

# Eden Crescent

Faculty of Law Annual 2004 - 2005



THE UNIVERSITY OF AUCKLAND  
NEW ZEALAND

# Eden Crescent

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# Message from the Dean



Photo: Scott Optican

Professor Stuart McCutcheon assumed office as Vice-Chancellor of The University of Auckland in January this year. Shortly thereafter he visited the Law Faculty, met a number of staff and friends of the Law School and opened the Marylyn Mayo Rare Book Room. This room, a generous gift from Dr John Mayo in memory of his wife, Marylyn, a graduate of this Law Faculty, is an important repository for rare reports, texts and statutes and an enduring reminder of the role the Faculty has played in the lives of so many erstwhile students. Thanks to John Mayo's kindness the Rare Book Room will be integrated into the planning and development of the new Law Faculty building due to be completed in 2009 on a site near the Clock Tower at the heart of the City Campus.

Although details of the new building have yet to be finalised, the Law Faculty will plan for increased numbers of students in Part I of the LLB as it moves to open-entry into Part I (from 2007) and as it contributes to the General Education papers offered from 2006 as part of the University's degree restructuring programme. However, entry into Part II of the LLB will generally remain limited to 300 students with strong academic marks across their Part I year or a prior degree (as at present).

The fine calibre of our student body is underlined again this year in many of the following pages. It is a source of great pride that so many students opt to pursue postgraduate legal research, often at world-renowned universities and often with scholarship assistance. This year University of Auckland graduates will be studying at the

Universities of Cambridge, Oxford, New York, Columbia, Duke, Virginia and Edinburgh. They succeed others who have completed their postgraduate work, often with distinction. We are proud of them, and of all the others whose diverse career achievements are recorded, and of the strong role they play as ambassadors for the Faculty.

It is not only postgraduates who enjoy studying overseas. Undergraduates are increasingly taking opportunities to study abroad for a semester as part of their undergraduate experience. With a number of University and Faculty agreements in place, this year students from the Auckland Law Faculty have studied at the Universities of California, McGill, British Columbia (UBC), Toronto, Indiana, Copenhagen, Lund, Glasgow and Nottingham. Undergraduate visitors to study at Auckland have come from universities in Copenhagen, Glasgow, Hong Kong, Indiana, Lyons, Singapore (NUS), Toronto, Uppsala, Stockholm and Cornell. In 2006 we will welcome for the first time undergraduates for a semester from Kansas, Western Ontario and William and Mary College.

Further international links have been fostered this year by the many visitors the Faculty has hosted and by the numerous contributions of staff members to conferences, colloquia, research programmes and scholarly publications. Two of our most eminent visitors this year have been from the United States, Supreme Court Justice Antonin Scalia and Professor Jack Greenberg from Columbia University (details at pages 17 and 22). In addition, the Faculty was fortunate to host one of the first Hood Fund Fellows, Dr Ngaire Woods, of Oxford University, and to have had an outstanding range of participants in our seminar series and in the Masters programme (details at pages 41-44).

This year the Faculty welcomed a number of new staff. Three alumni have returned to join the staff after postgraduate study. Amokura Kawharu and John Ip studied at Cambridge and Columbia respectively and are now settling in to full-time academic life. Richard Ekins is the third alumnus to return. He has completed his BCL and is now studying for his DPhil at Oxford. Thus Richard currently only has a fractional position at the Law School. In the middle of the year, Chris Hare joined us from a Fellowship at

Jesus College, Cambridge. Our final new staff member is Professor Jeff Berryman who has been appointed to a professorship in the Faculty for a three year term on a fractional basis; he will spend the balance of his time at the Law Faculty of the University of Windsor in Canada.

This year has seen a number of notable staff successes. Most recently, David Williams has been promoted to Professor. This is an outstanding achievement that has met with widespread acclaim as due recognition of David's scholarship, teaching and many other abilities. Jo Manning, who is a renowned specialist in medical law, was promoted late last year to Associate Professor. Peter Devonshire, widely recognised as an outstanding teacher in the Law School, won one of three Sustained Excellence in Teaching Awards offered as part of the 2004 University of Auckland Teaching Excellence Awards. Rick Bigwood won the JF Northey Memorial Book Award for his book, *Exploitative Contracts*; Peter Sankoff completed his LLM at Osgoode Hall and Jock Brookfield was appointed a Companion of the New Zealand Order of Merit.

As always, there are a number of farewells to record. In May this year Professor Jim Evans and Dr Don McMorland retired. Jim spent some 36 years of his working life at the Faculty, researching and teaching in many areas and always contributing to lively and rigorous debate. Don has spent almost as long at the Faculty, teaching Land Law and Vendor and Purchaser, although he has lectured part-time since 1992. Both are already sorely missed. Finally, our Faculty Accountant, Jonathan Taylor, leaves us next month for a new position with a commercial firm. Jonathan has been an excellent colleague and, while we wish him all the very best for the future, we are very sorry to see him go.

As this is the last Eden Crescent in which I shall write a Dean's Message, I would like to record my thanks to all my colleagues and friends in the Faculty, wider University and legal profession and to students, past and present, for their support and friendship. It has been an honour to be Dean of such a fine Faculty. I will treasure the memories of my time here.

*Julie Maxton*

# From Auckland to Oxford: Farewell to our Julie

Julie Maxton arrived in Christchurch in 1978 to begin her law teaching career at a tender age, fresh from studying law at University College, London and completing the bar finals in London. After seven happy years in Christchurch, Julie followed her husband (Jim Carson) to Auckland, and we at the Law School were the lucky beneficiaries of that move. Lateral movement of teachers between New Zealand law schools is uncommon, and the University of Canterbury's considerable loss was our major gain.

At Auckland, Julie rose rapidly up the academic ranks: Senior lecturer in 1987, then Associate Professor and Professor in quick succession in 1993 and Dean of Law from 2000 to the end of 2005. In common with several other colleagues (Peter Devonshire, Jane Kelsey, and Rosemary Tobin), Julie completed her doctorate while teaching full-time. No easy feat, and not for the faint of heart. Demonstrating her versatility, Julie's PhD thesis, *Contempt of Court*, was completed in 1990.

Julie Maxton is the complete legal academic, excelling across the entire range of activities. She has an enviable international reputation as an equity scholar, having published widely in New Zealand, Australia, Canada and the U.K. Julie is also a consummate law teacher, and in her career has taught across a remarkably wide range of subjects; including equity, commercial equity, commercial law, estate & tax planning, evidence, advanced evidence, income tax, property law, succession, theories of obligations, agency, restitution and legal theory. She was awarded the inaugural University of Auckland Award for Excellence in Teaching in 1993. Julie takes a genuine interest in her students and follows their careers with keen interest. For many, she is the first port of call for career advice.

Julie has very strong and longstanding links with the legal profession. For example, she has had a major involvement in presenting at New Zealand Law Society "road shows" on topics such as damages, domestic property, equitable remedies, estate planning, wills, and constructive trusts. This is in addition to membership of a number of committees at national and Auckland law society levels. Moreover, Julie has practised as a barrister since the early 1980s, and has appeared as counsel at almost every level of the court system (including the Privy

Council). She has been a member of the Legislation Advisory Committee since 2001.

The same record of service can be seen in the University. Right from the beginning of her career, Julie has sat on University committees. Legal issues are often close to the surface of this work and consequently lawyers do more than their fair share on such committees. On occasions Julie's legal abilities have been called on more directly by the University. For example, last year she coordinated the University's case in the High Court challenging the Tertiary Education Commission's wrong-headed decision to compare the research grading of New Zealand academics with those elsewhere based on different methodologies. The University won the case (*The University of Auckland v Tertiary Education Commission* [2004] 2 NZLR 668).

Julie's highly successful five-year stint as Dean of Law has been interrupted several times by calls to serve the wider University. At these times of institutional need, characteristically, Julie has put aside her own interests and heeded the call of duty. More than a year of her term as Dean has been given over to the Deanship of Graduate Studies and two stints as Acting Deputy Vice-Chancellor, the highest academic administrative position in the University. She discharged these new roles in an exemplary manner.

The Dean of Law has many audiences and many roles, and each Dean places her or his unique stamp on the job. In the modern University it is simply not possible, if it ever was, for the Dean to do everything that the University, our colleagues and our various communities require. Choices have to be made, and some tasks delegated to colleagues. Julie's focus has been outward, reaching out to the rest of the University and to the legal community. Her high standing as a legal academic and her ease with people from all walks of life - combined with her shrewd judgment, wisdom, and ability to see the big picture - have made her the perfect ambassador for the Law School, and hence much sought after within and without the University as a speaker, committee member, chair, mentor and confidante. Julie is a team player, with the ability to bring the best out of the rest of the team.

In all this, Julie was ideally complemented by her friend, Peter

Watts, who was Deputy Dean for almost the entire period of her Deanship and who acted as Dean for the periods Julie was otherwise engaged on University business. Peter's analytical mind, efficiency, directness, work ethic and utter decency are legendary in the Law School. Together, the administrative tag team of Maxton and Watts were indomitable, able to wrestle any problem to the ground. I cannot remember, in my time in the law school, such an impressive administrative team effort.

It is difficult for outsiders to gauge the vitality of the Law School, and so the Dean, as the "public face" of the Law School, is often taken as a barometer of the Law School's health. Julie's professionalism, intelligence, hard work, thoughtfulness and integrity have won the Law School many friends and assured the legal world that Auckland Law School is in excellent heart.

It will surprise some to learn that Julie took on the job of Dean with some reluctance. When she took up the Deanship at short notice in 2000 it was not as clear to her, as it was to others, that she would enjoy and prosper in an administrative role. She soon discovered, I think, that all the skills that make her a great teacher, advocate, scholar and colleague, also made her a fine academic administrator and leader. And so, after five years as Dean and twenty years as a colleague, we are to lose her to the plum administrative position at one of the world's great universities, the Registrarship of the University of Oxford.

Julie leaves us with the thanks, admiration and respect of her colleagues and many students. On behalf of the Law School community, we wish her every success at the University of Oxford, and count the Oxonians lucky to have her. We now know exactly how the Cantabrians felt in 1985! Thanks to Jim and their son James for their total support of Julie during the demanding years of the deanship.

It is the privilege of an institution to bask in the reflected glory of its accomplished alumni and colleagues. The warmth of that reflection compensates a little for the loss of "our Julie", a great teacher/scholar, leader, colleague and friend.

Mike Taggart

# The Rt. Hon. David Russell Lange ONZ, CH, LL.M., 1942 - 2005

*From a eulogy prepared for a public memorial service.*

In 1970 there was a minor realignment of those planets above central Auckland which affected the teaching and the practise of law. Indirectly it would lead to New Zealand's most bumpy political decade, the '80s, and to the occupancy as Prime Minister of the country's most eloquent and charismatic politician. Yes, in 1970, a new firm, Nixon and Lange, was established.

David Lange, a 26 stone, highly successful tutor in the Law Faculty departed to the city practice and Allan Nixon came "up the hill" to a Senior Lectureship in Criminology (while engaging, when need and inclination conspired, in Magistrates Court work in the firm).

They made an odd couple, in an odd office. Like something out of Dickens. Nixon, a conscientious objector to war, was frail-looking, bowed, wry, self-effacing - an older Bob Cratchitt. David was straight out of *The Pickwick Papers*, though larger than fiction.

The two men owned some things in common. They had outsized consciences and intellects, a devotion to seeking a just and good society, the inability to take themselves over-seriously, and an intense concern with their clients, and, very little idea of how to make money out of them.

Years later, Lange said, "Rolled up, Nixon and I made three-and-a-half Rumpoles and without the earning capacity to keep half a Rumpole in claret."

Allan, the "half Rumpole" (physically), spent five or six years at the Auckland Law School as a *drôle* critical commentator on crime, the place where David had recently graduated LL.M. - with such high marks in two papers that the external assessor was reactivated by the Dean (one, graded at 90, came back upped to 93). The former tutor, Lange, launched himself again (he had previously practised in Kaikohe) with chiefly Magistrates Court pleading. Then, a father of two,

he was very hard up. At no time in the next 40 years would he be exactly "flush".

"Up north" in the late '60s, and at Kitchener Street in the next decade, David's leading bugbear was the Police Offences Act 1927. He vowed to see it repealed. I heard him condemn it before a particularly grizzled Stipendiary Magistrate - a man who defied casual admiration. It is, said the advocate, "New Zealand's magna carta of social hygiene, the Establishment's scourge of the less-than-ideal-citizen, the scourge of him or her, for what he is, not for what he has done." "That's a matter for Parliament, not for this court", the beak said (correctly). "Get yourself to Wellington Mr. Lange." In 1977 he did. And in Opposition, as Justice spokesman, he helped the Minister, Jim McLay (and others on the fine Select Committee), to put down that monster.

Earlier in his two phases of law practise his clients were society's predictable casualties: the browbeaten and bullied (and he knew about bullying), the under-educated, the mentally frail, the readily tempted, the young and impulsive. There were ship-girls, a male prostitute whom he, somehow, successfully defended in the Supreme Court, and *demi monde* characters such as Too Fat's Missus and Trefor, who occasionally bombed solicitors' cars.

Defending the lower-orders in court was only one-third of the venture. First, David had to ensure they actually appeared. Second and third, if they got fines or probation he had to ensure they did not disappear. He told me of a rural youth aged 16 who, again, had succumbed to the charms of his girlfriend aged 15; an offence. The Magistrate bellowed at the lad "Come before me again - ever again - and I shall have you INCARCERATED". The young fellow rushed from the courtroom clutching his lower abdomen. He was pursued by the bailiff and by David (always light on his feet) waving a copy of the *Shorter Oxford English Dictionary*.

When I encountered David Lange as a law student in 1962, he had more words than anybody I have ever met.

And he matched them to ideas and to figures of speech - aphorisms, metaphors, alliteration, whatever. Here was a potentially very subversive joker. Witty too. A less-than-ideal-citizen in the making. Within two weeks he had (effortlessly) reversed our roles. Thereafter I listened. He orated. Forty-three years later that still obtained.

As we know, David gave up the practise of law in 1977. He had had enough of the inferior criminal court. "What happened there was a charade. The criminal law was a fraudulent construct and was afforded unwarrantable majesty in the eyes of the public... I knew I could never go back." So he acted on that old Stipendiary's adminicle and went sideways, and in a sense, up (or down) to Wellington as the Member for Mangere.

Obviously David's more enduring and powerful contributions to law were made in Parliament - as Prime Minister and in Cabinet portfolios and, after he resigned the leadership, as Attorney-General. There was homosexual law reform and the tightening of the rape laws, the Criminal Justice Act, the famous "nuclear-free" legislation, the Bill of Rights, an avalanche of S.O.E enactments (of which he may not have wholly approved), a new Labour Relations Act and the groundwork for the Resource Management Act. As Minister of Education he introduced the principle of self-management of schools. There was a great wodge of deregulatory legislation which, ideologically, he would have disliked but, in office, he made a good fist of promoting.

In office, David revealed an astonishing and quick mastery of complex issues. He, and Treasury personnel, may well have saved New Zealand from the indignity, in the first weeks of the new government, of having to go, cap-in-hand, to the IMF. His international vision was large and his anti-nuclear policy was brave - and brilliantly defended at Oxford in 1985. Even greater courage was shown over the last years of his physical pain.

For four or five years David had presided over a social-economic

transformation unprecedented in our history. Most commentators would now agree it was essential social medicine. As his second term commenced he wondered-out-loud if it was time to pause and reflect - "to have a cuppa". Just over a year later his position became untenable and he resigned in favour of the former Law Professor, Geoffrey Palmer.

David loved words - he was ecstatic orating them, writing them. Language and power are familiar bedfellows. When "in power" one sensed David quite liked eloquently exercising it. Yet I think he always mildly mistrusted power. "The truth is," he said, "that Prime Ministers are not as powerful as some of the public imagine. Nor are Ministers." He went on "As Minister of Education I received a number of letters from schoolchildren asking me to sack their teachers. To the child, they started with a cunning reference to their support of my anti nuclear policy. Now the simple fact was our system of government sadly but sensibly does not afford any Minister that power."

"In the end," he said, "you know that if you were forever serious in this job you could go mad." Well, he wasn't. And he didn't.

Serious? David Lange? Sometimes he tried hard to be. But it would last only a matter of seconds. Remember his handover of the leadership to Sir Geoffrey Palmer ("Well, thank you for all those compliments, Geoffrey. I think I'll stay.") Remember the persistent journalist along the corridor who stuck a mike in his face and beseeched him "Prime Minister. Just a word. Just one word." And he shot back, "Wombat."

A personal note. A few years ago David agreed to launch an unspeakably serious book for me. He arrived at the venue drawn and ill. I said, "Don't do it. I'll ring your doctor." He said "No. There's a big crowd there. An audience is my best medicine." He plunged his hand into a cavernous pocket, pulled out my book and held it aloft. It was unrecognizable. The cover was blanched. The pages were stuck fast. "Alas, your Honours, ladies and

gentlemen, I have not read it," he said. "My profound apology. Last night I was running a bath for my small daughter and trying to scan the book when it fell into the bath water. AND LOOK AT IT NOW" [a pause] "NEVERTHELESS ladies and gentlemen," he boomed, "This is a unique occasion. This is the first time in history that a book has been floated before it was launched."

It brought the house down. So have the hundreds, the thousands, of his speeches over fifty years. I'm sure I can speak for all the lawyers and judges and law teachers in saying: David - in 1977 you were a great loss to the criminal law. But what a huge, exciting gain that was to your country and to the world. And to the English language. Rest in peace, dear eloquent, wickedly-witty friend of the people. David, the last word, as ever, is yours. Wombat!

*Bernard Brown*

*The Faculty's sympathy is extended to Margaret and the family.*

## Associate Dean for Alumni & Advancement

Scott Optican with Bonnie Kong (BCom/LLB 2003) at the September 2005 Auckland University alumni dinner in Hong Kong.



Senior Lecturer Scott Optican was recently appointed to a new role as Associate Dean for Alumni & Advancement at the Faculty of Law, University of Auckland. Scott has been very active in alumni and advancement work for the past year. In September 2004, he accompanied Professor Julie Maxton, the Dean of Law, and other University officials to a series of Auckland University alumni dinners that he helped organise in Singapore, Malaysia and Hong Kong. Scott has also been instrumental in running the 2005 Annual General Appeal for the Law School, and recently returned with Professor Maxton from advancement and alumni trips to New York City and Washington, DC. He is covering two University-level committees related to alumni and advancement and has begun to organise fundraising and alumni initiatives for both the University and the Law School. Scott is expected to play an important role in various advancement and alumni projects soon to be undertaken by the Law School in relation to the building of its new premises on the City Campus.

# New Appointments and Promotions



## Jeff Berryman

Jeff Berryman has been appointed to a Professorship in the Faculty for a three-year term on a one-fifth basis. Jeff will continue to spend the rest of his time at the Law Faculty of the University of Windsor in Canada.

Jeff graduated LLB(Hons) from Auckland in 1977, and completed an MJur the following year. He was then a Judges' Clerk at the Auckland High Court, and a lecturer at Massey University for a short time, before heading to Dalhousie University in Canada where he completed an LLM. He has been on the staff at Windsor Law School since 1981, and was Dean there for five years in the early 1990s.

Jeff's research specialties are in contract law and in private law remedies. He is the author of a text on equitable remedies, and of the leading Canadian casebook on remedies. His long list of articles includes publications in England, and the United States, as well as Canada, New Zealand and Australia. He has served as editor in chief of the Windsor Yearbook of Access to Justice.

Along with a number of important university roles at Windsor, Jeff has also for many years served on the Board of Directors of the Windsor Symphony, including as President, with roles as Chair of its Artistic Planning Committee, and negotiator of agreements with its musicians. He and his wife Carol have two teenage children.

At Auckland he has been teaching in the LLM programme, and this year is teaching a course in Remedies.

