

Eden Crescent

Faculty of Law Annual
2005 - 2006



THE UNIVERSITY OF AUCKLAND
NEW ZEALAND

Eden Crescent

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Message from the Dean



Photo: Scott Optican

As with all the world's leading law schools, the Auckland Law School is educating the "global lawyer". Our graduates practise not only in New Zealand but on every continent; some in law firms and banks, others in industry and NGOs. The increasing emphasis on international law in legal education reflects the fact that most of the world's problems and opportunities - be they environmental degradation, trade disparities, rights abuses, armed conflicts (the problems), or global commercial activity and entrepreneurialism (the opportunities) - are ultimately addressed through mechanisms that have an international legal dimension and involve lawyers. This has been apparent for some time and the Law School has adapted in various ways - notably in the development of courses on different aspects of international law, as well as building international perspectives into existing courses. And, more than ever, we are hiring our future teachers in a global market.

At the start of 2006 the Faculty commenced a formal process of strategic planning, to identify our strengths and weaknesses and to ensure we are properly reacting to, and anticipating, developments and trends in legal education. We knew that, as part of the University of Auckland's regular cycle of departmental reviews, the Law School would be reviewed in July by an external panel - somewhat

like an accreditation process. Our preparation for that review was a valuable opportunity for stocktaking and reflection. At the time of writing this the Review Panel has visited and provided us with a preliminary (very positive) verbal report. A completed written report is awaited, which will then feed into our planning process, to be completed by the end of 2006. Some key points to emerge so far are these:

- The Law School morale is high. We have made excellent appointments of new staff in the recent past (see page 3 re our latest hire - Kevin Heller). The calibre of our staff will be the foundation of the Law School's future successes. We seek to attract the very best academics available.
- We see advantages in developing research "clusters" or "centres" that reflect and build upon our current expertise, giving it a profile. We already have the Research Centre for Business Law and the Centre for Environmental Law. Possible areas for development include comparative constitutional and administrative law, where we have recognised strengths, as well as the international law subjects. One particular area we are keen to develop further is South Pacific legal studies, Auckland being seen as a natural home for a centre of research activity in this important field. We recently established a local Board of Reference comprising Pasifika lawyers. Several of our academic staff have experience as consultants and researchers in Pacific legal issues, and we will seek to work with colleagues in Pacific institutions to take this further.
- The Faculty will continue to develop its postgraduate programme, which was reinvigorated in 2002 by the move to intensive five day courses (and a 15,000 word research paper) taught by visiting experts, mostly from overseas institutions, but sometimes New Zealand-based. In 2006 we have established a Board for Postgraduate Law and Tax, which serves as a largely external board of reference to advise on content and delivery of our postgraduate courses. We would also welcome comments from the local profession about the direction our

postgraduate offerings should take.

Our Maori and Pacific Island programmes are continuing to produce good results under the stewardship of Blair Strang and Karena Lyons (see inside back cover). Senior Lecturer Nin Tomas has done great work with Maori students in Parts I and II that is reflected in student successes. And Nin herself has completed her PhD this year (see page 2).

The Faculty of Law enjoys its very close association with the Legal Research Foundation. *The New Zealand Law Review*, which the LRF publishes, continues from strength to strength under the able editorship of Professor Rick Bigwood. Planning is now under way for the fourth New Zealand Legal Method conference in 2007, probably in late July. Check our website for details.

Planning for the new Law School building is in temporary abeyance with University building priorities presently elsewhere (Grafton Road in particular). But there will be a new Law School building soon enough: our leases run out in our present location in just a few years. We shall keep you posted on developments. Meanwhile we are to take extra space in the building across the road, at the corner of Short Street and Eden Crescent. We are anticipating hiring five new academics before the end of this year and our present space is at full capacity.

We are always pleased to hear of the continuing success of our graduates and encourage you all to keep in contact with us. Associate Professor Scott Optican, who is Associate Dean (Alumni and Advancement), has been doing a great job of publicising Law School and law student successes, and keeping in touch with many of you. Check our website regularly for Law School news and upcoming events.

I wish you all the very best and look forward to seeing many of you over the next twelve months.

Paul Rishworth

First Maori with a PhD in Law.

Senior lecturer Nin Tomas (Te Rarawa, Ngapuhi), (see front cover), became the first Maori to graduate with a PhD in Law at this spring's graduation in May. Nin celebrated the occasion with her whanau, including her son Inia, who graduated the same day with an MBChB degree in Medicine. Nin is a founding member of Te Tai Haruru, the Maori Academic Staff of Law School, and has lectured in the Faculty since 1992, in Maori Land Law, Contemporary Tiriti Issues, Public Law, Legal System/Legal Method, and Comparative International Indigenous Law.

The topic of Nin's PhD thesis is "Key Concepts of Tikanga Maori and Their Use as Regulators of Human Relationships to Natural Resources in Tai Tokerau, Past and Present", and it was supervised by Dr Cleve Barlow (Maori Studies), Professor David Williams (Law) and Associate Professor Ken Palmer (Law). As part of her research, Nin examined previously unexamined and untranslated early Maori written texts recorded during the Papatupu hearings held in Northland in the early 20th century, the records of early colonial writers

on tikanga Maori, and early Native Land Court records. She also reviewed contemporary materials, such as evidence in the Ngawha Geothermal Claim to the Waitangi Tribunal in 1992, and in the Ngawha Prison hearings before the Environment Court. A comparison of these written sources separated by nearly a century provides a basis upon which to consider how principles of tikanga have changed or developed in the intervening period.

Although the thesis is a case study in relation to a geographically and tribally specific region, Nin hopes that it will provide a basis from which a coherent modern system of Maori custom law can be developed. Accordingly, Nin aims to publish the thesis, and also to use it as a resource to feed into her other research interests. This study will also be an invaluable resource to other Maori academics and practitioners from across a variety of disciplines.

Khylee Quince

Sir Kenneth Keith Elected to the International Court of Justice

In November last year, the United Nations Security Council and General Assembly elected Sir Kenneth Keith to the International Court of Justice to serve for nine years as a permanent member of that Court. He was elected with the support, not only of the New Zealand government, but also Australia, Canada and a number of Pacific Island nations. The International Court of Justice is the principal judicial body of the United Nations, set up in 1946 by the Charter of the United Nations with jurisdiction to hear disputes between states and to render advisory opinions on issues referred to it. Judge Keith is the first New Zealander to hold such a position, which is the highest judicial office in the international legal system.

Although a graduate of Victoria University of Wellington, Judge Keith started his legal studies in Auckland and was very close to completing his LLB here when he transferred to Victoria in 1960. Over the years, he has remained a strong friend and supporter of the University in general and the Law Faculty in particular. Reflecting this, as well as his distinguished career and contribution to society, the University of Auckland conferred on him an Honorary Doctorate in 2001.

The first case Judge Keith has heard in his new judicial role arose out of the conflicts in the former Yugoslavia (now Serbia) regarding the application of the Genocide Convention to that conflict (*Bosnia and Herzegovina v Serbia and Montenegro*). Following normal procedure, the fifteen permanent judges of the Court sat with two additional ad hoc judges. The hearings on the substantive issues took place from 27 February to 9 May. Such complex litigation is (fortunately) a long way from that which would normally be considered by a member of the New Zealand judiciary. However, Judge Keith's career to date has equipped him well to deal with these sensitive matters of international law.

It is no exaggeration to say that he is New Zealand's pre-eminent international lawyer. Early in his career, Judge Keith gained both practical and academic experience of international law - as a lecturer in international law at Victoria as well as a member of the Legal Division of the New Zealand Ministry of

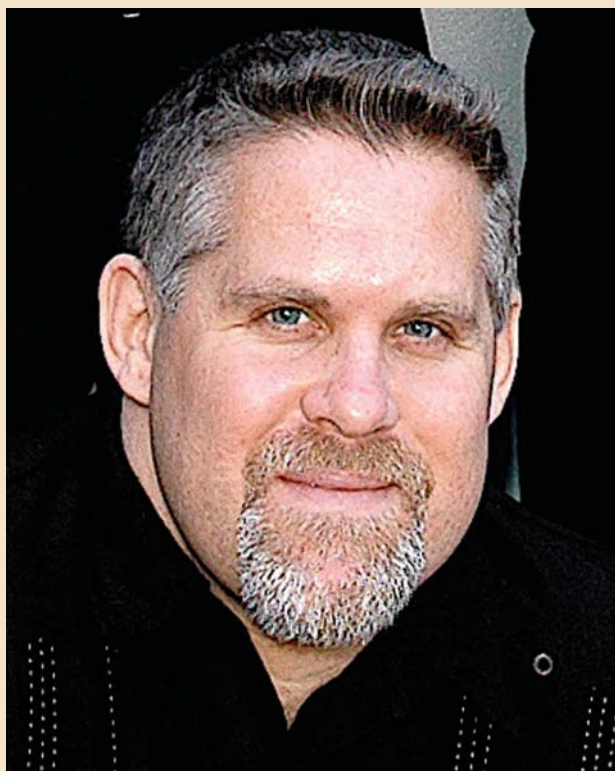
Foreign Affairs. During his time with the Ministry, he had his first dealings with the Court - being a member of the legal team representing New Zealand before the International Court of Justice - opposing French nuclear testing in the Pacific in 1973 and 1974. He also spent two years in the United Nations' Office of Legal Affairs. Even as he established himself in New Zealand legal circles, he was always involved in important initiatives internationally: working on the drafting of the 1977 Protocols to the Four Geneva Conventions; participating and then presiding in the International Fact Finding Commission. In 1995, he returned to the International Court of Justice again as a member of the New Zealand team to make submissions to that Court - again on the issue of French nuclear testing.

While Judge Keith may have been unaccustomed to hearing cases about genocide, he is no stranger to judicial office. Having spent 25 years as a Professor of law, he was appointed to the New Zealand Court of Appeal in 1996. In 2004 he became one of the foundation judges of the newly established Supreme Court. He has international judicial experience as well, having been involved with numerous international arbitrations, most notably the Rainbow Warrior Arbitration between France and New Zealand (1990), the Southern Blue Fin Tuna Cases between Australia, New Zealand and Japan (2000) and as part of a NAFTA tribunal considering the dispute between UPS and Canada (2000).

Sir Kenneth is renowned, not only for his encyclopedic knowledge of international law, but for his unfailing generosity in sharing that knowledge with others. He has consistently supported the learning and scholarship in international law in New Zealand, constant in his belief in and respect for the rule of international law. The Faculty, and this writer have been among those to benefit from his generosity. We are in no doubt that the coming years will allow a great many others to benefit from his knowledge and wisdom. We extend our warmest congratulations to him on his election to this prestigious office.

Treasa Dunworth

New Appointments and Promotions



Kevin Heller

American Kevin Heller was appointed as a lecturer to the Faculty of Law in June 2006. He specialises in international criminal law, domestic criminal law and evidence.

Immediately prior to joining the Faculty, Kevin spent two years as an Assistant Professor at the University of Georgia School of Law (USA). He is a permanent contributor to two international law blogs, *Opinio Juris* and *The Grotian Moment*, consults on the Saddam Hussein trial in Iraq for Human Rights Watch, and is the Book Review Editor of the *New Criminal Law Review* (USA).

Kevin holds a BA and an MA in Sociology from the New School for Social Research in New York City (both with highest honors), and an MA in Literature from Duke University (USA). He graduated with distinction from Stanford Law School (USA) in 1996, where he was the Senior Note Editor of the *Stanford Law Review*.

After law school, Kevin clerked for Judge William C. Canby, Jr - of the United States Court of Appeals for the Ninth Circuit - where he worked exclusively on appeals involving the death penalty, criminal law and procedure, and civil rights. Kevin then practised criminal defence law in Los Angeles for two years, specializing in homicide, drug-trafficking and racketeering cases.

Following his time as a defence lawyer, Kevin spent four years writing and producing television in Hollywood. His first job was on "The Court" - the Sally Field television legal drama - where he was the staff writer and legal advisor. His episode, entitled "Stay", was honored in 2002 by Death Penalty Focus - the largest anti-death-penalty group in the United States. Kevin then wrote for and consulted on a variety of American television shows, including "Boomtown," "Threat Matrix" and "Miss/Match." He was also a writer/producer on the American reality television show "The Apprentice."

Scott Optican

Peter Sankoff

Peter Sankoff was promoted to senior lecturer from February 2006. Peter joined the Faculty in 2001 from the Human Rights Law Section of the Department of Justice, Ottawa, Ontario. While at the Department of Justice Peter also served as an Adjunct Professor teaching Advanced Criminal Law at the University of Ottawa. After graduating with a degree in Journalism from Concordia University, Peter gained his formal legal education at the University of Toronto and Osgoode Hall Law School, York University, where he graduated JD and LLM respectively. In 1996 - 1997 he served as Law Clerk to Madame Justice Claire L'Heureux-Dube' at the Supreme Court of Canada.

At Auckland Law School Peter has established himself as a highly popular teacher of Legal System, Evidence, Criminal Procedure, and Animals and the Law. Peter's approach to research is as broad and energetic as his approach to teaching. He brought from Canada the substantial on-going commitment of editing the Canadian looseleaf publication, Mewett and Sankoff, *Witnesses*. In addition, while at Auckland Law School, he has published substantial articles in evidence, criminal procedure and criminal law in top-tier journals in Canada, the United States and New Zealand. His writing has been cited on several occasions in the judgments of Canadian courts. His most recent publication is a substantial handbook on witnesses which Canadian litigators are able to keep easily available on counsel's table while in court (see page 36).

This year Peter has been awarded a highly prestigious University of Auckland Early Career Research Excellence Award of \$30,000. Peter intends to use his award to further his latest project: a comprehensive revision of *Mewett and Manning on Criminal Law* [to be renamed Manning, *Mewett and Sankoff on Criminal Law*], Canada's leading treatise on the legal treatment of criminal conduct. Peter will use his funding to travel to Canada, Europe, Asia and Australia in 2006-2007, where he will meet with his publishers [Lexis-Nexis, Butterworths] and other scholars, and deliver a series



of seminars designed to test the merits of his research, and consult with experts in the area. Peter is already scheduled to speak at the University of Victoria, University of Alberta, Dalhousie University, Duke University and the University of Hong Kong, amongst others.

The law related to animals is a particular passion for Peter. New Zealand has large numbers of domestic animals compared to the number of people and yet there are very few lawyers with a specialist interest in animals and the law. Peter has already researched and written in the area, but the calls of publishers for text book writing in evidence and criminal law frustrate his ambitions for future research and writing in the animals' area. He has, however, managed to offer for the first time in 2006 an elective course in Animals and the Law, the success of which is inevitably going to lead to even larger enrolments in the future. On a more practical front Peter has played a key role in establishing and ensuring the ongoing effectiveness of the Animal Rights Legal Advocacy Network (ARLAN).

Peter is the Academic Counsellor to Pasifika students and, as Chair of the Faculty's IT Committee, is committed to leading the Faculty towards the best possible use of available technology.

Bruce Harris

Elsabe Schoeman



Conflict of Laws, once described as a “quaking quagmire in a dismal swamp”, is a notoriously complex and unforgiving subject. Staff and students at the Auckland Law School are very lucky indeed to have an expert guide through this hazardous terrain in Dr Elsabe Schoeman, who was recently promoted above the senior lecturer bar.

Elsabe came to the Law School in 2002 with an excellent

research track-record (as recognised by her tenure as an Alexander Von Humboldt Fellow at the prestigious Institute for International and Foreign Private Law at the University of Cologne). Since her appointment at the Law School, she has consolidated and enhanced her international reputation as a leading conflict of laws research scholar. Her article on recommendations for reform of the tort choice of law rule in New Zealand, published in the *New Zealand Law Review*, is a significant piece of research which will influence law reform not only in New Zealand, but also in Australia.

Elsabe also recently co-authored, with Associate Professor Rosemary Tobin, a major article on the private international law dimension of the New Zealand accident compensation scheme, which was published at the end of last year in the *American Journal of Comparative Law*. This is a significant achievement, given that the *American Journal of Comparative Law* is the pre-eminent North American comparative law journal, is rigorously refereed, and insists on incredibly high standards of scholarship.

Further examples of Elsabe's standing as a research scholar include her research publications being favourably cited by the South African Constitutional Court, her invitation in 2003 to represent South Africa on the Working Committee for the Hague Convention on Jurisdiction and Recognition and Enforcement of Foreign Judgments, and, more recently, an invitation from the New Zealand Ministry of Justice and the Australian Attorney-General's office to participate in their research and law reform project on trans-Tasman recognition and enforcement of judgments.

Elsabe is a thorough, dedicated teacher. She is passionate about communicating ideas, enthusing students, and involving them in the learning process. She has taught a broad range of classes, from the large Part II Contract classes, through to the electives, and LLM seminars. She moves between these very different styles of teaching and learning environments with ease, and is equally effective in all settings and at all levels. She has developed innovative LLM courses in international family law, and, with her creative use of class workshops, role playing, and her outstanding teaching materials, has rehabilitated the Conflict of Laws elective from feared arcana to its rightful place as a popular mainstream option, without having to sacrifice her rigorous academic standards.

In addition, and perhaps most importantly, Elsabe has made a significant contribution to the social fabric and the spirit of the Law School. She is an unfailingly involved, loyal, supportive, friendly, open, and positive colleague. Her promotion is richly deserved. It marks the first step of what will undoubtedly be an illustrious academic career in New Zealand.

Paul Myburgh

Scott Optican

No longer content with simply being Associate Dean for Alumni and Advancement, Scott Optican has added another “Associate” to his title, with a well deserved promotion to Associate Professor in 2006.

Scott Optican is truly one of a kind, and it's hard to imagine the Faculty without him. Born in the United States, Scott is one of that country's more popular imports to New Zealand, combining his nuclear free status with a New Yorker's charm and snappy fashion sense. An engaging conversationalist, Scott is more than capable of capturing a listener's attention on a wide variety of topics. Of course with his booming voice it's hard to ignore him! Morning tea without Scott is notable for the quiet calm that descends upon the Faculty lounge, a calm that is quickly shaken once Scott shatters the air with his



enthusiastic greeting and discussion of whatever topic has captured his fancy that day.

Naturally, that voice comes in handy in the classroom, and Scott puts it to very good use. He is an incredibly gifted teacher, who currently lectures in his primary areas of expertise: Evidence and Criminal Procedure. For almost two decades he has been one of the most popular members of Faculty amongst the student body, and his seamless presentation style, infectious enthusiasm and cutting sense of humour makes it easy to see why. His effortless nature in front of the classroom belies the energy and work he puts into his preparation. A Scott Optican lecture is not only educational - it's an event, and no topic is off-base. Students still talk about the day he came to class with the remarkably graphic video he took of his daughter Samantha being born - and by caesarean, no less. Scott was the 1996 recipient of a University of Auckland Distinguished Teaching Award in Law, and during a visit to the University of Western Ontario in 2005 his teaching was so impressive he was voted to the Students Council Teaching Honour Roll.

As every student in his classes inevitably learns, Scott is a graduate of Harvard Law School (JD), and a former prosecutor in the New York County District Attorney's Office. He is usually too modest to mention his BA in rhetoric from the University of California at Berkeley, his Masters degree (MPhil) in criminology from the University of Cambridge and the fact that he interned at the Crime Prevention and Criminal Justice Branch of the United Nations in Vienna, Austria, and was a judicial clerk for the late Honourable Constance Baker Motley of the Federal District Court for the Southern District of New York.

But all that just begins to describe Scott Optican. Since arriving in New Zealand he has become this country's leading

authority on criminal justice and policing issues arising under the New Zealand Bill of Rights Act 1990, writing a number of influential articles on these subjects. Scott is also co-author of *The New Zealand Bill of Rights* (Oxford University Press: 2003), and a frequent media commentator on crime and justice issues. His expertise on these matters has been recognized internationally (see page 22).

And still that doesn't fully cover what Scott brings to the Faculty. Scott acts as the faculty's unofficial photographer (with many of his photos gracing these very pages), moot coach, and faculty promoter, espousing the merits of the law school to anyone who will listen. He also acts as our advisor for students who wish to pursue advanced studies overseas, tirelessly assisting our most successful graduates in their efforts to reach greater heights in the world's top institutions, reviewing CVs, references and offering guidance.

Of course, those who know Scott well realize that while these diverse tasks mean a lot to him, his most important role in life is that of father to his lovely four-year old daughter Samantha. His pride and love for her are demonstrated by the rotating series of photos that have graced his office door since the day she was born.

Scott is a film aficionado, a former pilot, and currently holds the unofficial University of Auckland record for most dramatic one-year weight loss. He now maintains his svelte figure through running, weight training and all around frenetic activity.

Peter Sankoff

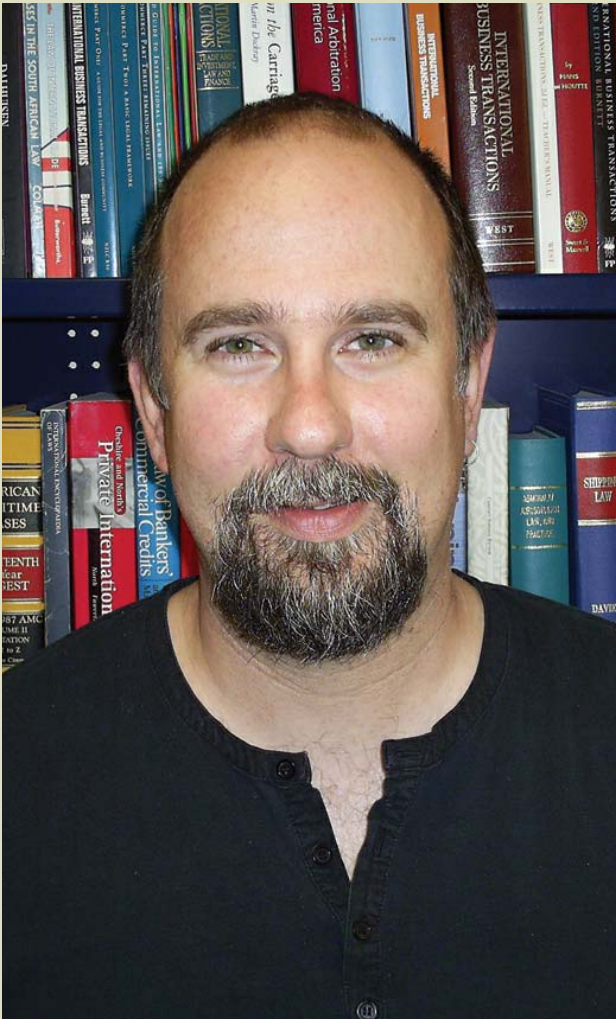
Paul Myburgh

Navigating the "high seas" of academic scholarship is no mean feat, especially when your field of research spans the entire globe. Paul has done this with great success and his recent promotion to Associate-Professor recognises his international standing as one of the leading scholars in maritime law today.

Before moving to New Zealand, Paul completed several degrees - BA (Honours) in Latin, LLB, BCL and LLM at the University of Pretoria in South Africa - as well as a three-year teaching stint in the Department of Private Law at the University of South Africa. He joined the Faculty of Law at Victoria University in 1988 and moved to Auckland in 1995 where he taught in the Department of Commercial Law at the University of Auckland. In 2000 he moved across the road to become a senior lecturer in the Law School.

Paul brings a wealth of teaching experience to his new position. He has taught a wide range of subjects at both undergraduate and postgraduate level, including conflict of laws, international banking and trade finance, international trade law, contract law, torts, electronic commerce, comparative law and, of course, maritime law. Paul is a popular and well-respected lecturer. He "inflicts" serious law and high standards on students, but always with a good dose of humour.

