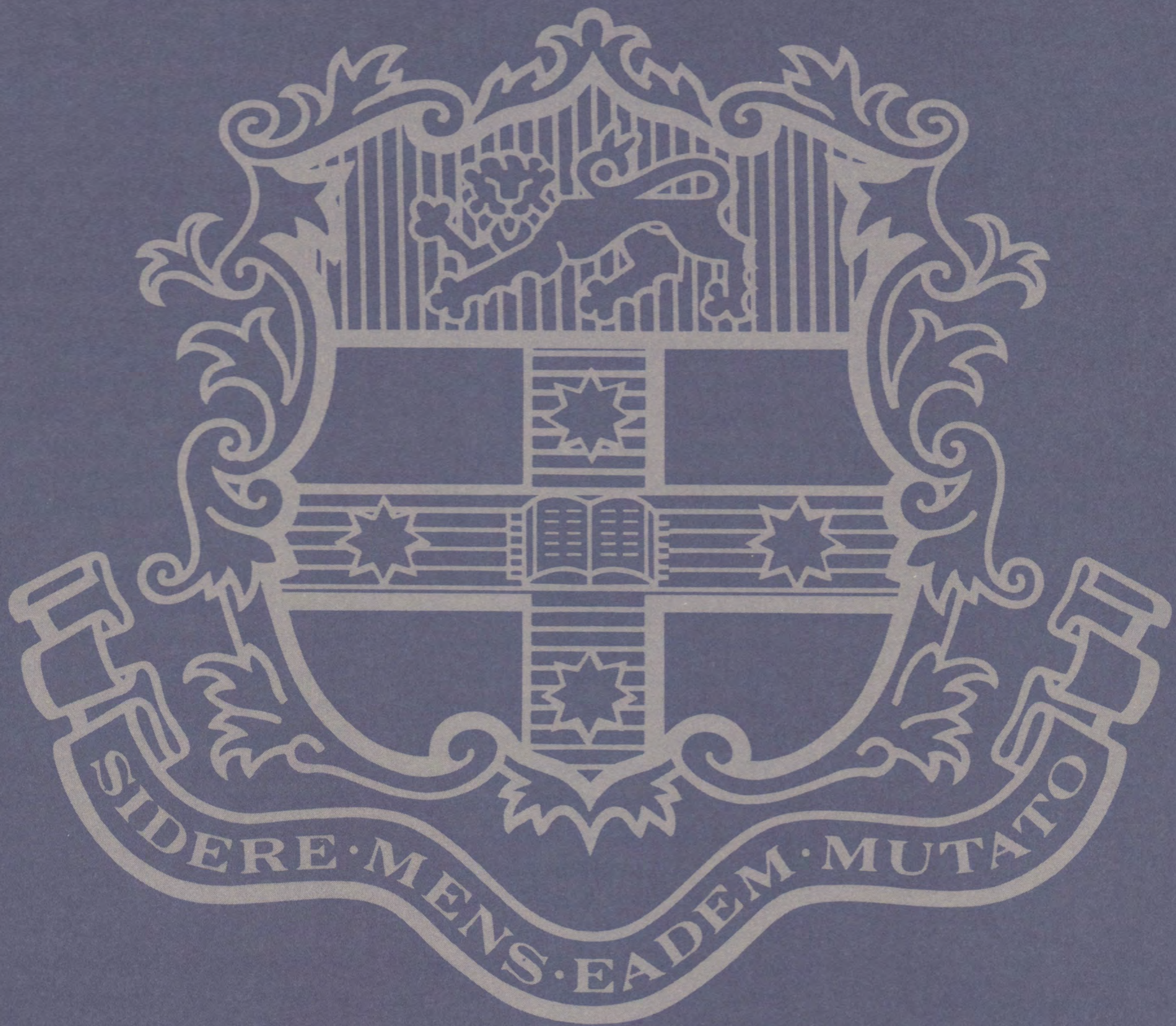


THE SYDNEY LAW SCHOOL REPORTS



VOLUME 1, NUMBER 2, 1989

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This is the second number of the Law School's new publication, designed to inform our students, graduates and supporters of some of our activities. The reaction to our first *Sydney Law School Reports* was unexpected in two ways.

From the profession the reaction was strongly positive and encouraging. The flavour of the responses can be gleaned from our "Letters" column.

From students the reaction was rather different. The student representatives were very supportive, but the only comments which came back to me from the general student population were expressions of puzzlement as to why the publication should be made available to them.

The answer, of course, is that this publication is aimed both at graduates and our existing students. We want our students to know more about what is happening at the Law School, and to become more involved in the process of change.

This issue contains feature articles on several matters which are of great topical concern for the Law School.

The proposed move to the campus is unlikely to affect the current generation of students, but is generally perceived to be of significance to the future welfare and achievement of the Law School.

Part of the case for moving is that students in the combined Arts, Economics or Science/Law programmes now spend three of their five years of university study on the campus, learning law subjects without

convenient access to law library or law lecturers.

Their interests can best be served by locating the Law School where they spend their time.

If a move to the campus proves not to be feasible, notwithstanding maximum efforts to the contrary, it may be necessary for us to reconsider the combined degree programme. The alternative might be to move towards a wholly graduate LL.B. course, taught entirely in Phillip Street.