*Peter Watts*

## John Ip

John Ip, a recent graduate of the University of Auckland Faculty of Law, rejoined the Law Faculty as a Lecturer in 2005.

John graduated in 2001, and spent two years as a Judges' Clerk at the High Court in Auckland. During this time he maintained a close relationship with the Law Faculty, primarily through his work as a tutor, and as a committee member of the Legal Research Foundation. In July 2003, John departed for the United States to further his studies in his main areas of interest: constitutional law and criminal procedure.

As part of his Fulbright scholarship, he spent his first month in the United States participating in the Foundations of American Law Programme at Georgetown University Law Center, in Washington DC. Upon completing this programme, John headed to New York to take up his studies at Columbia Law School. In May 2004, John graduated from Columbia with a Masters in Law degree, and was named a 2004 James Kent Scholar for his academic achievements (this is an honour awarded to the top 3% of the graduating class).

Following his graduation, John worked for six months at the International Justice Project, an NGO that deals with the death penalty and litigation concerning the Guantanamo Bay detainees. His work included research for lawyers representing various detainees, and helping with the drafting of US Supreme Court amicus (friend of the court) briefs.

In December 2004, John briefly returned to New Zealand to interview for the lecturing position at the Law Faculty, and a number of government positions in Wellington. In the end, however, he chose to return to his "home field", the Auckland Law Faculty.

Photo: Scott Optican



## Richard Ekins

Richard Ekins has been appointed to a Lectureship, but on a fractional basis whilst he completes his DPhil degree at Oxford.

Richard was a star student here at Auckland, from which he graduated LLB(Hons) in 2002, and BA(Hons) in 2003, majoring in Political Studies. He was a Senior Scholar in Law and the winner of the Robert Schenzies Prize in Politics. He was then a Judges' Clerk at the High Court in Auckland for two years, while continuing to tutor in both law and politics at the University.

Richard proceeded to Balliol College at Oxford on a Commonwealth Scholarship, from where he graduated with a BCL with Distinction, and won the Herbert Hart Prize for the top student in Jurisprudence in 2004. He is now being supervised for his doctorate by Professor Finnis on the subject 'Legislative Authority and Practical Judgement'. He is supported by a Foundation for Science and Technology Top Achiever Doctoral Scholarship and a LB Wood Travelling Scholarship. Richard has already published a number of articles, including an article in each of the *Law Quarterly Review*, *the European Human Rights Law Review* and *King's College Law Journal*.

Richard's teaching and research specialties are jurisprudence and statutory interpretation.

*Peter Watts*



Photo: Scott Optican

## Amokura Kawharu

Given the longstanding Kawharu whanau connection to the University of Auckland, it may have seemed inevitable that Amokura Kawharu would join the teaching staff of the Faculty of Law eight years after graduating from here with a BA/LLB (Hons) conjoint in 1997. Amokura's father, Sir Hugh Kawharu, is an Emeritus Professor of Maori Studies/Anthropology, and her elder sister, Merata, worked at the University's Sir James Henare Research Centre following the completion of her DPhil at Oxford. The family's academic credentials also extend to Amokura's late mother, Lady Kawharu, who as well as being the first Maori woman to graduate in Fine Arts at the University of Canterbury, also taught in the Maori Studies Department here at Auckland.

Amokura left school at the end of the sixth form to save the world, taking up an internship at Greenpeace and becoming a vegetarian, before making her way to Auckland University to study politics and law. Following her graduation, she worked in commercial law teams at Chapman Tripp, and also Gilbert & Tobin in Sydney. Her areas of expertise were corporate and securities law, including involvement in several ASX listings, venture capital transactions and mergers and acquisitions. While in Sydney Amokura maintained a pro bono practice, assisting Aboriginal groups and ParaQuad, the paraplegic and quadriplegic association of New South Wales.

In 2003 Amokura left a position as in-house counsel at Vodafone to attend Cambridge University where she completed her Master of Laws (LLM) with First Class Honours. Despite the trials of living above an off-licence premises and consequently having to deal with intoxicated patrons, Amokura was awarded the Rodwell Prize by Emmanuel College for her academic achievements.

Amokura's teaching in the Faculty currently includes stints in Land Law and Personal Property and in 2006 she will teach a course on Commercial Arbitration. Her wider research interests include international law and trade.

Outside of the law Amokura's interests include travel, tramping and astronomy. Amokura claims to have climbed Ben Nevis in Scotland, although this cannot be verified since it was snowing too heavily for photographic evidence. She was recently seen buying trinkets in Morocco, and has travelled extensively throughout Europe, North and South America and Asia. During a trip to Prague, Amokura was hauled off a train by Czech officials who suspected her of passport fraud. It seemed that her youthful Ngapuhi/Ngati Whatua looks belied the age of the person to whom the passport had been issued! Needless to say, all was above board and Amokura lives to tell the tale, to the relief of her new colleagues.  
*Khylee Quince*



## Christopher Hare

The Faculty has been fortunate in securing Christopher Hare as a Lecturer in contract law and commercial law.

Chris grew up in the Northwest of England. He read law at Trinity College, Cambridge, and spent a year at the University of Poitiers, France. Following this, he completed postgraduate studies at Harvard Law School (LLM) and Oxford University (BCL). He then spent several years in practice at a commercial law set of chambers in London. Following a case involving a particularly aggressive bank and its particularly

unfortunate customers, he decided that academia might be a "gentler" pursuit. Chris was appointed to a fellowship at Jesus College, Cambridge, in 2000, which he held until joining the Auckland Faculty this year.

His research interests include general commercial and banking law, particularly the international aspects of these subjects. Chris is currently completing a book entitled "Documentary Credits: Law & Practice," to be published as part of the LLP Commercial Law Library.

He enjoys swimming, but is strictly a spectator when it comes to other sports.  
*Peter Watts*



Photo: Godfrey Boehnke

## Joanna Manning

Joanna Manning has received a richly deserved promotion to the rank of Associate Professor.

Jo completed her undergraduate arts degree in English, and her law degree with honours at the University of Auckland in 1980. After a period in legal practice as a prosecutor at the Crown Solicitor's Office in Auckland, she completed an LLM in 1984 at The National Law Center at George Washington University in Washington DC, USA. This was followed by a further stint in legal practice in commercial and civil litigation.

In 1986 she joined the Faculty of Law at the University of Auckland. Although she commenced her academic career with a strong research and teaching interest in tort law, in 1997 she changed direction and began to specialise increasingly in medical law. Her interest in this area grew out of the Minister of Health's appointment of her as the consumer representative on the Medical

Practitioners Disciplinary Committee in 1986. She served in this role until 1999, gaining a fascinating insight into the workings of disciplinary tribunals in the health professions.

Jo has published numerous articles in New Zealand and international journals on a wide range of topics in medical law and ethics, many on issues of consent to medical treatment. Her recent work has been on developments in informed consent under the Code of Patients Rights. When pressed to explain why she has developed such a fascination for this area of the law, she comments that it is profoundly important, touches everyone's lives at some point in a way that is deeply personal, and deals with the essence and boundaries of what it means to be human. It is also a hugely dynamic area of law with changing power relations between patients and professionals.

As well as her teaching and research, Jo is Contributing Editor for Health Care Law to the *New Zealand Law Review*, has served in other roles in the medical disciplinary sphere, and has most recently been appointed as the lawyers representative to the National Ethics Advisory Committee.

Jo, whose personal warmth, vitality, humour and keen intelligence have enriched her many students over the years, is universally regarded with enormous affection and respect by her colleagues. What is perhaps most admirable about her professional success is that it has been achieved in addition to her very active role as mother to three beautiful children.

*Julia Tolmie*

## David Williams

News of the University's recent promotion of the former Rhodes Scholar, Treaty of Waitangi specialist and community advocate to a personal chair will be received with wide approval. Professor Williams has an acknowledged reputation as a leading scholar in Treaty of Waitangi issues through his publications, consultancies, and lectures in New Zealand and abroad.

His first degrees, BA, LLB, were earned at Victoria University of Wellington (1967 - 1969) followed by the BCL at Oxford University (1971). A fruitful association with Tanzania, East Africa, over a number of years resulted in the award of a PhD in legal history from the University of Dar es Salaam (1985). Legal history is a subject to which he has devoted a great deal of his energies - his "personal passion" as he puts it. Thus among his major publications are such titles as *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices*, Waitangi Tribunal, Wellington, 2001, *Matauranga Maori and Taonga*, Waitangi Tribunal, Wellington, 2001 and *Te Kooti*

*tango whenua: The Native Land Court 1864-1909*, Huia Publishers, Wellington, 1999.

Not with standing his formidable university background, Professor Williams chose not to restrict himself to academia for some ten years prior to 2001. In this period he maintained active links in the wider community as a barrister and as an independent researcher, while lecturing part-time at Auckland University. Concerns beyond the law had also led him to being ordained in the Anglican Church in 1986, and taking a Diploma in Theology at Oxford a year later.

Recognition of Professor Williams as a scholar of standing has resulted in his being called upon by both Victoria University of Wellington and the University of Waikato to assist in supervision and to act as an external examiner of law doctoral theses. And recognition lies beyond these shores as well. For instance, this year alone, the Centre for Comparative Legal History at Macquarie University, Sydney, invited him to become a research affiliate, the Consortium on Democratic Constitutionalism at the University of Victoria, BC, sought his membership of its interdisciplinary and international group of scholars, and, not least, the Australia and New Zealand Law and History Association asked him to host its 2005 conference in Auckland.

Indigenous community development is a field that has, perhaps inevitably, attracted

David Williams' professional interest. For example, my own Ngati Whatua community at Orakei has had to grapple in recent years with the philosophical and practical problems of balancing relationships between authority and the individual in the market place on the one hand and within the tribal group on the other. It is here that we have benefited greatly from David Williams' friendship and understanding of the bicultural tensions and contradictions that afflict tribal development today.

It may be said that the role of a Professor demands leadership. If not self evident, it has also to be admitted that leadership is not a ready companion for scholarship. The scholar will have to shoulder the professorial burdens of administration, negotiation and advocacy, not to mention the teaching, examining and mentoring of students, before turning to his or her papers. To reconcile such conflicts of ambition and responsibility requires clear vision and strength of character. While David Williams has a natural level of confidence based on past achievements, it is one tempered by consideration for others, just as his enterprise is tempered by consistency and balance. He will be equal to his new challenges.

Kia ora mai ra e te tohunga

*I. H. Kawharu*



Photo: Scott Optican

## Distinguished Visiting Fellow: The Rt. Hon. E W Thomas



The Rt. Hon. E W Thomas is visiting the Law School as a Distinguished Visiting Fellow. Ted joined the Faculty in August 2004 and his appointment will last until August 2006.

Ted was a Judge of the High Court in Auckland for five years and a Judge of the Court of Appeal for six years before reaching the compulsory retirement age of 68 in 2002. He was also appointed in 1997 as one of Her Majesty's Privy Councillors. Currently he is an Acting Judge of the New Zealand Supreme Court.

Prior to his appointment to the bench Ted had a stellar career in practice, which included an impressive resume of service to the profession and broader public, as well as honours for his performance in the legal profession. In 2002 he was made Distinguished Companion of The New Zealand Order of Merit.

In addition, throughout his career as a lawyer and judge he has published prolifically on an extraordinary range of legal issues. Thus, he has published articles or produced papers on issues in town planning, corporate law, administrative law, constitutional law, torts, and criminal law, to name only some of the areas he has traversed. Following his retirement from the Court of Appeal, Ted attended the Research School of Social Sciences at the Australian National University in Canberra. While there he wrote a book entitled: *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles*, which is being published by Cambridge University Press in September of this year.

For myself, one of the strongest testaments to the rigorous and wide ranging nature of Ted's intellect, as well as his own personal integrity and courage, has been the contribution that he has made to women's standing in the legal profession and to the realistic recognition of their life experiences in the development of legal doctrine.

It sometimes appears as though many of New Zealand's finest judges, whilst well versed in legal logic and principle, struggle to realistically appraise the social context in which the principles that they are applying will operate and/or what the repercussions of their decisions will be on the lives of those who are least empowered in the community. It is thus possible to find cases, for example, which could be viewed as operating to support what James Ptacek (*Battered Women in the Courtroom: The Power of Judicial Responses*, Northeastern University Press, 1999 at page 10) has labeled

the "social entrapment" of domestic violence. These include cases where the criminal justice system has failed to send a clear message to the perpetrators and victims of domestic violence that it will not be tolerated, either by partially excusing the perpetrator's actions (*R v Tepu*, 1998, High Court, unreported judgment) or by visiting negative repercussions on the victim's help seeking actions (*Police v Kawiti* [2000] 1 NZLR 117). It is also possible to find cases minimizing the protections available to such women by, for example, effectively dismantling mandatory arrest policies for the police in the context of domestic violence (see *Attorney-General v Hewitt* [2000] 2 NZLR 110).

Against this background Ted's judgments consistently stand out, not just in New Zealand but in Australasia, as examples of judicial reasoning at its best. They are well reasoned in legal principle, but they are also well researched and realistic about the constraints and pressures of many women's lives. One example will suffice. In *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 Thomas J (in the majority) held that a woman in an extremely violent relationship which traversed 17 years was not in a "relationship in the nature of a marriage" with the perpetrator. Accordingly, her various convictions for defrauding the social welfare department by drawing welfare benefits whilst living in such a relationship were quashed. In a judgment which fearlessly canvassed the social science literature on the phenomenon and impact of domestic violence, itemized Ms Ruka's experiences in great detail, and examined the history and wording of the social welfare legislation in question, Thomas J arrived at this conclusion for two reasons. First, because Ms Ruka lacked "the requisite mental and emotional commitment to the relationship for it to be properly described as being in the nature of marriage. She simply remained in the relationship because she had been battered into a state of terror and was powerless to do otherwise." Secondly, because "any assumption of financial interdependence or responsibility in this case was totally lacking." The perpetrator not only failed to support her or their child but, typically, actively sought to prevent her from having any money. Occasionally he even took the benefit money she was depending on from her. For other cases in which Ted has demonstrated an empathy for issues of concern to women, see: *R v H* [1997] 1 NZLR 673 (analysis of the recent complaint rule in rape cases); *W v Attorney-General* [1999] 2 NZLR 709 and *M v H* (1999) 18 FRNZ 359 (limitation period in cases of childhood sexual abuse); *Daniels v Thompson* [1998] 3 NZLR 22, at 73-77 (effect on women of precluding civil claims for exemplary damages where wrong also constitutes criminal offending); *Attorney-General v B* [1992] 2 NZLR 351, at 354-356 and 359-360 (cross-examination of complainants); and *Bottrill v A* [2001] 3 NZLR 622 (whether exemplary damages recoverable by women in respect of misreading of cervical smear slides where pathologist "inadvertently" grossly incompetent).

Ted's experience as a Judge has been of tremendous benefit to Auckland University law students. He has been generous in teaching classes, giving talks and actively participating in the life of the Faculty. In particular, he has devoted time to helping students prepare for international moot court competitions in Australia and the United States and, as noted below (see page 24), is the patron of the Equal Justice Project. The Faculty of Law has been delighted to have Ted as a visitor and is grateful for his many contributions to the Law School.

Julia Tolmie

# Alumni News in Brief

The following bulletins note some of the recent achievements of the alumni of the Faculty of Law, University of Auckland, not profiled elsewhere in this magazine. They represent only those that have come to the attention of individual members of the Faculty of Law. If you are a graduate of the Faculty of Law and would like to tell us what you are up to we would be delighted to hear from you. Please contact Julia Tolmie ([J.Tolmie@Auckland.ac.nz](mailto:J.Tolmie@Auckland.ac.nz)).

Several of our graduates have been accepted into postgraduate programs and, in some cases, have been awarded scholarships to pursue their study. The Faculty congratulates the following former students:

- **Bianka Atlas** starts an MSc in Childhood Studies at the University of Edinburgh in September of this year. She says:

“This is an interdisciplinary course, drawing on disciplines such as law, psychology, social work and sociology. It provides an advanced understanding of how theories, policies and practice conceptualise “childhood” and opportunities for critical review and analysis of how well they meet the needs and rights of children. It provides the opportunity to develop skills in research and consultation with children and young people. This opportunity - to engage and develop research skills with children and young people - is one of the things that really drew me to this particular programme.”

Until then Bianka is contracting as an analyst for the Family Team at the Ministry of Justice in Wellington.

- **Justin Drake**, who is half-way through his MBA at Virginia, has been



Nina Khouri

awarded the William Richmond Scholarship by the University of Virginia. It is awarded to a second year MBA student at the University of Virginia who has demonstrated academic excellence and an interest in entrepreneurship. Justin's academic record made him eligible for the scholarship but it was his “interests, personal attributes and commitment to the Darden [the name of business school at the University of Virginia] community that allowed [him] to be singled out.”

- **Justin Graham** is going to St Johns College at the University of Cambridge. He has a Spencer Mason Travelling scholarship, an Elliott Davis Memorial from Kings College, and a Chevening Bursary.

- **Rohan Havelock** is enrolled in an LLM at the University of Cambridge, specialising in corporate/commercial law. He has won a FWW Rhodes Memorial Scholarship (Auckland Grammar School), a Spencer Mason Trust Traveling Scholarship, and a Rotary Ambassadorial Scholarship.

- **Bridget Jang** has been accepted into the Duke Law School LLM programme. She is currently clerking at a law firm in Paris.

- **Tim Jenns**, currently practising at Clifford Chance in London, has accepted a place in the BCL programme at the University of Oxford.

- **Nina Khouri** has been awarded a Vanderbilt Scholarship (full tuition) at NYU Law School, where she will study for an LLM, specializing in dispute resolution theory and practice with a focus on international law. She has also won a Fulbright Scholarship, which in her case includes the Fulbright Alumni Award for the most promising Fulbright in this round. She will also be financially assisted by a Spencer Mason Trust grant and a scholarship from the PEO International Peace Fund.

- **Jimmy Liao** will be doing an LLM at Columbia University in New York. He will specialise in corporate finance, corporate governance and mergers and acquisitions, areas in which he practises.

- **Sarah Raudkivi** will be doing an LLM in General Studies at NYU, studying a combination of finance/corporate/commercial/international law. She has been awarded a

Spencer Mason Trust Travelling Scholarship in Law.

- **Kerry Tetzlaff** (who has been Acting Postgraduate Manager at the Law Faculty) has been offered a place to study for a PhD at Cambridge University, commencing in October of this year. She has the Spencer Mason Travelling Scholarship and the Yvonne AM Smith Charitable Trust Scholarship. She completed a BA/LLB at Auckland and is currently researching and writing her last paper for her LLM.



Jimmy Liao

The Law Faculty is proud of the number of our students who have recently completed post-graduate study. Some have had marked success in doing so:

- **Matthew Conaglen**, now teaching at the University of Cambridge, has won the Yorke Prize for his doctoral thesis.

- **Richard Ekins** was joint winner of the Herbert Hart Prize in 2004 for the top student in Oxford University's Jurisprudence & Political Theory course. He was also the winner of the Australian Society for Legal Philosophy's Annual International Essay Competition.

- **Sacha Judd** graduated with an LLM from London University, and was awarded the prize for the Best Corporate Law LLM in 2004.

- **Gareth Kayes** was awarded an MPhil with Distinction from the University of Oxford.

- **Jessica Palmer**, formerly Rickett, has just been awarded First Class Honours for her Cambridge LLM.

- Alex Penk is one of five scholars to win a Pegasus Scholarship in Cambridge. These are prestigious awards. In Alex's own words: "The Pegasus involves three months of placements in barrister's chambers in London, working for senior barristers, going to court with them, and getting time to talk to judges about their work, etc. It includes trips to courts in Edinburgh and Belfast to see how things are done there as well. It pays accommodation and expenses for its duration."
- Elizabeth Steer, Simon Bridges and Craig Ulyatt have each graduated with a BCL from the University of Oxford.

