a protest in Melbourne on the first day of bombing in Iraq. She is an active supporter of corporate firm-community legal centre partnerships, in litigation, policy development and social change.

Tanja acts on a daily basis for people who have been injured as a consequence of the neglect and lack of care of others. She is highly critical of recent attacks by Governments and insurance companies on the rights of injured people.

Tanja Kovac recently joined Melbourne law firm Ryan Maloney Anderson as a Senior Associate. She is a member of Feminist Lawyers and the Law Institute of Victoria's Bill of Rights Committee and chairperson of community access television station SKA TV.

ABSTRACT

Social change happens when lawyers work together with their clients, community organisations and the media to create public awareness and participation in and around a social issue. This requires lawyers to de-emphasise their role in creating just outcomes for society and see the process as something owned by the entire community.

Tanja will explore how social justice lawyers provide representation and advice in a way that aims to achieve more than legal outcomes. She will explore her views on what makes a good fighting social justice lawyer, questioning whether lawyers on day release from corporate firms foregoing fees is enough to make social change.

She will also explore ways in which lawyers who take holistic approaches to the practice of the law can fend off attacks from other members of the profession who believe that the rule of law is only served with impartiality, rationality and the application of technical legal expertise.

Peta Spender (Chair)

Peta is a Reader in Law (Associate Professor) specialising in corporate law, securities regulation and litigation. After graduating from the University of New South Wales and University of Sydney, she practised as a solicitor for several years in Sydney specialising in commercial law and commercial litigation. She commenced her academic career at the University of New South Wales and then relocated to Canberra.

Peta has contributed many articles to Australian and international publications as well as co-authoring *Civil Procedure: Commentary and Materials*, soon to be in its third edition. She is currently researching and writing in the areas of class actions, corporate law and corporate insolvency.

Conference Dinner

Noel Pearson

Noel Pearson holds degrees in history and law from the University of Sydney. He was involved in the establishment of the Cape York Land Council in 1990 and the other regional indigenous organisations representing the people of Cape York Peninsula, including Apunipima Cape York Health Council in 1994 and Balkanu Cape York Development Corporation in 1996. He chairs the board of the Cape York Partnerships Projects office and is a board member of Indigenous Enterprise Partnerships. He is now the Director of the Cape York Institute.

Notes

Plenary 3: The Legal Profession

John Basten

John Basten was a lecturer-in-law at the University of New South Wales when the predecessor of this conference was held in 1974. Whilst at UNSW, he was involved in the establishment of the Redfern Legal Centre in 1977 and the Kingsford Legal Centre a few years later.

When he commenced at the Bar, he was involved in a significant number of cases which established procedural rights for prisoners, and in many of the seminal NSW discrimination cases.

As a result of his experience in discrimination law, John was appointed as a part-time hearing commissioner at the Human Rights and Equal Opportunity Commission and a member of the NSW Law Reform Commission, with responsibility for its Report on the Anti-Discrimination Act 1977 (NSW).

More recently he has been involved in numerous cases involving the Refugees Convention, often appearing for the Minister, but in other cases for asylum seekers.

Simon Longstaff

Simon Longstaff is a philosopher and ethicist whose work focus is mostly in the wider community beyond academe. He has been Executive Director of St James Ethics Centre since 1991. Established in 1989, the Centre is an independent not-for-profit organisation which provides a non-judgemental forum for the promotion and exploration of ethics.

One of the Executive Director's roles is to encourage the process of integrating ethical considerations into the strategic thinking of the management community. More generally, Simon encourages and contributes to the active discussion of ethical questions amongst the widest possible audience.

Simon has a Bachelor's Degree in Education and won scholarships to study at Cambridge, where he read for the degrees of Master of Philosophy and Doctor of Philosophy.

More information about Dr Longstaff and the Centre is available at www.ethics.org.au

ABSTRACT

'Creative Compliance' and the end of the legal profession:

In the course of unravelling the circumstances leading to a swag of corporate collapses, Professor Doreen McBarnet, of Oxford University, has discovered a large number of examples of what she calls "creative compliance" – legal and accounting contrivances that have been brought into existence for the specific purpose of defeating the clear intention of legislation. McBarnet's investigations raise enduring questions about the profession of law, its purpose and relationship to society. Specifically, if law is a profession, then do its practitioners still feel bound to accept the traditional requirement that they act in a spirit of public service? If this obligation is accepted, then how should lawyers respond when substantive issues of justice are put into question by those who employ their services? Is the role of the lawyer fundamentally different from that of the citizen – and if so, then how so?