The article on "Law and Gender" might provoke some controversy, but at its core there are some major problems regarding the development of the legal profession. Why was it the case, for example, that in a Law School whose female population is close to 50% of the total, only about 1/3 of the students in the corporate-commercial optional subjects in 1988 were female? Is the relatively small number of women in senior positions in the legal profession to be explained solely by reference to the small numbers of female law graduates in the 50s and 60s? (Hardly surprising, by the way, if one reads Justice Gaudron's chilling account of conditions for female law students in the old Law School building.) What practical steps should be taken by educational institutions and others to ensure that ability percolates into achievement?



Professor Robert Austin, Editor,
Head of the Department of Law

LETTERS



Sir,

Congratulations on this publication. Please continue to send it to me.

Most graduates of the Law School have an interest in its doing which has not been properly serviced in the past. Perhaps there was less to report in the recent past than is the case now.

A note on the continuing stream of overseas visitors, whom we enjoy meeting in the Court of Appeal, would be one way of showing the new dynamic of the old Law School.

In case you need it for illustration, I attach copy of the photograph taken with the chief Justice, Professors Harland and Phegan and the overseas visitors to the recent AULSA Conference which the Law School so successfully hosted.

Mr Justice Michael Kirby
Court of Appeal
Supreme Court
Sydney
September 19, 1988



Sir,

Please accept my congratulations upon your initiative in publishing the Sydney Law School Reports.

One's relationship with the institution improves the more one understands what is happening in it. You have, if I may say so, taken an important step in that direction. I was particularly interested in the article by Professors Phegan and Vann detailing the new curriculum for the Law School.

It is interesting to have details of the changes from time to time in the curriculum and the thinking behind them.

I do hope that, as you have said, it will be possible "to produce this publication at least once each year".

With kind regards,

Yours sincerely

Mr Justice Dennis Mahoney
Court of Appeal Supreme Court
Sydney
September 8, 1988



Sir,

Well done on getting the reports underway. They will provide a further avenue for graduates to retain links with the Law School.

In considering whether the Law School should move back to campus, I wonder whether the needs of graduates have been properly addressed. A move back to campus would effectively make the sporting and library facilities currently available to graduates beyond their reach. The range of material, photocopy and borrowing facilities mean that the Law Society Library and Supreme Court Library are not effective substitutes.

Yours faithfully

R.J. D'Arcy Solicitor
6th Floor
154 Sussex Street
Sydney
September 8, 1988



Sir,

I was delighted to read a copy of the Sydney Law School Reports.

I trust that it will have the desired effect of improving communication with students and graduates alike.

I hope that everything is well at the Law School despite the financial circumstances which the University finds itself in.

With kind regards

Stephen Yen
65 Stradbroke Street
Deakin, ACT
10 October, 1988

The last six months of 1988 were a time of frantic and almost overwhelming administrative activity.

First, the Faculty Planning Committee had long discussions on "devolution", the process by which certain aspects of university administration will be transferred from the centre to the various faculties, a change which will take place for all faculties by 1990. The Planning Committee has put forward several organisational models for the Faculty, designed to cope with this change. These thoughts were presented to a Faculty Discussion Day late in the year.

Secondly, the anticipated introduction of the Higher Education Contribution Scheme (HECS) has led to the introduction of fees for LL.M. subjects. By charging fees, set at the minimum level necessary to exempt the students from HECS, the University rather than the Government is entitled to the relevant income. Because of special categories of

exemptions and the interaction between fees and HECS, the system is a complex one which we can only outline here. Some students (mainly those undertaking full-time postgraduate study) will be exempted from both fees and HECS; some will have the right to elect between fees and HECS (diploma students and those enrolled in previous years); some will be required to pay fees (part-time LL.M. by coursework students enrolling for the first time in 1989).

Notwithstanding the financial difficulties to which Government policy has subjected the University of Sydney, it has been possible for the Law School to obtain some staffing increases. The University provided an additional lectureship to match the generosity of Landerer & Co., so that the new Landerer Chair of Information Technology and Law could be established without any loss of existing positions. Alan Tyree (LL.B. *Well.*, M.Sc. *Ohio*, Ph.D. *Massey*), formerly an Associate Professor at this Law School, has been appointed to the Chair. Further, a new position of computer programmer has been created, to support our new Computer Laboratory.

Professor Pat Lane retired at the end of 1988, after thirty years of service with the University. At its meeting on 5 December 1988, the Senate of the University resolved to confer on Professor Lane the title of Professor Emeritus upon his retirement. A tribute to Professor Lane appears later in this issue. Other retirements and resignations have generated some vacancies which have been filled or soon will be.

The new Law curriculum, which was introduced partially in 1988, is fully operational in 1989, although it is subject to transitional arrangements for students still in the "pipeline". The conversion of the University teaching system from three terms to two semesters in 1989 will make it possible for us to teach the new curriculum in the setting in which it was intended to operate. Most of the later year subjects will be taught in a single semester rather than throughout the year. This will enable students to focus on a reasonably small number of subjects in any given time, and will maximise their choices with respect to options. As our first year of semesters plus a fully operational new curriculum, 1989 is a challenge and something of an experiment. We are convinced, however, that the end result will be worth all of the efforts.

Colin Phegan, Dean
Robert P Austin,
Head, Department of Law
Alex Ziegert,
Head, Department of
Jurisprudence



Professor Alan Tyree, Landerer Chair of Information Technology and the Law.

The Faculty introduced a new LLB curriculum as from 1988. The changes have been developed after several years of careful planning.

The result is an LLB programme that preserves the traditional core subjects yet provides a range of options in keeping with the diversity of law in a modern society.