We also congratulate alumni on some of their outstanding professional successes:

- Nick Francis, who graduated in 1997 LLB(Hons) BCom, moved to Hong Kong last September to work with DLA Piper Rudnick Gray Cary, doing maritime and trade litigation. Prior to moving to Hong Kong, Nick worked for three and a half years in Shanghai with Sinclair Roche & Temperley, and before that had a year off in Japan doing karate.
- Diana Hartley, who graduated from Cambridge University with a LLM in 2002, is currently in London working as a legal advisor for the UK Law Society.
- James Hartley is working for the Ministry of Foreign Affairs and Trade in Wellington. His specialist area is international law, a subject in which he was top of the class at Michigan during the completion of his LLM there.
- Kelby Harmes has been appointed Private Secretary to the Lord Chief Justice in Britain.
- Eesvan Krishnan won the Legal Research Foundation Award for Best Unpublished Paper and has been hired as a law clerk for Chief Justice Sian Elias.
- Rembert Meyer-Rochow, who graduated BA LLB(Hons) from Auckland in 1994, has worked in Hong Kong since 1997. Since 2000 he has been Asia Regional Counsel for Intel Corporation, the world's largest computer chip company. In 2005 he was a founding investor in FINDS, which has quickly become one of Hong Kong's hottest bars and restaurants

(specializing in Scandinavian cuisine). See: [www.finds.com.hk](http://www.finds.com.hk).

- Louise Moor completed her LLM at the University of Michigan and then stayed on as a Visiting Research Scholar to do work on refugee law. She also worked with A.W.Brian Simpson on jurisdictional issues of the ECHR. She has started work in Dublin with the Irish Refugee Council, a small NGO, as their Legal Officer. She is in charge of the legal team.
- Penelope Nevill has been offered a Law Fellowship position at Downing College, Cambridge. It is a College teaching position.
- Sai Novoti is working in New York as Legal Officer to the Permanent Mission of Fiji to the United Nations.
- Alyssa Phillips, a graduate of 2002 who is currently clerking for Justice Gault of the New Zealand Supreme Court, has been awarded the Cleary Prize for 2004. The Cleary Memorial Prize 1980 is awarded annually by the New Zealand Law Society to a lawyer of less than three years' standing in the profession who shows the most promise of service to, or through, the legal profession. The prize was instituted in memory of Sir Timothy Cleary, past president of both the Wellington District and New Zealand Law Societies and a judge of the Court of Appeal until his death in 1962.
- Megan Schrader (nee Cox) is living in Frankfurt, Germany, and working for Clifford Chance, a large English law firm. She works in the Project Finance Team. She is also a lecturer at the Goethe University, teaching a course which serves as a general introduction to the English legal system for civil law students. At the moment she is on maternity leave to enjoy her son, Jacob, who was born six months ago.
- Eugene Tablis has just moved to New York to start a job as an associate with the law firm Fried Frank Harris Shriver & Jacobson LLP.
- Anthony Trenwith was awarded the Law Commission's Bill Sewell Prize in Legislation.

The Faculty notes that it can now claim as an alumnus the presiding judge of all the courts of general jurisdiction in New Zealand. They are, Chief Justice Elias of the Supreme Court, Justice Anderson, President of the Court of

Appeal, Justice Randerson, Chief Judge of the High Court, and Judge Russell Johnson, Chief Judge of the District Court. In addition, Judge Graeme Colgan, former president of the University Alumni Association, now The University of Auckland Society, has been appointed Chief Judge of the Employment Court. Short profiles of Judge Johnson and Judge Randerson follow:

- Judge Johnson has been a District Court Judge since 1993. He served as Crown Counsel in Hong Kong from 1974 to 1977, barrister sole in Auckland from 1982 to 1986, and a partner in Wynyard Wood from 1986-1993. He is also a former Vice President of the Criminal Bar Association. In addition to serving as Executive Judge for the Northern Region and as Judge Advocate for Courts Martial, he has, on several occasions, acted as Chief District Court Judge in the incumbent's absence.
- Justice Randerson graduated from Auckland University with an LLB(Hons) in 1972 and practised with Wallace McLean Bawden & Partners, which later became Kensington Swan. He commenced practice as a barrister sole in 1989 and was appointed a Queen's Counsel in 1996. Justice Randerson has also sat from time to time in the Divisional Courts of the Court of Appeal.

The Faculty warmly congratulates those of its alumni who have recently joined the bench. These include:

- David Abbott has been appointed as an Associate Judge of the High Court. Associate Judge Abbott graduated from the University of Auckland in 1970. He worked in London early in his career before returning to New Zealand in 1977. He then joined Auckland law firm Price Voulk Brabant & Hogan, before moving to Shieff Angland, where he became a partner in 1983. In 1997 he became a barrister sole, specialising in civil and commercial litigation. He has been an active member of the Auckland District Law Society, particularly in continuing legal education. He co-founded The Legal Information Service Inc., has organised the legal roster at his local Citizens' Advice Bureau for more than 20 years, and currently has active community involvement as a

trustee of The Opera Factory Trust and as President of The University of Auckland Society.

- Raynor John Asher QC has been appointed as a Judge of the High Court. Justice Asher graduated from Auckland University with a BA LLB (Hons) and went on to complete an LLM at Berkeley, graduating in 1974. He then joined, and subsequently became a partner of, the law firm Kensington Haynes & White (now known as Kensington Swan). Justice Asher went to the Bar in 1986 and was appointed Queen's Counsel in 1992. Since that time, he has been President of the New Zealand Bar Association and Auckland District Law Society, as well as Vice-President of the New Zealand Law Society.

- Patricia Courtney has been appointed to the High Court. After graduating from the University of Auckland she was an investigation officer with the Department of Trade and Industry, before joining the firm of Heaney Jones and Mason as a staff solicitor. She then joined the firm of McElroy Milne, later becoming a partner. She was a founding partner of McElroys in 1992. Justice Courtney has specialised in insurance law, with particular expertise in professional negligence cases relating to solicitors, accountants and trustees.

- Simon France has been appointed to the High Court. After graduating from the University of Auckland, Justice France worked for Auckland law firm Nicholson Gribben before departing for overseas study. He obtained an LLM from Queens University in Ontario in 1983. On his return to New Zealand, Justice France joined Victoria University of Wellington's Law Faculty, where he was a Senior Lecturer and then Deputy Dean of the Law School. Justice France joined the Crown Law Office in 1995 as Crown Counsel in the Criminal Team and has appeared on behalf of the Crown in litigation in the Court of Appeal, Privy Council and Supreme Court. In addition, he represented the Crown Law Office at meetings of the Pacific Island Law Officers group for a number of years and has been involved in litigation skills programmes for Pacific Island lawyers. Justice France has published extensively in the subject of criminal law.

- The Faculty's Distinguished Visiting Fellow, the Rt Hon E.W.

Thomas (see above at page 8), has been appointed as Acting Judge of the Supreme Court.

- Susan Thomas has been appointed as a District Court Judge. Ms Thomas is currently a partner at Minter Ellison Rudd Watts. She served on the Board of Minter Ellison Rudd Watts from 2000 to 2004. She worked in London from 1983 to 1991, during which time she was a partner in a medium sized London firm for three years. She also worked as in-house counsel for Marks and Spencer plc in London. Ms Thomas' experience has mostly been in commercial property, construction and resource management. She also sat on the board of Tennis New Zealand from 1997-2001.

- Lisa Tremewan has been appointed as a District Court Judge. Judge Tremewan graduated from Auckland University with a BA LLB (Hons) and a MJur (with Distinction). Following graduation in 1985, she worked with Shieff England Dew for a time, before moving to practise in South Auckland, where she remained until 1999. She served as Tenancy Adjudicator from 1990-2000, was on the Residence Appeal Authority from 1998-2003 and was also appointed to the Removals Review Authority in 2000. She was appointed to the Refugee Status Appeals Authority in 1995 and, at the time of her appointment to the bench, was a senior member of that Authority. She was also involved in various capacities serving on law society committees, and was a Council Member of the Auckland District Law Society for several years. She has been involved in numerous community and charitable initiatives.

Awards and honours have been conferred on the following distinguished alumni:

- Justice Anderson, President of the Court of Appeal, was conferred with the status of Distinguished Companion of the New Zealand Order of Merit for services to the judiciary. Justice Anderson graduated LLB from the University of Auckland in 1967. He was a partner in the Auckland firm Martelli, McKegg & Adams-Smith, until commencing practice solely as a barrister in January 1972. He was appointed a Queen's Counsel in May 1986, to the High Court in May 1987, and to the Court of Appeal in

September 2001. He became President as from January 2004.

- Justice Glazebrook has had a distinguished alumni award conferred by The University of Auckland Society. She graduated from Auckland with an LLB (Hons) in 1980 (as well as an MA in History in 1978 and a Diploma in Business in 1994). Justice Glazebrook joined Simpson Grierson as a law clerk in 1986 and within three years was given a partnership, where she rose to national prominence in the field of taxation. Justice Glazebrook's distinguished law career resulted in her appointment to the High Court in 2000 and to the Court of Appeal just two years later. As a member of the Advisory Council of Jurists, established by the Asia-Pacific Forum of National Human Rights Institutions, she has played a leading role in two major reviews - human trafficking and the rule of law in combating terrorism.

Roger Connard, who taught at the Law School in the seventies sends the Law School community his best wishes. For many years since leaving Auckland Roger was sheep farming in the English Lakes' District. Then he took an MSc in ecology at Lancaster University. He is now the Director of the Federation of Cumbria Commoners, which involves an "unusual combination of law, hill-farming and ecology".



# In Memoriam: Kerry Russell McQuoid (1970-2005)

Kerry started off at Auckland University as a bit of a loner in Law School at large: he had arrived from Waikato after his intermediate year and he tended to hang around with the other Waikato law students. He stayed at O'Rorke Hall, and a lot of his mates when he first got to Auckland were from O'Rorke rather than from law school. He was popular - almost universally so - and by the end of his studies he knew people from all over the University and indeed from all over Auckland.

Kerry and I got to know each other well in 1992 and '93. We cemented our friendship at the Law Revue, where he played guitar in the band and I played drums. Kerry was an excellent musician and an artist as well. When we finished our final exams that year and before we started work, we took off together up to Paihia in my old V8 Holden and spent our last weekend as unemployed students drinking in pubs, scraping together cash for takeaways and trying to persuade the local girls to cut loose with two fresh lawyers who one day would be famous. On our last night of freedom, we drank cold beer on the balcony of the bach, looked out over the Paihia bush and talked about how far we had come and how far we would go.

It was at times like that when Kerry was at his most entertaining: intensely interested in discussing life, philosophy and law, quietly reflective on his own position within the universe, and confident in his own physical and mental abilities. He could handle himself in any situation, professional or personal. When he was interested in something he spoke with a twinkle in his eyes and a tight sparkly smile. He was an active listener and skilled at generating controversial discussion topics. He could take a position on anything and argue it any way. But without fail his approach was rational, logical, and philosophical. He never started a conversation he couldn't finish or an argument he couldn't win. He could come home late from the pub or a club, make a strong coffee and talk for hours.

Kerry was sensible, original, organised and brutally honest. He was more honest than anyone I know. It was an

emotional and intellectual honesty that sometimes tangled him up in knots. He would stew over things for hours (or even days) trying to find an answer he could cope with in his mind and according to his values. When Kerry was deep in thought, his friends knew to leave him alone. He could be distracted and abrupt until the answer came to him. Attempts to influence his views in the meantime would fail. However, his close friends also knew how Kerry would eventually resolve any problem: he would try to do the right thing by others, even if it was to his own detriment. He held himself to high standards. To those who knew the process and watched and waited, the answer was always the product of deep, ethical, emotional concentration. As a result, Kerry's decisions always commanded respect.

The intensity of Kerry's thinking process was reflected in both his personal and professional life. When he left University, he took a long time to decide what he wanted to do. He started off his legal career with James & Wells in Hamilton, but later moved to Auckland where he worked initially for the legal department of a shipping company. He did not have to wait long before Russell McVeagh made him an offer and he proudly started work there for the shipping team.

During a holiday in Hong Kong in 1999, Kerry quickly impressed the litigation partners at Herbert Smith and was offered a job in Hong Kong's premier litigation practice. The decision to leave Auckland and the life he loved at Russell McVeagh was an agonising one. But he had lots of friends in Hong Kong, the pay was phenomenal and the city and its culture intrigued him. He was torn, however, about whether to stay long term in Hong Kong and be a lawyer or whether to accept a scholarship to study music at Trinity College in Dublin. This too was a dilemma that engulfed him for weeks. He eventually chose law over music, rationalising it to himself by saying that he could take up the scholarship later if the job at Herbert Smith didn't work out.

The job did work out. His serious, no nonsense approach fitted perfectly with the big commercial cases assigned to

him. Clients liked his work ethic and valued his advice. But Kerry was not just another well-trained New Zealand lawyer in a city full of high flyers. He was a trusted advisor. Within a few years he was the lead associate on a number of major international cases for Herbert Smith, and would routinely travel to Singapore and other Asian cities as part of his job. Indeed, Kerry's career and personal travels had taken him almost everywhere. He made friends and impressed people all over the world.

In 2005, Kerry was offered and accepted a job as in-house legal counsel for Morgan Stanley, where he was to be head of Asian litigation based in Hong Kong. Sadly, it was a job he would never live to start. His illness manifested itself suddenly and unexpectedly while Kerry was in London preparing for his new role. Friends and colleagues mobilised to assist him when his illness became known. Among other places, calls and messages were passed to and from the Cayman Islands, the British Virgin Islands, London, Hong Kong, Singapore, Bangkok, New Zealand, Shanghai and Sydney.

It was no accident that Kerry managed to secure a position as a key lawyer in a top office of a major financial institution. He was one of those guys who, quite simply, had it all together. Kerry had worked out what was important in life. His modern day philosophy was not flashy or trendy or false. He knew what he believed in and why he believed in it. Kerry wasn't distracted by the trappings of wealth and privilege that became part of his jet-set lifestyle. He knew that it was better to be a great guitarist than it was to buy the greatest guitar. He knew that strength could come from silence much more than it could come from shouting. And he knew that patience and persistence and loyalty would bring success.

Kerry became a confidante to many who wanted to know what he thought and what he would do. He was a beacon of solid, steady support whenever a cool head and strong mind were needed. He was also more popular than most lawyers for two reasons.

First, Kerry rarely made people feel stupid or self-conscious. His advice was not dictated: he listened, observed and asked questions. Then and only then would Kerry give you his views. When he did, he would say things that would stay with you for weeks and months and years. Kerry was a man of the people, a man who knew people, and a man who people wanted to know. Kerry did not blow his own trumpet. He did not show off. He told you what he could say without sounding arrogant, and he let you work things out for yourself.

The second reason Kerry was so popular was that he was fun. He played in a band, performing in clubs and on radio in Hong Kong. His humour was dry and clever. Kerry always got the joke first and let you in

on it when he was ready. He had a smug little grin that would come over his face, and he would watch you react to his theatre.

I last saw Kerry at one of his penthouse apartments on Hong Kong Island earlier this year. We drank cold beer on his balcony, looked out over the city lights, and talked about how far we had come and how far we would go. We laughed about being boys from the provinces who had become men of the world. We were still on the move but one day we would be home.

Kerry was a self-made man, successful by any standard, and loved and admired by people all over the world. We will remember him when we hear our favourite songs and play the music he recorded. We will remember him

when our conscience tells us to do the right thing by others. We will remember his cheeky smile and his crushing one-liners. Kerry was definitely here.

Kerry McQuoid died suddenly and tragically from a brain tumour in July 2005. He will be sorely missed by family, friends, colleagues, and law lecturers.

A charitable fund will be set up in Kerry's name and memory. Interested persons should contact: Sammy Fang, Flat D, 7/F, 76 Village Road, Happy Valley, Hong Kong (Tel: +852 9803 7394/ email: sammyzyfang@hotmail).

*Mac Imrie (LLB 1993)*



## Inaugural Hood Fund Fellow Hosted by Law School

Dr Ngaire Woods graduated from the University of Auckland in 1987 with conjoint degrees in law and economics, before taking up a Rhodes Scholarship to the University of Oxford, where she completed her doctorate. In 2005 she returned to her *alma mater* to briefly take up the first Hood Fund Fellowship awarded by the University of Auckland.

As many of our readers will be aware, the Hood Fund was established in 2004 to mark the contribution of the former Vice-Chancellor of the University of Auckland, Dr John Hood. Dr Hood left Auckland at that time to take up the role of Vice-Chancellor at the University of Oxford. It was, therefore, particularly fitting that the first Hood Fellow should be a New Zealander from the University of Oxford.

Dr Woods is now a leading world expert on global economic affairs. She is currently a Fellow in Politics and

International Relations at Oxford University and the Director of Oxford's Global Economic Governance Programme.

Her distinguished career includes periods of service on a number of international bodies and references, including being a lead consultant on the United Nation's *Human Development Report* (2002), her current participation in the Helsinki Process on *Globalisation and Democracy*, and her membership in the resource group of the United Nations Secretary-General's *High Level Commission into Threats, Challenges and Change*.

As well as having presented radio and television programmes for the BBC in England, Ngaire has published numerous articles and books on international institutions, globalization and governance. Her most recent book *Global Mission: The IMF, the World Bank and their Borrowers* will be

published in late 2005 by Cornell University Press. This book formed the foundation of her two public lectures in Auckland as a Hood Fellow - both delivered to capacity audiences.

In the first lecture she discussed what drives the IMF and World Bank, asking the question, "Why is it that these institutions, created right back in 1944 on the crucible of World War Two to perform very important global public purposes, have become institutions associated with market focused globalization - a form of globalization that's attracted a lot of criticism for exacerbating poverty and inequality?"

In her second lecture she outlined the governance structure of the IMF and World Bank and offered a set of "practical ideas about how they could be reformed to better to fulfill their global and public purposes." Ngaire expressed the opinion that such institutions are necessary: "To have a world economy without them is like trying to play rugby with a referee. We need these institutions to make and enforce rules because without them it's the smallest countries that end up the most vulnerable."

Whilst Dr Woods' visit was hosted by the Law School, it attracted interest from across the University. She was caught up in a whirlwind succession of roundtable lunches, dinners and informal meetings with academics and students from the Faculty of Law as well as the departments of Economics, Pacific Studies, Development Studies, Politics, History and Geography. She also found time to squeeze in several media interviews.

Ngaire was accompanied on her visit by her husband, Eugene Rogan, director of the Middle East Centre, St Antony's College, University of Oxford, and their two delightful children, Richard and Isabelle.

Reflecting on her visit afterwards, Ngaire remarked that, "it seems to me that the Hood Fellowship scheme will likely have a lasting impact on scholarship in New Zealand and elsewhere. It is a superb way of connecting scholars from across the world. This kind of connection lies at the heart of good, competitive scholarship and benefits us all."

Photo: Scott Optican



## Dr Don McMorland Retires from the Law Faculty

In May, the Faculty gathered to honour the retirement of Dr Don McMorland from the Law School teaching staff. Don joined the Faculty as a Junior Lecturer in 1968 after graduating LL.M from Auckland. He took leave in 1969-72 to complete his Doctor of Philosophy from Cambridge University. From the beginning Don made his mark in the teaching of Land Law and later Vendor and Purchaser. He was a founding author of the dynasty of texts known as *Hinde McMorland and Sim on Land Law*.