Margaret Thornton

Margaret Thornton has been Professor of Law and Legal Studies at La Trobe University, Melbourne, since 1990. Her research interests are in the areas of discrimination jurisprudence, legal education, the legal profession and feminist legal theory. Her present research ARC project, 'The Neo-Liberal Legal Academy', examines the impact of the market on legal education. Her books include *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford 1990) and *Dissonance and Distrust: Women and the Legal Profession* (Oxford 1996, Beijing 2001). She is a Fellow of the Academy of Social Sciences.

ABSTRACT

From 2005, the typical law student will be paying 84 per cent of the cost of their legal education in Australian public universities, a dramatic change from the free higher education of 30 years ago. This presentation will consider the ramifications for social justice of the contemporary imperative to commodify legal education. It will be argued that the market mindset is beginning to affect the character of what is taught and how it is taught. First, it is inducing law students to focus on the credentialism associated with their law degree rather than the substance of their legal education; secondly, it is encouraging law students to seek work in well paid corporate law practice in preference to public interest employment. The presentation will draw on research presently being undertaken as part of an ARC-funded project, 'The Neo-liberal Legal Academy'.

Nicola Roxon

Nicola Roxon is Labor's Shadow Attorney-General and Shadow Minister Assisting the Leader on the Status of Women.

She has been a member of Federal Parliament since 1998 representing the western suburbs seat of Gellibrand in Melbourne. She previously held the positions of Shadow Minister Children and Youth and Shadow Minister for Immigration. She was promoted to the Immigration portfolio in July 2003 and to her current position in December 2003 by new leader Mark Latham.

Nicola is an honours law graduate, who worked as an industrial lawyer, union organiser and judge's associate to Justice Mary Gaudron in the High Court of Australia prior to her election to parliament.

Richard Refshauge (Chair)

Richard Refshauge SC BA LLB graduated from the ANU in 1975 and commenced practice with Macphillamy Cummins & Gibson, becoming senior litigation partner with emphasis on commercial and industrial litigation, constitutional law and insolvency. He also maintained a small criminal law practice and in 1998 was appointed the ACT's third Director of Public Prosecutions and, to date, the longest serving occupant of that Office. He is the editor and an author of *Civil Procedure ACT* and since 2000 has been an Adjunct Professor of Law at ANU. He is a member of the Councils of the ACT Bar Association and the Australian Institute of Judicial Administration and the Criminal Law Committees of the ACT Law Society and the ACT Supreme Court.

Access to Justice

John Corker

John Corker became the Director of Australia's National Pro Bono Resource Centre in January 2004. Previously he was a senior associate with Australian national law firm, Clayton Utz for 3 years. During this time he established Oz NetLaw, the "Cyberspace Law" practice of the Communications Law Centre.

Previously he spent 10 years employed by the Federal Government and was General Counsel for Australia's broadcasting and online services industry regulator, the Australian Broadcasting Authority ("ABA").

Prior to working for Government, he spent 7 years in Central Australia first as a lawyer for Aboriginal Legal Aid and then as the sole lawyer involved in the establishment of Imparja Television, Australia's first Aboriginal owned commercial television service.

He started his career as a judges' associate and a barrister in the State of Victoria.

He holds bachelor of economics and laws degree from Monash University and a Masters of Laws (Media, Communications and Information Technology) degree from the University of New South Wales.

Judy Harrison

Judy Harrison is the Director of Clinical Programs in the ANU Law Faculty and an Instructor at the ANU Legal Workshop where she teaches family law practice, legal practice skills and advocacy. She is an ANU graduate with over 20 years experience in non-profit and community legal practice. Judy has been involved in law reform in the ACT and NT and led a number of national campaigns for NGO's. She also works as a consultant for government and non-government organizations particularly in the areas of legal policy and legal service delivery.