The curriculum now contains 13 compulsory subjects which account for approximately two thirds of the law component of combined degrees. The compulsory subjects include Jurisprudence, International Law, Administrative Law, and Company Law.

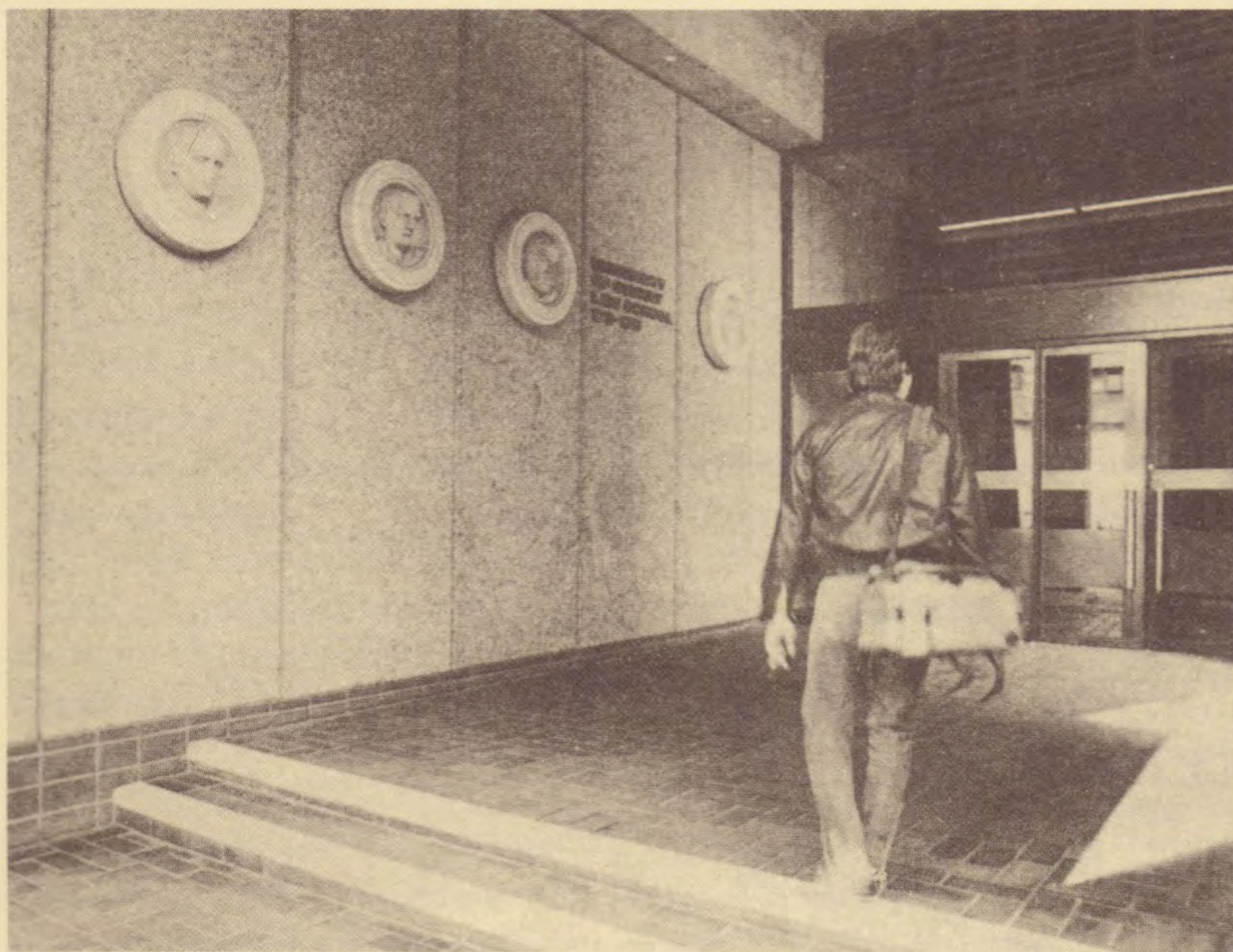
The optional subjects, as currently prescribed, are many and various. The two-unit options are these: Anti-Discrimination Law, Comparative Law, Criminology, Environmental Law, Family Law I, Industrial and Commercial

Property, Personal Taxation, Roman law, Jurisprudence (five strands: Sociological, Analytical, Marxist/Socialist, Human Rights, International/Comparative), Administration of Estates, Conveyancing, Dispute Resolution, Employment and Industrial Law, Legal History, Social Security law, Technology Law, Law and Social Justice. The one-unit options are as follows: Advanced Contracts, Banking and Insurance law, Business Finance Law, Consumer Finance law, Japanese Securities Law, Aspects of Japanese Contract law, Tribunals and Inquiries, Advanced Administrative Law, Advanced Real Property, Advanced Torts, Business Taxation, Conflict of Laws, Economic Regulation, Equitable Remedies, Family Law II, Insolvency law, Police Powers and Public Order, public International Law, Sale of Goods, and Securities Market Law.