Paul's scholarship and expertise has been recognized here and abroad. He has advised the New Zealand government on international maritime law issues and is currently redrafting New Zealand's outdated admiralty jurisdiction legislation. This year he received the Sir Ian Barker Prize from the Legal Research Foundation for best legal article or essay in 2005. On an international level, he was invited to provide an amicus curiae brief for the United States Supreme Court in a landmark international carriage of goods case in 2004. He is also heavily involved in the work of the Comité Maritime



International (CMI) and has represented Australia and New Zealand at four CMI plenary sessions. In 2004 he was part of a select group of ten leading international maritime law scholars who were invited to address a festschrift colloquium (in honour of Professor Robert Force) at the Center for Maritime Law at Tulane University. This year saw the publication of a chapter on New Zealand (with Piers Davies) in S Dromgoole (ed) *The Protection of the Underwater Cultural Heritage: National Perspectives in Light of the UNESCO Convention 2001*.

In the spirit of “things international”, Paul has taken on the job of Associate Dean (International). His extensive travels around the globe and his knowledge of different legal cultures no doubt serve him well in reaching out to universities abroad, as well as promoting Auckland Law School as a destination for foreign students.

Paul is an extremely supportive and loyal colleague. Despite a busy schedule, he is always ready, willing and able to discuss legal issues and share ideas with colleagues. When I look at his impressive CV, I can only conclude that Paul's day must have twenty-five hours.

Elsabe Schoeman

Julia Tolmie

“Infused with passion and power” was how one commentator described Julia Tolmie's academic work, and her colleagues and friends on the Faculty would agree. News of her promotion to Associate Professor this year was received with delight - but not surprise - as it was a timely and well

deserved acknowledgement of her commitment to and ability in teaching and researching law.

Julia has always excelled in the law. As a student at Auckland, she achieved a glittering list of awards and prizes - which may come as a surprise to those who knew her only as the maverick who smoked a pipe in the High Court law library during her student days. Even allowing for the fact that smoking was still permitted, it was still the mark of a renegade. On her graduation (with honours) from Auckland in 1987, she went onto complete her Masters at Harvard Law School (no reports of pipe-smoking in those hallowed halls), collecting the prestigious Frank Knox Memorial Scholarship, a Fulbright Travel Grant and an award from the Spencer Mason Trust Fund along the way.

On graduation from Harvard, she spent a year with the New Zealand Law Commission before taking up a lectureship with the University of Sydney where she spent the next ten years. Although Julia flirted in the early years with corporate law - she even taught company law for a time - it quickly became apparent that her passion lay in the more human side of the law. This found expression in her teaching criminal law (she was awarded an Excellence in Teaching Award in 1998) and building up her research on issues such as battered women syndrome, various criminal defences, intoxication and alcoholism in the context of criminal liability and fathers' rights.

Sydney's loss was our gain when Julia returned home in 1999, to take up a senior lectureship. She has continued to teach criminal law and over the years, her clear solid teaching has ensured that our graduates are well equipped to deal with the realities of criminal practice. In addition to the staple of



criminal law teaching, Julia has been passionate about rebuilding Auckland's Women and the Law course which has spearheaded much student research into such diverse topics such as women in prisons, the paid parental leave scheme, the legal relationship between the foetus and the mother, and the intersection of race and gender in the law's treatment of Pacific Island women.

In terms of Julia's own research, her hallmark is her painstaking empirical research which has resulted, over the years, in a solid core of innovative research. Reflecting Julia's vision of the law, her work is theoretically ground-breaking but of practical relevance and she engages, not only in the academic literature, in which she is widely published here and overseas, but also in mainstream media and as a professional consultant. Her work has been widely cited in academic commentary and judicial decisions, including by the Supreme Court of Canada. Her current focus is the contested issue of fathers' rights, domestic violence and post-separation contact arrangements and the possibility of actions in negligence against the police in cases of domestic violence. Working as part of an inter-disciplinary team, she has just received a substantial research grant to conduct a two year pilot study into issues of gender and post-separation parenting.

Lesser known to Julia's colleagues than her research and teaching skills is her considerable artistic talent. Although she has never elected to turn professional, Julia has exhibited her work - painting and ceramics - both here and overseas. Julia herself would say that her most prized work of art is her daughter Bianca who, at four, already shows signs that she has inherited at least some of her mother's spirit.

Treasa Dunworth

Warren Brookbanks

The Faculty was delighted when Warren Brookbanks was appointed to a Professorship in Law in February. Warren has been a valued member of Law School since his initial appointment in February 1983. Before then Warren had been in legal practice, including two years as a departmental solicitor in the then Department of Maori Affairs. Prior to that he had served for two years with the Tertiary Students Christian Fellowship and spent another two-year period as a Probation Officer in Auckland.

Warren's interests have long been in the fields of criminal law and law and psychiatry. For many years Warren has taught Criminal Law in Part II of the LLB degree and he began in the early 1990s to teach an elective paper in Law and Psychiatry. Many alumni and New Zealand practitioners will know Warren as one of the authors of the top selling textbook Simester & Brookbanks, *Principles of Criminal Law*.

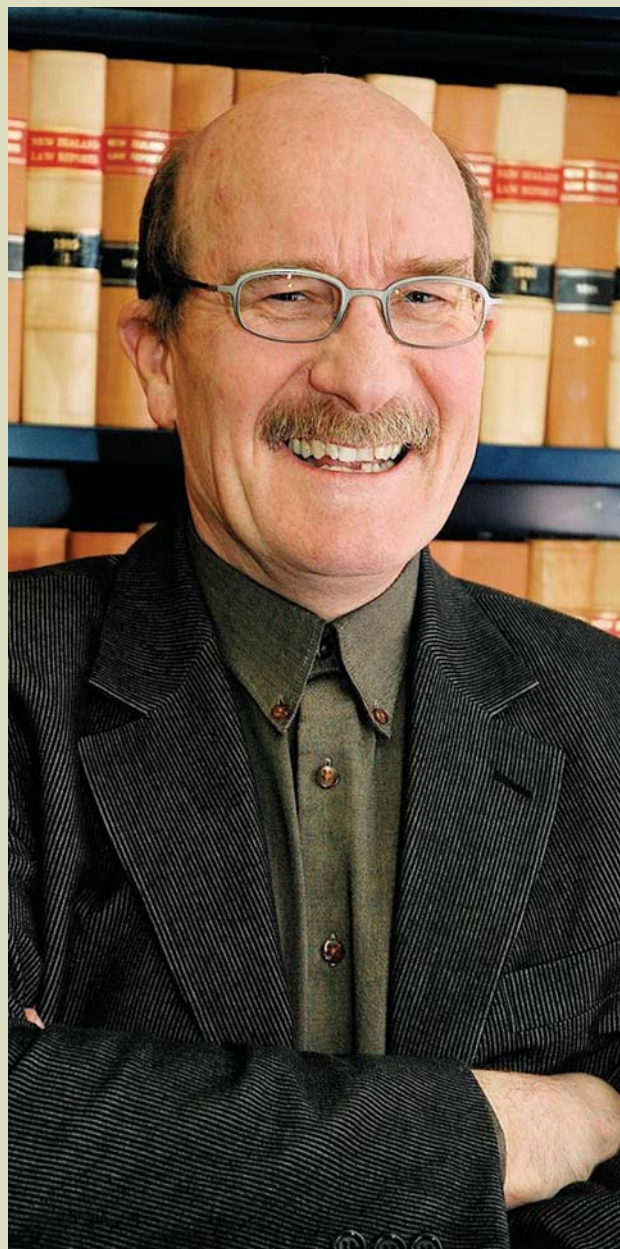
Warren has been extensively involved over the years as a consultant to various governmental agencies, including the Ministry of Health, the New Zealand Law Commission, the Mental Health Commission and the Ministry of Justice. He has undertaken research on behalf of the Scottish and English Law Commissions. In 1988 Warren was special counsel assisting the Committee of Inquiry investigating the provision of forensic psychiatric services in the Auckland region. In that regard he reported on files relating to suicides in Paremoremo Prison, and his findings were incorporated into the Mason Committee's Psychiatric Report 1988, which was instrumental in bringing about major and far-reaching reform of New Zealand's forensic psychiatric services. More recently Warren led a team in the evaluation of the impact on persons with disabilities of the possible repeal of legislation governing infanticide and provocation. With Sylvia Bell, Warren co-

authored *Mental Health Law in New Zealand*. Since the late 1990s Warren has developed an interest in the emerging school of legal inquiry known as "therapeutic jurisprudence". This is a law reform model that seeks to identify and eliminate those legal processes that produce psychologically damaging (and anti-therapeutic) outcomes, while promoting therapeutic outcomes. Another of Warren's special interests is in the concept of "fitness to plead" and he has, for some time, been working on a text in that area. Warren was also an original contributor to *Adams on Criminal Law* and in 2006 is preparing a new commentary on the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

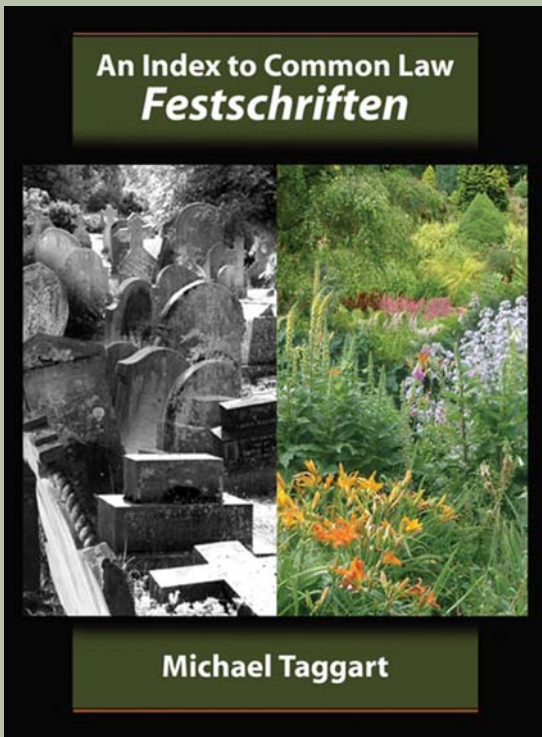
Warren has been a regular presenter at conferences and seminars and his expertise is frequently called upon by practitioners, judges and specialty bodies. Warren has extensive links with academics in other jurisdictions engaged in his fields of interest.

Warren's appointment was received with great acclaim in the Law School. It is a fitting mark of his many achievements to date.

Paul Rishworth



Smitten by *Festschriften*



In 1985, Lord Denning admitted “*Festschrift* is not a word known to me”. He may not be alone. Like the PhD and the Christmas tree, the *Festschrift* is a German import. Although the word does not trip easily off the tongue, it is now the universally accepted term in the legal academy for a published collection of essays written by several authors to honour a distinguished jurist or to mark a significant legal event.

Until quite recently, such volumes in common law countries tended to be clustered around the areas of international law,

comparative law, Roman law and legal history, and therefore were somewhat remote from the mainstream of law and legal practice. Indeed, prior to the late 1960s fewer than a dozen such tomes had been published in the home of the common law. Since then, however, there has been an exponential increase in the number of *Festschriften* honouring distinguished common lawyers, and more than 130 such volumes have poured forth in the UK. If one adds to that number those produced elsewhere in the common law world - including the USA, Canada, Australia, New Zealand, Ireland, India, Malaysia, Singapore, the Caribbean and Anglophone Africa - the total number of common law *Festschriften* in existence is close to 300. Altogether these volumes contain over 5,000 substantive contributions. Although each of these contributions is the equivalent of a law review article, until now they have not been indexed at all: hence the common description of *Festschriften* as “graveyards of scholarship”. As the genre has become more popular, this failure to index the contents has created a serious bibliographical gap in the literature of the Common Law.

My interest in legal *Festschriften* is long-standing; no doubt, the sign of a misspent adulthood. In 2002, I pointed out the seriousness of the bibliographic gap (“Gardens or Graveyards of Scholarship? *Festschriften* in the Literature of the Common Law” (2002) 22 O.J.L.S. 227) and followed that up with an application to the Law Foundation to fill the gap. Generous funding from the New Zealand Law Foundation enabled a small group at the University of Auckland to produce the world’s first *Index to Common Law Festschriften*, which was launched at the Law School on 14 September 2005. John Gallie (Te Awamutu) and Susan Styants (Papakura) represented the trustees of the Law Foundation at the launch, and John addressed the gathering.

Photo: Godfrey Boehnke. Roslyn Smith, Mike Taggart, Bernice Cole, Mary-Rose Russell and Leonie Hayes at the launch of the *Index* database.



The *Index* is a fully searchable database on the University of Auckland Library website and is free to access from anywhere in the world. The URL is

http://www.library.auckland.ac.nz/databases/learn_database/public.asp?record=iclf

The *Index* project took three years and involved me as editor and two experienced law librarians, Roslyn Smith (Cataloguing Department, University of Auckland Library) and Bernice Cole (Davis Law Library). Leonie Hayes and Brian Flaherty (Digital Services, University of Auckland Library) developed the fully searchable database, and Mary-Rose Russell (Manager, Davis Law Library) provided encouragement and support. The Davis Law Library has agreed to keep the *Index* database up to date. Many law libraries around the world have links to this database.

Subsequently, thanks to the further generosity of the Law Foundation a print version of the *Index* has been published: Taggart, M. (with the assistance of Smith, R., and Cole, B.), *An Index to Common Law Festschriften: From the beginning of the genre up to 2005* (Hart Publishing, Oxford, 2006) ISBN 1-84113-641-7.

All of this may sound rather esoteric, but next time you are scratching your head looking for a discussion of a vexing problem try a search on the web-based *Index* or flip open the hard copy: it may just throw up a treatment that will give your submissions, article or advice an edge.

Mike Taggart

Auckland Alumnus Was a Hero in the 9/11 Terrorist Attacks

With the release of the cockpit voice-recorder tapes from Flight 93, hijacked on September 11, the story of New Zealand passenger Alan Beaven can finally be told. Carroll du Chateau reveals the making of a hero.

It is ironic that a man who argued for the right of citizens not to go to war should die fighting. But not so ironic, say his colleagues, family and friends, if you knew Alan Beaven. Beaven's dissertation, which earned him an A on top of his LLB(Hons), was dated February 1974 and written against the backdrop of the Vietnam War. Titled "Conscientious objection to military service", it began with a quote from James K. Baxter".

When I was only semen in the gland or less than that, my father hung from a torture post at Mud Farm because he would not kill... I feared a death by cold in the cold groin and plotted revolution. His black and swollen hands explained the brotherhood of man...

And it ended with this statement: "During war the state adopts its most totalitarian form. If in winning the war it quashes the individual conscience of its citizens then it may be disputed whether it is a victory at all."

It was a considered, intelligent argument, written when New Zealand still practised compulsory military training and service. Only those who objected to going to war on religious or humanistic grounds (which plainly did not include Baxter's father, Archibald) were exempt.

Twenty-seven years later, after a stellar career as a criminal and environmental lawyer, two marriages, three children, a swing from Baptist to eastern spiritual beliefs, and a wanderlust that kept him roving the world despite a yearning to return to New Zealand one day, Beaven was still championing the same fundamental principles.

And although a gentle type, he had the build (1.9m and 93kg) and the courage to follow through. As his son John says, "The note Dad pinned at eye level in his New York office so he couldn't miss it read: 'Fear: Who Cares?'"

It must have been frightful when, 50 minutes into that five-hour flight from New York to San Francisco, an Arabic voice came over the intercom to tell the 38 passengers they had a

bomb on board and were returning to New York.

At the time Alan Beaven was on his way to finally sort out a case against a company polluting the American River in Sacramento.

He hadn't wanted to go. The night before, he and wife Kimi had celebrated their eighth wedding anniversary. They had almost finished a month-long training course at a New York ashram and within a couple of weeks were due in Mumbai for Beaven's year of voluntary work as general counsel to the SYDA Foundation, an organization based on the practice of Siddha Yoga Meditation.

Beaven was committed to the job. Over nine years he and Joseph Tabacco jnr had fought Shell Oil and local authorities and cleaned up the fouled waterways of California. As Joe had said, when they sat down in the early summer of 2001 and discussed Beaven's application for another chunk of time away from the desk, "You know we've cleaned up all the streams, there are no more cases to bring...we're running out of work."

But this re-hearing needed Beaven's negotiation skills. "I'll just go out there ...I know we'll get it settled."

Clean water was a birthright for Beaven who grew up in Otakau Rd, Milford in Auckland's glittering East Coast Bays. Born on October 15, 1952, he had the classic New Zealand childhood. The three brothers and little sister spent their time fishing and messing about on Dad's runabout. The boys, Colin, Ralph and Alan shared a room. "Three wardrobes, three chests of drawers, three beds," says Ralph, a property manager for Southpark Corporation, who lives in nearby Murrays Bay.

Their father was warehouse manager for L.D. Nathan, the boys went to Westlake Boys High School, played rugby and the fearless Alan surfed and did judo. Margaret went to Westlake Girls and was keen on tennis, "so we played quite a lot of that, too."

Then there was religion, lots of it at the Milford Baptist church in Didson Ave, plus Sunday School, which left Alan at least, says his older brother, "searching for something else. He had very strong social instincts, wanted to represent the underdog."

Beaven waltzed through his LLB at Auckland University, manning the phones for Lifeline in his spare time, picking up the Butterworth Prize for law, and catching the eye of Bill Hodge, the constitutional law lecturer who supervised his dissertation.

“He was an extremely thoughtful, mature young fellow,” says Hodge, an American familiar with the constitutional decisions of the US Supreme Court and aware of the extent to which conscientious objection had become a recognized legal doctrine.

“In those days you had to have an A average to get into honours. He was very intelligent, scholarly, and a gentle person.”

By then Beaven was dating fellow student Elizabeth King. Their 1976 wedding photo in a family garden shows an impossibly young-looking Alan, in loud, plaid pants; Liz in a flowing gown. As she says now, “He was charismatic, adventurous, optimistic, engaging, outgoing. He always had a crowd around him.”

The family shared the wanderlust. Colin (now 58), with his double degree and successful career in corporate law, joined Beaven and Liz in Britain. Margaret (51) married and moved to Florida, and their parents retired to the warmth of Surfers Paradise, where their father, Paul, lives still. As Ralph says, “Except for me, we’re scattered all over the world.”

Once in London, along with the travel, Beaven took his career seriously. “To pass four bar exams in four different jurisdictions you have to be serious,” says Liz, now education administrator at the Waldorf (Steiner) School in Sacramento. Beaven tackled his English bar exams, lectured at Kings College, then took chambers as a barrister. They lived an hour from his brother Colin, who says, “It was no secret in our family that Alan was certainly the most gifted.”

Son John was born in 1980, Chris three years later, and Beaven's attention turned to New York.

He arrived in Manhattan in 1985 at 32, with a hard-won reputation. “We hired him because he had very good trial experience,” says former colleague, Joe Tabacco. “He was very good on his feet, and New York seemed to like his accent, personality and sense of humour.”

First he did criminal-defence work, some in Thailand, and became intensely interested in spirituality. The boys went to Rudolf Steiner schools. John, now 25, remembers that when his parents first split, he would accompany his father to early morning Sunday meditation. “I’d sit in his lap [as he sat cross-legged] and read a book. It lasted an hour. It was kind of time that was our time, special for me.”

When Liz moved to California in 1992, Beaven convinced Tabacco to open a San Francisco office so he could be near his sons. The change of direction suited him. Within five years he had married Kimi, fathered Sonali and become one of California's leading environmental lawyers. His clothes were down-home Kiwi: one green suit, old khaki pants, an orange vest, and a “crazy”, psychedelic baseball cap. “He’d get into the office early,” says Tabacco “and by 4.30 he was out the door to spend time with Sonali.

“He was strong-willed without being inflexible ... took work seriously without being serious. He was extra efficient, could cajole people into giving him stuff, was a very, very good negotiator too.”

Beaven did not lead the regular life of highly paid San Francisco lawyers. Not for him the fancy restaurants, bars and clubs. Instead he lived across the bay in Oakland, worked on his spiritual life, played with his kids, lived frugally and saved his money. “And it’s difficult to do that in San Francisco.”

According to his brother Ralph, he worked in an

unconventional way and never totally adopted modern technology. On the other hand, “he was determined, open about things and where he stood on them. Thoughtful.” For his children especially, he was a star. John remembers how he put family first. “We’d come down every other weekend. He was very playful. If we were out playing other kids would ask if they could join in.”

He also taught them to be fearless, to let Sonali (now 9) climb a tree as high as she could, to trust.

“You’d never know he was a high-pressure lawyer,” says John. “When baseball became my passion it became his passion too. I don’t think he ever once said ‘no’ to ‘let’s go out and play ball.’ We’d spend hours and hours.”

Later, when John played for his University of California San Diego baseball team, Beaven wouldn’t miss a game. He treated his kids as people. Immediately he started dating Kimi, whom he had first met in India, he introduced her to his sons, and later asked John how he felt about their getting married. He was delighted.

“Kimi was and is absolutely incredible to myself and Chris - and to my mom...Kimi is much more outgoing, Mom more conservative, they have a great relationship.”

It was a trick of fate Beaven was on UA93. “I think he had a free ticket he hadn’t used on United,” says Tabacco. “He usually traveled Continental.”

True to form, many of the important people in Alan Beaven's life were on the move when the plane smacked nose first into that empty paddock. Joe Tabacco was driving back from the East Coast. Son John was in Melbourne watching the tragedy unfold on TV. His brother Ralph was in Fiji.

And Alan, the youngest brother, the wise and caring father, the tennis player who whipped Tabacco every match, was fighting, not just for his own life, but for those of his family, friends and most of all his principles.

Details about the crash and Beaven's part in it, trickled out so slowly he never got the public recognition he deserved. There were no survivors. Since he didn't carry a cell phone, Beaven made no calls from the plane. He must have learned about the World Trade Centre crashes from his fellow passengers. Until 10 days ago the cockpit recorder tapes were for officials and family only, and Kimi was reluctant to talk about what she and the family had known since 2002.

But, as Beaven's younger son Chris wrote to Senator Dianne Feinstein, those tapes made it clear: Alan Beaven, with the three other six-footers on that flight, fought with all his energy to stop the terrorists completing their mission. “My father, Alan Beaven, was among those 33 [sic] passengers on United Airlines flight 93. Their hurried steps towards the cockpit were the first in an international campaign against fanatical hostility. For this they should be celebrated. At a private listening in Princeton, New Jersey, I twice heard [my dad's] accented words. His final phrase “Turn up!” was shouted at 10:02:17.3 on the official cockpit recorder ... Authorities confirmed that DNA testing placed him in the cockpit at time of impact...”

This evidence undoubtedly proves his centrality in the effort to regain custody of United's Flight 93. He led a group that led a nation that led an international campaign against the threat of fanatical hostility. My father is a hero.”

This story is an excerpt from “Fearless First Stand Against Terror” Saturday April 22 2006 Weekend Herald B3. A full text can be accessed via the New Zealand Herald's official website: www.nzherald.co.nz

Auckland-Michigan-Chagos Islands - A Triangle But Not of the Bermuda Variety

In mid-August 2006, Professor Brian Simpson of the University of Michigan Law School visited the Law School again briefly. His last visit here was in 1993. One of the pre-eminent legal historians in the common law world, Professor Simpson's writings extend from the history of contract law as revealed in the Year Books to the disintegration of the British empire in the twentieth century, and much else in between.