Liz O'Brien

Liz O'Brien is National Convenor of the National Association of Community Legal Centres Chair Australian Legal Assistance Forum Administrator, Welfare Rights and Legal Centre Member Access to Justice Committee, Law Society of the ACT. She is a graduate of the ANU in History and Political Science. She has worked in the Community sector for more than 25 years. She was the Manager of Community Radio 2XX and president of the Community Broadcasting Association of Australia prior to her current employment.

Liz was the first female president of the ANU Students Association in 1976, led the agitation for a Womens Studies course and was an activist in the radical student left throughout the seventies.

ABSTRACT

John Corker will outline what role pro bono is playing in the delivery of legal services to the socially disadvantaged in Australia and will argue for the continuing role of the National Centre as an essential part of the partnership of national legal service delivery organisations.

ABSTRACT

Access to Justice has meaning when we separate the idea of law and lawfulness from the struggle for freedom and equality - which are the hallmarks of Justice. Martin Luther King in his letter from Birmingham Jail remarks on the danger of those who are more devoted to order than to justice. Justice is not orderly, it recognises difference and discrimination, it takes the side of the weak against the powerful, it recognise the obligation to disobey the law, it is not the 'absence of tension, it is the presence of peace'. It can't be blind.

Kathleen McEvoy

Kath McEvoy is one of three members of the Law School, University of Adelaide, (Margaret Castles and Alex Wawryk are the other two), who are establishing a Homeless Persons Legal Advice Service in Adelaide. Kath is a Senior Lecturer and former Dean of the Law School. Her areas of teaching and research are Constitutional Law and Industrial and Labour Relations Law, and she has also worked extensively in areas of Housing Law. Kath is a former member and Chairman of the SA Residential Tenancies Tribunal; Legal Member, SSAT; Hearing Commissioner of HREOC; and presently Chairperson of the Public Housing Appeal Panel in South Australia, and a Senior Case Officer of the Child Support Agency. All of this work has provided a great deal of both practical and empirical material touching on the role of lawyers and social change.

ABSTRACT

The University of Adelaide Law School is establishing a Homeless Persons Legal Advice Service, in conjunction with Baptist Community Services. While the Service will be along the same lines as the PILCH Service in Victoria, the Adelaide Service will be characterised by the use of students, and the emphasis on their development of legal and pro bono skills.

The Service will operate one day a week with students from the University of Adelaide Law School Clinical Law program. The students will have their clinical placement at the Homeless Persons' Advice Service, which will be situated in inner Adelaide. The students will be supervised by members of the academic staff responsible for the program, and also by another legal practitioner from an Adelaide law firm, supplied as an aspect of the firm's pro bono commitment. Various legal and associated aspects of homelessness will be the focus of those students' academic work, complementing the advice work they do on the placement.

The Service represents an important aspect of pro bono work in the community for legal practitioners (including legal academics). As importantly however, the Service contributes to an important aspect of legal education: giving students an opportunity to be exposed to broader issues of social justice, seeing and assisting the participation of legal practitioners on a pro bono basis, and enabling them to participate at first hand in the facilitation of very marginalised people into more mainstream legal services.

This Service provides an interface for legal practitioners and the community, and with issues of social justice in a way which might assist in addressing some of the underlying issues contributing to and exacerbating homelessness. Its novel aspect is its association with the University as an educational component in the Law degree.

Daniel Stewart (Chair)

Daniel Stewart is a senior lecturer in the Faculty of Law at the Australian National University. He has degrees in both Economics and Law from the Australian National University and a Masters in Law from the University of Virginia, where he was a John M Olin Fellow in Law and Economics. He has practised as a solicitor, been employed with the Corporate Law Economic Reform Program in the Commonwealth Attorney General's Department and was associate to Justice A M North of the Federal Court. He is the Chair of the Board of Management for the ACT Welfare Rights and Legal Centre.

Lawyers as Activists

Terry Connolly

Terry Connolly was appointed a Judge of the Supreme Court of the Australian Capital Territory on 31 January 2003.

He previously held judicial office as Master of the ACT Supreme Court since February 1996. Prior to this appointment he was a Member of the ACT Legislative Assembly since 1990, and he served in a range of Ministerial portfolios, including Attorney-General from 1991 to 1995. Born in Adelaide in 1958, he was educated at Woodville High School and Adelaide University, obtaining an Honours degree in law and a degree in politics and international relations. While at University he was active in the Australasian Law Students Association, being National President in 1979, and in Australian Young Labor, also serving as National President in 1979.