Magnificent as the new

curriculum is, what matters much more is the quality of the teaching staff who implement it. Much effort has been devoted to maintaining a first-rate academic team and to date this effort has been rewarded. We have a highly talented and dedicated group of teachers and scholars and this augurs well for the immediate future. The towering problem, however, is our inability to provide career paths and conditions of employment that are commensurate with ability and achievement. The present public university system seems hopelessly unresponsive to the problem and we are increasingly dependent on the private sector for support. A number of law firms have generously provided funds for chairs in particular areas, visiting fellowships, and for other purposes. This trend is most welcome. Looking ahead, we need to move beyond the outmoded salary structures that currently prevail. A variety of initiatives are conceivable, including the creation of a pool of "top-up" funds derived from subscriptions to a clearing-house for legal research and analysis operated and maintained by the Law School. A wide range of expertise is available in the Law School and the skills and expertise that we have on hand seem under-utilised by the profession and by the corporate sector. Possibilities of this kind are being explored and we invite your reactions and suggestions.

Brent Fisse
Professor of Law



Retirements

Pat Lane, Challis Professor in Law, (see Headnotes and tribute, below) Paul Ward, Senior Lecturer in Criminology and Criminal Statistics retired in January.

Resignations

Chris Hodgekiss, Senior Lecturer in Law (to practice at the N.S.W. Bar).

Jenny David, Senior Lecturer in Law, (to a position with the Australian Commercial Disputes Centre).

Jeff Goldberger, Lecturer in Law (to join a large Sydney corporate law firm).

Appointments

Alan Tyree (LL.B.*Well*, M.Sc.*Ohio.*, Ph.D.*Massey*), formerly Associate Professor in Law, appointed to the Landrerer Chair of Information Technology and the Law on 23 December 1988.

Denis Galligan (LL.B.(Hons) *Qld*, B.C.L.*Oxf*, M.A.*Oxf*, Professor and Dean of the Faculty of Law at the University of Southampton, appointed to the Chair in Law vacated by Professor Lane. He will take up the appointment in July, 1990.

Brent Fisse is Acting Head of the Department of Law during Professor Austin's period of study leave.

New Staff in 1989

David Fraser, B.C.L.*Laval*, LL.B.*Dalhousie*, LL.M.*Yale* — Senior Lecturer.

Lee Burns, B.Com, LL.B.*NSW*, LL.M.*Syd*. — Lecturer in Revenue Law.

Don Rothwell, B.A., LL.B.*Qld*, LL.M.*Alberta*, M.A.*Calgary* — Lecturer in Computer Assisted Legal Research (formerly Tutor).
Patrick Fazzone, B.A.*Connecticut*, J.D.*Duke* — Lecturer.

Brian Opeskin, B.Com., LL.B.*NSW*, B.C.L.*Oxf*. — Lecturer.

Bernard Dunne, B.A., LL.B.*Macq*. — Temporary Lecturer (formerly Tutor).

Anne Hurley, B.A., LL.B.*ANU*, LL.M.*Syd*. — Temporary Lecturer.

Grant Lamond, B.A., LL.B.*Syd*. — Temporary Lecturer.

Patricia Lane, B.A., LL.B.*Syd*. — Temporary Lecturer.

Kathryn McMahon, B.Ec.*Syd*, LL.B.*NSW*. — Temporary Lecturer (formerly Tutor).

Julie Stubbs, B.A.*W'gong*. — Temporary Lecturer (on secondment from N.S.W. Bureau of Crime Statistics and Research).

Julia Tolmie, LL.B.*Auck*, LL.M.*Harv*. — Temporary Lecturer.

Irene Nemes, B.A.*Syd*., LL.B.*NSW*. — Tutor.

Chris Hutchinson, B.Sc. (Computer Science) *Auck* — Computer Programmer.

Returned from leave in 1989
Mr Bron McKillop

On leave

Robert Austin —
28 December 1988 to
4 July 1989.

Jennifer Hill —
5 September 1988 to
25 July 1989.

Stan Hotop —
1 February 1989 to
31 January 1990.

Greg McCarry —
27 February to
7 May, 1989.

Pat O'Keefe —
23 March to
1 December 1989.

Stephen Odgers —
1 February 1989 to
31 January 1990.

Lyndel Prott —
1 February to
1 December 1989.

Romana Sadurska —
1 January to
30 June 1989.

Wojciech Sadurski —
1 September 1988 to
1 August 1989.

Carolyn Sappideen —
1 September 1988 to
1 September 1989.

Andrew Stewart —
1 January to
30 June 1989.

Jennifer Stuckey-Clarke —
15 February 1989 to
16 February 1990.

NEW CHAIR IN LAW

The Landerer Chair of Information Technology and the Law, established last year has been filled with the appointment of Alan Tyree, formerly an Associate Professor in Law at this University, who took up the position in December 1988. The Chair is the first of its kind in the British Commonwealth and already the University of London has followed our lead. The establishment of the Chair was the result of a substantial financial commitment by Mr John Landerer of Landerer & Co, Solicitors. His generous support made it possible to overcome the absence of public funding for such an important initiative. The Chair appropriately bears his name.

Information technology is creating new and important challenges for the law. Problems include the regulation of

transborder data flow, new problems of privacy which arise from the pattern matching capabilities of computers and the definition and clarification of rights in information itself. At the same time, computer technology is creating new opportunities in legal practice and in teaching. The Faculty has accepted that it has a responsibility to teach law students the fundamentals of computerised practice. All students are required to know the basics of computer based research and are encouraged to learn much more.

One of the most important areas of research in information science is the attempt to build computers that are intelligent. Professor Tyree is a leading authority on the application of artificial intelligence to legal problems. He is a co-founder of the DataLex Project and author of the FINDER program which "reasons" with case law. In

conjunction with the DataLex Project, he is currently engaged in exploring the feasibility of programs which will deliver legal services to low income groups in areas, such as immigration law, which are currently poorly served by the profession.