Professor Simpson gave a presentation on the Chagos Islanders' continuing fight for justice before the British courts and the European Court of Human Rights. The islanders were removed in the 1960s and early 1970s from these Indian Ocean islands to make way for the American military base on Diego Garcia and have not been allowed to return. The British government has stymied several legal victories and now the fight is being taken to Strasbourg. In the course of his talk, Professor Simpson singled out two Auckland graduates who have worked on this cause - Louise Moor and Larissa Wakim.

Larissa and Louise are two of several Auckland law students who have pursued postgraduate study at Michigan in human rights and international law. Subsequently they worked in the AIRE Centre in London, a leading human rights N.G.O. There is also a strong linkage with Michigan through Rodger Haines QC, who has taught Immigration and Refugee Law here since 1993, and has also co-taught courses at Michigan Law School with Professor Jim Hathaway.

Louise worked as a research assistant for Professor Simpson on a paper examining the European Court of Human Rights' jurisdiction over breaches of the European Convention of Human Rights in the overseas territories of Member States. But, as Professor Simpson said, such was Louise's contribution that it did not seem fair to acknowledge her assistance in a footnote and the paper will appear as a jointly authored one in the *British Yearbook of International Law*. Louise is currently working at the Irish Refugee Council.

Mike Taggart

David Williams, Brian Simpson, Paul Rishworth



Symposium on Pakeha and the Treaty

In June, the Faculty hosted a Symposium on "Pakeha and the Treaty of Waitangi" in association with the Human Rights Commission and as part of the Commission's series of symposia on the Treaty and human rights. Professor David Williams has been particularly active this year in bringing speakers and events relating to Treaty and indigenous issues to our faculty (see page 14). This symposium was yet another of his initiatives, and was also chaired by him. The event attracted a good audience and the presence of so many Treaty educators in it made the discussions at the end of each half of the day particularly interesting and informative.

The six presentations covered a range of questions and approaches. Human Rights Commissioner Rosslyn Noonan gave an overview of the Commission's "Te Mana I Waitangi" Project on human rights and the Treaty. That topic was also addressed by the Faculty's Dean, Professor Paul Rishworth, who contrasted the Treaty's ongoing role with the fate of colonial treaties overseas, and considered the extent to which Treaty rights overlap with the right to enjoy and practise minority cultures in s 20 of the New Zealand Bill of Rights Act. There were two further presentations with a legal bent. Sir Ross Jansen argued for constitutional status for the Treaty, and threw in some interesting historical observations, such as that Queen Victoria was unlikely to have been aware of the Treaty at all, as her attention was entirely occupied by her

imminent nuptials with Prince Albert at the time. I was the second speaker from the Faculty and suggested that the establishment of Pakeha-dominated self-government of the colony was a crucial early breach of the Treaty, before exploring the continuing implications of that breach. Perhaps of the greatest interest for those of us accustomed to think about the Treaty in legal terms were the two presentations concerned with the broader issue of Pakeha experiences with the Treaty. Ingrid Huygens, a Treaty educator, talked about the experiences of organisations that had taken steps to honour the Treaty in their operation. Finally, Pat Snedden gave an inspiring talk exploring the reasons for the fear and hostility in relation to the Treaty that recently found expression in the Orewa speech and the Foreshore and Seabed saga. He called for New Zealanders to become more historically literate and to embrace the Treaty as a positive basis for legitimacy and citizenship for both peoples.

No event on the Treaty of Waitangi would be complete without veteran treaty issues commentator, Emeritus Professor Jock Brookfield, who is about to launch the second edition of his book on *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (see page 37). His closing comments were a fitting end to a stimulating day.

Hanna Wilberg

Professor Michael Lobban: Hood Foundation Visitor



Professor Michael Lobban, from Queen Mary University of London, visited the Law School from 21 June - 12 July 2006 as a Hood Foundation distinguished visitor. As readers of *Eden Crescent* will be aware, the Hood Foundation was founded to celebrate the work of John Hood as Vice-Chancellor of the University of Auckland.

Michael Lobban is a legal historian with a particular interest in the history of legal theory. At 43, he already has a considerable reputation. His doctorate from Cambridge University was published in 1991 as *The Common Law and English Jurisprudence 1760-1850* and won the Society of Public Teachers of Law prize for outstanding legal scholarship in 1992. After he graduated from Cambridge, Michael took a teaching position at Witwatersrand University in Johannesburg. As a result of his period in South Africa, he wrote *White Man's Justice: South African Political Trials in the Black Consciousness Era* (1996). He has jointly edited two books, *Communities and Courts in Britain 1150-1900* (1997) and *Law and History* (2004), and published many articles. He has recently completed a major book, *A History of the Philosophy of Law in the Common Law World 1600-1900*, which will be published this year.

Michael Lobban came partly as a key-note speaker at the Australian Society for Legal Philosophy Conference (see below). Michael's paper was entitled "Common Law Reasoning and the Foundations of Modern Private Law". He argued that many of the foundations of modern private law were laid between the American Revolution and the First World War, an era in which English legal thought was dominated by the theories of Jeremy Bentham and John Austin. Although their analytical jurisprudence helped clarify judicial minds, their theories were not helpful in explaining the development of the law. Admittedly, Austin acknowledged that judges had a role as subordinate legislators, but he said

little about how they should carry out this role, besides indicating that they should follow the principle of utility. Again, much of his detailed work on the common law implied that there was a unity and coherence to it; which might suggest that judges ought to fill in the detail of an ideal map of the common law. However, no map was provided. The paper explored what judges in fact did across this period in developing principles of contract and tort that had not previously been defined. His conclusion was that although they strove for an overarching explanation of doctrine that would fulfill the promises of analytical jurisprudence, by the end of the nineteenth century it was admitted that jurists were not practising an abstract philosophical science, but were rather seeking workable theories that could be tested by experience and would be modified in the light of it.

In his public lecture, "The Failure of English Jurisprudence", Michael again explored the relationship between common law development and theories of the common law, but on a broader scale. He argued that a grand project existed from Sir Matthew Hale in the seventeenth century down to the late nineteenth century to create a jurisprudentially satisfying map of the whole common law. The aim was to produce a coherent theory of the common law that could explain its nature, identify its content, and make sense of that content by explaining why it was authoritative. He argued that that this project turned to sand by 1900, and he traced into the twentieth century the effects of its failure.

Michael also gave a staff seminar, a delightfully whimsical account of the career of the company promoter, Edward Hartmont, who skated adroitly around the edges of commercial fraud in the late nineteenth century. Hartmont's skill was in selling worthless assets at a large profit to companies he had promoted. The paper showed judges struggling to find workable rules that would limit such conduct without unduly restricting commercial investment.

(Copies of the text of Michael Lobban's public lecture can be obtained from Jim Evans: pj.evans@auckland.ac.nz)

Jim Evans

Australian Society for Legal Philosophy Conference in Auckland

Some readers will remember the New Zealand Society for Legal and Social Philosophy (NZSL&SP), which, from 1982, had active branches in Auckland and Wellington. Both branches held many meetings that discussed a wide range of issues affecting the law (legal philosophy being understood very broadly), but both ceased to be active around 1996. In contrast, the equivalent Australian body, the Australian Society for Legal Philosophy (ASLP), has been very active in the last 10 years, organizing lively annual conferences, producing a very good journal, and offering a substantial annual prize for graduate student writing in the philosophy of law. In an effort to help the New Zealand society re-establish, the ASLP agreed to hold its annual conference this year in Auckland.

I asked Tim Dare, from Philosophy, whom many readers will know as a teacher of legal ethics, to help organize the conference. As it happened, he had volunteered to organize a conference of the International Society for Legal Ethics. We agreed to run the conferences together. The upshot was a highly stimulating joint conference held from June 23-25,

offering a smorgasbord of 50 papers in all. Visitors came from the UK, USA, Malaysia, India, Singapore, and, of course, from Australia and New Zealand.

The theme of the ASLP Conference was "The Common Law". We were able to attract two excellent keynote speakers from the UK. Professor Michael Lobban (see above) and Professor William Lucy, from Cardiff University, who gave an interesting critique of modern, non-economic, philosophies of private law, particularly corrective justice theories. He argued that these share with economic philosophies of private law the assumption that much of the argument presented in legal judgments is, as he called it, "surface froth", hiding deeper realities that in fact shape the law. That being so, they are to be tested by their ability to explain central features of private law. But corrective justice theories, he suggested, characteristically overlook, or just deem improper, significant features of private law as it is in the common law: for example, strict liability.

A regular feature of ASLP conferences is a book symposium. At this conference the symposium was on Rick Bigwood's book, *Exploitative Contracts* (2003). In a session chaired by Justice Ted Thomas, Rick introduced the book, three commentators spoke and Rick then replied.

The Legal Ethics conference attracted as a plenary speaker Professor William Simon from Columbia University, who gave an open lecture entitled "Personal Virtue and Social Role in Lawyering". Professor Simon questioned whether it was useful to see issues of legal ethics as involving a conflict between personal ethics and professional ethics. He argued that legal ethics must leave room for the lawyer to see legal work as "meaningful work" from the perspective of private ethics. This led him to argue for a less formulaic approach to legal ethics than sometimes prevails.

In another plenary session, Mark Bennett, from Victoria

University, delivered a paper on the rule of law, which had won the ASLP writing prize. He was the second New Zealander in succession to have won it, as last year it was won by Richard Ekins, who has a part-time position in the Auckland Law Faculty.

A meeting of New Zealand participants at the conferences agreed to re-establish the NZSL&SP. The following aims were agreed: (1) to set up a branch in each university centre with a law school, (2) to hold national conferences at intervals of no greater than three years, (3) to establish a close working relationship with the ASLP.

Anyone interested in joining the NZSL&SP should e-mail Jim Evans at pj.evans@auckland.ac.nz

Jim Evans

Professor Bill Cornish Visits the Law School

In his thank you speech, John Katz QC brandished his cherished copy of the first edition (1981) of Bill Cornish's textbook on *Intellectual Property Law*, declaring that for years it had been his "vademeccum" (roughly translated as "the Bible - take it everywhere"). The occasion was an address by Professor Cornish, formerly the Herchel Smith Professor of Intellectual Property at the University of Cambridge to a group of Auckland practitioners in March 2006. The fascinating topic was the complex intersection of intellectual property creation and who owned it at Cambridge University (in which Bill had played a vital role as something of a "referee").

The Auckland Law School and the intellectual property law profession in Auckland were singularly grateful to the Legal Research Foundation for inviting Bill Cornish to be its "Visiting Scholar" in 2006. Bill, who in fact hails originally from Adelaide, has, since graduating from Oxford in the early 1960s, spent his entire academic career in Britain - first at the London School of Economics (where he held a Chair of Law from 1970-1990), and then, as mentioned, at Cambridge, from where he retired in October 2004. When he was appointed at Cambridge, Professor Cornish became the first Director of the Faculty's Centre for European Legal Studies. He was appointed a Fellow of the British Academy in 1984 and remains an external academic Member of the Max-Planck Institute for Intellectual Property Law, Munich. Bill was made an Honorary Queen's Counsel in 1997. The issue of his retirement was remarked upon by Leonard (Lord) Hoffmann

in the foreword to a collection of essays in honour of Professor Cornish (*Intellectual Property in the New Millennium*, Cambridge University Press, 2004):

"The word 'retirement' itself has some ironic overtones The possibility that one will plausibly be able to describe him as retired seems very remote. As far as the development of intellectual property law is concerned, the more remote the better."

But intellectual property is not his only interest and amongst his many publications is included, for instance, *Law and Society in England 1750-1950*. Bill is currently the editor for the nineteenth century volume(s) of the enormous project *The Oxford History of the Laws of England* (general editor, Sir John Baker). Indeed, it was legal history that formed the kernel of his address in a seminar to Law School academic staff with his talk, intriguingly entitled "Wife Sales : The Fate of an 18th and 19th Century English Tradition". Bill also gave a very well attended public lecture comprising a perceptive overview of one aspect of intellectual property law, "The Euro Plan for Trade Marketry" - (displaying again, Bill's trade mark sense of humour).

It was a pleasure to have such a distinguished visitor amongst us.

Paul Sumpter

Graduation 2005. Photo: Scott Optican



Three Distinguished Visitors with an Interest in Indigenous Issues

There are pleasures in serving as Deputy Dean of the Law Faculty. One of them, certainly, is that I have had the privilege of hosting a number of the interesting and important people who have visited the University of Auckland in 2006. They come to share their knowledge and their passion for aspects of the law with audiences of University staff and students, members of the judiciary and the legal profession, and interested members of the public. Amongst those visitors whom I have hosted this year, I wish to mention three visits.

1. Professor John McLaren,

Landsdowne Professor of Law at Victoria University, British Columbia, is a British-born Canadian who served terms as Dean of three Canadian Law Faculties, and yet has gone on to continue a productive research and writing career - especially in the area of colonial legal history in the Commonwealth. John came to Auckland as a University of Auckland Foundation Distinguished Visitor for 2006. The catholicity of John's interests, and his boundless enthusiasm, can be gleaned from the fact that he made four separate presentations during his short visit in early March:

- A public lecture (jointly sponsored by the School of Asian Studies and by Law) on "The Chinese Head Tax Case

in Canada and the Rule of Law: Judicial Resistance to 'Legalised' Discrimination";

- An informal staff seminar on the University of Victoria's Akitsiraq Faculty for teaching Inuit law students in Nunavut - the self-determining First Nation polity in northern Canada;
- A fascinating staff seminar on "The Doukhobors, Mass Nudity, Arson and Religious Freedom in Western Canada"; and
- A public lecture: "Men of Principle or Judicial Ratbags? The Trials and Tribulations of Maverick Colonial Judges in the 19th Century."

2. Professor John Borrows, like John McLaren, is a Professor at the University of Victoria. He came to New Zealand as the New Zealand Law Foundation Visiting Professor and visited all five New Zealand Law Schools. He is a leading indigenous legal scholar - an Anishinabe and a member of the Chippewa of the Nawash First Nation. Whilst he was with us in early May he gave a public lecture on "Creating Indigenous Countries: Indigenous Treaties in Canada and New Zealand" and a staff seminar on "Implementing Indigenous Legal Traditions in Canada". He also took the opportunity to meet with Joe and Rene Hawke of Ngāti Whātua, attended the University's Māori

graduation at Waipapa marae (Dr Nin Tomas was one of those honoured) and was seated beside the Prime Minister, Helen Clark, at a Pasifika graduation celebration evening.

3. Hon Justice Eddie Durie, best known for his long term as Chief Judge of the Māori Land Court and Chairperson of the Waitangi Tribunal, is now a Commissioner of the New Zealand Law Commission. During his visit to our Faculty in July he spoke about two of the projects that he has a role in supervising at the Commission. He talked to a Contemporary Tiriti Issues class of students, with a number of staff in attendance, on the Commission's Draft Report on 'Waka Umanga : A Proposed Law for Māori Governance Entities'. Then in the evening he gave a public lecture on another Law Commission project: "Custom and Human Rights in the Pacific". This was attended by people from a wide range of academic disciplines and community interests. It was of particular interest to a number of members of this Faculty as we are developing a much stronger profile for our offerings in South Pacific Legal Studies and our collaborations with Pacific lawyers and universities.

David Williams

Profile of Judge Andrew Becroft

Now 48, Becroft grew up in Wellington and made his name as a defence lawyer in South Auckland, before becoming a District Court judge in 1996 and taking up the Youth Court role in 2001. As a young man, Becroft had such a severe stutter that a court-room career seemed out of the question. On his first day of work at Queen St law firm Fortune Manning, Becroft couldn't even say his own surname on the phone to his first client, telling a caller "My name's Andrew B-b-b ..." "Oh, you mean Mr Andrews?" said the caller. Becroft said yes, hung up and sprinted around to the receptionist. I said, "If someone calls for Mr Andrews, it's me," he recalls. "I think the receptionist thought it was all very strange."

The firm paid for Becroft to attend a three-week Auckland Hospital stuttering programme where he was taught to pronounce words slowly and

softly, breathing through the consonants rather than trying to force them out.

Friend and colleague Jonathan Moses, who played backyard cricket with Becroft as a child, recalls how as Auckland University law students they were both inspired by volunteering at a free legal clinic in David Lange's Mangere electorate office, where the clients were predominantly poor, and 90 per cent Maori or Pacific Islanders. The community had few lawyers at the time - so in 1986 Becroft and Moses quit their city jobs to become the two founding solicitors in the Mangere Law Centre, a non-profit trust backed by Naomi Lange, along with many fellow young idealists, most of whom are now top lawyers and judges.

"We spent the first day laying the tiles on the floor," recalls Moses on the telephone from the Tanzanian city of

Arusha, where he is prosecuting genocide cases at the United Nations' International Criminal Tribunal for Rwanda.

"We'd been running the centre for a while, and had applied for a grant but hadn't heard anything, and just as we were literally spending our last dollars, this guy walked in. He looked really tough, like perhaps an ex-gang member, although that might be quite unfair to him. We barely looked twice, thinking 'oh yes, here's another client,' but he said 'I'm from the Community Organisation Grant Scheme, we've approved your grant, here's a cheque for \$20,000.' That allowed us to keep going," Moses says.

"I think those years in South Auckland shaped Andrew, dealing as we were with people who haven't been dealt many picture-cards in life. He's experienced first-hand the fact that if

people are given a chance, sometimes they will grab it with both hands and run with it.”

Moses recalls watching with Becroft the movie *My Cousin Vinny*, in which an unlucky defendant finds himself represented in court by - of all people - a stuttering legal aid lawyer. “We were on the floor of the picture theatre, rolling around with laughter. I was saying ‘You should sue them for defamation, Beaks.’ But I don’t think the stutter has ever held him back. I remember one occasion when Andrew overheard a police officer saying ‘Oh, the defence counsel is B-b-b-Becroft.’ You can be sure Andrew’s competitive nature meant he fought particularly hard for his client when cross-examining that policeman.”

He became a hero for many Maori with his 1997 District Court decision that Maori Kirk McRitchie had a customary right to catch trout to feed his iwi, without needing a licence. It was a controversial decision, later overturned by the Court of Appeal, but Auckland University Dean of Law Paul Rishworth says Becroft’s decision was correct according to the legal situation at the time; the Government had legislated away Maori rights to fish native species with the 1992 Sealord Settlement Act, but had not defined the status of trout, an introduced fish. “The Court of Appeal accepted that very specific rules had always existed in relation to trout since they were introduced to New Zealand waters, but to me Andrew’s decision was quite right as a judge in his position of first instance,” says Rishworth. Becroft believes there is brilliance within New Zealand’s world-leading restorative youth justice system, but wants to see more resources and time spent on making key elements work better, like the family group conferences where offenders, victims and police try to reach consensus on an out-of-court resolution which might include apologies, reparation - even creative solutions having a young shoplifter perform community work as a shop assistant in the dairy she robbed. Becroft is irritated by headlines which suggest youth crime is booming. He says youth offending has been a stable 22 per cent of total offending over the past 10 years. The Youth Court only sees the most serious offenders; the 15-20 per cent of cases which are not

resolved with a police caution or diversionary programme. These are New Zealand’s most difficult young people; 85 per cent are male, up to 80 per cent have drug or alcohol problems, 70 per cent do not show up to school or aren’t enrolled, and at least 50 per cent are Maori. Within that group, however, serious assaults and other top-end violence are increasing - although it is too early to call this a definite upward trend.

Becroft sees youth justice as a societal problem, not just one for the courts; he believes part of the solution is helping families understand the importance of attending school, participating in sport and choosing the right friends. “In New Zealand we have been very strong in our development of a restorative process that holds young people to account, but my criticism is that we haven’t been as committed as we should have been to preventing re-offending,” he says.

That requires more money and resources for social workers and youth justice co-ordinators (the CYFS officers who run family group conferences), drug and alcohol treatment, early identification and help for struggling families, Becroft says. He’s also in favour of broader approaches like “multi-systemic family therapy”, where psychologists and social workers work with all an offender’s family on problems which might be contributing to crime. This family-wide approach has been shown in United States research to cut reoffending to about 46 per cent of those who have committed serious crime, Becroft says - a world-beating level of success.

By comparison, in New Zealand 30 per cent of young people who go through the Family Group Conference process do not re-offend, and a further 25 per cent commit far less serious offences. “Family Group Conferences are often criticized as weak, liberal, Kumbaya singing, a slap over-the-hand with a wet bus-ticket, but that’s an absurd criticism because it is an idea with the seeds of genius in it. It’s not a soft system, it’s not a cop-out. It’s great for the victims, because they begin to see that the monster who burgled their house is a rather shy, uncertain 15-year-old with a constellation of human problems. For the offender, confronting the human dimension of their offending is a very powerful tool,

and all of them say it’s a lot tougher than court.”

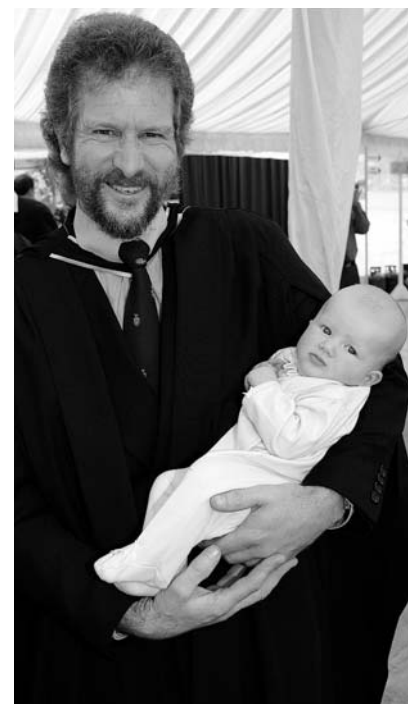
Becroft’s defence background makes him particularly quick to “cut through the nonsense” as a judge, says James Johnston, a partner at Wellington firm Rainey Collins.

“He’s heard all the excuses and that means the lawyers and the young people aren’t going to get away with anything,” Johnston says. He recalls one young client - a girl who had committed acts of serious violence - who was “on her way to Arohata” [women’s prison] until the Youth Court process. With the help of Becroft, social workers and others, she was able to meet and reconcile with her victims and start afresh with long-lost family members who were prepared to take her in.

“At the end of it all she said to him ‘Judge, can I shake your hand?’ and of course he said yes,” Johnston says. “I am 100 per cent confident that she will never reoffend. That case showed that family group conferences, when they are properly resourced, really work for the victim, the offender and society.”

This story is an excerpt from an article by Claire Harvey, “Crusader for Caring Justice” Saturday 11 March 2006 Weekend Herald B7. The full text can be accessed via the New Zealand Herald’s official website: www.nzherald.co.nz

Stephen Penk (LLB(Hons),LLM) and his grand-daughter. Photo: Scott Optican



Karina Williams - Rainbow Judge - My little mate



Cruelly sawn off by cancer at 43, Karina's legacy will long endure. Her wicked smile and humour, her passion for South Auckland youth, her disdain of posers, her desperate need for a fag after a long meeting or heavy court session, her short legs in control of the dirty great big ancient blue gas guzzling Mercedes, the fun she had with a beer, a fag, music and a dance, her ragged moth-eaten but comfortable office chair, the dark blue pinstriped suit, her thick black hair, her total loyalty to friends, her high moral standards, her love for her daughter (her "baby"), her mana and the love and friendship so many of us shared with her.