After completing his undergraduate degrees he worked for a year as Associate to Justice John Gallop, then a Judge of the Federal Court and the Supreme Court of the Northern Territory. Justice Gallop subsequently was appointed to the ACT Supreme Court.

He was admitted as a Barrister and Solicitor in 1982, and came to Canberra in 1983 to join the Department of Foreign Affairs as a legal adviser. He served as a legal adviser to the Commonwealth Government in a range of departments, including Foreign Affairs, Attorney Generals, Veterans Affairs and the Joint House Department until being appointed to a casual vacancy in the Legislative Assembly in 1990. During his period in the Commonwealth Public Service he served as National Secretary and then President of the Australian Government Lawyers Association.

At the time of his appointment to the Legislative Assembly he was Counsel Assisting the Solicitor General, involved in constitutional and international law litigation, including representing the Commonwealth in the High Court. He completed a Masters degree in constitutional law at the Australian National University in 1988, and taught that subject on a part-time basis at the ANU.

As Attorney-General he was involved in a range of significant law reform measures in the early years of self-government, including the transition of the courts to ACT jurisdiction. He introduced diversionary conferencing, a restorative justice initiative and victim impact statements in criminal proceedings, and in 1994 introduced an ACT Bill of Rights.

In 2001 he attended a course of mediation training at Harvard Law School, and has introduced a pilot mediation project in the Supreme Court to encourage early resolution of more complex cases. In October 2001 he was invited by the United Nations to attend a conference in Ottawa to draw up guidelines for restorative justice programmes worldwide. He represents the ACT on a national panel developing uniform standards for the education and training of legal practitioners.

He has served as ACT President of the Medico-Legal Society, and is currently President of the ACT Chapter of the International Commission of Jurists.

Patricia Ranald

Patricia Ranald manages research and policy at the Public Interest Advocacy Centre, Sydney. She is the national convener of the Australian Fair Trade and Investment Network, a network of 90 community organisations which conducts public education and advocacy on trade and human rights issues.

Dr Ranald was formerly a Senior Research Fellow at the University of New South Wales. Her doctoral thesis in International Relations was a comparative study of global and regional international trade agreements and their impacts on human rights.

Dr Ranald is the co-editor of *Stopping the Juggernaut: Public Interest versus the Multilateral Agreement on Investment* (Pluto Press, Sydney, 1999) and the author of numerous journal articles, book chapters and popular publications on globalisation, governance and the impact of trade agreements on human rights.

ABSTRACT

The Australia-US Free Trade Agreement (AUSTFA) is of interest to lawyers and other community activists because the restraints it places on the ability of governments to regulate in many areas of public interest. These include access to affordable medicines, Australian content in film and television, access to copyrighted materials including open source software, food labelling and quarantine.

Once these issues are included in a trade agreement they are subject to a trade disputes process based on trade law, not on public interest criteria. This has been confirmed dramatically by the US government reserving its right to object to the ALP amendments to the USFTA implementing legislation.

These issues prompted a community campaign that involved legal activists, unions, pensioners, church, health, social service, environment and cultural groups, and had a major impact on the mass media debate and on public opinion. The presentation will discuss the campaign and the need to monitor the impacts of the agreement.

Fiona Game

Fiona Game finished the last course of her undergraduate ANU law degree at the Byron Bay Summer School. Since that time she has been surfing, working on organic farms and volunteering for various groups such as the ANU Food Cooperative, Save the Ridge and the Indigenous Justice Advocacy Centre in Sydney. She currently works for Phillip Toyne, former Head of the Australian Conservation Foundation and former first lawyer for the Pitjantjatjara people during their successful negotiations to receive title to the Uluru National Park.

ABSTRACT

'Not fitting the mould: how to cope with Law School despair'

Fiona will discuss the frustrations experienced by some students who find that law school stultifies, rather than strengthens, their passion for social change. Her presentation will provide examples of ways in which law students can realise their potential as effective social change agents through unconventional channels such as conservation campaigns and the media.