Later he was the sole author of an invaluable text titled *Sale of Land*. After being promoted to Associate Professor of Law, Don stepped down from full-time teaching in 1992 to a half position and then a lesser part-time position, continuing to lecture to an enthusiastic class in Vendor and Purchaser. During his time at the Law School, Don has gained admiration from both staff and students for his personal integrity, academic excellence, and gentle humour. His incremental retirement from the Law School has

been balanced by his practice as a barrister, and his long-standing editorship of the *Butterworths (LexisNexis) Conveyancing Bulletin*. With typical wit Don noted at the retirement function that, like the Cheshire cat portrayed by Lewis Carroll in *Alice in Wonderland*, he had slowly withdrawn from academic life until one was left with the smile alone. It is to be hoped that Don will continue to grace the staff common room from time to time.

*Kenneth Palmer*

## Peter Devonshire Wins Distinguished Teaching Award

Peter Devonshire has been awarded a University of Auckland Teaching Excellence Award for Sustained Excellence in Teaching. Three awards in this category are made annually and they are contestable across the University. The awards were instituted in 2002 to encourage and reward excellence in teaching

Since joining the Faculty of Law in 1992, Peter has established a reputation

as an effective and successful lecturer.

He teaches Equity and Personal Property, and also an elective paper on Equitable Remedies. Peter endeavours to engage the students and to present a considerable volume of material in a structured and focused way. He is particularly appreciated for his clarity, his ability to create a learning environment where ideas are freely exchanged, and his concern that the

students understand the concepts and principles that are being discussed.

Peter received the Distinguished Teaching Award for the Faculty of Law in 1999 and has consistently received excellent evaluations for his teaching. Befittingly, the Teaching Excellence Award was presented to Peter at the Autumn graduation ceremonies 2005 in the presence of the graduating law class.

## The Greg Everard Memorial Mooting Competition

The Greg Everard Memorial Mooting competition, now in its third year, provides a forum for law students to hone and advance their advocacy skills to the highest level. The Moot was instituted in the Law School calendar by the family of Greg Everard to honour his memory and foster excellence in the work of the commercial bar. This year's final was held on the evening of Tuesday 16 August before a packed public gallery in the Number One Court Room with Justice Allan presiding. The topic concerned the rights of celebrities to privacy and the restraint of publication of tabloid newspaper articles. In a tightly contested moot, Paul Paterson was declared the winner of the Greg Everard Memorial Mooting Prize for 2005

From Left: Louise Everard, Frances Everard, Justice Allan and Madeleine Everard with the student finalists: Paul Paterson, Daniel Abercromby, Sally Morris and Charlotte Samders. Photo: Scott Optican





## The Auckland University Law Review

The *Auckland University Law Review (AULR)* continues to go from strength to strength in 2005, remaining one of the few journals to exclusively publish high-quality student work in New Zealand. In looking to the future and seeking to build a more professional journal, 2005's Editors-in-Chief have implemented many new initiatives in the way the Review is run. All staff have now undergone training programmes in legal research and editorial practice. Closer ties have also been forged with the *New Zealand Law Review*, with senior *AULR* staff assisting with footnoting work for the *New Zealand Law Review* and *New Zealand Law Review* editors assisting with *AULR* training. More stringent editorial guidelines have also been laid down.

The 2005 edition promises to be another valuable resource for anyone interested in developments in New Zealand law and legal scholarship generally. Articles to be published canvas areas as diverse as economics and contract, celebrity privacy, parliamentary privilege, the role of conscience in the law of contract, passing on in employment law, and historical pieces on Parihaka and women and taxation. Commentaries also cover a variety of areas sure to be of interest to practitioners, students and academics alike.

The *AULR* is always thrilled to hear from former staff members and contributing authors. A major initiative in 2005 is to build an alumni database. As many former authors and staff as possible will be contacted in the coming months as the Review looks to its 40th anniversary in 2007. The *AULR* also hopes to include alumni in future events, and to involve them with current members as valuable sources of information on careers and the substance and practice of the law. More information is available at the newly revamped website ([www.aulr.auckland.ac.nz](http://www.aulr.auckland.ac.nz)), which will also be carrying a comprehensive archive of past tables of contents by the end of the year. Since 2004, the complete back catalogue (except the most recent issue) has also been available electronically via the Hein OnLine database.

If you are interested in subscribing to the *AULR*, advertising to a broad international readership, or joining the alumni database please email the Editors-in-Chief at [aulr@auckland.ac.nz](mailto:aulr@auckland.ac.nz).

Father and son graduate 13 years apart. Mark Kelly moves the admission of his father, Leo Kelly. Photo: Scott Optican

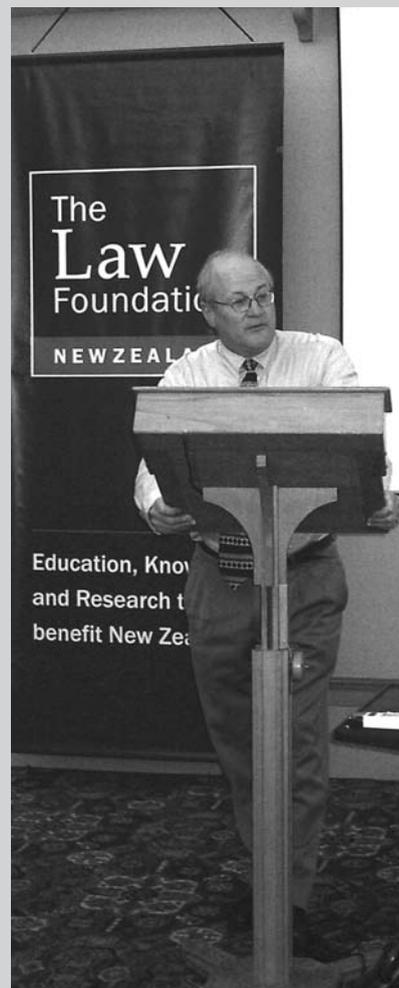
## Trajectories of Law in History: The Future Behind Us

The 24th Annual Conference of the Australian and New Zealand Law and History Society was held at the University of Auckland, 10th-12th July 2005, with the theme *Trajectories of Law in History: The Future Behind Us*. Some 56 scholars from Australia (mainly), New Zealand, South Africa and Canada gathered for the conference.

The opening event was a Ngati Whatua welcome to Waipapa, the University marae, followed by a keynote address on 'Truth, Reconciliation and the clash of cultures in the Waitangi Tribunal' from Chief Judge Joe Williams, a response from an Australian native title lawyer and a paper about a song of lament sung at a Tauranga hearing of the Waitangi Tribunal. The main conference venue was the suitably historic Old Government House. 35 papers were delivered on a wide range of topics, including Scottish stodial theory and indigenes, the Felons Apprehension Act 1865 (NSW), Julius Stone and fascism, dower in NSW, defamation actions in 19th century New Zealand, New Zealand literature and legal history, the removal of

Aboriginal children, the role of traditional leaders in contemporary South Africa, colonial law in Fiji and NSW, Australian research on fault in marital property law, etc. A keynote speech on law and history by Justice Paul Finn of the Federal Court of Australia (formerly a professor at ANU) led to an interesting plenary discussion on how to teach law to non-law students and history to law students. The conference dinner was held in the colonial vestiges of the Northern Club. It featured a talk by Professor Michael Taggart on graveyards, gardens and common law *festschriften*.

The New Zealand Law Foundation assisted with the conference in a number of ways, including bringing Justice Finn to New Zealand and bringing students from all five New Zealand law faculties to attend the conference. This support was appreciated. Professor David Williams of the University of Auckland Law Faculty hosted the conference, with great administrative support from Jane Kilgour.



Justice Paul Finn

## US Supreme Court Justice Antonin Scalia Visits

On October 21, 2004 the Law School was privileged to welcome Justice Antonin Scalia of the United States Supreme Court. Justice Scalia had visited once before, in 1999. As on that last occasion, the Judge addressed a large and attentive gathering of students, academic staff and practitioners. The subject of his address was the correct mode of interpreting the United States Constitution.

Justice Scalia is a well-known advocate of "originalism" - a concern to find out the meaning of the Bill of Rights as it was understood in the time of the framers - an approach that he contrasted with the "living constitution". That latter approach, in the Judge's view, was illegitimate and unprincipled because it allowed

successive generations of judges to breathe their own meaning into vague and general terms of the U.S. Bill of Rights - terms such as "liberty", "due process", "equal protection", "cruel and unusual" and so on. For Justice Scalia, the expansion of those terms was profoundly anti-democratic. That was because, as he explained, the more the Bill of Rights is expanded, the less territory that remains for law-making through the ordinary democratic process. On the Judge's view, the Bill of Rights was intended to preserve the political process by enshrining a relatively narrow set of rights. The advantage of an originalist view, then, was that it would preserve the word "liberty" to mean what the framers' generation understood by it, namely physical liberty, rather than (as has

happened) a more generalised "liberty" that includes, for example, reproductive choice and a freedom from regulation of private sexual activities. Taking this view, he argued, was consistent with the framers' view of democracy. With more scope for democratic choices, the result might be that some states would be liberal over abortion, others not, some would have laws about private sexual acts, others not. But, importantly, these were the choices that the Constitution always intended to leave to citizens. The remedy for minorities was to persuade others to support their cause, for this was democracy in action. On the Judge's view, if the Bill of Rights came to mean what successive generations of judges thought it should mean, then the appointment of judges necessarily

became politicised. This he saw as a bad thing; it ultimately made the meaning of the Bill of Rights itself a product of majoritarianism.

Originalism is not generally in favour amongst the judges of the western world. And there are degrees of originalism, for some might say that the original understanding of at least *some* phrases in the Bill of Rights was that they denoted a principle, or standard, that each generation of judges should apply in light of then current circumstances. On this view the prohibition on cruel and unusual punishments was intended to set a standard - in the knowledge that subsequent generations might use that very standard to condemn certain punishments in use in 1791.

It is interesting to note, however, that there is no direct relationship between originalism and conservatism. For example, in *Kyllo v. United States* 533 U.S. 27 (2001) the U.S. Supreme Court with Justice Scalia writing for the majority held unconstitutional a “thermal imaging” search under the Fourth Amendment, even though the search was conducted from the road and did not require intrusion into the

offender's house. For Scalia and his fellow judges in the majority, what counted was the original understanding of the Fourth Amendment - that persons enjoy privacy in their houses, and this precluded even invasions of privacy that might be perpetrated without a physical entry. In contrast, in a jurisdiction firmly committed to “living tree” interpretations, the Supreme Court of Canada has recently held unanimously that infra-red imaging from outside a dwelling did not constitute an unreasonable search and seizure under the Charter (see *R v. Tessling* [2004] 3 S.C.R. 432).

One may think the debate about originalism is irrelevant to the New Zealand Bill of Rights: not enough time has elapsed since its enactment to generate controversies about how old words apply to new circumstances. But we have seen something like it in cases such as *Quilter v Attorney-General* [1998] 1 NZLR 513 (CA), where judges divided over whether s 19 of the Bill of Rights (anti-discrimination rights) was breached by the common law's definition of marriage to exclude same-sex unions. For Keith J an operative part of his (negative) conclusion was that s 19 had not been

intended to reach this sort of controversy. In contrast, Thomas J felt that this avoided the real question, which was whether the standard enacted in s 19 was breached, and that standard was not affected by “what Parliament might or might not have contemplated when enacting s 19” (p 545).

Much of the debate comes back to whether a Bill of Rights, or a provision in it, was intended to be “affirmatory” or “amendatory”. Justice Scalia takes the view that the U.S. Bill of Rights was intended to affirm the important bulwarks of freedom, and that it is the Court's task to defend those. Some more modern bills of rights are explicitly “amendatory” - designed to set a standard that is not yet reached, rather than protect a state of affairs that is valued. The South African Bill of Rights and its equality guarantee is a good example of an amendatory bill of rights.

These are interesting and important debates to have. The Law School was delighted to be able to welcome Justice Scalia back to Auckland.

*Paul Rishworth*

Photo: Scott Optican



## Two Kiwis at the International Criminal Court



Larissa Wakim in Darfur

The Auckland Law Faculty currently has two of its alumni, Larissa Wakim and Leanne McKay, working at the International Criminal Court in The Hague. As most of our readers will be aware, the International Criminal Court investigates genocide, crimes against humanity, and war crimes. It currently has three situations before it. The first two were referred to the court by the States themselves and involve the Democratic Republic of Congo and Uganda. The third was referred by the UN Security Council and involves Darfur in Sudan. Because the court is a relatively new institution, and these are some of the first cases running through it, everything that is happening at present is precedential. Larissa told me that this makes for an exciting working environment. Similarly, Leanne remarked that:

“There are some fantastic people here in the Court and having come from NZ/Australia the opportunity to work in such a culturally diverse and international environment is fabulous. And although the Court is not yet holding trials, it is a really interesting time to be here in Chambers in terms of the contribution that can be made to the interpretation, development and implementation of policies and procedures that will affect the future operations of the Court.”

I pressed Larissa to describe where her obvious passion for international human rights, particularly in the context of humanitarian crises, came from. She commented that she grew up in an environment that was conducive to developing such an interest because both of her parents took a keen interest in social justice issues - both domestic and international. But Auckland Law School helped her find her niche. She commenced a law degree because she believed that it was a profession that offered the opportunity to make a positive impact both in the lives of individuals and on the wider community. Whilst at Auckland she took classes with Rodger Haines and Treasa Dunworth, which inspired her to head in the particular direction that she has gone subsequent to graduation.

Larissa graduated from the University of Auckland with a BA/LLB in 2000. She then spent two years in Cambodia,

working for local legal aid organizations, before returning to New Zealand to work as a researcher for the Child Poverty Action Group, a small policy-focused NGO. She got itchy feet and left again in 2003 for Cairo, Egypt where she volunteered for several months with a refugee legal aid project which provided legal representation to refugees taking claims to the United Nations High Commissioner for Refugees (UNHCR) for status determination.

In September 2003, she began her LLM at the University of Michigan, concentrating on international human rights and refugee law. After graduation, she spent the summer in fellowships; firstly at the UNHCR in Washington, DC, and then the AIRE Centre (Advice on Individual Rights in Europe) in London. She was also employed as a legal investigator for the US Department of State to interview refugees on the Chad/Sudan border about their experiences in fleeing attacks in the Western Sudanese province of Darfur. The result of those interviews was a declaration by US Secretary of State, Colin Powell, that genocide was occurring in Darfur.

In October 2004, she returned to Ann Arbor, Michigan, working as a research scholar with Professor James Hathaway on several projects in refugee law. Her contract ended in June when she started work as an assistant investigator at the International Criminal Court.

Leanne's career path after graduation from the Auckland Law School demonstrates a similar determination to make a difference in the area of international human rights. After graduation Leanne worked as a Refugee Status Officer for the Refugee Status Branch of the New Zealand Immigration Service determining claims for asylum. A highlight during that time was working the Tampa asylum seekers that New Zealand accepted from Nauru in October 2001.

In early 2002 she moved to Melbourne and commenced a Masters in Public and International Law at Melbourne University, specializing in international human rights law. She considers herself fortunate to have been taught by Professor Tim McCormack during that time. Professor McCormack is (among other things) *amicus curiae* for the trial of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia, and for the past two years she has worked with him in the preparation of briefs on various issues of international humanitarian and criminal law for the trial judges. After completing her Masters at the end of 2003, she commenced work at Melbourne University as a Research Fellow on a project looking at Australian parliaments and the application of human rights to legislative making processes. At the beginning of 2005 she began working as a Research Fellow to the Asia-Pacific Centre for Military Law.

In amongst all this Leanne did extensive volunteer work with Amnesty International Australia in the refugee field and also volunteered with the Refugee and Immigration Legal Centre, drafting submissions to the Minister for Immigration for the grant of humanitarian visas for failed asylum seekers, particularly from East Timor.

It was in April of this year that Leanne commenced a six-month internship at the International Criminal Court. She works in Pre-Trial Chamber II for the Samoan judge, Judge Tuiloma Neroni Slade.

Julia Tolmie

## Non-Calamity Jane

Jane Kilgour's name has become synonymous with The Legal Research Foundation. From her appointment as its Secretary-Treasurer in 1992 she has been of as high visibility in and about the Law School as many of the full-time lecturers. Between then and early 2005 Jane orchestrated more than fifty seminars and conferences, including a number of international two-day affairs.

Jane, an unfazable Queenslander, occasionally took “no” for an answer but under dignified protest. If she didn't move mountains that was only because the Legal Research Foundation never booked mountains for its functions. She literally opened doors to the Foundation's business and then flawlessly administered it throughout the day or days of the function in question. She invariably also organized a generous after-match function “where the meaningful argumentation and moves to law reform occur.” Where occasionally managers and flunkeys at host locations proved unco-operative Jane (very quietly) took no prisoners and things were done her way. This writer attributes her success to a form of Aussie charm from which Boedicia, as well as Mrs. Thatcher, could have learned enough to have kept them much longer in business. She has a very big sense of humour too (if anything had gone wrong - which it didn't - she could have seen the funny side of it).

From the age of about 10, Campell, Jane's son, helped out in a variety of tasks. Husband Kevin was ever-present at functions and, as the new Law Society's representative on the Legal Research Foundation Council, he maintains the Kilgour presence.

Jane has gone off “to play some golf”. I would be nervous to partner her if I didn't replace my divots.

During her time with us some dramatic innovations occurred. Among them were the re-vamp of the *New Zealand Law Review*, the reformation of the accounting system, and the instigation of the annual Distinguished Visiting Fellowship to the Law School.

Jane's departure was marked with a function at Justice Rodney Hansen's house. Barbara Relph has taken over at the Legal Research Foundation quite seamlessly. We trust she will guide us for at least as long as Jane has. And as happily.

*Bernard Brown*

Photo: Scott Optican



## Eulogy to Sir Trevor Skeet

Graduates of this Law School may be unaware that, since World War II, not one but at least two of their number have been long-serving members of the United Kingdom Parliament. One, of course, is Bryan Gould CNZM (LLM, 1962) who was a member of the Labour shadow cabinet during the 1980's, before unsuccessfully contesting the Party leadership in 1992. The other, less well-known here, was Sir Trevor Herbert Harry Skeet who, apart from a gap of six years in the 1960's, was a Conservative M.P. from 1959 until his retirement at the age of 79 in 1997, and who died in England on 14 August last year.

While, in their different ways, both attained distinction, neither actually achieved high Government office. In an obituary of Skeet, the *Independent* (London) offered this explanation:

“Academia in Britain has been vastly enriched by the infusion of talent from New Zealand, of whom Ernest Rutherford is only one among the most eminent. In politics, New Zealanders have fared less well. Bryan Gould's undoubted talents would have been recognized at an earlier stage had he not had a certain stigma of being from “Down Under”. And, I believe, the reason why Trevor Skeet never achieved the ministerial office to which his competence and assiduity surely entitled him, and which he craved, was that his colleagues reacted with, “Why should we give precedence and a plum job to a bloke from Auckland?””

The writer of that not particularly encouraging comment was a former Father of the House of Commons, Tam Dalyell, Eton and Cambridge, a journalist and author, himself a veteran Labour member for Scottish constituencies, and another whose long service has gone unrewarded by higher office. The other thing they seem to have had in common was an active interest in matters scientific and technical. In particular, it was Dalyell's view that Skeet probably knew more about the details of energy than anyone else in the House.

A third- or fourth-generation New Zealander, and describing himself, accurately enough, as British in *Who's Who*, Skeet retained his New Zealand passport to the end. He was born in Mt Eden in 1918, attended Kings College, and graduated LLB from Auckland University College in 1942. After serving during the War as an army and then as a naval engineer in North Africa and Italy, he obtained a place at the Inner Temple and was called to the English Bar in 1947. In Parliament, he was an energetic campaigner for causes which did not always find favour in his own Party, so much so that his proposals for the control of nuclear power generation prompted his local Conservative Association to threaten to deselect him. Against expectation, a ballot to retain him was won with a substantial majority. Indeed, either despite his independence or because of it, he appears to have been a popular constituency man, having been re-elected six times, usually with an increased majority. His most important contribution in the House of Commons was said to have been as Chairman of the Parliamentary and Scientific Committee 1985 - 1988. He was knighted in 1986.