Professor Tyree is well qualified for the position. His original training was in mathematics. He obtained an MSc in mathematics from Ohio State University and later completed a PhD while teaching in New Zealand. He went on to complete a law degree from the University of Victoria of Wellington before coming to Australia in 1978.

The establishment of the Chair and Professor Tyree's appointment to it has ensured Sydney's place at the forefront of this significant and expanding field of law and legal education.

Colin Phegan, Dean
Brent Fisse, Professor of Law

COMPUTER BITS

AIJA Seminar

The computer lab was the scene of strange sights in October. Some 50 judges from the Supreme Courts of various Australian States and the High Court of New Zealand were engaged in the "hands on" part of a seminar run by the Australian Institute of Judicial Administration. The judges were able to experiment with AIRS, the CLIRS simulator developed by the DataLex Project which is used for teaching purposes. They also used a litigation support system which contained a sample of

documentation from a current case. Some screens contained pictures which looked remarkably like a popular submarine game! A good time was had by all.

Enrolment 1989

The computer lab was also a central feature of this year's enrolment process. A programme written by Chris Hutchinson, the Faculty programmer, was used by nearly 400 students to complete the main stage of their enrolment process on January 27th and 30th. The programme,

developed in consultation with the administrative staff responsible for enrolments, allows students to choose times for compulsory subjects and select optional subjects. Class lists are collected automatically and stored on the Faculty's Honeywell minicomputer. First reports are that the system receives good marks from both the students and the administrators. Good work, Chris!

Alan Tyree, Landerer
Professor of Information
Technology and Law

In a University Law School, different forms of research merge into each other: conference papers or continuing legal education seminars become articles; demands for comment on current developments or new legislation turn into major projects; major research projects generate smaller works as by-products. One thing leads to another. At Sydney, in particular, much is happening on the research front. Here is a small selection . .

Recent Published Work

Richard Vann has survived the birth of twins and just edited a book entitled *Company Tax Reform* published by the Law Book Company which covers the imputations system of company taxation, the capital gains tax as it affects companies and the reforms to international taxation of recent years.

In "Exclusion of Polygraph Evidence: Is it Justified?" (1988) *Criminal Law Quarterly*, Eilis Magner reexamines the issues raised by *Beland v R*, a decision by the Supreme Court of Canada in October 1987, in which the majority excluded polygraph (lie detector) evidence. She concludes that they were right, but for the wrong reasons, and that such evidence should be excluded on different grounds. (Other recent pieces by Eilis Magner on the law of evidence are: "Is a Terrorist Entitled to the Protection of the Law of Evidence?" (1988) 11 *Sydney Law Review* 536-565; "Dealing with Claims to the Privilege Against Self-Incrimination in

Civil Cases: (1988) *Australian Bar Review* 149-167.) Wojciech Sadurski in "The Right, the Good and the Jurisprude" (1988) 7 *Law and Philosophy* 35-66 argues that legal philosophy must be based on a set of substantive political values about such fundamental matters as the nature of the political community and the meaning of human freedom. This general thesis is illustrated by the analysis of moral discourse about the justification and limits of liberty-rights and equality-rights. There is a significant parallelism in the discourse about these two types of rights in a liberal society: one is a mirror image of the other. The most effective way of arguing about individual liberties is by recourse to equality of individuals as moral agents; and about equality rights by an appeal to a notion of positive freedom.

In "The Element of Belief in Self-Defence" to be published in (1989) *Sydney Law Review*, Stanley Yeo examines the differing approaches taken by the High Court in *Zecevic* and the Privy Council in *Beckford* in respect of the element of belief in self-defence.

Plus numerous items in press or about to appear, including . .

Books

RJ Stein (with Margaret Stone), *Torrens Title* (Butterworths)
PJ Butt, GL Certoma, CM Sappideen, RJ Stein, *Cases and Materials on Real Property* (3rd edn)
GJ McCarry, *Aspects of Public Sector Employment Law*, Sydney 1988
Andrew Stewart, *Unfair*

Dismissal in South Australia (Corporate & Business Law Centre, University of Adelaide Monograph, November 1988)
James Crawford (ed), *The Rights of Peoples* (Oxford, Clarendon Press 1988) (essays by Crawford and Prott)
DJ Harland, KE Lindgren, JW Carter, *Cases and Materials on Contract Law in Australia* (Butterworths, Sydney, pp xlii + 979)

JD Heydon, WMC Gummow and RP Austin, *Cases and Materials on Equity and Trusts* (3rd ed)

Articles — too numerous to list, but they include . .

Robert Austin, "The Fund-raising Provisions of the Proposed Corporations Legislation", *Butterworths Company Law Bulletin* No 6, 1989.

Brent Fisse and John Braithwaite, "The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Accountability" (1988) *Sydney Law Review* 468-513.
Brent Fisse, "Controlling Workers Compensation Premiums: Artificial Intelligence and Expert Systems" (1988) 4 *Journal of Occupational Health and Safety—Australia and New Zealand* 409-415.

JW Carter, "Deposits, Accrued Rights and Damages" (1988) 101 *LQR* 207. James Crawford, "Aboriginal Public Law", a paper given at a principal session of the Bicentennial Legal Convention, Canberra, to be published in (1989) *Australian Law Journal*.
Jennifer Hill, "Close

Corporations" to be published in (1989) *Canadian Business Law Journal*.