Sarah Keenan

Sarah Keenan grew up in Toowoomba, QLD before coming to study Arts/Law at the ANU. While at ANU she was a regular volunteer at the Canberra Welfare Rights and Community Legal Centre. She was a general representative on the students' association, and was women's officer of the law students' society. While studying she also had a part time job as a youth worker at Lowana Young Women's Refuge. Sarah graduated with first class honours last November, and in March was appointed to be Associate to Justice Margaret Wilson of the Supreme Court of Queensland, commencing in October 2004.

In the interim time this year she has been overseas, most significantly spending almost 3 months in Japan on an international peace pilgrimage walking to Hiroshima in protest against the nuclear industry. She was good friends with Fiona Game during law school and shares her view of life as a law student/activist. Sarah will follow on from Fiona's speech by sharing her experiences of this "gap time" between graduation and starting her legal career, and the opportunities she sees for young lawyers to become activists.

Ritchie Hollands and James Prest

After graduating from the University of Adelaide with Bachelors of Laws and Arts (Honours), Ritchie Hollands worked for two years as a judge's associate in the District Court of South Australia. He then moved to Canberra to undertake the Graduate Development Program at the Department of Immigration and Multicultural and Indigenous Affairs in 2000. His subsequent work for that Department until late 2003 was in the Litigation and Legal Policy sections of the Department. In the latter area, he advised on and trained decision-makers in refugee law and lawful decision making. He now is a Senior Legal Officer in the International Crime Branch of the Commonwealth Attorney-General's Department. In his personal capacity, Ritchie has been actively involved in the leadership of legal efforts against the destruction of urban bushland in Canberra for the construction of a four-lane highway.

James Prest is solicitor at the ACT branch of the Environmental Defender's Office Inc., a public interest law firm. He was heavily involved behind the scenes with the Save the Ridge litigation in the AAT, Supreme Court and Federal Court when working as a solicitor at Pamela Coward and Assoc. between February and June 2004. He submitted a PhD thesis in law at the Centre for Natural Resources Law and Policy, Faculty of Law, University of Wollongong, in January this year under the supervision of Professor David Farrier, author of the NSW Environmental Law Handbook. He has a long-standing interest in environmental law and environmental activism. In his time off he reminds himself to laugh about the reaction of some governments to environmentalists' successes in the courts.

Tom Faunce (Chair)

Tom is a senior lecturer in the ANU Medical School and lecturer in the ANU Law Faculty. He is a graduate of ANU Law School and worked as an associate to Mr Justice LK Murphy of the High Court of Australia and at Mallesons (Canberra) and Freehills (Sydney). He is a graduate of Newcastle Medical School and trained in Intensive Care Medicine. His PhD at the ANU Law School was awarded the Crawford Prize in 2002.

Diversity in the Profession

Mick Dodson

Mick Dodson is a member of the Yawuru peoples, the traditional Aboriginal owners of land and waters in the Broome area of the southern Kimberley region of Western Australia. He is currently Professor and Chairperson of the ANU's Institute for Indigenous Australia.

Mick Dodson was Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner with the Human Rights and Equal Opportunity Commission. He served as Commissioner from April 1993 to January 1998. Born in the Northern Territory township of Katherine, Mick was educated in Katherine, Darwin and Victoria. He completed a Bachelor of Jurisprudence and a Bachelor of Laws at Monash University. He was awarded an honorary Doctorate from the University of Technology Sydney in 1998. He also holds an honorary Doctorate from the University of NSW. He worked with the Victorian Aboriginal Legal Service from 1976 to 1981, when he became a barrister at the Victorian Bar. He joined the Northern Land Council as Senior Legal Adviser in 1984 and became Director of the Council in 1990.

From August 1988 to October 1990 Mick was Counsel assisting the Royal Commission into Aboriginal Deaths in Custody. He has been a member of the Victorian Equal Opportunity Advisory Council and secretary of the North Australian Legal Aid Service. He is a member and the current Chairman of the Australian Institute of Aboriginal and Torres Strait Islander Studies. He is the former Chairman of the National Aboriginal Youth Law Centre Advisory Board.