On the other hand it would seem from the obituary in the *Independent*, and another in the *Daily Telegraph*, that his fellow members did not find him the easiest person to get on with. Described as honourable, tall, lean and fit, and stating in *Who's Who* that he was an experienced public speaker, he was nevertheless also said to be persistent, inclined to pontificate in a didactic manner, to be raucous and opinionated (inserting “I think” more times per speech than any other member) and to be one who was, perhaps, too ready to share his expertise and opinions with anyone who would listen. The suspicion has to be that it was these traits, at least as much as his Mt Eden origins and Kings College education, which cost him the office which Dalyell believed he both craved and deserved.

*Brian Coote*

# An Honour for Jock Brookfield

The recent appointment of Emeritus Professor F M (Jock) Brookfield as a Companion of the New Zealand Order of Merit (CNZM) makes him the fifth former member of the full time Law School staff to have received a royal honour in the last twelve years.

A graduate of this Law School in its University College days, and of Oxford where he took a D Phil, Professor Brookfield practised initially as a partner in Brookfield, Prendergast, Schnauer & Smytheman. Having joined the academic staff in 1966, he served successively as a Senior Lecturer, Associate Professor, Professor and Dean. Since his retirement at the end of 1993 he has very actively continued his research and writing, and still occupies an office at the Law School.

His lectures, articles and books have mainly reflected interests in land law, conveyancing, water law and,

especially, constitutional law. Through his editorship of *Goodall*, and of *Nevill*, and his membership for 14 years of the Legislation Advisory Committee of Parliament, he has had considerable influence on legal drafting practice in this country. There have also been several articles on water and soil conservation, which culminated in his authorship of the title, *Water in The Laws of New Zealand*. Then, too, he has written widely on aspects of land law, a subject he taught for many years.

Undoubtedly, though, his greatest interests and contributions have been in relation to constitutional law. His Oxford thesis was prompted by the Unilateral Declaration of Independence in Rhodesia and made him an international authority on revolution and constitutional legitimacy. This interest led on to his numerous contributions to Treaty of Waitangi jurisprudence and to sovereignty questions generally. The publicity

attending his inaugural lecture on 'Legitimacy and the New Zealand Constitution' brought home to many people for the first time the differences between the Maori and English versions of the Treaty and their present-day significance. His work in this area has since been pursued with energy and courage, especially since his retirement, and has included the publication of his very well received book, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*, AUP, 1999.

Most recently, he has sought to suggest ways in which issues arising from the foreshore and seabed controversies might be resolved.

His appointment to the New Zealand Order of Merit has been warmly received as a most appropriate acknowledgement of a distinguished career; one which, it will be widely hoped, will continue to bear fruit in years to come.

Gongs Galore: From left, Bernard Brown ONZM (2000), Nadja Tollemache OBE (1993), Jock Brookfield CNZM (2005), Margaret Vennell ONZM (1997), Brian Coote CBE (1995)



# Professor Greenberg is the Legal Research Foundation Distinguished Visiting Fellow 2005

The Faculty, in conjunction with the Legal Research Foundation, had the pleasure of hosting Professor Jack Greenberg and his wife Deborah Greenberg from mid-July to early August, as the Legal Research Foundation Distinguished Visiting Fellow for 2005. The visit was underwritten by generous grants from the New Zealand Law Foundation and the United States Embassy (Wellington) Department of Public Affairs.

Professor Greenberg, of Columbia University Law School in New York, is best known for his role in litigating *Brown v Board of Education*, the landmark 1954 US Supreme Court case that ruled racial segregation in schools to be unconstitutional. The Brown decision, which turned out to be a catalyst for the US civil rights movement, was one of forty cases Professor Greenberg argued before the Supreme Court during his time with the NAACP Legal Defense and Educational Fund. Upon leaving the Legal Defense Fund in 1984, he joined the faculty of Columbia University Law School where he teaches civil procedure, and civil and human rights law.

In addition to his academic work, Professor Greenberg has remained active in the civil rights movement through his membership in several organisations, including Human Rights Watch. In recognition of his long service in promoting civil and human rights, Professor Greenberg was awarded the American Bar Association's Thurgood Marshall Award and the Presidential Citizens Medal.

Professor Greenberg has taught at universities all over the globe, including Yale, Harvard, Princeton, the University of Tokyo, the University of Munich and the University of Nuremberg-Erlangen. He has also travelled to countries such as Poland, the Soviet Union, South Africa, the Philippines, Korea, and Nepal. However, this was his first trip to New Zealand.

During his time at the University of Auckland Faculty of Law, Professor Greenberg gave seminars and talks to students and staff about civil and human rights law, and public interest litigation. He spoke to various Law School classes and groups, and made media appearances on TV One's "Breakfast" program, BFM Radio and Radio NZ. Feature articles on

Professor Greenberg's life and visit appeared in the *New Zealand Herald*, *Law News* and *Law Talk* magazines. He also gave a public lecture at the Engineering School, which was well attended by University staff, members of the legal profession, and even Auckland high school students. The Auckland District Law Society hosted a function for Professor Greenberg, who concluded his time in Auckland with a keynote address at the Legal Research Foundation's *Legal Methods III Conference: Law, Social Policy and the Role of the Courts*.

After his time in Auckland, Professor Greenberg and Deborah travelled south to speak in Wellington and Christchurch, and to address the New Zealand Bar Association's Winter Conference in Queenstown. He also met with members of the New Zealand Supreme Court, and was hosted in Queenstown by Chief Justice Dame Sian Elias and her husband, University of Auckland Chancellor Hugh Fletcher.

Professor Greenberg and Deborah - herself a graduate of Columbia Law School, law teacher and US Supreme Court litigator - also found time for tourism, sampling New Zealand wine and food at some of Auckland's best restaurants. However, some of the finest cuisine was to be found in "Sunderland House", a beautiful Herne Bay bed and breakfast owned by law student Cathy Sunderland and her husband Donald Sunderland (an interior designer and television personality). Donald and Cathy were gracious hosts to the Greenbergs during their three-week stay in Auckland. Able to work in a professionally appointed kitchen, Professor Greenberg justified his reputation as a gourmet chef by cooking delicious recipes from his published cookbook: *Dean Cuisine: The Liberated Man's Guide to Fine Cooking* (with Professor James Vorenberg, Dean, Harvard Law School (1991)). He also showed his skill at mixing margaritas and preparing Chinese dumplings with the author.

The Law School benefited tremendously from Professor Greenberg's visit, as did the New Zealand Bar, the wider University community, and members of the New Zealand public. His visit was a rare opportunity to host a lawyer and scholar who has championed the cause of human and civil rights in the United States and around the world.

*John Ip*

Photo: Scott Optican





Jim Evans with his family at his retirement dinner. Photo: Scott Optican

## Professor Jim Evans Retires

Jim Evans is one of the most distinguished legal philosophers New Zealand has produced. He has an international reputation as a fine scholar and teacher who deals with universal issues in the discipline of law. It has been to the University of Auckland's enormous advantage that Jim has chosen to spend most of his working life here, some 36 years, developing his research and nurturing generations of students.

Jim, however, did not begin his legal journey here. He was introduced to the discipline of law at the University of Otago where he graduated BA, LLB in 1964. He then came north to the University of Auckland, graduating LLM first class honours in 1970, before undertaking a PhD at the University of Cambridge, graduating in 1974. Before joining the staff of this University in 1969, Jim had a period as a practising lawyer in a firm that has now evolved into Phillips Fox.

Jim's promise was recognised early by the award of a prestigious Tapp Research Scholarship to Gonville and Caius College at the University of Cambridge. Since then his scholarship has been consistently recognised by invitations and research fellowships, many keenly contested across disciplines. He has, for example, held research fellowships (often more than once) or invited visiting positions at the Universities of Cambridge, ANU, Melbourne, Sydney, Wollongong, Cornell, Dalhousie, Hong Kong, British Columbia, Calgary, Colorado, and Malaya.

A principal focus of Jim's scholarship has been on philosophical issues in statutory interpretation. His PhD thesis was entitled *An Analysis of Rules and its Relevance to Statutory Interpretation* and his later work has developed a number of its themes. For example, in his outstanding book, *Statutory Interpretation: Problems of Communication*, and his contributions to the sets of essays edited by Rick Bigwood, *Legal Method in New Zealand*, under the title 'Questioning

the Dogmas of Realism', and *The Statute: Making and Meaning*, under the title 'Reading down Statutes'. Jim's body of work illustrates the careful, close-textured work dealing with language and communication for which Jim is famous, and which has earned him a place among the foremost legal philosophers of his generation. His work, together with the impact he has made as the founder of the New Zealand Society for Legal Philosophy and an executive member of the Australian Society for Legal Philosophy, will ensure that Jim's influence will endure.

Jim has, however, wider interests in law and in life. In the law he has demonstrated a remarkable versatility, writing recently on judicial appointment, Aristotle's theory of equity, the development of the doctrine of negligence, the dilemma of proof and the extension of criminal statutes, constructive trusts, the nature of a legal right, and "choice and responsibility" in law. In his early work he wrote even more widely; infants' contracts, contractors' liens, legal aid, the liability of the Crown, practical training for lawyers and abortion are all subjects that have captured his attention and to which he has brought his distinctive clarity and accuracy.

As a teacher Jim has inspired generations of the top students in the Law Faculty, many of whom now occupy key academic positions here and overseas. The following remarks come from a former student, Richard Ekins, a FRST top scholar and winner of the Hart prize for Jurisprudence at the University of Oxford, now working towards his DPhil at Oxford: "It has been a privilege for me to learn from Jim. After instructing me in the basics of my field, Jim acted as an exceptional research supervisor. He provided invaluable guidance in determining the direction of my research and he subjected my work to unflinchingly perceptive, rigorous and clear analysis. Throughout my formal studies, and thereafter as an intensely helpful and dedicated mentor, Jim has

been an inspiration in the model he presents of inquisitive, painstaking, and insightful scholarship."

(Richard has since been appointed to a fractional lectureship in the Faculty, see above at page 5).

In the life of the University and of the Faculty Jim has always been altruistic, supportive and interested. He was an important contributor for the University in the 1990s in the fight for academic freedom - mobilising opinion, writing submissions and appearing before a Parliamentary Select Committee. He remains a valuable ally in the on-going quest to bring clarity to parts of Wellington as his piece in the *New Zealand Journal of Educational Studies* demonstrates. It is entitled 'Muddled Thinking in the Funding of Tertiary Education in New Zealand'. Jim founded the Law Faculty's Blind Lawyers' Network, and remains the only sighted member of it. He has also been, for a number of years, the Faculty's Academic Adviser to Pacific Island students.

But none of this quite captures what a marvellous colleague Jim is. He is willing to talk, argue even, on all kinds of issues, constantly searching for the truth, for a better understanding, for accuracy. No problem is ever too small or too large to engage his interest. Every problem is treated by him with the same degree of care, and many of his colleagues have therefore found him an invaluable sounding board for intractable problems in their own fields of study. Sessions with Jim can sometimes last hours, but colleagues are frequently amazed at how fast he can be at getting to the nub of a problem. The answer may not even be where one thought the problem was.

We have been all the richer for having him among us and we hope that we will continue to benefit from his wisdom and humour for many years to come. We all wish him, and Jill, the very best and most productive of retirements.

Julie Maxton

# The Equal Justice Project

Two Auckland law students, Eesvan Krishnan and Peter Williams, have spear-headed an exciting new organisation designed to make legal services more accessible to the community, as well as giving senior students the opportunity to experience working with clients, and receive training from, the profession and judiciary. The Equal Justice Project (EJP) is Auckland Law School's first student-run pro bono programme and has already received significant support from the Faculty, Profession, Judiciary, and the Auckland District Law Society (who are EJP's principal sponsors). EJP is modelled on highly successful programmes overseas, and in parts of New Zealand, which promote a win-win situation: students help the community, and in doing so gain valuable experience and life skills.

The Project is based on the principle that everyone has the right to equal access to justice; that is, no one should be denied the ability to access legal services because they cannot afford a lawyer. While there are already measures in place to promote access to justice, such as the Legal Aid Scheme and community law centres, many Aucklanders do not qualify for legal aid and may not be able to access a community law centre. To address the gap between public resources and unmet legal needs, the profession has a long tradition of pro bono work. But, as Eesvan and Peter observe, it is clear that the demand for pro bono work exceeds its supply. Drawing on well-established scholarship, Eesvan and Peter argue that pro bono work is "best understood as an ethical obligation incumbent upon every lawyer rather than a form of charity," and thus the profession can and should do more to address unmet legal needs in Auckland. EJP is a first step: "In partnership with community groups and the profession, EJP aims to harness the knowledge, skills and enthusiasm of law students to promote access to justice and, in doing so, advance a vision of pro bono work as an ethical obligation."

The response from the student body to EJP has been fantastic - over 130 penultimate and final year students signed up as members. In 2005, EJP's members are promoting access to

justice through five projects:

1. Free student-run legal clinics at the Waitakere Community Law Service. Supervised at all times by volunteer solicitors, the students will help interview clients, conduct research and discuss possible legal solutions. This will help to significantly increase the capacity of the first community law centre in West Auckland.
2. Legal education workshops about practical aspects of the law at Auckland high schools. This year they will concentrate on running workshops in lower decile schools.
3. A combination of initiatives to promote access to justice to refugee and migrant communities, which have particularly acute unmet legal needs.
4. Assisting the Human Rights Commission in legal research into complaints mechanisms in the mental health field.
5. Conducting the first-ever empirical survey into the nature and extent of pro bono work currently being done in Auckland.

EJP envisions making a contribution to the legal education of Auckland law students in three main ways. First, it could help shape their professional values, including a commitment to pro bono services. Secondly, it offers educational benefits in areas like professional responsibility, problem solving, lawyering (including client interviewing techniques), and leadership skills. Finally, it will assist students' career development and foster good-will between law schools, alumni and the community.

Each of the five projects is managed by a penultimate year student and an Advisory Committee, made up of members of the Faculty and Profession, assists the students on an ad-hoc basis. The Committee currently consists of Scott Optican, Professor Julie Maxton, and Rodger Haines, QC. The project's patron is Justice E.W. (Ted) Thomas (see his profile above at page 8).

EJP can be contacted at [info@equaljustice.co.nz](mailto:info@equaljustice.co.nz) and would be grateful for alumni to get in touch to assist the organisation.

Justice Thomas with Eesvan Krishnan and Peter Williams at the launch of EJP. Photo: Scott Optican



# 2005 Law Postgraduate Programme

2005 has seen some changes to the postgraduate team. In February this year, Professor Mike Taggart took over as Director of Postgraduate Legal Studies for the duration of Professor Paul Rishworth's six months research leave. In July this year, Professor Rishworth became the new Deputy Dean and Michael Littlewood became the new Director of Postgraduate Legal Studies.

In addition, Kerry Tetzlaff joined us as Acting Postgraduate Manager from December 2004 - August 2005 while Nicola Andrews took maternity leave. Carlene Nienaber commenced as Acting Postgraduate Manager in August 2005. Like Kerry (see above at page 9), Carlene has a long affiliation with the Law Faculty, having completed her BA LLB in 2002/03 and subsequently commenced her LLM.

## International Developments

Students are responding positively to the opportunity, and increasingly are choosing, to add an international study component to their postgraduate study. The Law Faculty thus had a number of students head over to Freie University, Berlin, for the two week intensive course Environmental Policy and Law in Germany and Europe from 4-14 July 2005. Associate Professor Klaus Bosselmann taught the course in conjunction with several German colleagues, and the course included excursions to European and German environmental institutions. In addition, several students attended courses at the University of Melbourne.

## Postgraduate Successes

Our postgraduate students and graduates have had many successes over the last year. Some of them are outlined below:

John Barker's PhD in Law and Geography (see last year's edition of *Eden Crescent* at page 18) won one of the University of Auckland's Best Doctoral Thesis Awards.

Guy Charlton, a full time PhD student from the United States of America, was also awarded a University of Auckland International Doctoral Scholarship. Guy is engaged in a comparative study

of aboriginal title jurisprudence and methodology in Canada, Australia, USA and New Zealand, with a focus on customary fishing and hunting rights cases.

The following students had articles published in the *New Zealand Postgraduate Law eJournal*:

- Geoffrey Beresford, LLM student, 'The Processes of Constitutionalism in New Zealand and the United Kingdom'.
- Sam Carey, LLM student, 'Obiterated! Should New Zealand Follow the UK's Lead and Extend the Action of Breach of Confidence to Cover Privacy?'
- Marlene Frank, LLM graduate, 'The Rights of Employees in the Event of the Employer's Insolvency: A Comparative Approach to the Rights of Employees During Restructuring in the United States and Europe'.
- Anja Gerdung, LLM graduate, 'Invasion of Privacy: Does and Should a Common Law Tort of Invasion of Privacy Exist in New Zealand?'
- David Griffiths, PhD candidate, 'There's No Art to Find the Mind's Construction in the Face.'
- Gina Hefferan, LLM student, 'Exemplary Damages in Contract: Another Anomaly?'
- Herman Salton, PhD candidate, 'Veiled Threats? Islam, Headscarves and Freedom of Religion in France and the United States.'
- Kerry Tetzlaff, LLM student,



Kerry Tetzlaff. Photo: Scott Optican

'Towards a Global Convention on the Right to Water.' This paper was also presented at the International Council of Women's Asia Pacific Conference, *Women in Sustainable Development: Poverty Eradication, Water, and the*

*Girl-Child - Cross-Cutting Challenges in Human Rights*, November 2004.

The following students had their articles published in the 2004 issue of the *New Zealand Journal of Environmental Law*:

- Stephanie Curran, LLM student, 'Sustainable Development v Sustainable Management: The Interface Between the Local Government Act and the Resource Management Act'.
- Anja Gerdung, LLM student, 'Global Environmental Governance and the Role of Civil Society Groups'.
- Stephanie Mead, LLM graduate, PhD student, 'The Precautionary Principle: A Discussion of the Principle's Meaning and Status in an Attempt to Further Define and Understand the Principle'.
- Ceri Warnock, LLM student, 'The climate Change Regime: Efficacy, Compliance and Enforcement'.

Geraldine Hikaka, LLM student, co-wrote a paper with Professor John Prebble of Victoria University entitled: 'Legal Autopoiesis and General Anti-Avoidance Rules'. This paper won second prize at the *Australasian Tax Teachers Association Conference*, 2005.

Philip Gurney, LLM student, had his paper, 'The New Zealand and Australian CFC Regimes' published in (2004) 10 *New Zealand Journal of Taxation Law and Policy* 309-333. Another LLM student, Nicola Williams, published her paper, 'The Scope for Invoking Legitimate Expectation in the New Zealand Tax Law Context', in (2005) 11:1 *New Zealand Journal of Taxation Law and Policy*.

Michael French was awarded the Gaze Burt Prize for Commercial Law (best MComLaw student in 2004). Matthew Allen was awarded the Gaze Burt Prize in Franchising Law (2004).

The University-wide postgraduate research competition has now finished, with three of the five law students who entered winning places. Frank Schoene-de-le-Nuez presented his LLM tax research: 'The Aging Society, Fertility Rate and Tax Incentives for Having Children'. Frank came first in the Business and Law division of oral

presentations. Eric Kwa, who presented an aspect of his PhD research, 'Strengthening Traditional Knowledge Through Partnership for Sustainable Development,' came second. Deidre Bourke, whose LLM thesis is entitled 'The Regulation of Animal Experiments in New Zealand - A Case Study of Enforced Self-Regulation,' was placed in the top 11 research posters out of approximately 40 posters which had been selected from faculty competitions. The fact that we have the smallest postgraduate programme in the University but were well represented amongst the prize winners is a reflection of the calibre of students that the Law School's postgraduate programme is attracting.