Patricia Loughlan, "Testamentary Guardianship", to be published in (1989) *Australian Law Journal*

Patricia Loughlan, "Liability For Assistance In A Breach of Fiduciary Duty" to be published in (1989) *Oxford Journal of Legal Studies*.

Greg McCarry, "Landmines Among the Landmarks: Constitutional Aspects of Anti-Discrimination Laws": (1989) *Australian Law Journal*.

PN Parkinson, "Who Needs the Uniform Marital Property Act?" (1987) 55 *Univ Cincinnati L Rev* 677-731.

W Sadurski, " 'When Ideals Clash': Smith, Calabresi, and the Priority of the Right over the Good" (1987) 6 *Law and Philosophy* 259-280.

Andrew Stewart, "Breach of Contract Through Unfair Termination: The New Law of Wrongful Dismissal" (with R Naughton) to be published in *Australian Journal of Labour Law*, vol 1, no 3 (Dec 1988).

John Wade, "Matrimonial Property Reform in Australia: An Overview" (1988) 22 *Family Law Quarterly* 41-69

Research Grants and Projects

Jennifer David (together with Julie Stubbs from the Bureau of Crime Statistics and Research) received a grant of \$12,950 to gather, collate and present detailed information on all services, governmental and non-governmental, for victims of crime throughout Australia: to disseminate that information in the form of a directory of

services; and to research and produce a bibliography of relevant Australian publications. This is part of the continuing work of the Institute of Criminology within the Law School.

Richard Vann has an Australian Research Grants Council for research into the Australian income tax policy and law. The book recently published was assisted by this grant and he will be working on books on the taxation of entities and international taxation with the renewal of the grant for 1989. Alex Ziegert has a

research grant of \$10,000 from the Law Foundation of NSW to fund a major comparative project on "Law and Family Coping in New South Wales and Sweden". The study focuses on:

- patterns of social interaction within the family, and between the family and contacts outside, and
- the structure of a highly differentiated and selective legal system, in the way in which it is seen to be more or less relevant and/or accessible for individuals in given family contexts.

An important aspect of the project is the comparison of families in communities within different legal systems. This aspect concerns the issue of "legal culture", and enables a number of propositions concerning the "litigiousness" of a society and the operation of legal systems with different structural forms to be tested. Families in different communities in Sweden are to be selected to form a control group for the families in NSW. In this respect the operation of the Swedish legal system, given its similar socio-economic and

geo-political parameters, is a useful control sample for comparative research within Australia.

James Crawford has been collaborating with a group of Japanese international lawyers led by Professor Yasuaki Onuma of Tokyo Law School on the production of a fully revised English language version of a comprehensive study of Hugo Grotius (first published in Japanese in 1987). The project is supported by a grant from the Japan Foundation.

Other Items of Note

John Wade was appointed to the Commonwealth's Family Law Council in January 1988, and has been participating on sub-committees on "The Future of the Family Court" and "Spousal Maintenance".

David Harland has just completed an extensive report entitled "Post Market Control of Technical Consumer Goods in Australia". This is part of a study undertaken for the Commission of the European Communities by the Zentrum fur Europäische Rechtspolitik of the University of Bremen. Professor Harland is also a consultant to the Australian Law Reform Commission in their work on Product Liability.

At a Continuing Legal Education Seminar on 22 November at the Law School, James Crawford outlined the provisions of the Admiralty Act 1988 (Cth) and the Admiralty Rules 1988, which come in to force on 1 January 1989. These result from the Australian Law Reform Commission's Report 33 on *Civil Admiralty*

RESEARCH

Jurisdiction (1986), of which he was Commissioner in Charge.

Bob Austin has been appointed Chairman of the Companies Committee of the Business Law Section, Law Council of Australia.

Brent Fisse has been appointed to the Operations Review Committee which will oversee the operations of the Independent Commission Against Corruption (NSW).

And now, enter the Library

The University of Sydney Law Library has a collection of 120,000 volumes and is one of the largest and oldest law libraries in the country. Under the *Copyright Act 1879* (NSW), the University receives one copy of every book published in NSW. As a consequence, the Library's holdings of Australian law are very good indeed. All the University libraries are open

to the public. In addition, graduates of the University may apply for a borrower's card. This may be done at Fisher Library (on campus) during business hours or by filling in a form at the Law Library desk. Cards applied for at the Law Library take about two weeks to process and are posted to the requestor's address.

James Crawford
Challis Professor of
International Law

STUDENT NOTES

1988 has proved to be an interesting but confused year for students at Law School.

At the beginning of the year, there were some teething troubles with the new curriculum, due mainly to the large class sizes of over 500 in Company Law and International Law in this the transitional year; not forgetting the beleaguered Library staff who "miraculously" survived the onslaught of 500-plus Company Law students all searching for the same materials for the one essay question! Concern was shown by many students that some compulsory subjects had not been cut down by the requisite one-third to make way for the increase in options.

Consequently, the complaint was that the work-load was too high. On the whole, the concept of the new curriculum has been well received by the students. However, many of the benefits of the new curriculum will not be felt until next year when the new curriculum is fully in place, and these teething problems are ironed out.

One of the major concerns students voiced about work-loads was a lack of direction as to the reading required for some courses. I was therefore pleased when Faculty adopted my motion for a comprehensive course guide in each subject which will give direction to students as to the necessary reading.