He is a recently retired member of the National Children's & Youth Centre Board and is the convenor of the Advisory panels of the Rob Riley and Koowarta Scholarships. Mick is also a member of the Publications Committee for the University of New South Wales Australian Indigenous Law Reporter. He is also a member of the New South Wales Judicial Commission and the Western Australian Law Reform Commission, and a board member of the Reconciliation Australia and Lingjari Foundations. He is the current chairman of the Australian Indigenous Leadership Centre. Mick Dodson has been a prominent advocate on land rights and other issues affecting Aboriginal and Torres Strait Islander peoples, and a vigorous advocate of the rights and interests of the Indigenous peoples of the world. He was the Co-Deputy Chair of the Technical Committee for the 1993 International Year of the World's Indigenous People. He is also chairman of the United Nations Advisory Group for the Voluntary Fund for the Decade of Indigenous Peoples. He serves as a member of the Board of Trustees of the United Nations Indigenous Voluntary Fund. Mick has, for over a decade, participated in the crafting of the text of the Draft Declaration on the Rights of Indigenous Peoples in the United Nations Working Group on Indigenous Populations and in its more recent consideration by the Working Group of the United Nations Commission on Human Rights.

Margaret Thornton

Margaret Thornton has been Professor of Law and Legal Studies at La Trobe University, Melbourne, since 1990. Her research interests are in the areas of discrimination jurisprudence, legal education, the legal profession and feminist legal theory. Her present research ARC project, 'The Neo-Liberal Legal Academy', examines the impact of the market on legal education. Her books include *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford 1990) and *Dissonance and Distrust: Women and the Legal Profession* (Oxford 1996, Beijing 2001). She is a Fellow of the Academy of Social Sciences.

ABSTRACT

The concept of diversity signifies the postmodern 'turn' in the way that it suggests inclusiveness, adaptability and tolerance. But the legal profession is also a paradigmatically modernist institution that embodies exclusivity, uniformity and conservatism. This presentation focuses on the contradictions that inhere within the social justice imperative to render the legal profession more diverse. Each time that there has been an attempt to do so, there have been counter moves to rein back and neutralise the effects of diversification. The point is clearly illustrated by the entry of women into the profession in large numbers, which has occurred since the 1970s. Technologies of resistance include the domination of the profession by corporate lawyering, the long hours culture and the maintenance of the 'glass ceiling'. The conjunction of race and age will also be addressed, as well as the ubiquitous issue of class.

Sumitra Vignaendra

Sumitra Vignaendra has been researching the nexus between equal opportunity and entry into the legal profession over the last 10 years, including at the Law Society of England and Wales, during which time she commenced researching the topic of her conference paper. The topics of the other related research studies on which she has participated include: Australian Law Students' Career Destinations; The Social Profile of New Law Students; The Career Intentions of Law Students; Social Profile and Entry into the Legal Profession; Hearing Black and Asian Voices: The Exploration of Lawyers' Identities and Learning Outcomes and Curriculum Development in Law.

ABSTRACT

The paper provides preliminary findings from a British study that examined the career experiences of lesbian and gay solicitors and barristers; currently a dearth of information exists about the experiences of these lawyers. This paper will discuss the unique position these lawyers occupy. On the one hand, as lawyers, they are power brokers within the legal system, many of them working in areas that enable them to advocate for disadvantaged groups. On the other, as lesbian and gay employees, due to a lack of workplace policies that explicitly incorporate sexuality, they are in potentially vulnerable positions themselves as a result of their sexuality.

Hilary Charlesworth (Chair)

Hilary Charlesworth is Professor of International and Human Rights at the Australian National University. She was educated at the University of Melbourne and Harvard Law School.

She has taught at the universities of Melbourne and Adelaide and has been a visiting professor at Washington & Lee School of Law, Harvard Law School and the Global Law Faculty at New York University.

Plenary 4: Legal Education

Richard Johnstone and Mary Keyes

Richard Johnstone is a Professor in the Griffith Law School, where he is the Director of the Centre for Socio-Legal Research, Director of the Occupational Health and Safety Unit, within the Socio-Legal Research Centre and Associate Dean (Curriculum, Teaching and Learning). Until April 2004 he was the foundation Director of the National Research Centre for Occupational Health and Safety Regulation, based in the Regulatory Institutions Network in the Research School of Social Sciences at the Australian National University, and is now an Adjunct Professor in the Regulatory Institutions Network, and a member of the National Research Centre. Previously Richard taught at the law schools of the University of Melbourne, the University of Queensland and Monash University. Richard's academic interests are in occupational health and safety regulation, socio-legal research and legal education. He has served as editor of the *Legal Education Review*, and has authored or co-authored five books on teaching and learning in law.