## New Zealand Postgraduate Law eJournal

January 2005 saw the launch and inaugural issue of the *New Zealand Postgraduate Law eJournal*. This is an online refereed journal dedicated to promoting and publishing postgraduate research throughout New Zealand and to providing postgraduate students with the opportunity to gain editorial experience. It can be found online at [www.nzpostgraduatelawejournal.auckland.ac.nz](http://www.nzpostgraduatelawejournal.auckland.ac.nz).

The NZPGLeJ was founded by Herman Salton (Editor-in-Chief) and Kerry Tetzlaff (Deputy Editor-in-Chief). Due to the departure of Kerry, David Griffiths has now replaced Kerry as Deputy Editor-in-Chief for Issue 2. Kerry remains involved in the capacity of Senior Editorial Advisor.

## LLM Courses for 2006

2006 promises another exciting range of intensive and full semester courses in the postgraduate programme. A flyer inserted into this magazine contains the most up to date details of the courses on offer.

At the time of going to press intensive courses in the following subjects had been finalized: Advanced Issues in Technology Law; Commercial Law & Foreign Investments in China; Common Law in Theory and Practice; Contemporary Issues in Administrative Law; Contract Law; Disability in a Global Setting; Indigenous Rights and Natural Resources in Comparative Perspective; Medico-Legal Issues; Oceans Law & Governance; Problems of Corporate Insolvency; Public Law; Remedies; Sports Law; Tax Law; Wildlife and Domestic Animals.

These courses will be taught by a range of distinguished guest lecturers from New Zealand and overseas. These

include, amongst others, Professor Charles Wilkinson (Distinguished University Professor at the University of Colorado, winner of various awards for leadership, scholarship and teaching), Professor Richard Calnan (Visiting Professor at University College, London, partner since 1987 at the leading international law firm Norton Rose), Francis Dawson (once a member of the Faculty of Law, University of Auckland, and well-known in Auckland as an outstanding teacher and contract lawyer), Philip Baker QC (Visiting Professorial Fellow at the University of London, practising as a Queens Counsel from chambers in London) and Jeffrey Jowell QC (Professor of Public Law at University College, London, Vice-President of the Council of Europe's Commission for Democracy Through Law, and practising as a Queens Counsel from chambers in London.)

In addition there will be full semester courses offered in the following subjects: International Environmental law; Energy & Natural Resources; Maritime Law; Resource Management; Employment Law; Local Government; Wine Law; Copyright; Corporate Governance; Regulation of International Trade; Communications & Information Technology Law; Insurance; Franchising; Insolvency.

Postgraduate students visit Stonyridge Vineyard on Waiheke Island. Photo: Scott Optican



# Mayo Memorial Funding Boosts Research



Photo: Scott Optican

A generous gift by Dr John Mayo in memory of his wife, Marylyn, has provided a significant fillip to historical legal research within the Faculty of Law. The memorial, the Marylyn Mayo Rare Book Room, is located in the Davis Law Library and comprises a spacious and comfortable reading room, and two smaller rooms which house a collection of rare and historical nominate reports, statutes, and texts -

some up to three centuries old. The new funding has also enabled the collection to be cleaned prior to its relocation, and makes provision for its ongoing development and preservation. Prior to Dr Mayo's gift, use of the collection was severely restricted as the room in which it was stored was cramped and overfull, and some of the material was in a parlous state and not able to be handled.

The reading room itself is home to a large selection of reprinted legal treatises and a growing collection of faculty publications.

The creation of the Marylyn Mayo Rare Book Room is a significant milestone in the Faculty's research capabilities. As Professor Mike Taggart, holder of the Alexander Turnbull Chair in Law, has stated "Much of the research that, a few years ago, could only be undertaken overseas can now be conducted here." As the collection develops so too will the importance of the Marylyn Mayo Rare Book Room to legal researchers.

Dr John Mayo, and invited guests, including friends and fellow students of Marylyn, faculty and library staff attended the official opening in March by the Vice Chancellor,

Stuart McCutcheon.

Marylyn Mayo, one of the Faculty's early women law students, graduated BA LLB in 1960, and became an office solicitor at the Ministry of Works in Auckland. Her move to Australia initially saw her teaching first-year law at the Townsville campus of the University of Queensland. She was later requested to be Foundation Head at the Law School of James Cook University, where she stayed until she retired. Dr John Mayo was responsible for establishing economics as a discipline at the same university.

Marylyn Mayo always retained a strong interest in, and affection for, the law and her *alma mater*. In 2002 she endowed annual scholarships for Auckland law students who were struggling financially (see 2002-2003 *Eden Crescent* at pages 4-5).

The Davis Law Library is proud to be the custodian of this special memorial and is anxious to preserve the treasures of our legal heritage. Members of the legal profession who have legal texts which they either no longer require or are unable to accommodate are urged to contact the Davis Law Library ([davis@auckland.ac.nz](mailto:davis@auckland.ac.nz)).  
*Mary-Rose Russell*

## The Making of Modern Law is the Making of Modern Legal Research

Ever needed to trace an esoteric point of law, say in a first edition of Chitty's or Arnoud, and been thwarted as there are no copies available in New Zealand? With the assistance of strategic funding from the University, the Davis Law Library has just purchased *The Making of Modern Law* (MOML) which provides online access to these wonderful old treasures of our law from the desktop.

MOML is a digital full-text archive of 22,000 British and American legal treatises covering the period 1800 to 1926. It contains seminal legal works, many of which are no longer available in print. What makes this such an exciting product is that it is now possible to track changes in the law through each edition of these early works.

MOML, the new law initiative in the suite of Thomson Gale archival products, "covers nearly every aspect of American and British law, including domestic and international law, legal history, business and economics, politics and government..." Not only is it an indispensable resource for legal researchers but it also provides a wealth of information of use to historians in a variety of fields - politics, criminology, religion, social welfare and cultural history.

Our legal academics are highly enthusiastic about this new acquisition. Professor Peter Watts describes it as, "unspeakably brilliant for historical research. I am simply staggered by the material that is on there and its accessibility ... For those of us who use old texts, whether or not as legal

historians, this is marvellous. For this type of resource, the acquisition has catapulted us into something little different from the very best US law libraries and Oxbridge."

Professor Mike Taggart says, "Without any exaggeration, it can be said that the acquisition of this resource will turn the Davis Law Library into a world-class research library for modern (19th and 20th) legal history."

In conjunction with the newly-opened Marylyn Mayo Rare Book Room, which provides physical access to the Davis's rare and historical legal materials, MOML provides the University of Auckland Faculty of Law with the ability to undertake serious legal historical research.  
*Mary-Rose Russell*

# Our American Friends



Photo: Rachel Hale

When I joined the Law School staff in 1962 the appointment of a non-New Zealander was a rare event. The 'locals' were very good value: of the other subprofessorials three became Deans and all Emeritus Professors. They were, in the words of our leader, A.G. Davis, "a tight little ship".

The Faculty expanded dramatically in the mid-1960s. While I was overseas an American named Art Fine came and went. (I didn't meet him but surmised that he may have been more at home at the Elam School of Art Fines.) In 1968 a pleasant man named Ed Flitton arrived with his family. Ed was a capable teacher and made few bones about the fact that he was avoiding a war - the Vietnam conflict. He was followed by two flamboyant characters, Stan Ross and Joe Richie. Joe, sometimes draped in a Confederate flag, had arrived at Auckland with only one "contact name", Dr. B. Coote. Discovering B. Coote's address, Joe civilly knocked on the Bella Vista mansion door - to no avail (the good doctor was on leave.) He gained admission to the house, with colour of night,\* and stayed on for a number of weeks. On the good Doctor's return, Joe congratulated him on his legendary Kiwi hospitality and, in lieu of rent,

presented him an LP record. Joe was an amiable, ambling Southerner and the funniest man, without knowing he was funny, I have ever encountered. Years after leaving us he returned for a weekend, booked a church hall in St. Heliers and put on a colour-slide show of a couple of his holidays. The slides were dull, the commentary deadpan. It was hilarious. (Afterwards he asked me why everyone laughed.) I still have the nagging suspicion the joke was on us.

If Joe struck folk as unusual, Stan Ross was from another planet. A bullet-nick in an ear lobe signified his credentials as poverty lawyer, North California. Stan was a pretty good international law teacher with a perfectly informal approach to his lecturing. (We wore gowns in those days - late '60s early '70s', Stan wore a sweatshirt.) Our Dean, Jack Northey who could strike fear into the sinews of a Supreme Court judge at fifty yards, told Stan he would be teaching Land Law as well as International. Stan didn't say a word and went off to teach International, exclusively. Within weeks he became New Zealand's first law lecturer to be photographed by media in the act of teaching. *The Auckland Star* devoted a half page to Stan with thirty or so students sitting on the sward in Albert Park during a lecture reading them poetry. "Is This What the Taxpayer Pays For?" asked the *Star*? Stan was reported as saying it was a nice sunny day, so why not? The audience thought all their lecturers should do the same and said they liked their law studies interspersed with Ferlanghetti. (Not all of us could do that: "indefeasibility under the Torrens system" was difficult to rhyme with anything). But it should be noted that Stan's *modus operandi* engaged the legal imaginations of some students where I and others had not succeeded. One engagee went on the bench here, another to a higher perch in an overseas jurisdiction. 1969 was a stirring time for universities worldwide. Knowing the US Ambassador was ensconced with the V.C. and professors in the Law School Library, Stan quickly recruited a ragtag army of students and laid siege to the library for five hours. (This writer was one of the "captives" and attests that cocktail chat tends to run thin after the first hour.)

Release occurred on the Ambassador's written promise to secure the immediate withdrawal of all US forces from Vietnam!

Stan Ross? He joined the University of New South Wales in Sydney and continued for many years teaching in his inimitable style. And he published books about law that were noteworthy for their freshness of approach and their irreverence.

Three Americans, as different from one another as each was from Stan Ross, arrived at the Faculty early in 1972. Two were to become 'fixtures'; the other, Dr. Bob Marsel, made his mark as an erudite and approachable scholar before leaving a year later to become Clerk to the Chief Justice of the U.S. Supreme Court in respect of *in pauperis* petitions.

Of the other two, Jerome B. Elkind, specialist in international law and public law, remained among us for twenty-five years. Jerry wrote some high-profile opinions and for several years enlivened the local press with commentaries under the by-line, "Elkind's Writ". He resigned in 1997 to take up an appointment at the University of Swaziland. Jerry won a prestigious prize for his book on interim protection in international law, and was awarded a Doctor of Laws degree for his publications. Maintaining active interest in the Auckland Ethnic Council's work and in public speaking, he now lives in semi-retirement in Freeman's Bay, and engages in consultancy work.

The third "1972 recruit", Dr. Bill Hodge, has become the voice and the face of the Law School. No less. But there is a great deal more. He is a pioneer teacher of any number of highly popular courses, notably Employment Law, Tort, Constitutional and Civic Rights, Criminal Procedure and Pacific Legal Studies. Bill, more than anybody in the Faculty, has taken law and practice "to the people". A natural broadcaster, his radio and television presentations have broadened and deepened "the ordinary joker's" appreciation of law in its various contexts. Bill headed the civil rights movement at some crucial junctures in

our modern history. Even-minded on issues of citizens' rights, Hodge worked selflessly during the Springbok Tour conflicts, not only to ensure that lawful protest could occur but also that those on the other side had unimpeded access to their lawful appointments. Necessarily Bill Hodge's public persona temporarily retired itself during a three-year "seconded" appointment as an industrial arbitrator - a time, incidentally, throughout which he continued the development of his near-legendary Employment Law course in the Faculty. Now full-time teaching again, Bill has resumed his prime-time national news appearances. His no-nonsense classroom approach, especially in Employment Law, and Arbitration, has won him the respect of professionals and academes. The man who must be in his seventh decade, looks about thirty-five. He is the legs of the Faculty too! A marathon addict from way back, Bill recently ran across the United States. The sight of his calves may be as familiar to colleagues and generations of students as those belonging to All Blacks and film stars. But his fame is less ephemeral. W.C. Hodge's good friend and book-collaborator, Mike Doyle, made a firm impression with us in the mid 1970s. The Doyles, like all our American friends, settled in fast and Mike adapted to the oddities of New Zealand

criminal law and procedure in time to create a durable legacy in a relatively brief sojourn here.

Our Americans, like our Canadians and South Africans (not to mention the occasional Brit and Cretan), have increased this Law School's appreciation of the laws of their countries of origin. Indirectly, and often directly, they have facilitated the personal contact of New Zealand teachers and students with their "home" jurisdictions. In the 1960s it was still a rare occurrence when a Kiwi graduate took off for study in the USA. (Jack Northey had opened up the way to Canadian universities.) Nowadays, as we know, probably more Aucklanders study at post-graduate level in North America than in England. And it is no coincidence that a regular flow of visiting U.S. and Canadian scholars, law practitioners and judges has moved this way since our first "career teacher" bonds were established.

Back to the full-time. No, Scottie, you haven't been forgotten! Scott Optican reached our shore - from practice as an Assistant District Attorney in New York - in 1992. The Auckland University Law School has not been quite the same (calm, reflective) institution since that time. A full-impact player in the classroom, and the

staff common room, Scott has turned us, and our preconceptions about law (and let's face it, life itself) upside down and inside out. In doing that he has left a thousand or so students with indelible memories of Hollywood movies, exquisite hair-grooming, and lately, daughter-adoration: and, be it noted, with the liveliest law-in-action experiences they are likely to get anywhere outside the courtroom or drafting chamber. A portrait of Scott's dog (the late Friedel) - bewigged and gowned - has found itself juxtaposed with that of a long-serving Dean at the Law Library entrance. It's for real. It isn't an Optican illusion. An imaginative and articulate interactionist, Scott has earned the University's Distinguished Teaching Award as well as a burgeoning reputation as an author on evidence, criminal procedure and the Bill of Rights.

Like our other American friends he has brought us laughter, approachability, a lot of talking points and, above all, an arrestingly different view of our system, and of ourselves. Vive la difference!

Unquestionably they have changed us more than we have changed them.

*Bernard Brown*

\*A nocturnal play on colour of right

Amanda Lyne, Scott Optican and Julie Maxton in Singapore for the University of Auckland alumni dinner.



# Peter Sankoff graduates with an LLM from Osgoode Hall Law School

This year's sabbatical leave was a particularly rewarding one for Peter Sankoff, who spent the year in his native home of Ottawa, Canada. In addition to getting married and teaching Criminal Law and Constitutional Law at the University of Ottawa, Faculty of Law, Peter also managed to successfully write and defend his LLM thesis at Osgoode Hall Law School at York University, Toronto.

Peter's thesis, *R. v. Corbett and the Search for a Better Understanding of Discretionary Power in Evidence Law: A Thesis in Three Judgments*, examines the increasing use of judicial discretion as a means of resolving questions of evidentiary admissibility in criminal proceedings. Focusing particularly upon the Supreme Court of Canada's landmark decision regarding the admissibility of an accused person's criminal record in *R. v. Corbett*, [1988] 1 S.C.R. 670, it considers the benefits and drawbacks of utilizing a broad form of discretion, as opposed to a fixed rule of admission, in the evidentiary arena. While generally warm to the idea of utilizing discretion to resolve evidentiary issues, Peter concluded that Canadian courts have paid too little attention to what it actually means to "exercise discretion" and have failed to consider whether they intend this tool to simply provide room to deal with unforeseen fact scenarios, or to allow judges "free choice" to apply different theoretical models to particular questions of fact. While Peter believes that discretion and

flexibility are necessary components of a sound model of evidentiary admissibility, he argues the current approach unwisely abandons predictability without ensuring that mechanisms exist to ensure that judicial choice is exercised in a principled manner. After reviewing fifteen years of jurisprudence, Peter concludes that the results have been an unnecessarily high level of inconsistency and a comprehensive failure to address the underlying issue of when a criminal record should be admitted in any sort of coherent manner. More alarmingly, the failure to decide upon a theory of discretionary power, and the decision to grant an extremely wide latitude in its use, permits diametrically opposed theories of admissibility to be advanced daily, while precluding higher courts from attempting any form of justifiable review.

The thesis was written in the form of a judgment to a hypothetical case at the Supreme Court of Canada. This narrative device allowed Peter to explore the issue of judicial discretion from three distinct voices, one representing a majority opinion promoting a more controlled form of discretion, with a concurring position proposing a return to rules, and one dissent advocating the status quo. Peter concluded the thesis by suggesting a solution to that particular problem at stake in *Corbett* itself, and discussing the usefulness of his theory in respect of other areas of evidentiary admissibility.

## Student Successes

Auckland Law School continued its run of success in student skill-based competitions this year with some wins and some excellent placements. Richard Hellaby and Paul Ryan were part of the four-member team that won the international final of the Global Business Challenge Competition, held in Seattle, Washington State, this year. Auckland is now the first university to have won this competition two years in a row.

Issac Hikaka and Jesse Wilson continued their remarkable joint performance, which has spanned several years (see the last two editions

of *Eden Crescent*), by winning the Chen Palmer & Partners National Human Rights Moot. They also finished among the top 12 teams in the Philip C. Jessup International Law Moot Court Competition in Washington DC (from a starting group of 102 teams). In what was a very close moot, the Auckland team lost against Austria in the first of the final rounds.

Aditya Basrur and Sally Morris mooted in the Asia-Pacific round of the Manfred Lachs Space Moot in April. They were defeated in the semi-finals by the National University of Singapore, which went on to win the

final. However, the written submissions of the Auckland team were ranked fourth across the 33 teams in the region and all of the judges commented favourably on Auckland's standard of delivery, responses to questions and level of argument throughout the competition.

Sabrina Muck (who now works for the boutique commercial law firm, Burke Melrose) has had an article based on her LLB(Hons) dissertation accepted for publication in the *New Zealand Journal of Tax Law and Policy*. The article is called 'The Netherlands-New Zealand Double Tax Agreement.'





Sheron Korpus and Tim Cameron. Photo: Scott Optican

## Auckland Alumni Make Partnership in New York Law Firms

Two Auckland alumni have the spectacular achievement of having made partnership at prestigious New York law firms. The Faculty warmly congratulates Tim Cameron, who is now a partner in Cravath, Swaine & Moore, and Sheron Korpus, who is a partner at White & Case.

Both Tim and Sheron have careers which have followed a remarkably similar trajectory. Both graduated from Auckland Law School (Sheron in 1991 and Tim in 1994). Both then spent some time working in large Auckland firms (Sheron at Kensington Swan for four years in their litigation department, and Tim at Russell McVeagh for three years, also in litigation, whilst also completing his M.ComLaw(Hons) at Auckland), before travelling to the US to complete an LLM at top American law schools (Sheron at the University of Virginia, graduating in 1996, and Tim at the University of Chicago, graduating in 1998). Both then took up positions in the New York law firms where they eventually became partners (Sheron becoming a partner in 2003, and Tim in 2005).

I asked them what they took from their experience at Auckland Law School and Sheron remarked that:

“I loved Auckland Law School. I was lucky to learn from terrific professors (Julie Maxton, Peter Watts, Francis Dawson, Brian Coote stand out in my mind) who had an evident passion for the law and passed it on to their students. They were also great people. Auckland Law School taught me the law block by block, and, by the end of my first year, it all came together so I had an appreciation of how the different subjects fit with each other. By then, I had no doubt that I would become a litigator and continue to analyze cases and legal arguments.”

Tim endorsed these sentiments:

“Auckland Law School was challenging, stimulating, and deeply

thought-provoking. I also have very fond memories of many of the professors who taught me - including Julie Maxton, Scott Optican and Peter Watts, in particular. I don't think any of us really realized at the time the quality of the legal education we were receiving.”

Sheron went on to comment that the training he received at Kensington Swan was “first rate,” before adding:

“I believe that Auckland alumni can compete with the brightest graduates from such revered law schools as Harvard or Yale. Today, New Zealand graduates are not as uncommon as when I first applied for a position. A New Zealand candidate should approach an opening confident that he or she is not less qualified than a U.S. candidate.”