Nearing the end of her battle, riddled with disease, Karina sought solace in traditional Maori spiritual healing, at the same time continuing with the horrible chemotherapy which finally proved too tough for her weakened body. In character, near the end, angry with friends sceptical of her ability to survive much longer, she decided only family and closest friends such as Laverne King and Ida Malosi could visit. That didn't help the grieving process for the rest of us although the extended tangi did - to an extent. Had I been asked to write about KW a year ago, I would have struggled to find words through the pain. The writing process was in the hands then of the brilliant and professional Catriona MacLennan whose accurate and perceptive tributes to our little mate were appreciated by all.

Born and raised in the small settlement of Ruatoki in the eastern Bay of Plenty, Karina regarded herself as a bit of a rat-bag, as a kid requiring her school teacher parents to send her to posh Auckland St Cuthbert's College to "straighten her out" (her words not mine). Not too many brown faces around her

there and no Te Reo offered. Queen Victoria School, New Zealand's premier Maori girls college, was two buses away but 20 minutes on the bike. She biked to her lessons through rain and shine, supported by her school which recognised her strengths and elected her Head Girl in her 7th form year. Her take on this was "I had a very perceptive Principal who fixed me up by giving me responsibility". Pity she didn't take the smokes away at the same time!

Karina lived and worked in her professional life as a barrister and Judge in South Auckland. Thirteen years as a criminal and youth court barrister/advocate plus tenancy adjudicator, firstly in South Auckland chambers at Otahuhu with Beecs, Paddy O'D, Ema A, Jonny Moses, Lisa T, Jo Baddeley, Colleen Newton, Peter McCoskery and others, before starting up Friendship Chambers at Manukau when the court shifted there with me, Catriona McL, Panama L, John Adams, Colleen N, Simativa Perese, Justin Graham, Rosaline Fuata'i, Mary Tualotalava.

Her commitment to getting young Maori from South Auckland into law was legend. She mentored Maori law students and lawyers. She pressed them to accept responsibility for their race and to work in South Auckland. She was the soul mate, mentor and surrogate mother of a few errant old white males as well! She was the proverbial mother hen whenever we travelled on Mental Health District Inspectors' or Judges' meetings away from Auckland. On one such trip, a colleague was renamed "Nonu" by Karina, after an incident involving Jerry Collins and some of his mates in a Wellington bar at 3:00 am - details omitted!

Her appointment as a Judge was always going to happen. It was something she had to do as part of her journey and, in particular, to serve Maori youth in South Auckland. Her swearing-in was a Kapa Haka competition between Tuhoe (probably the loudest), Te Whakatohea, Tainui, Te Aupouri, and Ngaitai.

Karina sang like a princess and played netball like Irene van Dyke despite being a third her size. She played for Auckland. I caught her one day at Manurewa playing tennis. Apart from having trouble getting her breath she wasn't too bad. She coached and composed for Kapa Haka groups and worked on the Mangere Bridge School Board, where they all loved her. She was humble. She was sensible. She was a young Maori woman, aware of her huge abilities, but modest to the extreme.

There were personal worries in her life and a few of us shared her agonies, helpless in the main to do anything but support her. Her daughter, Kataraina, is on her own interesting journey. At the age of 13, she is set for a tennis career which is what Karina and Kataraina's father, Richard, both wanted. She too goes to St Cuthbert's. My vocal ribbing of her decision to send her to a posh private school was countered by her argument that a brown girl from South Auckland needs every opportunity in this world compared with "you white middleclass honkies and your kids". I saw her discriminated against in the only Tenancy Tribunal case I had in front of her, many years ago. The male lawyer on the other side behaved badly - until a brilliant Williams "rocket" put him firmly in his place.

She knew what it was like to be young with brown skin and to be pulled up for warrant and licence checking "just because of what you look like". When older, her brown face driving a flash Merc also continued to attract Police attention - "must have stolen it"!

Mental Health patients loved her in her role of District Inspector. Her empathy and genuine concern for those under disability transferred transparently to all. We worked together as the South Auckland DIs. Never scared to question the

bureaucratic gobbledey gook, she liked to preface questions with "Sorry, I'm just a little brown girl who knows stuff all, but what exactly are you talking about?!". This last year has been rough for her friends, her parents, her daughter Kataraina. The pain has probably become more acute in some ways. What a terrible waste. Such talent. What a future. She started up the Manukau Family Violence Court with Chief Judge Johnson and John Adams (the Judge!). "Binning wife bashers helped no one," she reckoned. Improve their behaviour. Stop them drinking, stop the cycle, and then we might get somewhere in the long term. She wasn't just loved. She was adored. The respect for her from counsel and colleagues was total. She and her Judge

soul mate, Ida Malosi ("Scary Ida"), shared the same love and respect. I have kept all the personal emails we exchanged. I often re-read them. I kept her texts and phone messages. Memories of Karina keep her with me in my work and life, as they do for so many others. "Rainbow Judge"? Russell Johnson described her as such at her burial - a reference to the multi-ethnic makeup of Judges in the Manukau District Court and the end of dominance of mainly white males ("Yeah right" she might say!). Ka kite. Haere ra my little mate.

Judge Phil Recordon

Three Inaugural Professorial Lectures 2005-06

Three new professors at the Faculty of Law have given their inaugural lectures over the last 14 months.

Professor Rick Bigwood addressed the topic "Contract Law, Advantage, and Transactional Neglect".

He advocated a paradigm shift from "exploitation" to "transactional neglect" in what he called "pure advantage situations" (for example, certain unconscionable dealing and undue influence cases). By "transactional neglect" he meant the defendant's corrective liability for failure to take reasonable precautions against the risk of foreseeable transactional harm to the plaintiff, when the defendant and the plaintiff were, knowingly to the defendant at the time, bargaining under whatever conditions make "exploitation" possible.

In conclusion he opined that the shift from exploitation to transactional neglect creates no greater risk for the general security of contractual relationships than is currently tolerated under the "anti-exploitation" rationale. Only judges' language in deciding actual cases should alter.

In his Alexander Turner Chair inaugural lecture Professor Michael Taggart examined "The Chequered History of Delegated Legislation in the Twentieth Century".

He defined delegated legislation as legislation made, not by Parliament, but by persons or bodies on whom Parliament by statute had conferred the power to legislate on specified topics. It often had more impact on the lives of ordinary citizens than many full-blown Acts of Parliament.

For delegated legislation the twentieth century had been a century of two halves, said Professor Taggart. In the first half the battle for the legitimacy of delegating legislative power had been fought and won. This legal battle had really been a proxy for an ideological battle over the acceptance of the welfare state.

"The second half was dominated by attempts to enhance parliamentary safeguards against potential and actual 'abuses' of these delegated powers. While parliamentary scrutiny has been considerably better than nothing at all - and in some places and at times has been quite successful - generally speaking it has fallen short of fulfilling all the hopes of proponents."

The study of delegated legislation had become unfashionable amongst administrative lawyers. The rhetoric of the privatisation movement had exacerbated this neglect while actually generating more delegated legislation and a colossal amount of quasi-legislation or soft law, to which a great deal

of constitutional objection could be taken.

Behind all this delegated legislation and soft law was the State - "that much maligned concept, supposedly too small to deal with global problems and too big to deal with local ones."

"The State has not retreated in any real sense since the 1980s," said Professor Taggart, "but rather has engaged with the private sector in very complicated patterns of interrelationship and interdependence, often in considerable tension. The rhetoric of deregulation, competition and privatisation deceived people into thinking there must be less, rather than more, rules. This is not true. The resultant pattern of 'mixed administration' has led to more delegated legislation, increased delegation of governmental functions to the private sector, and more soft law (or rules) contributing to what the sociologists call the 'juridification' of society."

Professor David Williams' topic was "A Pākehā Perspective on the Ongoing Importance of the Treaty of Waitangi". He reflected on changing attitudes to the legal and political status of the Treaty of Waitangi since his first appointment to the University of Auckland in 1974 - a year before the Māori Land March and the Treaty of Waitangi Act 1975 made seminal contributions towards an enhanced status for Māori rights in the state legal system.

Drawing on his work as a political activist, as well as his academic scholarship, Professor Williams traced the shift by activists from the slogan "The Treaty is a fraud" to "Honour the Treaty"; and the shift in official circles from the Treaty being considered "a simple nullity" to the invention by Parliament and the courts of "the principles of the Treaty". In particular, he addressed the contested philosophical underpinnings for the retrospective redress of historical grievances based on Treaty breaches prejudicially affecting Māori.

He then discussed questions raised about Treaty jurisprudence since 2003 because the superficial political consensus on Treaty issues which existed in the 1990s has evaporated. The 1960s integrationist myth that "We are all one people" has found new strength and now competes with the more recent myth that "The Treaty is the foundation of the nation" for the hearts and minds of Pākehā New Zealanders; and meanwhile the Treaty lacks any form of entrenchment in the constitution of the nation. In conclusion he drew attention to the 2006 Agreed Historical Account between Ngāti Whātua o Orakei and the Crown on breaches of the Treaty that marginalised the tangata whenua in the past, and the role that Ngāti Whātua rightfully hope and expect to play in the future of Tamaki Makaurau/Auckland.

The Law School Student Support Fund

At the Law School Leavers' Dinner at the end of 2005, Dean Paul Rishworth asked graduating students to consider making a financial gift to the Faculty of Law. He proposed a contribution of \$20 per Law School leaver. The gift would be used to help fund current students representing the Law School at national and international lawyering skills competitions. That effort has now been formally established as "The Law School Student Support Fund 2006".

When Aditya Basrur and Paul Paterson were students, the Law School financially supported them to compete in lawyering skills competitions in New Zealand and overseas. Those experiences made them enthusiastic about Paul Rishworth's idea and they have been the organising force behind the fund, assisted by Scott Optican.

The Law School's successful participation in competitions involving client interviewing, witness examination, negotiation and mooting benefits all Law alumni. In addition to its world-class teaching and research faculty - and the accomplishments of its graduates - taking part in international competitions grows the reputation of the Law School both in New Zealand and on the world stage.

In its inaugural year, the fund has raised close to \$1,000. The goal is to build upon this effort in future years so that each year's graduating class can leave a sum for the next year's class. Those who wish to contribute to this initiative should contact Aditya Basrur (aditya.basrur@gmail.com) or Paul Paterson (paul.paterson@gmail.com).

Jane Kelsey in Senegal, INCD conference



In November last year Professor Jane Kelsey participated in a conference on Cultural Diversity, Social Cohesion and Sustainable Development in Senegal, West Africa. The conference was organized by the International Network for Cultural Diversity (INCD). Jane is an elected member of the INCD's Steering Committee and acts as their adviser on the interface between international trade agreements and cultural policy.

This was the first conference of the INCD since the agreement on a new UNESCO Convention on cultural diversity in August 2005. The INCD was a major initiator of that Convention, alongside the network of culture ministers known as the International Network on Cultural Policy (INCP). This initiative arose from concerns that international trade and investment agreements in the World Trade Organisation (WTO) and at regional and bilateral levels are limiting the options for governments to pursue cultural policies of their choice, and extending the dominance of the major US-based entertainment companies.

The conference had two themes: the contribution that culture

can make to addressing poverty and the opportunities and limitations of the Convention, especially for Africa. Jane's formal contribution was a paper on "Why Cultural Activists Need to Understand Trade Agreements". This explored the threat to cultural diversity from current proposals in the General Agreement on Trade in Services (GATS), which form part of the Doha round of WTO negotiations. She focused in particular on the European Union's lead role in advocating the UNESCO Convention and the potentially contradictory impacts of its proposals for quantitative targets and plurilateral negotiations in the GATS negotiations and its negotiations on services and investment with the Africa, Caribbean and Pacific countries pursuant to the Cotonou Agreement 2000. These concerns were highlighted in the Declaration that resulted from the Conference.

Jane's paper was presented to the Ministers of Culture, meeting as the INCP, when representatives of the INCD met with them at the conclusion of the conference. She also had the opportunity to raise the issues directly with the Ministers of Culture from Cuba and Brazil at a celebratory evening of bad wine and superb Senegalese music (see photo).

Student Successes in Skills Based Competitions



Once again Auckland law students have represented superbly the Faculty of Law in various national and international skills based competitions.

ALSA Mooting Championship

The University of Auckland won the Australian Law Students' Association Mooting Championship held in Melbourne, Australia in July 2006. The team of final year law students, James Townshend, Charlotte Saunders and Jonathan Orpin, won the prestigious competition which brings together students from over thirty law schools across Australia and New Zealand. The win marks the second time Auckland has won the competition in the last three years.

NZ Law Students Association Conference 2005

In the NZ Law Students Association conference every Auckland team (in the disciplines of mooting, witness examination, client interviewing and negotiation) progressed to the final rounds undefeated; a total of 13 out of 13 competition round wins! In the finals the Client Interviewing Team, Jonathan Orpin and Charlotte Saunders, took out the New Zealand title and then went on to compete in and win the world championships in April this year (see next item). Paul Paterson also won the witness examination competition. Special thanks to Scott Optican, Anna Quinn, Aaron Lloyd, Ted Thomas and Simon Mount.

Louis M Brown International Client Counselling Competition

The University of Auckland team, Charlotte Saunders and Jonathan Orpin, won the Louis M Brown International Client Counselling Competition held in Cardiff, Wales in April 2006. They were competing against teams from 18 different countries. This is the second time Auckland has won the competition, and the fourth time a New Zealand team has done so. The team received sponsorship from Russell McVeagh and the New Zealand Law Foundation, and is particularly thankful to Russell McVeagh employment partner, Malcolm Crotty, for his coaching and support.

6th Annual McGill Management International Case Competition

Part IV law students Rachael Germann, Tessa Gould and Mark Russell joined with another University of Auckland student and Peter Smith, Deputy Director of the MBA programme at the Business School, to take second prize at the 6th annual McGill Management International Case Competition (North America's leading case competition) in Montreal, Canada this year.

Manfred Lachs Space Mooting Competition

James Townshend and Jonathan Orpin won the regional round of the Manfred Lachs Space Mooting competition in Sydney in April 2006. Forty universities from Australia, China, India, Indonesia, Japan, Singapore and Thailand competed in this year's competition. In recognition of their victory the team received the Alexis Goh Memorial Trophy and James Townshend was named Best Oralist in the Final. The team went on to compete in the world final in Spain and won the competition (Jonathan and James are

pictured posing with the three judges of the International Court of Justice who judged the final). The win continued Auckland's successful run in the Lachs moot. In 2003, Auckland University law students Isaac Hikaka (now with Lee Salmon Long) and Jesse Wilson (now with Bell Gully) won the World Finals of the Manfred Lachs Space Law Mooting Competition in Bremen, Germany. In 2005, Aditya Basrur and Sally Morris reached the semi-final of the Asia Pacific regional round. Hikaka coached this year's team with assistance from Wilson, adjunct lecturer Simon Mount (Meredith Connell) and Scott Optican.

The American Bar Association (ABA) National Criminal Justice Trial Advocacy Competition

This year Paul Paterson and Peter Williams participated in the American Bar Association (ABA) National Criminal Justice Trial Advocacy Competition, held at the John Marshall Law School in Chicago, Illinois. It features top law students from the United States and a single international team which is invited to compete in each year. Like every other international team before them, the pair did not proceed to the final round. However, they were praised for their advocacy skills by the American organisers and judges of the competition and received "Outstanding Participant" awards. The team thanks Meredith Connell of Auckland who were their primary sponsors and the University of Auckland Law School.

National Universities Prepared Debating Championship Competition

A team of two Auckland Law Students, Jonathan Orpin and Paul Paterson (along with Engineering student Jordan Ward), won all of their five preliminary round debates before winning the National Universities Prepared Debating Championship Competition in Dunedin in 2005. Jonathan Orpin was named as best speaker of the tournament, and selected as a member of the New Zealand Universities Debating Team. The team thanks Jesse Wilson and Scott Optican.

The Launch of the Rt Hon EW (Ted) Thomas's Prizewinning Book

The Law School celebrated the launch of Ted Thomas's book, *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles* (Cambridge University Press: 2005), on 27 October 2005. Ted's book was launched by Dr Gordon Cruden, a former member of the Hong Kong judiciary and President of the Lands Tribunal of Hong Kong for 15 years. Over 140 guests attended the occasion. The book was separately launched in London as well.

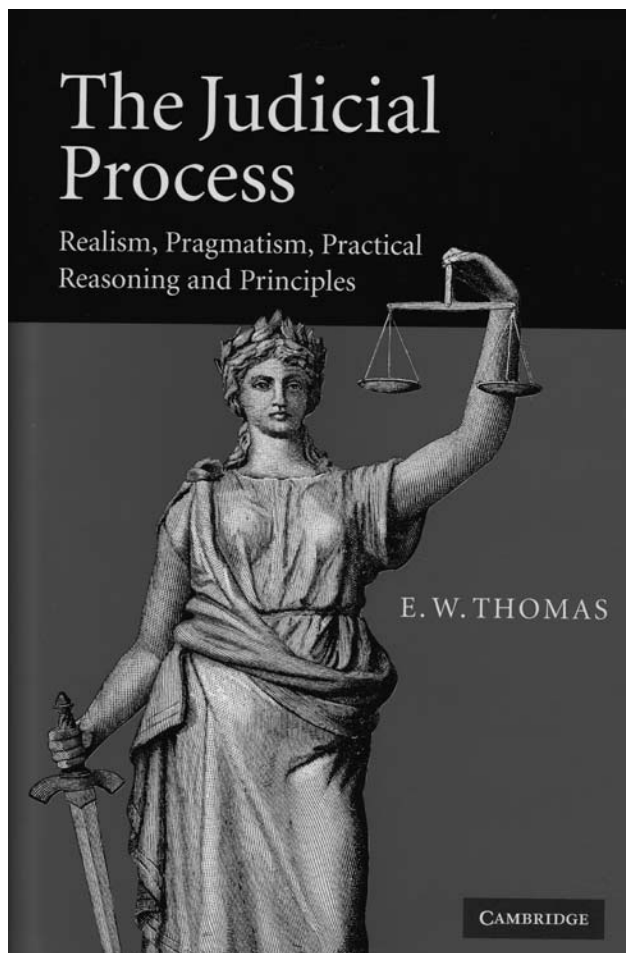
The Judicial Process articulates in very clear terms its author's conception of the modern judicial role. As a former senior judge himself, Ted is highly critical of contemporary judicial reasoning that continues to exhibit unthinking obedience toward positivism and "rules" (at the expense, in particular, of underlying principle). Such formalistic thinking, the book argues, continues to wield a "perverse influence" over the common law method. The author's principal aim in *The Judicial Process*, therefore, is to dismantle outmoded theories of the judicial process, with a view to bridging the gap between legal theory and judicial practice. The work propounds a coherent and comprehensive judicial methodology for modern times founded on the truism that the law exists, first and foremost, to serve society. The resulting methodology described in the book is one that is both "realistic and pragmatic", and responsive to the twin criteria of justice and modernity. The revised conception of practical reasoning that Ted ultimately embraces is one that includes a vital role for legal principles.

Professor Andrew Halpin, Professor of Legal Theory at Southampton University, has described the book as "clearly written, informative, intelligent and stimulating, and a welcome addition to works in the tradition of Cardozo". Geoff Lindsay SC, in the *Australian Bar Review*, has hailed the work as "a robust study in jurisprudence by a profoundly thoughtful lawyer of broad practical experience, deep learning and a firmly held predisposition against what he perceives to be legal formalism". Mr Lindsay deems it to be "a book full of genuine insight ... intended to be provocative".

Ted has been a Distinguished Visiting Fellow in the Law School since August 2004, as well as continuing to function as an Acting Judge of the Supreme Court of New Zealand.

Following his retirement from the Court of Appeal in 2001, Ted spent the best part of the following year as a Visiting Fellow at the Research School of Social Science, Canberra, researching and writing *The Judicial Process*. In recognition of its quality and the author's achievement, the Legal Research Foundation awarded the work the JF Northey Prize for the best book published by a New Zealand-based author in 2005.

Rick Bigwood



Legal Research Foundation Prizes

The Rt Hon E W (Ted) Thomas, Distinguished Visiting Fellow at the Law School, was awarded the J F Northey Prize for Best Published Book in 2005 by the Legal Research Foundation in respect of the book: *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles*, Cambridge University Press (see above)

Associate Professor Paul Myburgh was awarded the Sir Ian Barker Prize for Best Published Legal Article or Essay in 2005 by the Legal Research Foundation for his essay entitled "Arresting the Right Ship: Procedural Theory, the In Personam Link and Conflict of Laws", published in Davies, M., (ed), *Jurisdiction and Forum Selection in International Maritime Law*. The essay was originally presented at a festschrift colloquium held at the prestigious Center for Maritime Law at Tulane University in 2004 to honour Professor Robert Force.

This colloquium was by invitation only, and was limited to ten leading international maritime legal experts. Paul's essay explores one of the most important challenges facing international maritime law: the theoretical basis and justification for the exercise of domestic admiralty jurisdiction over foreign vessels. It analyses judicial approaches to this issue on both sides of the Atlantic Ocean, and proffers an appropriate procedural and conflict of laws approach which should ensure that foreign vessels are only arrested in admiralty where there is a legitimate basis for the assertion of the court's jurisdiction to enforce a maritime claim.

Paul Paterson, one of our LLB(Hons) students, received a special commendation in the unpublished student paper category.

His Excellency the Hon. Anand Satyanand, the Governor-General

August 23rd 2006 was a red-letter day for the Auckland Law Faculty. Judge Anand Satyanand was inaugurated as Governor-General. His Excellency and his gracious wife Susan are known to many readers of this Journal, as is the story of “Satch’s” distinguished progress through our private and public law sectors of governance. His and Susan’s hospitality is well known too; their doors in Auckland and Wellington have always been open. Running through the three generations of the Satyanands’ family life in New Zealand are the threads of high achievement and notable service to the community.

In such a saga, a central figure almost always, on turning into his seventh decade, slides quietly from a career into retirement, a bit of gardening, occasional speechifying and hazy oblivion. Not this man. Not this partnership. Anand and Susan are now prominent on the national stage and will stay as such. Their lives have already changed.

Some things won’t. They have an intense unfeigned interest in everyone they meet. That certainly will not alter, but it will prove physically and psychologically challenging. When the present writer was asked early this year what single quality stood out in Anand Satyanand, his response was, “the most congenial person I have ever encountered”. Had a plural answer been invited I would have added an intense attention to detail (though without loss of woods for the trees), a willingness to go the extra ten or twelve thousand miles, a shrewd intelligence, and excellent communication skills. Add to that compote a droll humour: (looking back forty years, one can see how a future Prime Minister, Lange, and a future Governor-General chugged along happily together at the Westfield Meatworks).

New Zealand has been greatly favoured with its modern Governors General. The last seven, or eight, including Lord Porritt, have been native New Zealanders and one, Archbishop Reeves, *tangata whenua*. All have

been prepared to talk to us at the Law School, five have been lawyers, and two of them are Auckland graduates. One, Sir David Beattie, was Governor-General at the time when Auckland Law School alumni attained the offices of Chief Justice, President of the Court of Appeal, Prime Minister, Leader of H.M. Opposition and (in Margaret Wilson) President of the ruling Labour Party. The long-serving Dean of Law, Jack Northey, did not live quite long enough to savour that “flush hand”, but with us today, he would take especial delight in Anand Satyanand’s recent appointment.