Mary Keyes is a senior lecturer at Griffith Law School, and a member of the Socio-Legal Research Centre. She teaches international litigation, and contract and civil obligations. She researches in international litigation and legal education.

ABSTRACT

The Purposes of Legal Education: Constraints and Challenges

In this paper we argue that although recent changes to legal education in Australia appear impressive, this impression is largely formed by reference to the low benchmark provided by the traditional model of legal education, which still has a partial hold over the legal academy. We argue that there are significant impediments to progressive developments in legal education, which include full engagement with teaching and learning theory, and acceptance that the purposes of legal education include enabling students to understand how law operates within society, stimulating students' awareness of the role of the law in effecting and supporting social change. The constraints we identify include the assumption that the main purpose of legal education is preparation for legal practice; the corporatisation of law schools; the reluctance of legal academics fully to engage with interdisciplinarity and educational theory; and the insufficiency of resources provided for legal education.

Bill MacNeil

William MacNeil is a Senior Lecturer in Law and Associate Dean, Postgraduate Programs at the Griffith Law School, Brisbane, Qld, Australia where he teaches Jurisprudence and Legal Fictions: Representations of Law in Cinema, Philosophy and Literature. Born in Canada, he holds law degrees from Dalhousie, London and Columbia. Prior to coming to Australia in 1998, he taught at the Faculty of Law, University of Hong Kong and, before that, was a research assistant at the London School of Economics. In 2001-2002, he was the Karl Loewenstein Visiting Fellow in Jurisprudence at Amherst College. He has published in the fields of legal history, human rights and cultural legal studies. At present, he is completing a book on the jurisprudence of popular culture.

ABSTRACT

Law School's Moving Image: The Legal Academy on Film

This paper will counterpose two filmic images of law school and legal education: '70s classic, *The Paper Chase* and millennial comedy, *Legally Blonde*. Both films track the progress of a hapless student (Mr. Hart, Elle Woods) through—is there any other law school as far as Hollywood is concerned?—Harvard, subjecting each to the "hierarchy" in which that law school, according to one critic, so famously trains. I want, however, to gauge the critical difference between these films, asking the extent to which the "feminisation" of law school so clearly evident in *Legally Blonde*, contests, even subverts the "regime of the phallus", sustained and embodied by Prof. Kingsfield in *The Paper Chase*? In short, does sociology (gender, but also race and class) affect epistemology, and the organisation of a hierarchised knowledge? *Legally Blonde* refuses any easy answers to this question, but may point, in its very pointed comedy, to a feminist diagnosis of the psychopathology of not only law school and legal education but legal knowledge itself: a diagnosis, which turns on a prescription— that of woman as masquerade.

Anne Macduff

Anne Macduff BA (Hons)/ LLB joined the Law Faculty, ANU in July 2004 as an Associate Lecturer. Prior to commencing at the Law Faculty, Ms Macduff worked on a number of projects investigating diverse aspects of legal education at the ANU. Ms Macduff continues her commitment to the delivery of quality legal education in her role as Academic Advisor to ANU's indigenous law students. Her current educational research has focussed on critical thinking and self reflective practice, while her legal research interests relate to legal theory and indigenous issues.

ABSTRACT

Critical Thinking and Social Change in Legal Education

The conference has raised the interesting question of whether or not we should be teaching social change. I would like contribute my voice to this discussion by noting that if we teach students well, we cannot do anything else but teach social change. I raise this point because I see that social change is closely linked with the critical thinking approaches that we encourage in both undergraduate and practical legal students.

To explore how critical thinking implies taking personal and social responsibility and encourages social change, I will draw upon the influential educational work of J Biggs. I will also suggest how Biggs' concept of critical thinking helps us to address any lingering concerns that teaching social change is inappropriate because it mandates particular moral values.