It was pleasing to note that in response to student-initiated

discussion on open-book exams on Faculty late last year a member of the teaching staff early this year put forward a motion requiring that relevant statutes be allowed in all examinations. The motion was adopted and is a welcome step in the right direction.

Finally, I would like to thank those members of the teaching and administrative staff who set up and operated the student evaluation of teaching surveys. These surveys are a useful way academic staff can gauge the response of all students in their subjects to their teaching. The opportunity to comment on teaching ability has been well received by all students.

Stephen Janes
Student Representative
Faculty of Law

V I S I T O R S

In the last issue, some details were given about the Allen Allen and Hemsley Visiting Fellowship, which each year brings a distinguished scholar to spend some time as a visiting professor in the Department of Law. This year's Allen's Fellow is Professor Misao Tatsuta of the Faculty of Law of Kyoto University. Professor Tatsuta is very well known for his work in company and securities law. He will be with us from February until June. Other longer term visitors for 1989 are Professor James Cox of Duke University (company and securities law, Fulbright Senior Scholar,

February-May) and Mr Colin Tapper, All Souls Reader in Law at Magdalen College, Oxford (Visiting Professor, teaching Evidence and Law and Technology, July-September).

In August 1988 the Faculty hosted the annual conference of the Australasian Universities Law Schools Association. This was the first time for many years that the conference had been hosted by this Law School and we were fortunate to have an unusually large number of interesting overseas scholars deliver papers during the Conference — Professors Thierry Bourgoignie (Louvain-la-Neuve), Rudolph Dolzer (Heidelberg), Gerald Frug

(Harvard), Ewoud Hondius (Utrecht), Robert Gordon (Stanford), Donald King (St Louis), Catharine MacKinnon (Osgoode Hall), and Norbert Reich (Bremen), and Judge F. Easterbrook of Chicago.

Other recent visitors to the Law School have included Professor Upendra Baxi (New Delhi), Mr Peter Cane (Oxford), Professor Lucinda Finley (SUNY, Buffalo), Professor Roy Goode (London), Dr Jane Stapleton (Oxford), Professor J. Onuma (Tokyo), Dr R Wacks (Hong Kong) and Professor Jacob Ziegel (Toronto).

David Harland
Challis Professor of Law



In the chambers of the President of the Court of Appeal. Left to right: The Dean, Professors Hondius, Gordon, Bourgoignie, Reich. His Honour Justice Michael Kirby, Professors Finley, Frug, Dolzer, Harland, Sir Laurence Street.

The Placements Office administers a number of programmes designed to assist students in their future careers. The most important of these is the Employment Interview Scheme. The Graduate Programme is for final year students and the Summer Clerkship Programme is for students in their penultimate year of law studies. There are approximately thirty legal firms participating in the programmes, and six law schools. The purpose of the scheme is to reduce the time and energy expended by solicitors and students on applications for employment and to assist students in obtaining employment.

Arrangements are made for representatives from participating law firms to visit the Law School to speak to students about their firms and the employment opportunities they offer. These visits have proved to be an excellent way for intending applicants to find out about the firms and the nature of legal practice as a

solicitor. Students are strongly urged to attend these "lunchtime presentations" as an important step in preparing for their future careers.

Law firms interested in participating in either or both the Graduate and Summer Clerkship programmes are encouraged to contact the Placements Office.

The Professional Observation Programme is available to students who have completed all first year law subjects. This Programme, conducted by the Law Society of New South Wales in conjunction with the five Sydney Law Schools, provides one week's observation in a law firm or government department. This is designed to give students a sense of the relevance of their studies and prepare them for professional practice.

Another way the Placements Office assists students with employment is by keeping a register of graduands and recent graduates who are interested in appointment as a judge's associate. Details of students on the register are sent to judges when they contact us in search of an associate. It is then up to

the judge to select and contact applicants.

The Law School does not attempt to usurp the functions of the College of Law and the Bar of providing practical legal training for intending legal practitioners. However, an element of practical training can enhance student interest in academic study. This reasoning has led the Faculty to introduce a Legal Professional Programme, providing instruction on a voluntary basis to students in their penultimate year in the areas of legal professional responsibility, advocacy, drafting, lawyer-client relations and negotiation. This year the programme, taught by staff of the College of Law and solicitors from Clayton Utz, Mallesons Stephen Jaques, Minter Ellison, and Sly and Weigall, will be offered as an intensive one-week presentation in the last week of the July vacation.

The Placements Officer welcomes inquiries from employers or students regarding any of these activities.

Lesley Corey
Placement Office

Mandatory CLE is now clearly part of every solicitor's practising life.

Every solicitor seeking to renew a New South Wales practising certificate MUST have completed during the previous year a minimum of ten (10) CLE units as accredited by the Mandatory Continuing Education Board of the Law Society of New South Wales. Unless otherwise stated on our brochures, all our courses offer a specified number of MCLE units towards this end. Our duty in providing a wide range of subjects is to stimulate interest as well as fulfil needs.

Stimulation of interest comes with variety and depth. Over the past twelve months we have canvassed areas including Current Commercial Law, Developments in Advanced Tax Law, Criminology, Evidence, Administrative Law, Conveyancing, Maritime Law, Alternative Dispute Resolution, Industrial Relations and the Law.

Though fundamental areas are covered in general topics, depth and specialist concerns are also pursued. Evidence of this is the inclusion of courses run in conjunction with outside organizations of specialist groups. Some of these include Australian Commercial Disputes Centre, Centre for Industrial Relations Research of Faculty of Economics of the University of Sydney and the Maritime Law Association of Australia and New Zealand. This we do in order to expose the seminars to a wider but relevant audience.