Jack had an abiding interest in the S.W. Pacific and a special one in Fiji. Anand is of Fijian Indian heritage. His mother, Tara, is still with us. Father, the late Dr. Satyanand, was a legendary figure in Auckland general medical practice. (He put a future Catholic Archbishop at the back of a queue in his surgery one evening so he could take reflective guidance from him in his conversion to the faith). His son entered the Law School in the mid ‘60s. I would describe Satch as a very lively, very able and tidy-minded student. He was also the hub of student social life and became President of the Law Students’ Society. To balance the robust entertainment side of things Satch generated interest (to my horror) in introducing student evaluation of lecturers’ classroom skills. This was an idea well before its time: Dean Northey insisted on vetting results before publication. Satch joined the Crown Solicitor and proved to be a vigorous and fair prosecutor. He was an officer of the court in the truest sense. Then he worked with Shieff, Angland where that legal thinker, advocate and parliamentarian of finesse, Martyn Finlay, was a partner. Satch soon joined him in the partnership, later accepting appointment to the District Court bench.

Before his elevation I had the honour of serving with him on the Criminal Law Reform Committee. Until his arrival we would concentrate on a particular subject, shake it to death, then think up another one. The newest

member, he swiftly had us divided into three groups each with a special subject-responsibility. Three subjects of reform were coterminously considered and serially reported on. That influence was exerted in the most cheerful and effortless fashion. It would take several pages to list his similar impact on dozens of other significant committees around New Zealand.

In 1995 he came to roost in both Wellington and Auckland as Ombudsman. By nature, nurture and that mysterious thing, “calling”, he was perfectly suited. Vigilant, never officious, ever cordial (whatever he actually thought of those whom he inquired into), he set a distinctive fashion in Ombudsmanship. And he has travelled widely, sharing his experiences and insights of that office with any number of nations and nationalities.

Anand Satyanand is a natural, unselfconscious ambassador. As Dame Silvia Cartwright has so ably demonstrated, there can be a much more proactive role, internationally, for the Governor Generalship. Expect to see that office “bridge-heading” New Zealand’s diplomatic and trade forays into numerous countries. If indeed we are embarked upon that more robust and rounded function, then Dame Silvia and the Hon Anand Satyanand will prove to have been its early engineers.

I have mentioned the word “congenial”. No one I know is consistently more so than Satch. And, with it, he is wise and unstuffy. In footballing terms he is as much at home with League (of which he was a former Administrator) as with Union.

The Auckland Law School means a lot to him. It played a part in making him. When His Excellency the Honourable Anand Satyanand appears at our open door we can take as much delight in the event as he unquestionably will.

B J Brown

Scott Optican Lectures on New Zealand Bill of Rights Law in Turkey and Kansas



Scott Optican speaking to members of the Istanbul Bar Association.

In December 2005, Scott Optican completed a 10-day teaching visit to the Bahcesehir University Law School, Istanbul, Turkey. Scott was invited to give translated lectures on criminal procedure, police powers, and Bill of Rights law in New Zealand, Canada and the United States. The trip was sponsored by Professor Feridun Yenisey, a leading criminal law academic in Turkey and the Director of the Institute for Global Understanding of Law (IGUL) at Bahcesehir University.

Participating in an IGUL-sponsored seminar on Turkey's new criminal procedure code, Scott's speaking schedule included a week's worth of lectures to members of the Istanbul Bar Association. He also travelled to the Turkish city of Bursa, where he spoke at a weekend conference on Turkish criminal

procedure organised by the Bursa Bar Association. Other events included a talk to Bahcesehir University law students on legal responses to terrorism in the United States, and meetings with various Turkish law professors, judges and Bahcesehir University administrators. Scott's lectures in Turkey were translated and published in short books by the Bahcesehir University Law School/ IGUL Press.

Following his visit to Turkey, Scott taught an intensive short course in comparative criminal procedure at the University of Kansas School of Law in the United States (February 2006). He has also been invited to teach his intensive comparative criminal procedure course in April 2007 as a visitor with the Global Law Program at the University of Haifa in Israel.

Auckland University Law Review

2006 has seen another important development in the life of the *Auckland University Law Review*. In addition to publishing a selection of the best research produced by students of the Faculty, the *Review* has established an advisory board constituted of former editors and contributors. Bringing us into line with the foremost student-run American law reviews, the function of the Board is to ensure continuity and to provide us with a pool of informal advisors who are expert in their fields. The composition of the Auckland University Alumni Advisory Board is: Rt Hon Dame Sian Elias, Chief Justice; Rt Hon Justice Blanchard, Judge of the Supreme Court; Hon Justice Anderson, Judge of the Supreme Court; Hon Justice Chambers, Judge of the Court of Appeal; Hon Justice Hammond, Judge of the Court of Appeal; Hon Justice Priestley, Judge of the High Court; Hon Justice Winkelmann, Judge of the High Court; Alan Galbraith QC, Barrister; Debora Clapshaw, Barrister; Mark Gavin, Partner, Russell McVeagh; Roger Partridge, Partner, Bell Gully; Adam Ross, Partner, Chapman Tripp; Jonathan Stone, Partner, Skadden Apps, Hong Kong; Campbell Walker, Partner, Gilbert Walker; Amokura Kawharu, lecturer, University of Auckland; Dr

Michael Littlewood, senior lecturer, University of Auckland; Professor Paul Rishworth, Dean of Law, University of Auckland; Professor Andrew Simester, University of Nottingham; Professor Mike Taggart, University of Auckland; Aditya Basrur, 2005 Editor-in-Chief. We extend our thanks to the Board members for their continuing involvement with the *Review* and the Faculty.

It has now been 39 years since the first edition of the *Review* was published in May 1967. With our 40th anniversary celebrations in sight, and in the interests of further extending our contact with former writers and editors, we actively encourage those with a past connection with the *Review* to contact the current editors at aulr@auckland.ac.nz.

For those wishing to subscribe, the *Review* is available on direct subscription in New Zealand for \$40.00 per annum (including GST and postage) by writing to: Auckland University Law Review; Faculty of Law, University of Auckland, Private Bag 92019, Auckland.

Soil Conservation and Sustainable Energy in Iceland, Northern Germany and Denmark

In September 2005 I had a rare opportunity to travel to Iceland and Northern Europe to undertake research in, and to participate in a number of events concerning soil conservation and sustainable energy development. The main impetus for the trip was an invitation to deliver a paper on New Zealand legal and policy approaches to soil conservation at an international workshop on "Strategies, Science and Law for the Conservation of the World Soil Resources". The workshop was held in a small town called Selfoss, which is in an area that has been clawed back from chronic desertification over the last 50 or so years by the patient efforts of the Soil Conservation Service of Iceland. This body is charged with the difficult task of restoring the effects of historical overgrazing, adverse climatic events and volcanic eruptions. Sveinn Runolfsson, the current Director of the Soil Conservation Service at Gunnarsholt, is an ardent advocate of soil conservation using native species such as birch, willow and other shrubs, and is the third generation of his family to work in this role.

A related event at the workshop was the drafting of a Protocol for the Conservation and Sustainable Use of Soil. This arose partly from the activities of members of the IUCN Commission on Environmental Law - Specialist Group on Sustainable Use of Soils and Desertification who were in attendance. Significant progress was made on refining the Draft protocol and the Specialist Group is now working towards having the instrument adopted as a Protocol to the UN Convention on Biological Diversity or the UN Convention to Combat Desertification.

Following the Workshop, and with a few days in hand, I completed a circumnavigation (by car) of the island over five days. The visual spectacle of massive glaciers and numerous snow covered volcanoes in the North and centre of the island is impressive, although virtually all of the terrain is affected by volcanic and thermal activity. Iceland, a country of only around 300,000 people, (and some 85,000 Icelandic ponies), is 99.5% self-sufficient in thermal and hydro-electric power generation. Driven by a strong commitment to sustainable energy development, the Government has recently introduced policies progressing the development of a "hydrogen society". Utilising the immense potential of the country's renewable energy resources, the plan is to produce hydrogen for use in

cars, trucks and marine propulsion, not only for use in Iceland, but also for export to Europe and globally. Supporters of the plan talk of Iceland becoming the "Middle East of the world" in terms of hydrogen cell supply. There is, however, a small but growing environmental movement that is questioning the physical impacts of large scale hydro and geothermal energy developments. Given the fragility of the sub-arctic environment the advantages of such further energy development in a global context will need to be weighed carefully against the impact on the local flora and fauna.

Following the Iceland workshop I remained in Europe for a further month studying wind energy and alternative energy projects in Northern Germany and Denmark. While in Germany I met with Dr. Jan Reshöft and Michael Stump. Jan is a past visitor to Auckland Law School and now works as a lawyer specialising in sustainable energy projects in Germany. Michael Stump was one of our top LLM students at Auckland in 2003 and joined Jan and I for our tour of the energy developments. One of Jan's clients is Enercon, the largest manufacturer of wind turbines in Germany. I was fortunate to have a guided tour round their factory in Aurich, and to visit the largest wind turbine currently operating (4.5-6.5 MW) at Emden on the Northern coast. This turbine is singularly impressive standing almost as high (from ground level to blade tip) as the Sky Tower in Auckland City. Travelling on to Denmark I visited the offshore wind farm development at Nysted. Situated around 10-12 km off the south coast of Gedser in the Baltic Sea, the wind farm comprises 72 2.2MW turbines in 8 rows of 9 turbines, and is said to generate sufficient electricity to supply 110,000 homes. This visit raised in my mind the possibilities of similar offshore developments in New Zealand.

In Denmark I visited another previous Auckland Law School visitor - Helle Anker, and her family. Helle, who spent a very productive sabbatical at Auckland in 2001/2002, is now a Professor of Law at the Royal Veterinary and Agricultural University in Copenhagen. She is also, along with another of our ex-Master's students, Christina Voigt (now at Oslo University), a member of the Nordic Environmental Law Network.

David Grinlinton (Photo: David Grinlinton)



Professor Rick Bigwood Wins National Teaching Prize

In 2006 Professor Rick Bigwood received a prestigious National Tertiary Teaching Excellence Award. These awards are set up to encourage excellence in tertiary teaching and are competed for by all academics from all tertiary institutions and disciplines in the country. His win follows his earlier success as a recipient of a University of Auckland Teaching Excellence Award for sustained excellence in teaching. Rick has been lecturing primarily in contract law since he joined the University in 1995. In his nomination of Professor Bigwood for the University Award, recent graduate Eesvan Krishnan had this to say:

“In reflecting on the reasons why Professor Bigwood deserves this award, they seem to coalesce into one simple fact: he understands that success in teaching is measured only by success in learning. He promises his students that he will do everything that he can to help them succeed and he backs this up. He is always willing to go the extra mile if it helps learning. He has the rare talent of clear and methodical exposition. Somehow he manages to explain the kernel of an idea simply and



Photo: Scott Optican

beautifully, and then weave the layers of detail around it. Many a complicated idea has been illustrated superbly with a story about Russell the cat. As his students will remember, Russell was an unfortunate cat who always seemed to suffer life's tragedies, but for us the tragic was always made the comic, and our understanding of the law was the better for it.”

The seven surviving Deans of Law (aka ‘The Seven Samurai’ or, more accurately, ‘The Magnificent Seven’), who gathered on 26 October 2005 to attend the Inaugural Lecture of Mike Taggart as Alexander Turner Professor of Law. From left: Brian Coote(1983-1987), Mike Taggart (1992-1995), Paul Rishworth(2005-), Jock Brookfield(1987-1990), Julie Maxton(2000-2005), Grant Hammond(1990-1992), Bruce Harris(1995-2000). Photo: Scott Optican



Au Revoir to Janet McLean



With a name like “Janet McLean”, we should have realised that it was inevitable that one day “our Janet” would leave us for Scotland. And so it was that in July 2006 Associate Professor Janet McLean left the Faculty with husband Tim to take up an appointment as Professor of Law and Governance at the Law Faculty of Dundee University, where there are already so many Janet McLeans that her email is of necessity “J.M.Z.McLean” to distinguish her from the rest. But, as Dundee University will have already been lucky enough to discover, Janet is quite unique - quite unlike “all the rest”!

Janet joined the Faculty in 1991. Here she stayed for the next fifteen odd years, except for a brief stint in 1997/8 to take up a position as Director of the New Zealand Institute for Public Law at Victoria University of Wellington, from which in 1999 we were fortunately able to lure her back.

Janet taught and researched mainly in Public and Administrative Law. She was tremendously popular with students, with an approach marked by sophisticated understanding, a gentle sense of humour, and repeated use of a

cricket metaphor. She managed to make 8 am lectures in Public Law in the dead of winter both illuminating and fun. As a student in her last Public Law class here observed, “you make Public Law better than it actually is!” She was always much sought after for research supervisions and pastoral support. And who can forget her appearance as a “construction worker”, complete with fake tattoo and hard hat in the 1992 Law Revue?

Her scholarly ability is renowned. She developed quickly into a scholar of international standing, and has produced a prodigious body of outstanding work. Her current work is examining the modern concept and theoretical underpinnings of the legal personality of the State, considering such matters as: whether the State differs from private aggregations of power, such as corporations; whether “private” institutions should be treated as public for certain purposes; and how the law should conceive of international entities that “transcend”, or are the product of, the State. The answers to these questions are critical in today's world in view of the ever-increasing range of mixed public and private law functions in modern

constitutional democracies such as New Zealand, and the challenges posed to the nation state by globalization. She edited and contributed to a significant collection of essays, *Property and the Constitution* (Hart Publishing 1999), edited the *New Zealand Law Review* for a period, and remains the book editor for the *Public Law Review*. In 2003 she was awarded the prestigious George P Smith Distinguished Professorship of Law at the University of Indiana, where she delivered a stimulating lecture series. Close friend and fellow academic public lawyer Professor Mike Taggart, describes her scholarship as “highly regarded internationally,” noting that “regrettably it is simply impossible to replace such home-grown talent even by advertising internationally at chair level.”

In addition to her academic prowess, Janet has extensive experience in government and public policy. She was an author of the law reform report, *Ministerial Re-Evaluation of Human Rights Protection* (2000), which led in 2001 to extensive amendment to the Human Rights Act. She served on a number of governmental committees, including the Legislation Advisory Committee.

But it is as a colleague and friend that she is most loved and her day-to-day presence in the Faculty is sorely missed. As Dean Paul Rishworth says: “Janet's personality is characterised by a warmth and generosity that made her the glue that held the Faculty together.” She took seriously the role of mentor and support to many new members of the Faculty. Her unerring ability to mess up a joke at morning tea never disappointed.

We wish her well in her endeavours in Scotland, where she and Tim are recently installed in a gracious Edwardian “semi-detached” overlooking the River Tay at “Wormit-on-Tay” (I kid you not!) - equidistant from Dundee and St Andrews where Tim is Professor of Moral Philosophy. We hope and trust that our own Scottish professor will be a frequent and welcome visitor to the Faculty.

Jo Manning

Law in the Muslim World: Thoughts from a US Critical Race Feminist

The Faculty was visited in 2006 by Professor Adrien Wing, a leading American critical race feminist from the University of Iowa. Professor Wing was in New Zealand as a guest of the New Zealand Law Commission and stopped in Auckland on her way down to Wellington to deliver two guest lectures: one to the Faculty of Law's Women and the Law course, followed by a public lecture. She was accompanied by her partner James and her youngest son (who attended both of her lectures and asked her some extremely difficult questions from the audience).

Professor Wing has authored over 70 publications, as well as being the editor of *Critical Race Feminism: A Reader* (New York University Press, 2nd edn, 2003) and *Global Critical Race Feminism: An International Reader* (New York University Press, 2000). Her work traverses a wide range of concerns, such as constitutionalism in Namibia, South Africa and Palestine; critical race feminism; US Gangs; legal

decision-making in the Palestinian intifada; rape in Bosnia; and women's rights in Palestine, South Africa and Black America. Professor Wing has been a consultant to the United Nations, for several years served as a constitutional advisor to the African National Congress, and organized an election-observer delegation to South Africa. She also has served as an advisor to the Palestinian Legislative Council relative to Palestine's future constitutional options and as an advisor to the Eritrean Ministry of Justice on human rights treaties. Most recently she advised the Rwandan Constitutional Commission on a post-genocide constitution.

In her public lecture Professor Wing briefly talked about the contributions made by critical race feminism towards legal theory, before elaborating on her own concept of multiplicative identity. This is the idea that people's identities are multifaceted - they are not just comprised of race and gender. Furthermore, at any point in time some

of these identities might subject a person to privileging, whilst others might simultaneously subject them to disadvantage. She went on to illustrate her point by talking about the complex fashion in which many aspects and levels of identity operate and co-operate in respect of the conflict in the Middle East. For example, the struggle in Palestine is to have a national identity, whereas in Lebanon a person's national identity, at the time that Professor Wing was speaking, constituted them as a target for bombing whether or not they were politically affiliated with the particular terrorist group that was being targeted by Israel. Wing was a generous, personal and charismatic speaker who demonstrated a detailed current knowledge of the Middle East. At the end of her talk she was thanked by some of the women in the audience, who originated from the Middle East, for speaking of them as human beings, instead of as stereotypes and statistics.

Julia Tolmie



Law School Joins The Global Classroom: Comparative Indigenous Peoples and the Law

In an exciting new development, senior lecturer Nin Tomas and lecturer Khylee Quince co-taught 'Comparative Indigenous Peoples and the Law' this year with academics from Australia, Canada, and the United States in a "global classroom." Direct communication between teachers and students from around the world was achieved using videoconferencing, on-line visual link up, chatrooms and email.

The course deals with issues of importance to indigenous peoples and the legal mechanisms by which their relationships to the state and other members of the societies within which they live are developing. The New Zealand component of the course explores the conceptual base that

underpins Maori society as a distinct group in New Zealand, how that conceptual base is reflected in New Zealand lawmaking, and traces the development of modern hapu and iwi governance, educational, economic and legal structures at a national and international level.

The technology used to deliver this course means that students enrolled in the course are able to access a pool of top quality, "in situ" expertise from around the world without having to leave their own countries. Whilst in the global classroom, students are exposed to diverse views and a range of approaches from the various lecturers, as well as being able to compare the responses to similar problems taking place within a range of

jurisdictions. And they are able to share knowledge and debate ideas with other students from different jurisdictions. The course is a fantastic opportunity for those students whose careers will mean that they must function as global citizens. Finally, the course also offers an opportunity for the Faculty to showcase one of its great strengths - our indigenous scholars - to the rest of the world.

Student feedback from the course has been extremely positive and next year it will be offered for the first time to Auckland post-graduate students (see below).

Julia Tolmie

The Postgraduate Programme

The Postgraduate programme has gone through another change of guard with the arrival of Megan Henley at the beginning of the year as Postgraduate Manager. She works with Michael Littlewood, who continues in the role of Postgraduate Director.

Programme growth

The programme is becoming increasingly popular among law graduates from around the country and overseas. Approximately 40% of the programme is currently made up of international students, providing a great environment for the sharing of ideas and the experiences of different jurisdictions. It is also not unusual to see a mix of recent graduates, seasoned professionals, barristers and judges in the classes. This depth and diversity of experience, as well as the mix of international and local teachers, enriches the programme as a whole and infuses it with the intellectual vitality that is a central ingredient of postgraduate study.

New Link to European Law Postgraduates

Since finishing her LLM at Auckland and going on to commence her PhD at Cambridge University, former Postgraduate Manager, Kerry Tetzlaff, has been aiding the development of the programme's international profile in a newly created role as Postgraduate Manager Europe. Over the past year Kerry has been attending LLM fairs throughout Germany, including fairs in Frankfurt, Trier, Munich, Berlin, Muenster and Hamburg, as well as in Vienna, Austria. She is frequently swamped at these events by students interested in studying law at Auckland. Where possible recent alumni from the Postgraduate Programme join her, such as Nico Just.

Kerry has also met up with many of our LLM Alumni over the last year: Virginia Strelen is working for Freshfields in Cologne, Harry Strelen is working for a Luxembourg bank,

Marc Oehler is working as a commercial and property lawyer in Munich, Gerald Schaefer is working as a teaching assistant for the University of Dundee in Scotland, Anja Gerdung is completing her PhD in Berlin, Siggie Buschbacher is a district prosecutor in Berlin, Sascha Grimm has been working for Linklaters in Frankfurt, while Soeren Havenith is completing his German legal studies in Bonn.

Student Testimonial

This year as part of my postgraduate study I enrolled in the intensive course Commercial Law and Foreign Investment in China. Not really knowing anything about China let alone the legal system of China I considered this a step into the unknown. I was pleasantly surprised by the huge depth of knowledge and passion for her subject as well as the excellent teaching skills of Professor Lusina Ho of the University of Hong Kong. The course traversed a lot of ground as we grappled with the vast historical development of the Chinese legal system and were rapidly brought up to speed with commercial and property law in China as it is today. We then looked in detail at several recent developments in specific areas of the law, such as the development of the concept of "Private Property" in China and the effect of China's entrance into the WTO on the development of the law of contract. It was a fascinating course and thoroughly recommended to those wishing to understand more about the Chinese legal system and in particular about the recent rapid developments in commercial law in one of the world's largest nations.

Georgina Packer (BSc, LLB(Hons), LLM)

Doctoral Research

2006 has been a strong year for our doctoral programme. At the autumn graduation we had two Law PhD students

graduating; senior lecturer Nin Tomas (see page 2) and John Bunbury (*A History of the Action of Deceit on the Case and Related Developments in Contract Law*). The Law School also welcomes a new PhD student to the programme this year, Jason Karl. Jason's topic is *Financial System Regulation in New Zealand: A Critical Evaluation of Regulatory Responses - 1994 -2007*.

New Zealand Postgraduate eJournal

The New Zealand Postgraduate Law eJournal has just released its fourth issue since its inception in 2005. The journal's primary mission is to publish the best work produced at masters and doctorate level by law students throughout the country. It is also open to submissions from any discipline at the postgraduate level on the subject of the law.

Articles in the new edition include: Kerry Tetzlaff, "Humanitarian Intervention Post-Kosovo" and Rak-Hyun Kim, "Principles of Sustainable Development in Korean Environmental Law".

To see the journal, visit:
<http://www.nzpostgraduatelawejournal.auckland.ac.nz/Home.htm>

Postgraduate Programme for 2007

The postgraduate prospectus is undergoing a make-over this year with the new style postgraduate flyer that will be winging its way to law firms and alumni across the country in the next couple of months. We plan to provide more comprehensive information about the courses and application process on our Law School website (www.law.auckland.ac.nz). Always wary of the time constraints on our students, the postgraduate team is expanding to help deal with all questions about courses and to make enrolment a more streamlined process.

Intensive courses

Some of the intensive courses for this year follow slightly different structures to the past, and there may be some changes prior to the commencement of the 2007 programme, so we strongly advise those interested in these classes to consult the website about dates of

courses and assessments for more information when it becomes available. In 2007 we will be offering the following intensives:

Comparative Indigenous Peoples and the Law: weekly sessions from 1 Feb-21 March

Senior lecturer Nin Tomas, University of Auckland (and lecturers from Australia, Canada, the United States via video-conference link (see page 27).

Comparative Disability Law: 1-13 March

Professor Michael Stein, William and Mary School of Law and Harvard Law School.

Water Law: 14-20 March

Professor Sandra Zellmer, University of Nebraska College of Law.

Commercial Equity: 21-27 March

Richard Nolan, University of Cambridge.

Law of Agency: 28 March-3 April

Professor Francis Reynolds, University of Oxford and Professor Peter Watts.

International Tax Law: 8-11 August

Professor Reuven Avi-Yonah, University of Michigan.

Secured Transactions: 9-15 May and 18-24 July

Professor Rod Wood, University of Alberta, and Associate Professor Mike Gedye, Department of Commercial Law, University of Auckland.