Mike Robertson

Michael Robertson is Deputy Head of School and Program Convenor at the Griffith Law School. He has legal qualifications from South Africa, Great Britain, and Australia, where he obtained his doctorate, and has previously practised both as a solicitor and then as a barrister. His primary teaching interest is in legal professional practice, including legal ethics, and his current research interests are in lawyer-client relationships, client participation in legal service delivery, and in self-help legal services and practice. Most of his recent publications are in these areas. In one of his current projects he is exploring ways in which ethics teaching and learning objectives can be integrated across the law curriculum. He is also a member of a curriculum review committee looking at this and other aspects of curricular reform in the Griffith Law School.

ABSTRACT

Recent reports suggest that there is a considerable divergence of approach to the teaching of legal ethics in Australian legal education. It is also clear that the area remains challenging for legal educators. Within the literature it is possible to identify at least three possible approaches in answer to the question of what law students should be encouraged to learn about in 'legal ethics'. This presentation will briefly review the three approaches and suggest why, in the context of curriculum planning or reform, it is crucial to reach an understanding of what the curriculum-wide ethics learning objectives will be. One possible formulation of curriculum-wide, learning objectives in legal ethics will be provided for illustration, and some of the implications of such an approach considered.

Lyn Weathered

Lynne, LLB (Hons) (Bond), is the Director of the Griffith University Innocence Project and course convenor of the associated law elective. She is currently writing a thesis which reviews institutions for the correction of wrongful conviction in the United States, Canada, England and Australia and which will include recommendations for the investigation and correction of wrongful conviction in this country. Her interest and research covers all aspects of wrongful conviction and innocence project work in Australia and internationally. Lynne is also the Executive Director of the Australian Innocence Network and a member of the United States Innocence Network Steering Committee. She has presented at several conferences on innocence work and most recently on 3 September 2004, was an invited speaker at a Colloquium on the establishment of a UK Innocence Network, held in England. Lynne is also Barrister of the Supreme Court of Queensland.

ABSTRACT

Innocence Projects aim to help innocent but convicted people. They are generally university-based, student-resourced, pro-bono lawyer instructed and academically supervised investigations into claims of wrongful conviction with the goal of securing the release of innocent people from prison. Innocence Projects have been established in the United States for over a decade. Responsible for well over 100 exonerations to date, Innocence Projects in the United States have had a significant impact on their criminal justice system. They are, however, still a relatively new concept for Australia. This presentation highlights the conscious and live interplay between social justice and education that occurs through the activities of Innocence Projects.

Closing Reflections

Hal Wootten

Hal Wootten's career included 20 years in practice at the NSW Bar, founding Dean of the UNSW Law School, judge of the NSW Supreme Court, Chair of the NSW Law Reform Commission, Royal Commissioner into Aboriginal Deaths in Custody and Deputy President of the National Native Title Tribunal. He also served as Secretary-General of Lawasia, founding President of the first Aboriginal Legal Service, Chair of the Australian Press Council, Chancellor of the NSW Institute of Technology and President of the Australian Conservation Foundation. In 1991 he was made a Companion in the Order of Australia for services to human rights, conservation, legal education and the law.

About this Conference

Thirty years ago, the ANU Faculty of Law held a conference under the banner of *Australian Lawyers and Social Change*, the proceedings of which were published in a book of the same name edited by David Hambly and Jack Goldring. This conference revisits some of those themes and takes a fresh look at the roles of Australian lawyers in the twenty-first century.

The overarching theme of the conference is, what role can and should Australian lawyers play in the continuous improvement of the law and the operation of the legal system? In particular, what role can and should Australian lawyers play in the promotion of law reform and the achievement of social justice? After an initial session focused on the phenomenon of law reform, these questions are

asked in turn of the judiciary, the legal profession, and legal educators. Speakers will debate, *inter alia*, the relative merits of different models and conceptions of the law and the legal system: law as, on the one hand, an agent of change, and, on the other, as a conservative influence that provides a natural brake on change.

Established in 1960, the Faculty of Law at the ANU strives for excellence in teaching and research, yet is informed in all of its work by an ethos of commitment to continuous improvement of the law and the operation of the legal system. It does not see this commitment as antithetical in any way to the spirit of free inquiry, and indeed is sponsoring this conference as part of the on-going process of dialogue and debate.

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