Sheron is in the litigation department in White & Case, practising commercial litigation, international arbitration, intellectual property and bankruptcy litigation. He remarks that he is a “generalist”, enjoying the variety and the opportunity to learn about different industries and issues: “I could be dealing with a complicated privatization dispute one day and a patent case concerning genetically modified corn the next day. At the end, it is all dispute resolution, and the same skills apply.”

Tim is also in the litigation department in Cravath, Swaine & Moore, practising “general commercial litigation covering a wide range of practice areas, including, for example, securities and antitrust litigation, tax litigation, and defending clients involved in regulatory investigations being conducted by the U.S. Securities and Exchange Commission and the Department of Justice.” Tim has represented several significant European clients who do business in the U.S. and says that he particularly enjoys “the challenge of helping non-U.S. businesspeople understand the complexities of American law, while

grappling with the various cross-border issues that accompany those kinds of cases.” Like Sheron he values the challenge and diversity of the work that he does and also credits his time at Russell McVeagh with equipping him to compete with graduates from the top U.S. law schools.

Becoming a partner at White & Case was a personal accomplishment for Sheron because when he first joined the firm there were hardly any Kiwis working in New York law firms and he was somewhat of an unknown quantity. He put a lot of work into becoming a partner but says that it was “truly worth it. I work along side smart, creative litigators who are terrific mentors and colleagues.” Unsurprisingly, these sentiments are also echoed by Tim.

Apart from becoming a partner at White & Case, some of the highlights of Sheron's career to date have been arguing a case in the New Zealand Court of Appeal six months after being admitted to the bar and achieving a reversal of the High Court decision, arguing in the Second Circuit Court of Appeals and his first jury patent case in the US - “explaining genetic engineering to a jury was quite a challenge.”

For Tim, a Cleary Memorial Prize winner in New Zealand in 1995:

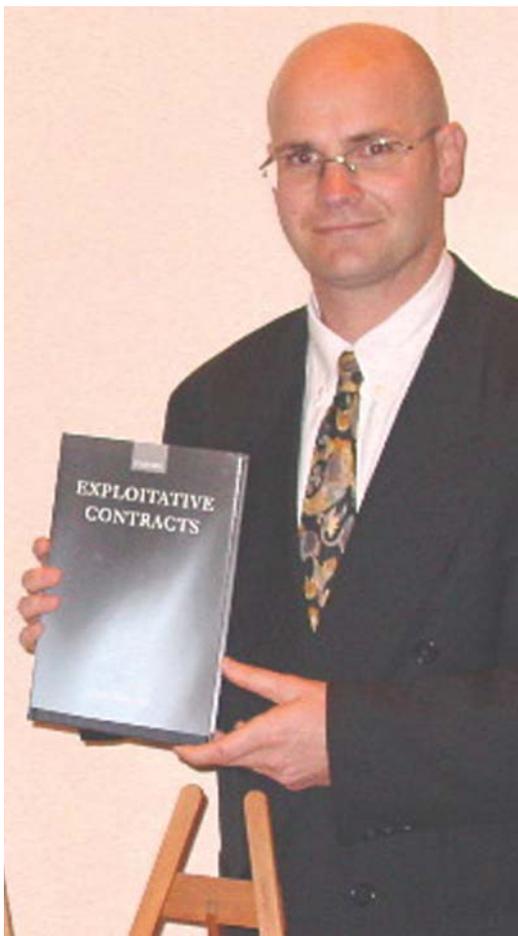
“The biggest highlight of my work in the U.S. to date was appearing before the United States Supreme Court (albeit as junior counsel) in 2001. I have been told that I am the first New Zealander ever to appear before the U.S. Supreme Court. It was an incredible experience, and something I would very much like to repeat.

He concludes by saying that:

“Sheron and I are the only two Kiwi litigation partners in New York. I believe, and I hope we're the first of many more to come. It's a great place to practise law.”

*Julia Tolmie*

## JF Northey Memorial Book Award



Professor Rick Bigwood was the winner of the 2004 JF Northey Memorial Book Award for his book *Exploitative Contracts*, Oxford University Press, Oxford, 2003.

The book has also received favourable reviews. For example, David Campbell [2005] 64(1) *Cambridge Law Journal* 243-245 describes it as a “fine book” which has the virtues of being comprehensive and authoritative, whilst “refus[ing] to be swamped by the amount of material it discusses.” Although it engages with theory and law at an academic level, it is also a profoundly practical book. Campbell remarks that:

“Anyone familiar with the practical difficulties of the legal regulation of economic activity in general, and of regulating exchanges by means of the law of contract in particular, finds it difficult not to assume a superior attitude when reading much of the recent political philosophical literature addressing inequality and exploitation. There, all sorts of desirable “end-states” are set out, often in the most careful detail, drawing the nicest possible distinctions; but this effort seems wasted as it is quite impossible to conceive how those states might as a practical matter be brought about. The concept of exploitation which Bigwood puts forward is resolutely “juridical” or “legalist” in that it is based on an authoritative discussion of the law, and eschews “utopian” speculation in order to put forward an argument that, so far as one can say at this early stage, is capable of surviving the first stage of being put into practice, since it can be stated in coherent doctrinal terms.”

Bigwood's argument, “given concrete doctrinal application,” is described as “powerful.” One of its most important contributions, according to Campbell, is that it:

“revives liberalism - in Bigwood's case “the classical liberal conception of contract” - but in a way that seeks to avoid that telling points made in the critique of liberalism that has, for good and, increasingly, ill, brought us to our present situation.”

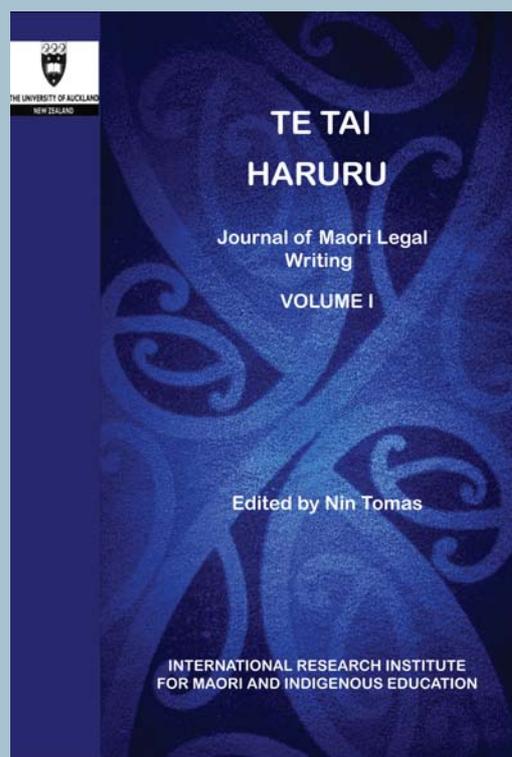
## Launch of Te Tai Haruru - The Journal of Maori Legal Writing

A new journal, *Te Tai Haruru*, is being published within the Faculty. The journal deals with legal issues relating to Maori and is published in association with the International Research Institute for Indigenous Education.

*Te Tai Haruru* is the first periodical publication to explore contemporary legal issues that impact on Maori from within a tikanga-based framework. Described by Justice Edward Durie, who presented the keynote speech at *Te Tai Haruru's* launch, as “a significant step forward for Maori scholarship”, the journal presents leading scholarship on topics relating to the development of tikanga (Maori customary law) as a living system of law within Aotearoa/New Zealand. Contributions are subject to external review.

The Journal's first volume contains two sections. Section A focuses on the controversial *Ngati Apa v Attorney General* decision of the Court of Appeal, which held that Maori have the right to apply to the courts to determine the extent of customary interests in the foreshore and seabed land in Aotearoa/New Zealand. Section B contains four essays examining the development of “Mana Whenua” as a principle of Maori customary law.

The Journal will be published yearly and can be ordered through the Faculty's website.



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# Controlling Persistently Vexatious Litigants - some historical notes

*This is an excerpt (without footnotes) from a joint paper entitled "Controlling Persistently Vexatious Litigants" which has just appeared in Matthew Groves (ed.), Law and Government in Australia: Essays in Honour of Enid Campbell (Federation Press, Sydney, 2005) 272-300. Jenny Klosser wrote her LL.B.(Hons) dissertation on the topic of vexatious litigants in 2002. She worked for the New Zealand Immigration Service determining claims for refugee status, and is presently enjoying her O.E.*

It is possible to go through Law School without learning that the statute book contains a power to stop persistently vexatious litigants from undertaking future civil litigation (without leave of the court). This draconian power can be found in one of the two sections numbered 88A in the *Judicature Act 1908*! It was enacted in 1965, and follows closely the form of a late nineteenth century English statute (the *Vexatious Actions Act 1896*).

The unspoken assumption upon which these statutory provisions rest is that superior court judges have no inherent jurisdiction to prevent a litigant from bringing future legal proceedings. The High Court's inherent jurisdiction was thought to be limited to striking out particular proceedings as vexatious and to prevent vexatious applications within an extant proceeding (so called *Grepe v Loam* orders), and did not extend to restraining the filing of future proceedings. This was held to be the legal position in New Zealand: *Stewart v Auckland Transport Board* [1951] NZLR 576 (HC). (Note recently in *Bhamjee v Forsdick* [2003] EWCA Civ 1113 the English Court of Appeal refused to follow antipodean authority on the point.)

Subsequently, the judge in *Stewart's* case wrote to the Attorney-General raising the need for legislative action along the lines of the English Act of 1896. It was decided within the Department of Justice, however, that the small number of actions brought by Stewart would not have satisfied the requirement of habitual vexation in the English statute, and that the inherent jurisdiction to strike out vexatious

proceedings before trial was "sufficient for all practical purposes".

In 1954 and 1955, the question was again raised by Judges and Magistrates concerned about several vexatious litigants, including one Thomas John Downes, who had brought over 50 actions against and in relation to his ex-wife. The Law Revision Committee approved the introduction of legislation and the matter was forwarded for drafting. The Minister of Justice and a body described as the Steering Committee demurred, reasoning that the small number of cases could be dealt with under the inherent jurisdiction and did not justify legislation which would encroach unduly on access to the courts. A handwritten note by the Hon JR Marshall (then Minister of Justice, and later Prime Minister) reads: "I am not keen on legislation to restrict the right of access to the Courts & I do not think one or two cases should be invoked to make what I would consider bad law".

Legal practitioners in Auckland raised the matter again in 1965, apparently prompted by the activities of an errant colleague. The Law Revision Committee consulted the New Zealand Law Society and the High Court Registrars as to the need for legislative action. The almost unanimous view of the Registrars around the country was that there was little or no difficulty with vexatious litigants, and that legislative change was unnecessary. Significantly, as the pressure for legislative action was coming from some Auckland practitioners, the Registrar at the High Court in Auckland thought the problem was "insufficient to warrant the introduction of special legislation".

The New Zealand Law Society was very half-hearted in its support. The President of the Society wrote that, although the "Auckland view" favoured legislation along the English lines, the Wellington District Law Society was "not quite so positively in favour" as there seemed no "pressing need". However, he concluded, "if the need is there" Wellington agreed that the English legislation was "a satisfactory model".

The summative report of the Department of Justice to the Law Revision Committee - in true "Yes Minister" fashion - described the New Zealand Law Society's view as "mildly favourable", and marginalised the adverse reactions of most Registrars as either based on a lack of experience with vexatious litigants or sympathy for the breed. It appears the Department, whose support for legislation in 1954 had been stymied by ministerial resistance, remained of the view that legislation was needed. The Statutes Revision Committee agreed with the officials, and directed that the legislation be drafted. This time it was prepared.

One of the issues considered in the drafting was whether vexatious criminal proceedings (as distinct from civil proceedings) should be counted, and whether those declared persistently vexatious would still be able to bring private criminal prosecutions. These issues had split English, Canadian and Australian courts. In the deliberations of the Law Revision Committee, the Solicitor-General thought it was advisable to deal with vexatious private criminal prosecutions at the same time as vexatious civil proceedings. The minutes of a meeting on 2 July 1965 state the Committee "generally favoured a proposal that section 51 of the Supreme Court of Judicature Act [sc. the English provision] should also be applied (possibly with a more mild choice of words) to criminal proceedings of an irritating nature", and it was recommended that the Attorney-General's power to stay indictable proceedings be extended to include summary proceedings as well. In a frank memorandum to his Minister, the Secretary of Justice recommended that "the question of vexatious criminal prosecutions be deferred for further study", and that recommendation carried the day. Consequently, a person declared a persistently vexatious litigant under s. 88A remains free to institute criminal proceedings. (This has prompted a recent judicial call for the Legislature to look at the matter urgently: *Brogden v Arnold (No 2)* [2003] NZAR 536, [29] (HC).)

Section 88A was inserted into the *Judicature Act* in 1965. Somewhat surprisingly, no one in the House spoke up for the constitutional right of the citizen to access courts. Indeed, surprise was expressed the other way; that the situation had not been dealt with by Parliament earlier. When moving the introduction of the Bill, the Minister of Justice, the Hon JR Hanan, said the general view of the High Court Registrars and the New Zealand Law Society was that New Zealand had been “fairly free of vexatious litigants, but that it was desirable to introduce some measure to curb them”. Dr Martyn Finlay, MP for Waitakere, explained that the Bill was prompted by the activities of an individual who has been well known to Auckland practitioners, including himself, over a number of years.

That unnamed individual appears to have been Jack Stuart Wiseman, a solicitor of Auckland. Mr Wiseman had had a long running dispute with a local authority, and accused past and current Mayors and their Councils of being “dishonest, corrupt and malicious”. He was successfully sued for libel by the past and present Mayors and they were awarded 1,000 pounds damages: *Greville v Wiseman* [1967] NZLR 795 (HC); *Stredwick v Wiseman* [1966] NZLR 263 (HC).

Mr Wiseman applied unsuccessfully for new trials on several grounds, including perjury. He then appealed to the Court of Appeal, which dismissed his case and explained that the correct course of action to challenge a judgment tainted by perjury would have been an application to set aside the verdict. Mr Wiseman then tried to avoid enforcement of the original judgments through applications for stay

of execution, suspension of the injunction and other temporary relief. Only then did he heed the Court of Appeal's advice and apply to have the judgments set aside on the ground of alleged perjury. He issued also a writ for an illegal attempt to imprison him. Throughout the dispute Wiseman made serious allegations against his opponents, their counsel and some members of the judiciary (for which he was imprisoned for three months for contempt of court): *Re Wiseman* [1969] NZLR 55 (CA). Mr Wiseman's principal judicial target was Justice TA Gresson, whose subsequent suicide shook the legal establishment and intensified Wiseman's accusations, making them all the more stinging. Eventually, he was struck off the roll: *Re Wiseman* [1970] NZLR 286 (FC).

The Attorney-General applied for the first order under s 88A against Wiseman, which was granted in the High Court by Justice Woodhouse: *Re Wiseman* (High Court, Auckland, M672/67, 20 February 1968). Mr Wiseman appealed, but the Court of Appeal confirmed that the order was justified and necessary in view of “the whole history of this litigation”: *Re Wiseman* (CA 10/68, 28 May 1969).

Since then, s 88A has been invoked on remarkably few occasions. Only three more orders have been made (in 1993, 2000 & 2001), two more applications have been filed but discontinued (in 1985 & 2002), and one application is pending (*Attorney-General v Palmer* (High Court Auckland, CIV2003-404-588, 16 July 2004, Williams & Baragwanath JJ -interim judgment). This is far fewer than in England or Australia (on the latter, see S Smith, “Vexatious Litigants and Their Judicial Control - The Victorian Experience”

(1989) 15 *Monash ULR* 48). One reason for this may be that in New Zealand (in contrast to some Australian and Canadian jurisdictions) only the Law Officers - the Attorney-General or the Solicitor General - can apply for an order under s 88A. The tiny number of applications may reflect an “appropriately conservative approach by successive Attorneys-General, no doubt mindful of the fundamental constitutional importance of the right of access to the Courts”: *Brogden v Attorney-General* [2001] NZAR 809, [20] (CA).

History shows that the immediate impetus for enactment of this statutory power was the protection of public officials from vexatious legal attack. Wiseman defamed successive local body Mayors and their Councils, and said very nasty things about some judges. His scandalous statements about judges in affidavits were purged from the publicly accessible court records and remain sealed to this day. Wiseman even petitioned Parliament for the removal of certain judges from office. It is understandable that the Attorney-General, as the head of the profession and protector of the judiciary, is particularly solicitous of the reputations of judges, who cannot speak out publicly in their own defence.

[If any alumni have information about, or recollections of, Mr. Wiseman and his disputes, Mike Taggart would like to hear from you. This is part of an ongoing research project. Mike can be contacted by e-mail <mb.taggart@auckland.ac.nz> or phone 09-3737599 ext. 88028.]

*Mike Taggart & Jenny Klosser*

## Kerensa Johnston Receives Grant for Research within Taranaki

Kerensa Johnston has been awarded a research grant by Nga Pae o Te Maramatanga, the National Institute of Research Excellence for Maori Development and Advancement. Her research project, 'Maori Women Speak Back: Our Stories, Laws and Histories', examines legal issues affecting Maori women in the Taranaki area. It focuses on the extent to which women experience discrimination in the context of the Crown-Maori Treaty relationship and in the context of Maori customary relationships governed by tikanga Maori (Maori customary law). The bulk of the research will be completed while Kerensa is on sabbatical leave in 2005.

## 'Exporting' Our Comparative Crim pro Law Course

Senior Lecturer and Associate Dean Scott Optican is becoming known for his teaching trips to overseas law schools. He started with a one-year teaching stint, lecturing in U.S. criminal law and criminal procedure to students at the University of Oregon School of Law (2000-01). In January and February 2005, he taught an intensive Winter Term course in comparative Bill of Rights law (criminal procedure) as a Visiting Professor at the University of Western Ontario School of Law in London, Ontario (Canada). Scott also gave talks in 2005 to students and faculty at the William and Mary School of Law in Williamsburg, Virginia (USA) and the University of Kansas School of Law in Lawrence, Kansas (USA). In December 2005, he will teach an intensive short

course on Comparative Bill of Rights law (Criminal Procedure) at the Bahcesehir University Faculty of Law in Istanbul (Turkey). He will teach a similar course in January/February 2006 as a Visiting Professor at the University of Kansas School of Law.

Scott was also invited in May 2005 to give a lecture to members of the ESR Forensic unit in Mt Albert, Auckland. Scott's talk dealt with the courtroom presentation of expert and forensic testimony and New Zealand Bill of Rights issues related to the handling and processing of Crown evidence in criminal cases. He was treated to a tour of the ESR Forensic facility.



Above: Scott Optican handing blood evidence as a fully gowned and masked member of the ESR forensic team

Below: Scott poses with his Comparative Bill of Rights (Criminal Procedure) class from the University of Western Ontario School of Law, London, Ontario, Canada. Kevin Barnum - a provincial constable and canine handler with the Emergency Response Team of the Ontario Provincial Police - is visiting the class with his dog "Blast" - an explosive sniffing chocolate Labrador.

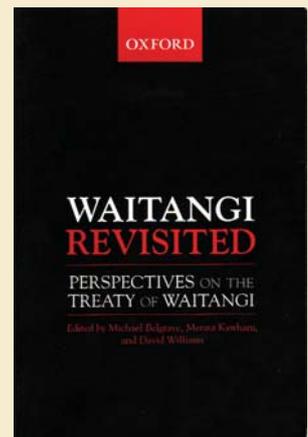


## New Books

Michael Belgrave, Merata Kawharu and David Williams, *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, Oxford University Press, Melbourne.