International Environmental Law: 4-13 April

Jutta Brunnee, University of Toronto.

Administrative Law: 5-11 September, Wellington

Professor David Mullans, Queen's University, and Professor Mike Taggart.

International Arbitration: 15-21 August

David Williams QC and Professor William Park, Boston University.

Australian Tax Law: 28 Feb-6 March

Associate Professor Lee Burns, University of Sydney.

Utilities Regulation: 26 Sept-2 Oct
Dr George Barker, Australian National University.

Full Semester Courses

These are all taught by academics at the University of Auckland. When planning these courses we try to make them as accessible as possible to our students who are working full time.

Copyright Law: Semester one

Professor Ian Eagles and Associate Professor Louise Longdin.

Law of Insurance: Semester one

Chris Nicholl.

Franchising Law: Semester one

Gehan Gunasekara.

Criminal Defences: Semester one

Professor Warren Brookbanks and Kris Gledhill.

Resource Management Law: Semester one

Associate Professor Ken Palmer.

International Sales and Finance: Semester two

Associate Professor Paul Myburgh and Chris Hare.

Public International Law: Semester two

Dr Caroline Foster.

Trans-jurisdictional Issues in Competition Law and Policy: Semester two

Professor Ian Eagles, Associate Professor Louise Longdin and Dr Chris Noonan.

The Regulation of International Trade: Semester two

Dr Chris Noonan.

Natural Resources: Semester two

Associate Professor David Grinlinton.

International Criminal Law: Semester two

Kevin Heller.

Children and Families Across

Frontiers: Semester two

Dr Elsabe Schoeman & Associate Professor Pauline Tapp.

Faculty of Law Publications and Conference Papers

Allan Beaver

- 'Gregg v Scott and Loss of a Chance'. *University of Queensland Law Journal*, 24, 201-212, 2005.
- With Rickett, C. 'Interpretive Legal Theory and the Academic Lawyer'. *Modern Law Review*, 68, 320-327, 2005.

Jeff Berryman

- With Kos, J.S., and Watts, P.G. *Contractual Remedies*. Wellington, New Zealand, New Zealand Law Society, 1-135, 2005.
- 'Round Table on Remedies'. *South Eastern Association of American Law Schools Annual Conference, South Carolina, 19 July 2005*.
- 'Collateral Benefits: Commentary on Justice Sanderson's Paper'. *Civil Law Seminar: New Horizons in Tort Law, National Judicial Institute, Toronto, May 11-13 2005*.
- 'Damages for Loss of Homemaking Capacity: Commentary on Justice Slatter's Paper'. *Civil Law Seminar: New Horizons in Tort Law, National Judicial Institute, Toronto, May 11-13 2005*.
- 'Ethnic Wars and Tort Law'. *Fourth Remedies Forum, Brandeis Law School, University of Kentucky, Kentucky, 10 November 2005*.
- 'Cross-border Enforcement of Mareva Injunctions in Canada'. *Advocates' Quarterly*, 30, 413-438, 2005.

Rick Bigwood

- 'Antipodean Reflections on the Canadian Unconscionability Doctrine'. *Canadian Bar Review*, 84, 171-216, 2005.
- 'Symposium Introduction: Confessions of a "Good Faith" Agnostic'. *New Zealand Business Law Quarterly*, 11, 371-377, 2005.
- 'When Exegesis Becomes Excess: The Newborn Problematics of Contractual Duress Law in New Zealand'. *Journal of Contract Law*, 21, 208-225, 2005.
- (ed.) *Public Interest Litigation: The New Zealand Experience in International Perspective*. Wellington, LexisNexis, xxvi + 272, 2006.
- 'Public Interest Litigation: Introduction and Overview'. In: Bigwood, R. (ed.) *Public Interest Litigation: The New Zealand Experience in International Perspective*, Wellington, LexisNexis, 1-12, 2006.
- 'The Full Truth About Half-Truths?' *New Zealand Law Journal*, 114-116, 2006.

Klaus Bosselmann

- 'Ecological Justice and Law'. In: Richardson, B., and Wood, S. (eds) *Environmental Law for Sustainability: A Critical Reader*. Oxford, Hart Publishing, 129-163, 2005.
- 'The Significance of the Earth Charter in International Law'. In: Blaze Corcoran, P. (ed.) *Toward a Sustainable World: The Earth Charter in Action*. The Hague, Kluwer International, 171-173, 2005.
- 'Three Steps Towards a Sustainable New Zealand'. In: Breuer, D., (ed.) *Visions of Leading Kiwis*, Auckland, ANEWZ Publishing, 1-4, 2005
- 'Institutions for Global Ecological Governance'. *Biological Integrity and Human Rights for Public Health: Hard and Soft Law Perspectives*, *Global Ecological Integrity Group*

Conference, Italy, 29 June-3 July 2005.

- 'Ecological Justice: What's the law got to do with it?' *7th Nordic Environmental Social Science Research Conference, Göteborg University, Sweden, 15-17 June 2005*.
- 'Poverty Alleviation and Environmental Sustainability Through Improved Regimes of Technology Transfer'. *Round Table Dialogue on Advancing Millennium Development Goals, United Nations Environment Programme, Kenya, 16-17 February 2005*.
- 'The Earth Charter's Importance for the Development of International Environmental Law'. *Earth Charter +5 Conference, Netherlands, 7- 9 November 2005*.
- 'The Promotion of Renewable Energy Sources through Compliance Mechanisms in International Environmental Agreements'. *6th Annual Conference on Environmental Taxation, University of Leuven, Belgium, 22-24 September 2005*.
- 'Planetary Ethics and Global Governance'. *Earth Charter + 5 Conference Background Reader, 1-20, 2005*.
- 'Achieving the Goal and Missing the Target: New Zealand's Implementation of the Kyoto Protocol'. *Macquarie Journal for International and Comparative Environmental Law*, 3, 1-18, 2005.
- 'Der völkerrechtliche Status der Erd-Charta'. *Erd-Charta-Themen*, 13, 2-6, 2005.

Warren Brookbanks

- With Bell, S.A. *Mental Health Law In New Zealand*, (2nd edn.) Wellington, Thomson/Brookers, 3-471, 2005.
- 'Mentally Impaired Offenders in New Zealand'. *High Court Update - Mental Health Issues*, Wellington, 7 November 2005.
- 'New Generation Hospital Orders in New Zealand -Whose Benefit?' *24th Annual Congress of the Australian and New Zealand Association of Psychiatry, Psychology and Law, Wellington, 3-6 November 2005*.
- 'Sexual Predators and Extended Supervision'. *Developments in Mental Health Law, Northumbria University, England, 14 October 2005*.
- 'Some Thoughts on Self-Control in Provocation'. *Staff Seminar, Faculty of Law, de Montfort University, Leicester, 12 October 2005*.
- 'Mental Health Act and Criminal Procedure Act: Who Has Right of Way?' *New Zealand Family Law Journal*, 3(5), 60-62, 2005.
- With MacKay, R.D. 'Protecting the Unfit to Plead: A Comparative Analysis of the Trial of the Facts'. *The Juridical Review*, 1(2), 173-195, 2005.
- 'Australian Criminal Laws - Critical Perspectives by Bernadette McSherry, and Bronwyn Naylor', *Law Talk*, 05(650), 18, 2005.

F.M. (Jock) Brookfield

- 'Popular Perceptions, Politician Lawyers and the Foreshore and Seabed Controversy'. *New Zealand Law Journal*, 315-318, 2005.
- 'The Sea Land Controversy and the Foreshore and Seabed Act'. *New Zealand Law Journal*, 362-364, 2005.
- *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*. (Updated edn.), Auckland, Auckland University Press, 11-265, 2006.

Neil Campbell

- 'Commentary on the Insurance Contracts Bill', *New Zealand Insurance Law Association Annual Conference, Wellington, October 2005*.
- 'Allocation Problems in D&O Policies: Vero v Baycorp'. *Insurance Law Journal*, 17, 85, 2006.
- 'Comment on *Public Trust v Toussaint*'. *Butterworths Conveyancing Bulletin*, 11, 110-111, 2005.
- 'Civil Claims Against Corporate Agents'. *Butterworths Conveyancing Bulletin*, 12, 1-3, 2006.
- 'Comment on *Landco Albany Ltd v Fu Hao Construction Ltd*'. *Butterworths Conveyancing Bulletin*, 12, 16-17, 2006.
- 'Defective Amalgamations'. *Company and Securities Law Bulletin*, 53-54, 2005.
- '*Revisiting Trevor Ivory v Anderson*'. *Company and Securities Law Bulletin*, 33-34, 2006.
- 'Enforceability of "no caveat" clauses'. *Australian Law Journal*, 80(4), 215-216, 2006.
- 'Good Faith: Lessons from Insurance Law'. *New Zealand Business Law Quarterly*, 11(4), 479-489, 2005.
- 'Insurance Law'. *New Zealand Law Review*, 431-447, 2005.
- With McLellan, D.H. *Insurance Law and Litigation*. Wellington, New Zealand Law Society, 1-88, 2006.
- 'Good Faith in Insurance Contracts'. *University of Canterbury, Faculty of Law*, 16 August 2005 and *University of Otago, Faculty of Law*, 8 October 2005.

Brian Coote

- 'Reflections on Intention in the Law of Contract'. *New Zealand Law Review*, 183-208, 2006.
- 'Contract Not Trust: Some Questions About the Contracts (Rights of Third Parties) Act From Another Perspective'. *Journal of Contract Law*, 12, 72-80, 2006.
- 'More on the Scope of s4, Contracts (Privity) Act 1982'. *New Zealand Business Law Quarterly*, 11, 239-243, 2005.
- 'Implied Conferral and "Benefit" Under the Contracts (Privity) Act 1982'. *New Zealand Business Law Quarterly*, 12, 13-17, 2006.
- 'Recovery for Loss of a Chance : Could it be for All, or Nothing at All?' *New Zealand Business Law Quarterly*, 12, 127-132, 2006.

Peter Devonshire

- 'Enjoining Breach of a Charterparty'. *Law Quarterly Review*, 121, 560-563, 2005.
- 'Restraint on Freedom of Expression under the Human Rights Act: *Cream Holdings Ltd v Banerjee* in the House of Lords'. *Civil Justice Quarterly*, 24, 194-199, 2005.

Treasa Dunworth

- 'Correspondent Report for New Zealand'. *Yearbook of International Humanitarian Law*, 6, 551-553, 2003.
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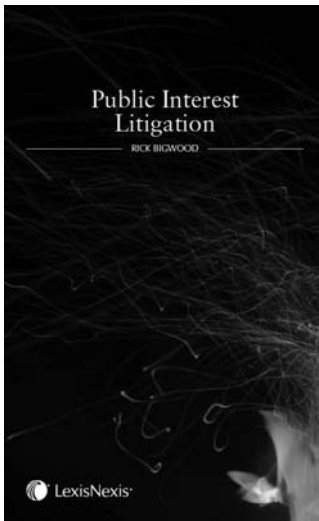
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- Invited participant, Law Commission, *Auckland Workshop on Custom and Human Rights in the Pacific*, Otahuhu, Manukau, 16 June 2006.
- 'The Moral Basis for Retrospective Redress of Historic Social Justice Claims'. *Annual Conference of the Association for Legal and Social Philosophy*, Ireland, 28 June-1 July 2006.
- Invited chairperson (and panelist), *5th Annual Maori Legal Forum*, Wellington, 31 July-1 August 2006.
- 'Salmond on Native Customary Land', *The Salmond Symposium: Developing a New Zealand Jurisprudence*, Wellington, 18-19 August 2006.
- 'A Pakeha Perspective on the Ongoing Importance of the Treaty of Waitangi', *Inaugural Professorial Lecture*, Auckland, 4 September 2006.

Graduation 2006. Photo: Scott Optican



New Books



Two new books, *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles and Index to Common Law Festschriften*, have been profiled elsewhere in this magazine (see pages 8 and 20). The following books have also been published by Faculty members this year.

***Public Interest Litigation*: Rick Bigwood (ed), LexisNexis, Wellington, 2006**

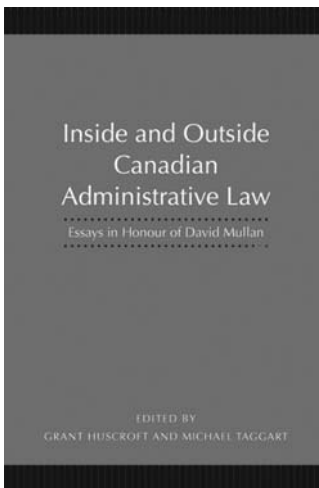
Public Interest Litigation is the third book in a series discussing the New Zealand legal system, each edited by Professor Rick Bigwood. The first, *Legal Method in New Zealand*, asked whether there was a distinctly New Zealand legal method. The second, *The Statute: Making and Meaning*, considered the enactment and interpretation of legislation by the New Zealand Parliament and Courts. The essays in this book move to the controversial subject matter of public interest litigation - court cases that are used to advance or vindicate social or political causes.

Written by local and international experts in public law, the essays in this collection describe and analyse many examples of public interest litigation, and present both sides of the debate on the use of ordinary courts to pursue cases that have, traditionally, been viewed as belonging to the “elected” branches of government. The essays explore the tensions and pressures faced by these courts in this type of litigation, as well as the implications for lawyers and legal practice, and for New Zealand society generally.

***Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan, Grant Huscroft and Michael Taggart* (eds), University of Toronto Press, Toronto, 2006**

From the early 1950s, some talented New Zealand lawyers bucked the trend to go to Oxbridge or London, and headed for the alternately greener and whiter pastures of Canada. A pioneer in this regard was former Dean of the Faculty of Law Professor Jack Northey, who was one of Professor (later Chief Justice) Bora Laskin's most memorable doctoral students at the University of Toronto in the early 1950s. Thus began Jack's well-known love affair with Canada (see Bernard Brown, “Jack Northey” in Tarling, N. (ed), *Auckland Minds & Matters*, Auckland, Auckland University Press, 2003, 105).

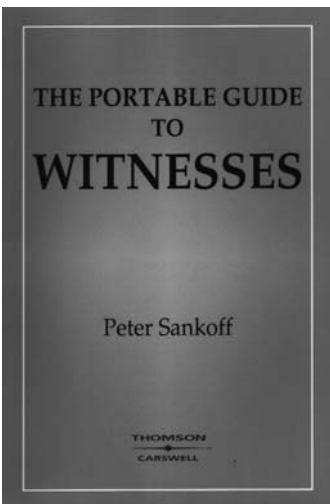
Jack's writing on New Zealand administrative law sparked some of David Mullan's earliest publications as a legal academic. David Mullan, a graduate of Victoria University of Wellington Law School, was part of a later and much larger wave of New Zealand lawyers who went to Canada in the 1960s and 1970s (including Bill Foster, Keith Farquhar, Phil Osborne, Terry Wade, Stephen Mills, Grant Hammond, Jeff Berryman - to name only Auckland graduates). Indeed at one stage almost every law school in common law Canada boasted at least one New Zealander. Many of them have made major contributions to their adopted country. David Mullan went on to become Canada's leading administrative law scholar and New Zealand administrative lawyers like to claim Mullan as one of our greatest legal exports. So when Mullan took early retirement from full-time teaching at Queen's University in 2004, Grant Huscroft and Mike Taggart organised a Festschrift to honour his contribution to Canadian and Commonwealth administrative law and scholarship. Grant is a former student of both Mullan and Taggart, and was a member of the Faculty of Law at Auckland from 1992-2002 before joining the Faculty of Law at the University of Western Ontario. Mike Taggart has known David Mullan since his sabbatical leave at Queen's in the late 1980s.

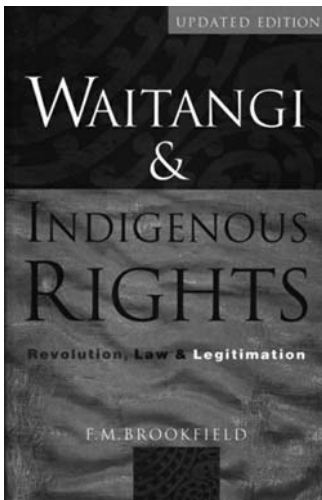


The book of essays contains contributions by leading administrative lawyers from around the world, including: Alfred C. Aman, Jr. (University of Indiana at Bloomington); Philip Bryden (University of New Brunswick); Hugh Corder (University of Cape Town); Paul Craig (University of Oxford); Genevieve Carter (Sherbrooke University); Robin Creyke (Australian National University); David Dyzenhaus (University of Toronto); Justice John Evans (Appellate Division of the Federal Court of Canada); Sir Kenneth Keith (Judge of the International Court of Justice); Denis Lemieux (Laval University); Wade MacLauchlan (President, University of Prince Edward Island); Chief Justice Beverley McLachlin (Supreme Court of Canada); Janet McLean (University of Dundee; formerly Auckland 1991-97, 1999-2006); Lorne Sossin (University of Toronto); and Mark Walters (Queen's University, Ontario).

***The Portable Guide to Witnesses*, Peter Sankoff, Thomson, Carswell, 2006**

This book is a comprehensive and practical manual for the busy litigator. Easily accessible chapters examine a wide range of issues that lawyers and barristers face every day when preparing, examining or cross-examining witnesses in all manner of judicial proceedings, including the expert witness, the child witness, the adverse and hostile witness, witness credibility





and witness protection. *The Portable Guide to Witnesses* has also been cross referenced to *Mewett and Sankoff's Witnesses*, a treatise on the substantive, evidentiary and procedural laws related to witnesses. This allows the practitioner to access detailed analysis and commentary away from the time-sensitive environment of the courtroom. The combined effect of these two works provides a complete treatment of the law of evidence as it applies to evidence given by witnesses in civil and criminal proceedings as well as before administrative tribunals, public inquiries and legislative committees.

Waitangi and Indigenous Rights (revised edition), Jock Brookfield, Auckland University Press, Auckland, 2006

The updated version of *Waitangi and Indigenous Rights* includes a substantial epilogue in which the author considers some of the developments since 1999 that bear on the book's main themes of legality and legitimacy. The attempted revolution in Fiji in 2000 and (arising from the revolution begun in Aotearoa New Zealand in 1840) the continuing controversies over the foreshore and seabed, the values of Crown law and of Maori customary law, and the constitutional future, are all discussed. Critique of some recent work of Paul McHugh, David V Williams, Ani Mikaere, Bill English and others, is included.

The Equal Justice Project. (left to right) BACK: Claire Allan (Project Manager, Disabilities Project), Nura Taefi (Project Manager, Partnerships with Community Law Centres), David Dickinson (Student Director), Claire Achmad (Student Director), Rt Hon. Justice Thomas (EJP Patron) FRONT: Sumudu Basnayake (Project Manager, Street Law), Judith Somaratne (Project Manager, Pro Bono Research Team), Anashuya Richards (Project Manager, Refugee and Migrant Project). Photo: Scott Optican.



Visitors and Seminars

The Faculty of Law runs a seminar series throughout the year, together with the Legal Research Foundation, the Centre for Environmental Law, the Research Centre for Business Law, or other organizations in which members of the Faculty are involved, such as the Law and Economics Association and the 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 are some of the other seminars that took place, as well as some of the international guests who attended the Faculty to teach in the postgraduate programme, in 2005/2006.

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

Professor Philip Baker QC, Queen Mary University of London: Taught 'Double Taxation Conventions and International Tax Law.'

Philip Baker is a Visiting Professorial Fellow at the Centre for Commercial Law Studies, Queen Mary University of London, England and also joint head of the School of Tax Law at Queen Mary. He divides his time between academic work and practise at the bar in London, where he is a Queen's Counsel specialising in taxation. Previously he was a Lecturer in Law at the School of Oriental and African Studies, London University. He has written widely and lectured on a range of topics including double taxation conventions, European Community tax law, taxation and human rights, and Chinese law. He is the author of *Double Taxation Conventions* (Sweet & Maxwell, loose-leaf), which is a commentary on the OECD Model Tax Convention.

Richard Calnan, University College London and University of Nottingham: Taught 'Problems of Corporate Insolvency'.

Richard Calnan is a solicitor and a partner in Norton Rose in London, where he specialises in banking and insolvency law. He has spent most of his working life at Norton Rose, but taught for three years at Auckland Law School in the early 1980s. His practice covers a broad swathe of financial law - both setting up transactions and dealing with their consequences. Much of his work has involved companies in financial difficulties - both restructurings and formal insolvencies. Many of his transactions are of a cross-border nature (including the English administration and US bankruptcy of Maxwell Communication Corporation plc). Richard is a Visiting Professor at University College London and a Special Professor at the University of Nottingham. He has published widely in the areas of financial law, the law of security and insolvency law.

Robert Cryer, University of Nottingham: 'Terrorism: An International Crime or a Transnational Crime and Does it Matter?'

Robert Cryer is Reader in international and criminal law at the University of Nottingham. He is currently writing a book on international criminal law for Cambridge University Press and a book on the Tokyo International Military Tribunal for Oxford University Press. His paper examined the suggestion on the part of some international criminal lawyers that terrorism has become a discrete international crime - investigating what difference it would make if this was true,

and suggesting that such assertions are, at least as yet, premature.

Professor David Favre, Michigan State University College of Law: Taught 'Animals: Legal and Social Issues.'

Professor Favre is the creator and editor of the largest website in the world focused on animal law (www.animallaw.info). He has spoken to audiences around the world on animal issues (U.K. Costa Rico, Japan, China, Australia, Brazil and Portugal). In 2004 he was co-convenor of the first global legal conference on animal welfare. For over 20 years he has been on the Board of Directors for the Animal Legal Defense Fund, serving as Chair for 2003-2005. In addition to a number of law review articles related to animal topics, he has written and edited nine books, including a text book for teaching animal law, *Animal Law: Welfare, Interests and Rights*, 2003; *Trade in Endangered Species*, 1989; *Federal Wildlife Law*, 2004; and *Animal Law and Dog Behavior (co-authored)*, 1999.

Associate Professor Joanna Harrington, University of Alberta: 'The Absent Dialogue: Extradition and the International Covenant on Civil and Political Rights'.

Professor Harrington's publications include contributions to essay collections and respected law journals, as well as the co-editorship of *Bringing Power to Justice? The Prospects of the International Criminal Court*. Her legal experience includes the litigation of international claims before the United Nations Human Rights Committee in Geneva and the Inter-American Commission on Human Rights in Washington DC. In her paper Associate Professor Harrington reviewed the extradition jurisprudence under the *International Covenant on Civil and Political Rights*, which stretches over thirty years, and argued that this jurisprudence makes it clear that an extradition treaty is subject to the obligations of a human rights treaty, much like an extradition statute is subject to a state's constitution. The question she then asked was why some domestic courts do not mention, or engage with, this international case law?

Associate Professor Lusina Ho, University of Hong Kong: Taught 'Commercial Law and Foreign Investments in China.'

Associate Professor Lusina Ho has published widely in the areas of Equity, Trusts (including the Chinese Trust Law), and Restitution. Her recent publications include: *Trust Law in China*, Asia, Sweet & Maxwell, 2003; 'The Reception of Trusts in Asia - Emerging Asian Principles?' [2004] *Singapore Journal of Legal Studies* 287; and 'Deposit - The Importance of Being (an) Earnest?' (2003) 114 LQR 41.

Associate Professor France Houle, University of Montreal: 'The Use of Extrinsic Aids to Interpretation by Judges: A Case Study on the Use of Regulatory Impact Analysis by the Canadian Federal Court Judges'.

Associate Professor Houle is affiliated with the Centre of Research on Globalisation and Work - in which she participates in several research projects, including precarious forms of labour. Her paper analysed empirical findings on the uses of Regulatory Impact Analysis Statements (the published reports of the Canadian Public Administration analysing the socio-economic impact of any new regulatory requirements or regulatory changes) as interpretative tools by the Federal Court of Canada.

Associate Professor Grant Huscroft, University of Western Ontario: Taught 'Human Rights and Constitutional Judicial Review.'

Associate Professor Grant Huscroft was a member of the Faculty of Law at the University of Auckland from 1992-2002. He was visiting Professor at McGill University in 1998. He has written extensively in the area of judicial review and bills of rights. His publications include: Huscroft and Brodie (eds.), *Constitutionalism in the Charter Era*, Toronto, LexisNexis-Butterworths, 2004; Rishworth, Huscroft, Optican, and Mahoney, *The New Zealand Bill of Rights*, Melbourne, Oxford University Press, 2003; and Huscroft and Rishworth (eds), *Litigating Rights: Perspectives from Domestic and International Law*, Oxford, Hart Publishing, 2002. A book of essays, *Inside and Outside Administrative Law, Essays in Honour of David Mullan* (edited with Professor Michael Taggart), is forthcoming (see page 36).

Dr Luke Nottage, University of Sydney: 'Who's Afraid of the Vienna Sales Convention (CISG)? A New Zealander's View from Australia and Japan'

Dr Nottage is a Senior Lecturer in commercial law at the University of Sydney. He has a strong research connection with Japan and most recently has been a visiting Associate Professor at the Ritsumeikan University's Law Faculty in Tokyo and a post-doctoral fellow at the prestigious Max Planck Institute for Foreign Private and Private International Law. Dr Nottage's paper drew on insights from legal theory and behavioural law and economics to explain why the Convention has remained less used in Anglo-Commonwealth jurisdictions. He suggests that this tendency remains despite the Convention regime's considerable benefits for planning transactions and resolving cross-border sales disputes, illustrated briefly by a New Zealand-Japan case study.

Associate Professor Mark Perry, University of Western Ontario: Taught 'Advanced Issues in Technology Law.'

Mark Perry is a graduate of the Auckland Law School (DipCSc 1995/MJur 1998) who is an Associate Professor in the Faculty of Law and in the Faculty of Science at the University of Western Ontario, Canada. Mark has published widely in both computer science and law, in areas from patenting transgenic mice to the creation of autonomic computer systems, and has spoken at institutions and



conferences around the world. He is a Barrister and Solicitor of the Law Society of Upper Canada, Faculty Fellow of the IBM Centre for Advanced Studies, and an Executive of the ACM Computers and Society committee. In addition to research publications in Canada, Germany, New Zealand, Switzerland, the United Kingdom, and the United States, his expertise has been sought by Canadian practitioners and government, and he is a regular commentator for television, radio and the newspapers.

Professor Andrew Simester, Nottingham University: '(When) is it Wrong to Discriminate between Buyers when Setting Prices?' and 'Criminalisation, Culpability, and Fundamental Principle in Complicity'

A graduate of the Auckland Law School (BCom/LLB(Hons) 1988) Professor Andrew Simester joined Nottingham Law School in July 2000 from the University of Birmingham, where he was Reader in Criminal Law Theory. He is also an affiliated Lecturer in the University of Cambridge, where he has taught on the LLM programme since 1994. Professor Simester's main interests lie in the fields of legal philosophy, criminal law, and restitution, and he has published in these areas in every major common law jurisdiction. His books include (with Sullivan, G.R.) *Criminal Law: Theory and Doctrine*, 2000; (with Brookbanks, W.J.) *Principles of Criminal Law*, 1998 and 2002, as well as two edited collections. His first paper considered, from legal and economic perspectives, the ethical problems and limitations of price discrimination, an increasingly common practice in which firms charge customers different prices for the same product. His second paper outlined some of the sources of an identified internal tension in complicity and, drawing on certain fundamental principles of criminal liability, suggested resolutions.

Professor David Vander Zwaag, Dalhousie Law School: Taught 'International Ocean Law and Governance.'

David Vander Zwaag holds the Canada Research Chair in Ocean Law and Governance at Dalhousie Law School, Halifax, Canada. He was a co-founder of Dalhousie's interdisciplinary, graduate marine affairs programme and is past director of Dalhousie's Marine and Environmental Law Programme. He is co-chair of the Australian-Canadian Oceans Research Network (ACORN) and chairs the Specialist Group on Oceans, Coasts and Coral Reefs under the IUCN's Commission on Environmental Law.

Professor Charles Wilkinson, University of Colorado: Co-taught 'Indigenous Peoples and Environmental Law'

Professor Charles Wilkinson is the Moses Lasky Professor of Law at the University of Colorado. Wilkinson practised law with the Native American Rights Fund between 1971 and 1975, and since then has worked closely with many tribes. He served as counsel for tribes concerning passage of Menominee Restoration Act of 1973; the Siletz Restoration Act of 1977 and the Siletz Reservation Act of 1980; and the Texas Band of Kickapoo Act of 1983. He has also successfully represented Indian tribes and individuals in major litigation. He currently serves in an advisory capacity to the Native American Rights Fund and the American Indian Resources Institute. Professor Wilkinson has written thirteen books, including the standard law texts on federal public land law and Indian law. He served as Managing Editor for *Felix S. Cohen's Handbook of Federal Indian Law* (1982 ed.), the leading treatise on Indian Law and in 1987, Yale University Press published *American Indians, Time, and the Law*. His most recent book, *Blood Struggle-The Rise of Modern Indian Nations*, was published in March 2005 by W.W. Norton. Over the years, Wilkinson has also taken on many special assignments for the Departments of Interior, Agriculture, and Justice.

Mary-Rose Russell, Library Manager Davis Law Library graduates LLM (first class honours) 2006

Law Lecturers Tour New North Shore Police Station

In August 2006, lecturers from the Law School teaching in the area of criminal law were invited to tour the new North Shore Policing Centre in Mairangi Bay. The tour was arranged and guided by Area Commander Les Paterson and Inspector Gary Davey (LLB 2006).

The new North Shore Policing Centre was officially opened by the Minister of Police on the 7th of September 2006. It houses 215 staff that moved into their new accommodation from smaller and older buildings across the city and is the most modern station of its size in the Southern Hemisphere. New design philosophies were incorporated into the construction, with

the aim of making the business of policing as efficient as possible. For example, the station is within five kms of 80% of the North Shore's emergency calls. There is also direct private access onto the motorway and, within a few months, the new bus-way will be available for police use in emergencies. As a result, response times will be substantially improved.

80% of the police staff in North Shore all work from the top level of the station, making interactions between staff and policing teams efficient and effective for communications. The station is also divided into "hard" and "soft" areas so ordinary members of the

public will not cross paths with suspects or prisoners. All suspect interviewing and prisoner management is on the second floor, along with police vehicle parking. This provides a completely secure and separate level from the rest of the station, with independent access and egress.

According to Commander Paterson, the new station has already proven to be an effective recruiting tool for the police. Indeed, as pictured in the accompanying photo, a number of Auckland law graduates have made successful careers in policing - both in the areas of law enforcement and in legal advising roles.

Photo Right. Standing (left to right): Senior Sergeant Tim Anderson LLB (officer in charge of Prosecutions for North Shore, Waitakere and Rodney District); Kevin Heller (lecturer); Police Senior Legal Advisor Christine Scott LLB (Glasgow) (Northern region legal service centre); Inspector Gary Davey, BBS, LLB (tactical manager for North Shore city police); Police Senior Legal Advisor Alistair Murray LLB (Manager; Northern region legal service centre); Inspector Les Paterson MPA (Area Commander in charge of North Shore City Police); John Ip (lecturer); Khylee Quince (lecturer); Associate Professor Julia Tolmie. Kneeling: Peter Sankoff (senior lecturer); Associate Professor Scott Optican; Constable Laura Ellis LLB (Emergency Response Officer, North Shore City Police).

Alumni News

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. Wherever we have been able to obtain the information we have included the degrees and year of graduation from Auckland after the alumni's name, although not degrees from other institutions. 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).

Alumni Pursuing Postgraduate Studies

• **Maria Alcalde** (BA/LLB(Hons) 2002) will be starting a BCL at the University of Oxford this year. She has received a New Zealand Federation of Graduate Women Postgraduate Fellowship, and the Auckland District Law Society's Spencer Mason Travelling Scholarship in Law. After graduating from Auckland she worked as a solicitor at Russell McVeagh's Auckland office for two years, followed by two and a half years in the

Trade Negotiations Division of the Ministry of Foreign Affairs and Trade (MFAT). At MFAT, her key responsibilities related to World Trade Organisation issues and other items on New Zealand's trade agenda. She was also seconded to the New Zealand Parliament, where she served as Private Secretary to the Hon Jim Sutton and most recently to the Hon Phil Goff.

• **Leo Farmer** (BA/LLB(Hons) 2006) has been working for in the Revenue team at Meredith Connell and is now heading off soon to do an LLM at the London School of Economics and Political Science (LSE).

• **Daniel Han** (BA/LLB(Hons) 2006) has won a Transitional Justice Scholarship from New York University and a Spencer Mason Travelling Scholarship to pursue an LLM in International Legal Studies at New York University.

• **Rohan Havelock** (BA/LLB(Hons) 2004) completed his LLM at Cambridge with First Class Honours and was awarded the Leonard Coling scholarship from Sidney Sussex College. He has returned to New Zealand to commence work as a solicitor at Bell Gully.

• **Tim Jenns** (LLB(Hons) 1998) has graduated from Oxford, BCL with Distinction (1st class honours), and was awarded the Allen & Overy Prize for the highest mark in Global Comparative Financial Law.

• **Jimmy Liao** (BCom/LLB(Hons) 2004) graduated from the University of Columbia and is about to commence work in the corporate team of Weil Gotshal Manges, a New York law firm. He writes: "I was lucky enough to be elected as graduation speaker for the LLMs and gave a speech at graduation along side the Governor of New York State."

• US/ NZ Fulbright Graduate Awards went to **Nicole Roughan** (BA/LLB 2005) and **Katherine Sanders** (BA/LLB(Hons) 2004), who will both be studying in the LLM programme at the Yale University School of Law. Since graduating from Auckland Nicole completed an LLM while employed as an assistant lecturer in the Law Faculty at Victoria University of Wellington. Katherine worked for the New Zealand Court of Appeal, the Supreme Court and, most recently, the law firm Chapman Tripp.

• **Yvette Russell** (BA/LLB 2005) is



working as a Policy Analyst in the Child Family and Community Policy division of the Ministry of Social Development in Wellington. She has just won a Rotary Ambassadorial Scholarship 2007/08 to pursue postgraduate study in New York.

- **Nicholas Sage** (BA/ LLB (Hons) 2005) gained a place in the Hauser Global Scholars Program at New York University School of Law. Since graduating from Auckland, Nicholas has worked as a judge's clerk at the New Zealand Supreme Court.

- **Michael Simperingham** (BA/LLB(Hons) 2003) is in the LLM program in International Legal Studies at New York University. He was awarded a FWW Rhodes Scholarship and a Spencer Mason Travelling Scholarship. He has been working in refugee law/protection and international human rights for the past few years.

- **Michelle Smith** (LLB(Hons) 2002) has completed her LLM at Cambridge UK. She writes: "It's been interesting to look at policy issues from both an economic and legal standpoint. Hopefully I've combined the two in my dissertation - I wrote about land use

conflict in the wine industry, examining the RMA framework from an institutional economics framework. The quality of the lecturers has been one of the highlights of the course. James Crawford was one of the best: the war stories from the ICJ in the Danube Dam case were really interesting. The other highlight was winning blades at the May Bumps. I coached both college crews and the men won their "blades" (the equivalent of a gold medal) at the May Bumps, second only in importance to the Boat Race. It's the first time in college history that a Clare Hall crew has won blades."

- **Kerry Tetzlaff** (LLM), who is currently pursuing her PhD at Cambridge University, has been awarded a New Zealand Bright Future Top Achiever Doctoral Scholarship.

Alumni on the Bench

- **The Hon Justice Noel Anderson** (LLB 1967) has been appointed a judge of the Supreme Court. Justice Anderson was a partner of the firm Martelli, McKegg and Adams-Smith in Auckland. He commenced practice as a barrister in 1972 and was appointed a Queen's Counsel in 1986. Justice Anderson was appointed a judge of the

High Court in 1987, a Judge of the Court of Appeal in 2001, and was appointed President of the Court of Appeal in 2004.

- **The Hon Justice David Baragwanath** (LLB 1964) was given a Distinguished Alumni Award at a celebratory dinner at the University of Auckland in March 2006. Justice Baragwanath presented an address on the appropriate legal response to the growing threat of terrorism.

- **The Hon Justice Ellen France** (LLB(Hons) 1982) has been appointed a judge of the Court of Appeal. Justice Ellen France has an LLM from Queen's University, Ontario. Before being appointed to the High Court in April 2002 she was a senior legal adviser in the Department of Justice Law Reform Division, Crown Counsel and then Deputy Solicitor-General in the Crown Law Office.

- **The Hon Justice Lyn Stevens** (LLB(Hons) 1970) has been appointed a judge of the High Court. After graduating from Auckland Lyn went on to obtain a BCL from Oxford University in 1972. He was Crown prosecutor and a partner in the firm of Meredith Connell from 1975, leaving

to join Russell McVeagh McKenzie Bartleet in 1980. Lyn went to the bar in 1992 and was appointed Queen's Counsel in 1997. Lyn has lectured at the Law School in the law of torts, land law and competition law. He has also lectured at other New Zealand and overseas universities. Lyn is also an alumni representative on the University's governing board, the University Council. He held the office of Pro-Chancellor from 2001 to 2003. His elevation brings the number of Auckland alumni sitting on the High Court as judges to 12, and as associate judges to four.

- Since retiring from the Hong Kong judiciary in 1997 **Wayne Gould** (1970) has created a computer programme to design sodoku puzzles, a feat which took him six years. Sodoku is a game involving grids of numbers which practises logic and, accordingly, teaches people how to think logically. He gave the puzzles to newspapers for free but charged for his computer programme (which has particularly hard puzzles that the newspapers do not have). His marketing campaign has been a great success with his puzzles appearing in 350 newspapers in 57 countries in the world, his computer programme selling spectacularly and he himself attracting the title "Mr Sodoku."

Alumni in Practice

- **Rachel Bickler** (BA/LLB(Hons) 1987) runs UK law firm Nabarro Nathanson's Brussels office (http://www.nabarro.com/our_firm/index.asp?sectionID=12114&officeID=16779) and has recently become Chair of the Law Society of England and Wales Committee on European Union Affairs.

- **Sarah Cahill and Jonathan Orpin** have been appointed to positions as judges' clerks in the Court of Appeal.

- **Lisa Fong** (BA/LLB(Hons) 2004) has been appointed as private secretary to the NZ Attorney-General. Her role will involve liaising between the Attorney General and his responsible departments, the Crown Law, Serious Fraud and Parliamentary Counsel Offices, and aspects of the Ministry of Justice, to assist him in performing his functions as the senior law officer of the Crown. The role is a unique opportunity to observe the interface between the law and its political and executive influences. The secondment comes in Lisa's second year as an Assistant Crown Counsel for the Crown Law Office. Prior to joining the Crown Law Office, she was a judges'

clerk at the High Court in Auckland and clerk to the Rules Committee.

- **Kelby Harmes** (BA/LLB(Hons) 1998) is in the Olympics and Museum Property team of the Legal Advisers to the Department for Culture, Media and Sport in the UK. This is his third post in the UK Government Legal Service. Previously he was the Principal Private Secretary to the Lord Chief Justice, Lord Woolf, and a legal adviser at the Department for Constitutional Affairs.

- **Anna Longdill** (BSc/LLB (Hons) 2003) successfully completed the Ford Iron man Triathlon World Championship in Hawaii with a time of 11:50:46 (placing her 12th in the 18-24 women's group). The Hawaii Iron man is an event comprising a 2.4-mile swim, 112-mile bike ride, and a 26.2-mile run. Anna is currently a prosecutor with Meredith Connell in Auckland.

- **Rembert Meyer-Rochow** (BA/LLB(Hons)1994) worked at Russell McVeagh before accepting a scholarship in 1995 to complete an LLM at Bond University, Queensland. In 1997 he moved to Hong Kong to work as an associate of Deacons (a leading HK law firm), specializing in IP and technology law. In 2000 he became Asia Regional Counsel for Intel Corporation, based in Hong Kong. Intel is the world's largest computer chip company, with over 91,000 employees spread across 294 worldwide offices and facility locations, and revenue of \$34.2 billion in 2004. In 2005 he was a founding investor in FINDS, which quickly became one of Hong Kong's

hottest bars and restaurants (specializing in Scandinavian cuisine). See: www.finds.com.hk. He says:

"My job as legal counsel with Intel involves advising business executives, and working with Intel's US-based lawyers as well as lawyers of other technology/teleco companies in the Asia region on a wide range of legal issues related to technology product sales and marketing. I deal with joint ventures, business negotiations, sponsorships, legal disputes, technology licensing, advertising, media/public relations, and intellectual property disputes across the Asian region on a daily basis."

- Dean Paul Rishworth presented a paper to the Pacific Islands Law Officers Meeting in Vanuatu in September 2005 and met up with two Law School alumni, **Dr Manu Tupou-Roosen** (LLB 1997) and **Fagaloa Tufuga** (LLB 1993). Manu went on to complete her PhD at Nottingham in 2004. Her thesis examined the regional response of Pacific states to the fisheries compliance regime under international law. She now works as Legal Officer, Forum Fisheries Agency, Honiara. Fagaloa is Regional Maritime Legal Officer for the South Pacific Community, based in Suva, Fiji. In 1997 he completed a Masters in International Maritime Law at the International Maritime Law Institute in Malta.

- **Mark Wilson** (LLB 1985) is a partner in Kennedys - an international law firm based in the UK - and has



recently been involved in establishing the firm's new office in Dubai.

• **Jenny Zhuang** (BA/LLB(Hons) 2004) has been sitting professionals and climbing in Hong Kong. She is pictured doing The Corner 7a (25) at Tung Lung Island on her second attempt. She says, "Top roped my first 8a (30) a few weekends ago, aided by a bit of blasphemy it was rather do-able.... Sorry non-climbers, it just means I climbed stuff really really hard." She is about to start work in the Hong Kong office of the law firm Linklaters.

Obituary

• **John Madden** (LLB 1979) died of

melanoma of the liver in February 2005. John was an older student, about 52, when he started studying law in 1975. He only practised for a few years, but was famously the winner in an unjustified dismissal case soon after he began his legal career - to do with signing documents as witnessed when they had not been. He was "chuffed" because all the newspaper reports referred to him as a "young" law graduate.

• **Kenneth Sandford** died in November 2005 at the age of 91 after an illustrious career. Kenneth Sandford was a senior partner in a Hamilton law firm for 22 years (serving for a time as the President of the Hamilton District Law Society) and spent time as a

Crown Prosecutor before being appointed as the first chairman of New Zealand's Accident Compensation Commission for eight years from 1972. The Accident Compensation Act came into operation in 1974 and that year Mr Sandford was awarded a CMG for "public services". His two other great interests were writing and cricket. He published two novels in London. *Mark of the Lion*, the story of Charles Upham VC and Bar, took Mr Sandford, an infantry captain in World War II, five years to complete and has been reprinted several times. He was also a cricket enthusiast, representing Waikato at one point and serving on the NZ Cricket Board of Control for 15 years, and as a president of the NZ Cricket Council.

Letters from Alumni



Letter from Japan

Rahera Smith (BA/LLB 2001) (pictured) is from the Atihaunui-a-Paparangi, Ngati Tuwharetoa, Nga Puhi and Hauraki tribes. Her previous experience includes working for the Ministry of Maori Development and Amnesty International in San Jose, Costa Rica. Currently Rahera is at the United Nations University's Institute of Advanced Studies (UNU-IAS)

managing a special project called "Call of Earth, Llamado de la Tierra" (COE). Her work focuses on enhancing indigenous participation in the international intellectual property (IP) policy arena and she works with indigenous peoples from all over the world. She explains:

"In recent years, indigenous knowledge (often referred to as 'traditional knowledge') has assumed an increasing

scientific and economic value generating significant national, regional and international interest, particularly in the context of IP rights. Most indigenous peoples are situated in areas where the vast majority of the World's plant genetic resources are found and have utilised the natural resources of their local environments in an ecologically sustainable way for thousands of years. Traditional knowledge is being discussed at a

number of United Nations fora including the World Intellectual Property Organization (WIPO) and the Convention on Biological Diversity (CBD). Yet despite this growing interest, indigenous peoples continue to play a limited role in international discussions on IP rights affecting their role in biodiversity management. COE provides a forum for indigenous peoples to explore in various ways issues regarding IP. It endeavors to enhance indigenous peoples ability to positively influence conceptual approaches, policies and practices regarding IP policy development.”

She goes on to talk more personally about her current experiences:

“Living in Yokohama is great. It's a modern, spacious and clean city (approx four million people), approximately 25 mins from Tokyo. Getting around is pretty easy; the subway system is efficient and reliable (though I ride my bike to work everyday). The food is expensive but delicious (the sushi is superb) and you are spoilt for choice here - all top export quality goods so no 'seconds' here! The people are plentiful but orderly and very courteous and helpful... I'm sure Kiwis could learn a thing or two! And last but not least, the shopping - electronic gadgets galore, way ahead of the times and choices, choices and more choices... Japanese people love to shop, and you can see why as there are so many places to go...the only downside is that western sizes are a rarity!”

Letter from Cairo

Leanne McKay (BA/LLB 2001) writes:

“The recent Dahab bombings were a bit of a shock. Despite living in a city where there are men in uniforms with large guns on literally every corner, one's daily concerns have very little to do with the 'T' word. So when terrorists attack a location that is such a popular destination for many expats, and indeed where close friends had just spent a long weekend, it is a stark reminder that all is not well in Egypt, or the region for that matter.

In fact I have just been in Jordan for two weeks working as a rapporteur at a conference run by the InterAction Council on 'Islam and the West'. A group of experts, former heads of state,



diplomats and academics meet annually to discuss global issues so this year the focus was on the Arab-Israeli conflict, the war in Iraq, terrorism and Iran. Unfortunately we didn't solve all the problems (!), but I learnt a huge amount from the seminars and discussions. I am even more fascinated and in love with this region of the world, despite all the problems! While I was in Amman I managed to do some refugee-related work too, including meeting with 15 Iraqi asylum seekers at one of CARE International's projects. Their comments reflected exactly the same issues that we face with the asylum seekers and refugees here in Cairo. In fact in some ways Egypt's treatment of asylum seekers is better than in Jordan, though unfortunately that's not saying much. However the experience helped me to put Cairo into context, and I came back with plenty of ideas for our work here.

Jordan is an interesting place. Much

smaller, quieter and cleaner than Cairo but despite seeming to be, in fact, a little boring, a small amount of digging reveals a multi-layered complex country. Due to its geographical location, it acts largely as a stabiliser in an otherwise very unstable region, but the balancing act this role requires is also pretty precarious. The Palestinian issue seems to impact on every other topic of concern, and the influx of Palestinians and Iraqis over recent times has left Jordanians a minority group in their own country. However it was not all work in Jordan. After spending some time in Amman, a friend and I went to the Dead Sea where I floated in the water and covered myself in therapeutic mud! Then we travelled to Petra, which was amazingly breathtaking. Petra was built in the 3rd century BC by the Nabataeans who carved palaces, monasteries, tombs and houses from the surrounding rose-coloured cliffs. Apparently only 10 percent of the city

has been identified so far and considering a full day of walking around the site was not enough to see everything I can hardly imagine the true scale of the place. We climbed 1000 steps to a monastery that was incredible - enormous, well preserved and the views were magnificent.