The Treaty is as controversial today as it was in 1989 when *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* was first published. It remains central to debates about New Zealand society and its future. Among the new issues to emerge in the last fifteen years are the inclusion of the Treaty in a large range of legislation, greater recognition by the Crown of its duty to recognise the Treaty, and the transformation of the claims process. This fully revised second edition explores these new issues without losing sight of the historical perspectives, and without losing any of the strengths, that made the first edition such an outstanding contribution to the Treaty debate.

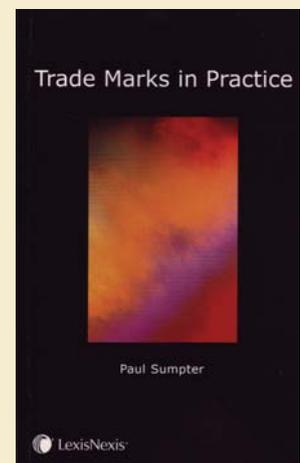
The contributing authors, leaders in their respective fields, provide a range of perspectives on the social, legal and historical impact of the Treaty. The book is edited by, and has contributions from, Michael Belgrave, Merata Kawharu, and David Williams, and a Foreword by I.H. Kawharu. Other contributors include Allen Bartley, Tom Bennion, F.M. (Jock) Brookfield, Mason Durie, Shane Jones, I.H. Kawharu, Jane Kelsey, P.G. McHugh, Ani Mikaere, Margaret Mutu, Andrew Sharp, Maui Solomon, Paul Spoonley, Ann Sullivan, Paul Tapsell, Evelyn Tuuta, Ranginui Walker, and Grant Young.



Paul Sumpter, *Trade Marks in Practice*, LexisNexis NZ Limited, Wellington, 2004.

*Trade Marks in Practice* aims to give readers a brief, accessible guide to the Trade Marks Act 2002. It was written with the practitioner of trade mark law in mind and is the first commentary on the new legislation, which came into force in 2003.

Because of the genealogy of the new statute questions arise as to where to look for guidance - European Community law, the United Kingdom, Australia, United States or simply the old law. As a reviewer has noted, this book "... is packed with the relevant tests, cases, extracts from the IPONZ guidelines and analysis". They also remarked that: "One of the strengths of this work is the identification of a myriad of issues, ambiguities and inconsistencies in the Act and the provision of guidance on their likely significance".



## Visit by the Radford University Group

In 2005 a group of criminal justice students from the University of Radford came to New Zealand and Australia for several weeks to research the criminal justice systems in these countries. Scott Optican arranged visits for the American students to the Manukau District Court, ESR Forensic in Auckland, and the Auckland High Court. The students also received lectures on various aspects of the New Zealand criminal justice system from Scott and Auckland University law lecturers John Ip, Julia Tolmie and Khylee Quince. The Radford visit was planned and coordinated by Hana Colmar, Programme Coordinator for Educational Travel at the University of Auckland Centre for Continuing Education.

Scott Optican (kneeling center) poses in front of the Manukau District Court with students from the Radford University Department of Criminal Justice, Radford, Virginia (USA). Also pictured are Manukau District Court Judge David Harvey (far left) and Radford University Professor of Criminal Justice Bakhitah B. Abdul-Ra'uf (second left).



# Visitors and Seminars

In conjunction with the Department of Commercial Law in the Faculty of Business and Economics, the Faculty of Law runs a seminar series throughout the year. Other seminars are also held, whether under the auspices of the Legal Research Foundation, the Centre for Environmental Law, the Research Centre for Business Law, or other organizations with which members of the Faculty are involved, such as the Law and Economics Association and International Law Association. Many participants are Professors from other jurisdictions who are visiting the Faculty of Law. We have profiled a selection of visitors and seminars elsewhere in this edition of *Eden Crescent*. The following sets out some of the other seminars that took place in 2004. It also profiles some of the international guests who attended the Faculty this year to teach in the postgraduate programme.

Those interested in attending Faculty of Law seminars may find details of upcoming events on the website: [www.law.auckland.ac.nz/](http://www.law.auckland.ac.nz/) (click on "events").

**Professor Antony Anghie, University of Utah: taught 'Imperialism and International Law'.**

Antony Anghie is Professor of Law at the S.J. Quinney School of Law, the University of Utah. His research interest is the relationship between imperialism and international law, and he has written a number of articles on that subject. He has served as a Senior Fellow at Harvard Law School, and as a Visiting Professor at the University of Tokyo.

**Professor Richard Bonney, University of Virginia: 'Capital Punishment and the Mentally III'.**

Professor Bonney is the John S. Battle Professor of Law and Director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia. He is an expert in the fields of criminal law and procedure, mental health and drug law, public health law, and bioethics. His extraordinary career includes service as a member of the National Advisory Council on Drug Abuse, Chairman of Virginia's State Human Rights Committee, as a member of the Advisory Board for the American Bar Association's Criminal

Justice Mental Health Standards Project and, on the John D. and Catherine T. MacArthur Foundation Research Network on Mental Health and the Law. He is currently participating in the MacArthur Foundation's Research Network on Mandated Community Treatment and on an ABA Task Force on Mental Illness and the Death Penalty.

**Professor David Brown, University of NSW: 'An Overview of Some Recent Developments in Australian Criminal Law'.**

Professor David Brown has taught criminal law, criminal process, criminology and penology in the Faculty of Law at the University of NSW since 1974. He is a joint author of *Criminal Laws* (The Federation Press, Sydney, 1990; 1996; 2001; 2006 forthcoming), the major teaching text in criminal law in NSW universities. His other books include: *The Prison Struggle* (1982; with Zdenkowski, G.); *Rethinking Law and Order* (1998, with Hogg, R.); *The Judgments of Lionel Murphy* (ed, 1986, with Blackshield, T., Coper, M. & Krever, R.); *Death in the Hands of The State* (ed, 1988, with Hogan, M. & Hogg, R.); *Prisoners as Citizens* (ed, 2002, with Wilkie, M.); *The New Punitiveness* (ed, 2005, with Pratt, J., Brown, M., Hallsworth, S. & Morrison, W.).

**Craig Bosch, University of the Western Cape, Çapetown, South Africa: 'Employment Consequences of Transferring Businesses'.**

Craig Bosch is a Senior Lecturer at the Faculty of Law at the University of the Western Cape. Craig's talk was timely in New Zealand, considering the contents of the Employment Relations Law Reform bill which had just emerged from Committee. Craig presented a comparative view on the kinds of issues raised by the bill.

**Professor Jens Peter Christensen, Aarhus Universitet, Department of Public Law and International Law, Denmark.**

Professor Christensen visited the Faculty of Law in December 2004. He was interested in public law principles and governance in New Zealand at

central and local levels. He was accompanied by his wife, a medical specialist. Both were keen outdoor runners and cyclists, and they enjoyed climbing Mt Taranaki and Mt Ruapehu during the visit.

**Professor Tony Duggan, University of Toronto: 'Exemplary Damages in Equity.'**

Professor Duggan holds the Iacobucci Chair at the Faculty of Law, University of Toronto and is a Professorial Fellow at the Faculty of Law, University of Melbourne. He has published widely in the areas of secured lending, consumer protection, equity and trusts. His books include *Consumer Credit*, Butterworths, Sydney, 1999 (with Lanyon, E.) and *Contractual Non-Disclosure*, Longmans, Melbourne, 1994 (with Bryan, M. & Hanks, F.). Whilst in Auckland he also taught a postgraduate intensive course, 'Secured Transactions'.

**William J. Edwards, deputy public defender with the Los Angeles County Public Defender: 'What I Wish I had Learned in Law School: Defending and Advocating for People with Intellectual Disabilities'.**

Mr Edwards is a deputy public defender with the Los Angeles County Public Defender. Currently he serves on the Faculty of the National Academy for Equal Justice for People with Developmental Disabilities at Temple University in Philadelphia. He also serves on the American Bar Association, Commission on Mental and Physical Disability Law and has published numerous articles on issues involving people with mental retardation who are charged with crimes.

**Associate Professor Colleen Flood, University of Toronto: 'Litigating Health Care Rights in Canada.'**

Colleen Flood is an Auckland alumni who is currently an Associate Professor at the University of Toronto, holding the Canada Research Chair in Health Law and Policy. From 1997 to 1999 she was the Associate Director of the Health Law Institute, Dalhousie Law School. She is the author of numerous

health law articles and book chapters as well as the author of *International Health Care Reform: A Legal, Economic and Political Analysis*, Routledge, London, 2000, and co-editor of *Canadian Health Law and Policy* (2nd edn), Butterworths, Toronto, 2002.

**Justice Grant Hammond, Court of Appeal of New Zealand: taught 'Appellate Principles and Practice'.**

Justice Hammond was educated at the University of Auckland and the University of Illinois. For some years he was a litigation partner in a New Zealand law firm. He then turned to academic life. He has taught as a Law Professor at Illinois, Dalhousie and Cornell, and has delivered visiting lectures at Stanford, Berkeley, and Queen Mary College, University of London. He was the Director of the Institute of Law Research and Reform, and a Professor of Law at the University of Alberta, before his return to Auckland as a Professor of Law, and then Dean of Law. He was appointed to the High Court in 1992. He served on divisional courts of the Court of Appeal prior to his appointment to the permanent Court of Appeal in 2004.

**Peter Harris, University of Cambridge: will teach 'United Kingdom Tax Law and Policy'.**

Peter Harris is a solicitor and a Senior Lecturer at the Faculty of Law of the University of Cambridge, and a Tutor and Fellow of Churchill College. He is the author of two books and various refereed articles. An abridged version of his book *Corporate/Shareholder Income Taxation* won the International Fiscal Association's Mitchell B. Carroll prize. That version was also awarded a Yorke Prize by the Law Faculty of the University of Cambridge.

**Professor David Hasen, University of Michigan: taught 'US Corporate Tax: Theory and Policy'.**

David Hasen is Assistant Professor at the University of Michigan Law School. His research and teaching interests include U.S. federal income taxation, tax policy, administrative law, and jurisprudence. His publications

include a forthcoming article in the *Tax Law Review* on the taxation of financial instruments.

**Professor Francisco Lopez Jurado, the University of Navarra, Spain.**

Professor Jurado is a Professor of Public Law, Director of the Administrative Law Department, and a member of the Academic Council of the Garrigues Chair in Global Law at the University of Navarra. He is interested in the study of Anglo-American public law and will be in Auckland on sabbatical until January 2006.

**Geoff McLay, Victoria University of Wellington: 'Just a Visual Hazard ?- Gorringer, Lord Hoffmann, Professor Harlow and the Public-Private Divide and Negligence'.**

Over the last 10 years various Commonwealth jurisdictions have been debating the degree to which statutory obligations to provide services or to protect the public might give rise to damages actions on behalf of those who are either ill served or unprotected by the state agencies that were charged with responsibility for looking after citizen's interests. This seminar used the recent decision of House of Lords in *Gorringer*, a roading case, as a point of departure to discuss how judges conceptualise private law actions against public authorities for public services being badly performed or not performed at all. In part the seminar was a reply to the concerns raised by Professor Carol Harlow in her New Zealand visit last April.

**Richard Nolan, University of Cambridge: taught 'Commercial Equity'.**

Richard Nolan is a Senior Lecturer at the University of Cambridge and a Fellow of St John's College. He is also an English barrister in part-time practice at Erskine Chambers, the leading corporate law set in London. He is a contributor to *Buckley on the Companies Acts*, and one of the four editors of the *Journal of Corporate Law Studies*. He has been a consultant to the Law Commission for England and Wales in relation to both trust and corporate law matters. He has also been a consultant to the UK Department of

Trade and Industry in relation to the reform of British company law. Whilst in Auckland, he also gave a seminar to the profession for the Research Centre for Business Law entitled, 'Current Developments in UK Corporate Governance'.

**Dr Luke Nottage, Sydney University: will teach 'International Commercial Contracts'.**

Luke Nottage is Senior Lecturer at the Law Faculty at the University of Sydney. He has also taught and practised law in New Zealand and Japan, and has held research fellowships in Italy, Canada and Germany. Luke is a Special Associate of the Australian Centre for International Commercial Arbitration. His publications focus on contract law, product liability, civil dispute resolution, corporate governance, cyber-law, and legal education, mostly comparing developments in Japan or transnationally.

**Professor Michael Pendleton, Murdoch University: 'US-Australia Free Trade Agreement and Copyright Law - What Does it Mean for the Technology, Media & Telecommunications Sector?'**

Professor Pendleton is a Special Counsel in Deacons' Intellectual Property Group, and a Professor of Law at Murdoch University. He has authored eight books and over 100 articles on international intellectual property. He was Chairman of the Law Reform Commission of Western Australia and is a member of the Federal Attorney General's Copyright Law Review Committee. He is a Mediator, Arbitrator and Domain Name Panelist of the World Intellectual Property Organisation, Geneva. Whilst at Auckland he also taught 'Patent Law (Infringement and Validity - A Comparative Perspective)' in the LLM program.

**Professor Catherine Redgwell, University College London: taught 'Advanced Topics in Environmental Law'.**

Catherine Redgwell is a Professor and Vice-Dean of the Faculty of Law,

University College, London. She has published widely in leading academic journals, as well as contributing chapters to a number of edited collections. Monographs include *Energy Security: Managing Risk in a Dynamic Legal and Regulatory Environment* (co-edited with Barton, B., Ronne, A. and Zillman, D.), Oxford University Press, 2004, and *Energy Law in Europe: National, EU and International Law and Institutions* (co-edited with Roggenkamp, M. Ronne, A. and Del Guayo, I.), Oxford University Press, 2001.

**Associate Professor Megan Richardson, University of Melbourne: will teach 'International Commercial Contracts'.**

Megan Richardson is an Associate Professor at the Law Faculty, University of Melbourne, where she teaches and researches in contract law, law and economics, entertainment law and intellectual property law. She has written widely across these fields in journals in Australia, Canada, the United Kingdom and New Zealand. Past work experience includes stints at the New Zealand, Australian and Victorian Law Reform Commissions, and three years in commercial legal practice at Buddle Findlay and Chapman Tripp Sheffield Young in Wellington.

**Kent Roach, University of Toronto: 'Recent Developments in Counter-Terrorism.'**

Kent Roach is a Professor of Law at the University of Toronto, with cross-appointments in criminology and political science, and a Fellow of the Royal Society of Canada. His books include *Constitutional Remedies in Canada* (winner of the 1997 Owen Prize for best law book), *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*, *September 11: Consequences for Canada* (named one of the five most significant books of 2003 by the Literary Review of Canada) and (with Sharpe, R.) *Brian Dickson: A Judge's Journey* (winner of the 2004 J.W. Dafoe Prize for best contribution to the understanding of Canada). He has represented aboriginal and civil liberties groups in many interventions

before the courts, including in the landmark Supreme Court of Canada cases of *Stillman*, *Latimer*, *Gladue* and *Sauve*.

**Karen Scott, University of Nottingham: 'The Day after Tomorrow: Ocean CO2 Sequestration and the Future of Climate Change'.**

A number of offshore carbon sequestration techniques are presently being trialed internationally. Ms Scott's seminar dealt with the legality under the United Nations Convention on the Law of the Sea (UNCLOS) (1982) of these activities. Karen is a Lecturer at the University of Nottingham. She has a piece by the same title appearing in the 2005 *Georgetown International Environmental Law Review* (forthcoming).

**Professor Len Sealy, University of Cambridge: taught in 'Corporate Law'.**

Len Sealy is an Auckland graduate who went on to do postgraduate study at Cambridge and later took up a teaching post there, along with a Fellowship at Gonville and Caius College. He retired from the S.J. Berwin Chair of Corporate Law in 1997, but continues to be actively engaged in teaching and writing. Professor Sealy is the author and co-author of a number of books in company law, commercial law and the law of insolvency. He has been a consultant in company law reform to the Law Commissions of England and New Zealand and a number of other Commonwealth jurisdictions.

**Professor Avrom Sherr, Institute of Advanced Legal Studies, University of London: 'Do Lawyers do any Good?'**

Avrom Sherr is the Director of, and Woolf Professor of Legal Education at, the Institute of Advanced Legal Studies of the University of London. He studied at the London School of Economics, then worked with the city firm of Coward Chance. He taught at Warwick University from 1974 onwards and was the Director of the Legal Practice Programme. Prior to his current position, from 1990 to 1995, he was Professor of Law and Director of

the Centre for Business and Professional Law at Liverpool University.

**Professor Andrew Simester, University of Nottingham: taught 'Fundamental Principles of Criminal Liability'.**

Andrew Simester is Professor of Legal Philosophy at the University of Nottingham, and is also a member of the Faculty of Law at the University of Cambridge, where he has taught on the LLM programme since 1994. Andrew's main interests lie in the fields of legal philosophy, criminal law, and private law theory, and he has published in these areas in every major common law jurisdiction. He is the author of two leading criminal law textbooks, in both New Zealand (*Principles of Criminal Law*, with Brookbanks, W.) and the United Kingdom (*Criminal Law: Theory and Doctrine*, with Sullivan, G.R.), and has edited a number of books of essays.

**Professor Tony Smith, University of Cambridge: will teach 'The Media and Contempt of Court'.**

Professor Smith teaches and researches at the University of Cambridge (having previously taught at the University of Canterbury, and at Durham and Reading Universities where he was Dean and Chairman of the Faculty respectively). He is author (with Eady, D.) of *Arlidge, Eady, and Smith on Contempt*, (2nd edn), 1999, and he has published books on property offences and offences against public order as well as a revised edition of *Glanville Williams, Learning the Law*, 2002. He edited (with Simester, A.) the book *Harm and Culpability*, 1996. He is a practising barrister from London Chambers and an Honorary Bencher of the Middle Temple.

**Christina Voigt, University of Oslo: 'Conflicts and Compatibility between Climate Change Law and International Trade Law: The Role of the Principle of Sustainable Development'.**

Christina Voigt is a research fellow in International Environmental Law and a Lecturer at the University of Oslo.

She studied law at the Universität Passau in Germany. She has an LLM - Envir from the University of Auckland, New Zealand, (2002) and has previously worked as a legal practitioner in Germany.

**Justice Wallace: 'The Rule of Law, Democracy and Morality'.**

Judge Clifford Wallace is a former Chief Judge of the US Court of Appeals, 9th Circuit (California).

**David Williams QC: will teach 'Commercial Arbitration and Dispute Resolution'.**

David Williams QC, an Auckland alumni, is a practising barrister and arbitrator. He was a Visiting Scholar at the University of Virginia Law School in 1978 and a Visiting Fellow at

Cambridge University in 2002. He was a judge of the High Court of New Zealand from 1991-1994 and presently serves, part time, as a judge of the High Court and Court of Appeal of the Cook Islands. He has acted as counsel in over 100 cases before the New Zealand Court of Appeal and in numerous New Zealand cases heard in the Privy Council, London. He was the New Zealand appointee to the ICC Court of International Arbitration from 1999-2002 and is presently a member of the London Court of International Arbitration and President of the Arbitrators' & Mediators' Institute of New Zealand.

**Professor Yoshinaka, Hiroshima University Japan.**

Professor Yoshinaka lectures in criminal law and criminology at Hiroshima University in Japan. During his stay in Auckland (October 2004-

July 2005) he carried out research in comparative criminal justice (responses to juvenile offending in NZ and Japan) and gave two guest lectures in the undergraduate course on criminology on juvenile offending and organized crime in Japan.

**Ming Zhou, Victoria University, Melbourne: will teach 'International Commercial Contracts.'**

Ming Zhou is a Lecturer at the Law School, Victoria University, Melbourne. He has also taught at the University of Melbourne Law Faculty. He has published articles on the Vienna Sales Convention and the WTO. Previously he was in private practice with Deacons Lawyers, Hong Kong, Middletons Lawyers, Melbourne and Camerons Lawyers, Shepparton.

Edward Scorgie, LLB(hons) 2000, singing opera at a recent LRF Annual General Meeting. Photo: Scott Optican





Jim Evans retires. Photo: Scott Optican



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