I arrived back in Cairo a few days ago and was surprised at how much I had missed the city, which is still just as fabulous, exciting, exhausting and stimulating as it was four months ago when I arrived! My work could be described with the same adjectives, though maybe I should add stressful too!

Despite initial concerns, I have conquered the art of crossing the roads in Cairo (the five lanes of traffic still seem to multiply every time I want to cross though!), and am at ease not only hailing taxis but also have sufficient Arabic now to both direct the drivers and argue with them as required (ie: at least once a week!) I have avoided any sort of nasty illness despite eating anything and everything (touch wood) although I must say that Egyptian cuisine has lost some of its initial appeal. Fortunately I share an apartment with a wonderful Australian girl who is not only a fabulous cook but shares my Melbourne-bred love of all foods Asian, Italian and Mediterranean - we eat-in a lot.

I spent a weekend in the desert camping under the stars a couple of months ago. Camping miles from any sign of civilisation was just wonderful. The landscape was also fascinating - far from being flat and barren, we went through the White Desert where chalk deposits created a moon-landscape look, and the Black Desert where small mountains were covered in black stone and the Western Desert (pictured) which was reminiscent of the bottom of the ocean with canyons and crevices. I also had a weekend at an eco-resort on the Red Sea. Having lived and grown up on an island, I still get a huge thrill out of seeing other countries so close by. So waking up on the beach and looking across a small stretch of water to Jordan and Saudi Arabia (with Israel just tucked away to the left) was very exciting!

Aside from the travelling, I have been working hard at AMERA, the refugee NGO I am working for. My clients are mainly from Sudan, Ethiopia, Somalia

and Eritrea. Generally I assist them writing testimonies to take to their refugee determination interview with UNHCR, and/or draft legal arguments in support of their claims. We have a new group of legal advisors arriving in a few weeks and I'll be doing some of the training, which will be fun. As always, there's no shortage of things going on...."

Letter from the USA

Nina Khouri (BA/LLB(Hons) 2003) (pictured) has been reading for her LLM at New York University Law School, focusing on international law and dispute resolution. She graduated in May and is now working for the London based Centre for Effective Dispute Resolution, Europe's largest mediation provider. During the course of her year she wrote:

"Spring is here at last! NYU Law School and Washington Square Park are awash with cherry blossoms and pale students prostrating themselves on the lawn in the sun. As I head into the final exam period, I am beginning to

reflect on my LLM experience in New York.

NYU is an intellectual Disneyland. My subjects have ranged from Islamic law to the politics of information production in the internet age, and from the anthropology of human rights to the history of international legal theory. I wrote a paper on the international legal aspects of the bird flu outbreak and helped a professor write an expert advisory opinion for a South American country facing crippling arbitration claims. This semester I am taking the NYU Mediation Clinic, an intense skills-based program where we mediate discrimination and disciplinary cases involving New York City employees. I've also been mediating at the Brooklyn small claims court and am now supervising other mediators. Being in New York has enabled me to link into exciting international law and dispute resolution events happening outside law school as well, such as a seminar on Security Council reform hosted by the Austrian Commission at the Dag Hammarskjöld library at the United Nations and the monthly



breakfast meetings of the NYC Dispute Resolvers Consortium.

This year has been personally rewarding too. I have lived on my own for the first time in my life, survived a winter exam period in the dark and snow and, best of all, been immersed in the multiculturalism of this city. NYU markets itself as 'a global law school' and this has certainly been my experience. There literally are people from all over the world, from Ethiopia to Germany to Argentina. I've become used to not organizing social events on Friday night if I want my Jewish friends to attend, used to the Mexicans down the hall throwing rowdy parties, and used to the social awkwardness of moving to kiss someone on both cheeks in greeting when they are only expecting one! When we go out, it could be to a Flamenco performance in the East Village, the Indian neighbourhood in Queens for fresh spices, or the Moroccan café down the street for a lavender tea.

The highlight of my time here, however, was a very American experience. Over spring break I traveled to New Orleans with a group of thirty NYU law students as part of a nationwide student volunteer effort in the wake of Hurricane Katrina. I was the only non-American in our group. Half of the group volunteered at law offices in New Orleans. The other half (to which I belonged) helped to clean out and gut houses that had been damaged in the flood but were not covered by insurance.

Each day we would don protective suits, masks, goggles and heavy gloves and enter into these houses. It was heartbreaking to see family homes totally flooded, the rotten food still in the refrigerators, the now-mouldy underwear that had been hung out to dry in the bathroom, and the family pictures covered in slime. We'd begin by hauling out the furniture, mildewy sofas, rusted bedframes, waterlogged bureaus of clothes. Then we'd rip out the fixtures and pull down the walls until only the vertical 4 by 2s forming the skeleton of the house remained and the house was ready for rebuilding.

One afternoon we were taken through the Ninth Ward, one of the poorest and most damaged neighbourhoods of New Orleans. It was like visiting the 'upside down houses' in amusement parks where the usual rules of gravity and order are suspended. Whole houses had

been lifted off their foundations and dropped dozens of metres away. Squashed cars peeked out from under houses and entire sides of some houses were missing. Each house had spray paint markings on the front indicating when it had been inspected and whether any corpses had been found inside. We walked through one area that was completely barren. This was where the levee had broken. I had never been to a natural disaster zone before and was stunned at the devastation.

When we finished work for the day we would return to base camp, a tent city set up by the Federal Emergency Management Fund (FEMA). The camp was extremely well organized. There were 1,500 volunteers staying there, mostly students. We were all given fresh bed linen and shown to enormous sleeping tents that housed 400 cots each. There were laundry facilities, a game room with WiFi internet access and banks of plugs for charging cell phones, prefabs with hot showers, a stadium, and a dining tent that provided chances to sample good ol' southern fare like cajun ribs and breakfast grits. In the evenings we got a glimpse of old New Orleans in the restored French Quarter. Bourbon Street was back in business and the jazz clubs were awesome! We were there for a raucous St Patrick's Day parade that saw the entire French Quarter draped in shiny green beads. I even enjoyed a history tour that documented vampirism in New Orleans (Anne Rice fans, eat your heart out!)

The significance of the experience for me was summed up by Mike, a Vietnam veteran and the owner of one of the houses we gutted. He gave us chili dogs and cans of Budweiser for lunch as a thank you and told us about the street and its inhabitants - who would come back, who had lost someone, whose house had been most severely damaged. He became emotional, telling us how when he came back from Vietnam he didn't know what to think about his country. 'But American is about this,' he said as he spread his hands. 'Not big policies, not the government policy in Iraq. Just little people helping little people, not even caring about the differences between us.' I feel honoured to have been a part of that effort."

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courtesy of Fulbright New Zealand.

Letter from the Cayman Islands

Timothy Bridges (LLB(Hons) 1987) writes:

"When I enrolled in Law School in 1984 there was a lot of gloom about in the legal profession. In an early tutorial I was told that statistically only one in four of us would end up finding a career in law. I was also well aware that the chosen few that 'made it' and became articled clerks could look forward to several years of hard work and poverty with the hope that one day they might make the grade and enter into the land of prestige, riches and power. One thing I did know, however, was that I had found the right degree for me and that was all that really mattered at that time.

I have often heard people say that they only really started learning after they left law school. However, I would beg to differ. I have found in professional life that the important thing is not whether you remember the information you have learned but that you obtain a solid grounding which will enable you to develop good instincts. The benefit of a solid legal education is probably demonstrated more by that nagging doubt or question you have in the back of your mind than being able to dial up an answer to a particular legal question. One thing that I have become aware of through the years is that Auckland University Law School afforded me just such an education and for that I am grateful.

As luck would have it the job market for law graduates unexpectedly opened up in the year of 1986 and I was fortunate enough to be offered a place with a leading Auckland (later to be come national) law firm. Two years later, like many NZ lawyers, I made the pilgrimage to London and worked for a large city firm there. I remember my surprise when I discovered that practising law in the City was in several respects inferior to the environment which I had left behind in New Zealand. Of course things have moved on since those days however in 1989 legal practice in London seemed quite antiquated and far more hierarchical than I would have imagined.

I was to find leaving NZ far easier than returning. During the early 90s I

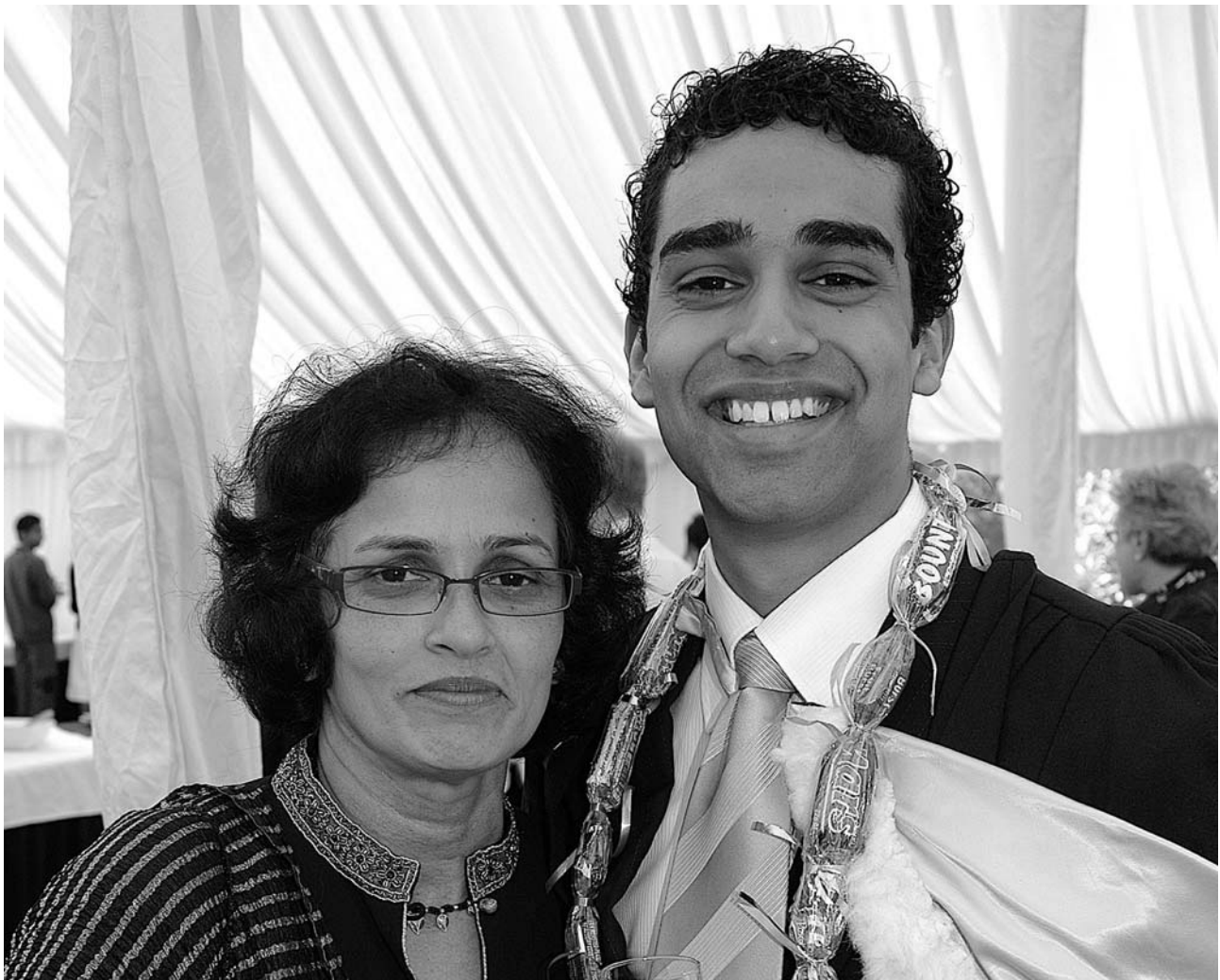
investigated on more than one occasion a return to legal practice in NZ but nothing satisfactory materialised. Instead I stayed on in London during what were difficult years for lawyers, particularly those with a foreign accent as we were arguably the more expendable part of their workforce. But I made it through this period and by simply securing continuous employment at leading firms throughout those lean years I had achieved something. The lessons I learned in that unforgiving environment were invaluable. These included not to take success for granted and the importance of your good clients. And I also learned how to be user friendly from a client's perspective, how to work hard, and how to handle pressure. When I left the UK in 1996 I was on the fringe of partnership but I was not enjoying life and the prospect of a prolonged stint in London under a high level of stress was not what I wanted. One particular day in the middle of August (which was traditionally the quietest month of the year) I was sitting

in a conference room, the sun was shining outside and I was about to embark on one of those transactions that would take over my life for the next month. The rationale behind involving me in this particular deal was that I would work with a different team of partners and this would broaden my profile within the Firm and help groom me for partnership. Therefore it was important that I performed well on this transaction. However I was already tired and had a full workload on and I was not really sure how I was going to manage. I just decided there and then that I did not want to do it anymore. The next day I announced this to my boss (whom I obviously trusted) and began investigating other options. I had worked frequently with offshore counsel and was attracted to the kind of lifestyle being offshore promised.

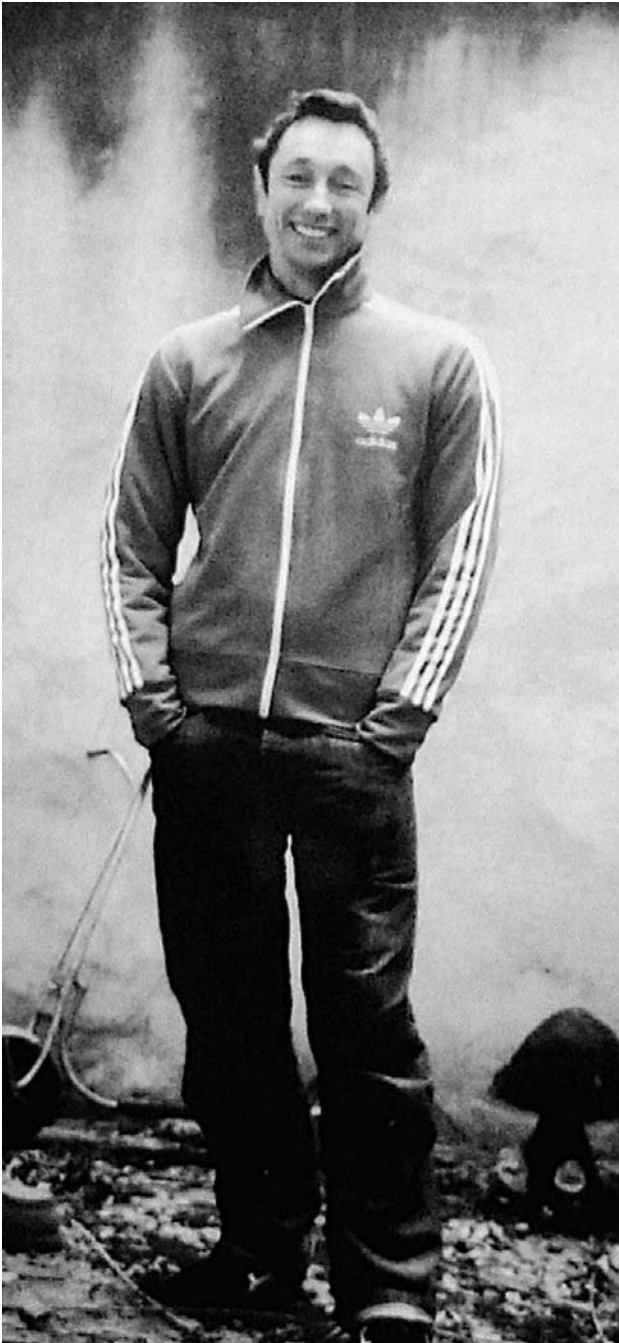
Only eight months later I was on my way to the Islands - first Bermuda and a few years later Cayman (where I remain today). I was attracted to this environment because it offered both the

opportunity to continue working within the market I had been practising in while in London but without the hassles of City living. It enabled me to reconcile living a healthy lifestyle within the demands of a highly stressful internationally based working environment. By relocating to Bermuda I achieved a good balance and I have not looked back since taking that step. There are adjustments to be made however. In particular, there are not always the same levels of professionalism and transparency that one would expect to find in a leading onshore financial centre (or in cities like Auckland or Wellington for that matter). Although it is possible to do first class work in these places, limited competition and the operation of work permit regimes can distort the way the market for legal services operates. Nonetheless, good career prospects are available and life in the Islands can be both satisfying and rewarding. Today I enjoy the challenges of an international practice in a tax-free environment where the sun nearly always shines."

Eesvan Krishanan and his mother, graduation 2006. Photo: Scott Optican



Grant Burnett Sievwright: 25 January 1970 - 27 August 2006



On a humid, torrential night in March 1996, the floorboards of a scruffy Ponsonby flat learnt that they could flex six inches. A euphoric, crammed crowd leapt and wriggled in every room. Men in wetsuits and body paint danced wildly with women in tin foil togs and toweling jumpsuits. People danced in the rain outside. The fulcrum of all that joy was a sinuous, slender six-foot-six man with elfin features and a goofy grin: Grant Sievwright. The flat was Grant's, as was the band, "Oscar the Grouch", for whom Grant was singer, guitarist, saxophonist and Hawaiian-shirted inspiration. Grant's energy, enthusiasm, and outrageous repertoire of songs and friends made that party an instant legend. It was only through exhaustion that the revelers started to disperse near dawn, wearing what was left of their costumes, and carrying with

them the memory: "I was at *that* party of G's".

Tragically, Grant recently died in Paris, after major abdominal surgery. It seems oxymoronic to describe him posthumously. He was the embodiment of being alive. He worked hard, but played like a kid. He laughed like Yogi Bear. He was a sanctimonious vegetarian and a parsimonious clothes shopper. He was a great musician and a terrible lyricist. He loved adventure, learning and fun.

Grant's personal CV defied exaggeration. He was a surfer and a windsurfer, a snowboarder and a ski instructor. He climbed the 2000ft El Capitan rock face in Yosemite and hopped boulders in Switzerland. He played the sax, the guitar, the French horn, the piano, and even the didgeridoo. He was a debater and an actor. He starred in three university law school revues, and directed the best of them, 1992's "Soul Practice".

Grant was also an outstanding lawyer. He graduated from Auckland University in 1993 with a BCom/LLB(Hons). In that same year, he was admitted to the Bar and started work as a litigator at Bell Gully in Auckland. A recent Bell Gully tribute described Grant's energy and talent, and the high regard in which he was held. In 1996, he travelled overseas, working first in Toronto and subsequently in London. For the last three years he had been working for top US firm Shearman and Stirling, running complex international commercial arbitrations from their Paris office. He had also taken time out to work for the International War Crimes Tribunal for Rwanda in Tanzania.

Grant's tastes were retro. He liked old jazz and Falcon 500 automobiles. He got around Paris on a Vespa called "Bianca". He also lived to a delightfully retro moral code. He was modest, and never spoke ill of anyone unless they truly deserved it. He was a loyal and forgiving friend. He was compassionate and concerned for the world around him; a keen supporter of Friends of the Earth, and a volunteer construction worker for a poor Costa Rican village. Grant was a gentleman and a gentle man.

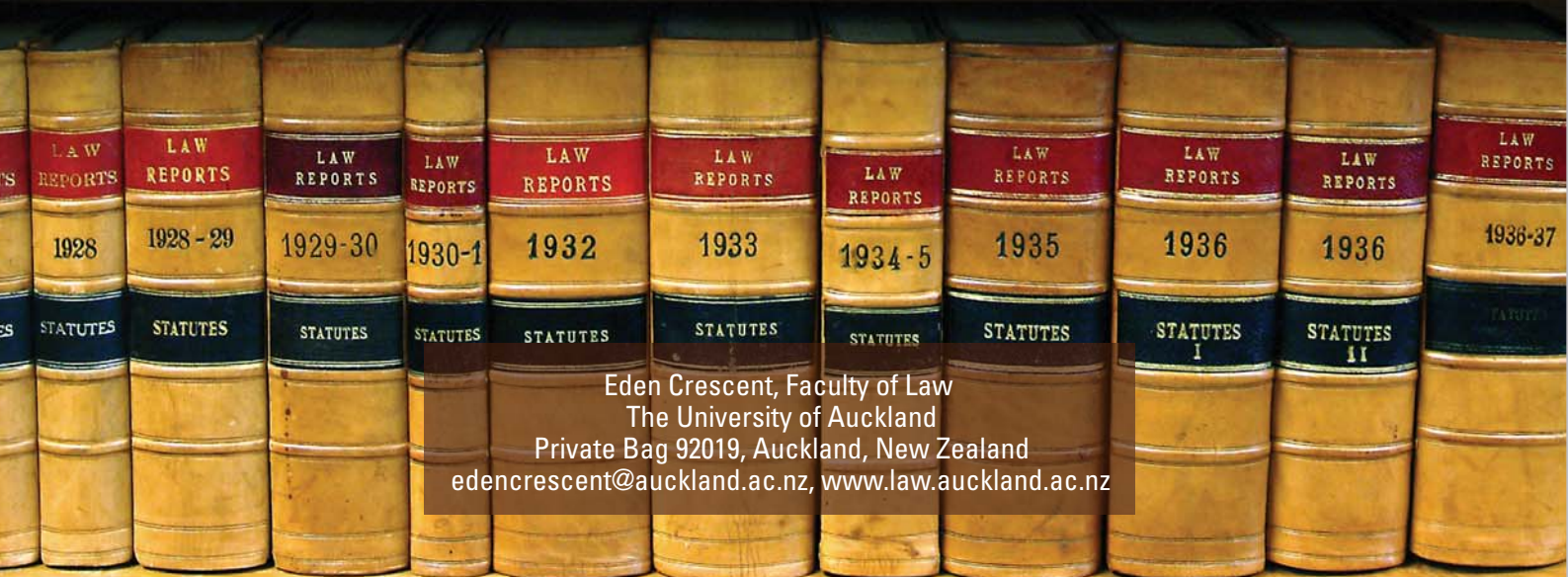
Grant was also hilarious. In law school revues he played a game show host, an eminent contract professor, a drunken Court of Appeal judge, and a host of other parts, all with great timing and acute mimicry. On student road trips, when accommodation was short, Grant would keenly declaim the posturepaedic benefits of the ground, before leaping grinning into the back of his car. When asked whether there was room for any of his mates, he would say that there was not room for all of them, and it would be unfair for some to miss out, so no. Only when the grumbling subsided would he hoot with laughter and relent. He recently got a friend to go to a sophisticated Paris party with him dressed as Bo and Luke Duke (of "Dukes of Hazzard" TV and movie fame).

There have been three services for Grant, in Paris, London and Auckland. It is no small measure of how rightly loved and popular he was that those services were attended by over 500 people in total. He will be achingly missed by his loving mother Robyn, the rest of his family, and his legion of friends. We will disperse into a greyer dawn, cherishing the memory: "I was lucky enough to know G".

Mark Kelly (LLB 1993), Barrister, Park Chambers (Auckland)



Karena Lyons (Pasifika Academic Co-ordinator) and Blair Strang (Pouawhina Maori). Photo: Scott Optican



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