The currently proposed courses for 1989 include Trade

Practices, Intellectual Property, Tax, Conveyancing, Contracts, Commercial Law, Evidence, Family Law, Criminology, Environmental Law amongst others which are likely to arise subsequent to new legislation.

We do try to identify your special interests if you have indicated them to us. Sometimes when a series is prepared it covers a wide ambit, crossing various topics and we hope to let all potential participants be aware of the availability of these courses. Should you receive a brochure on a subject unsuited to your interests, you may care to pass it to a friend or colleague for whom it is relevant. If you are not already receiving our brochures, let us know your interests and we will be happy to keep you posted.

You could also let us know if there are topics which Sydney University Continuing Legal Education programme might consider offering. Your needs are our greatest interest.

In 1987 we offered eleven lecture series and seminars, in 1988 fourteen were conducted. All of our programmes are presented in the centrally located Law School building on the corner of Phillip, King and Elizabeth Streets in the heart of Sydney CBD.

The office of Placements and Continuing Legal Education together with that of Graduate and Community Relations of the University of Sydney is responsible for the postal distribution of *The Sydney Law School Reports*. Should you have any suggestions or variations to the way your Report is addressed or despatched, we would be happy to hear from you. We are conscientiously

trying to improve our record-keeping and can only be sure of efficient maintenance of our data base(s) with your support and feed-back. Please write to let us know any changes to our way of addressing you! Please write to us C/- CLE, Faculty of Law, University of Sydney, 173-175 Phillip Street, Sydney, 2000 or use the Document Exchange on DX 983 SYDNEY. On the 'phone you can call Jenny Littman on 225-9238 or Lesley Corey 225-9267 or visit our office on level 13 of the Law School, Room 1307 to acquaint yourself with the latest (and some past) aspects of CLE at Sydney University Law School.

Jenny Littman
Co-Ordinator
Continuing Legal Education

(Justice Mary Gaudron reflects on the Law School of the early '60s.)

Part Time and Partisan

The old Law School in Phillip Street was a good, but not outstanding example of down-at-heel dickensian. It had a stubbornly reluctant lift (maximum load 6 persons) and mean, narrow stairways; timber hand rails and bannisters were, like its students, slightly mobile upwards. It backed onto a more modern, but characterless construction fronting Elizabeth Street. At certain levels there was access between the two buildings, and the Law School spilled over to these accessible floors. The characterless construction had two lifts. They were under the command of Ron. It also had stairs, but they did not give ready access to the two main lecture halls, LS1 and LS2, located on the fifth and sixth floors of the Phillip Street building.

We, the sixties generation, arrived in our hundreds. Entry was guaranteed by 4B's (one of them in English) in the old Leaving Certificate. A gentleman's pass was 2 A's and 4 B's; anything in excess was in poor taste. We were all gentlemen, or at least we were addressed as such in lectures. And being gentlemen, we affected indifference to our rate of progress through examinations. After all, it was our right to stay at the Law School until graduation, no matter how long it took. There were stories (mostly true, we later discovered) of people who had failed Succession three and four times.

As if in concession to our numbers, expected to increase because of the post war baby boom, there was an increase in

full time academic staff. Harry Whitmore, Gordon Hawkins, Don McDougall, Enid Campbell (the only female member of academic staff) and Curt Garbesi arrived more or less at the same time as we did.

Our first task was to attend on Mrs Gaunson (and her dog, Sally) to collect the printed notes. We gave her our names, patted the dog and identified our subjects: in return she gave us the notes. Given a moderate measure of good fortune, we would soon strike up a friendship with a "repeat" student whose assurances as to what would and would not be examined would facilitate a selective ignorance of their contents.

The students were classified either as full time (candidates for the four year degree course) or part time (a five year course). The difference suggested by the terminology was neither apt as a class distinction nor descriptively accurate. We were all employed or would become so well before we completed our studies. In the main we were articulated to city solicitors. Our master solicitors tended to regard lectures as an unnecessary suspension of our legal education. *Mutatis mutandis* for the lecturers. The system survived because lectures were from 9 to 10 a.m. (Succession was 8.30 a.m. to 9.30 a.m.), 4 to 5 p.m. and 5 to 6pm.

Regularly, at 9.05 a.m. and 4.05 p.m. a chaos of students attempted to gain possession of the lifts, despite the mandatory injunctions of Ron to take the stairs. Between 4.55 and 5.05 p.m., the rule of law was suspended as hundreds of students descended via the

stairs from LS1 to LS2 and an equal number ascended from LS2 to LS1. We maintained a lively interest in *Indermaur v. Dames*.

Outside lectures the sexes were neatly segregated. The men's common room was in the Elizabeth Street building. Rumour had it that it contained a billiard table. The women's common room (4 chairs, 1 day'n'night lounge and 6 keyless lockers) adjoined the women's wash room where a two stand urinal stood as testimony to their equality before the law. Social contact between the sexes was had in the Catalina Coffee Lounge (housed on the ground floor of the Elizabeth Street building) under the proprietorship of a gentleman known only as Caveat Emptor. More daring mixed company was to be found in the ladies' lounges of the Phillip and the Balfour. The Phillip had an upright piano. It provided accompaniment for the Law School Song, *The Ball at Shatwell's Hall*. It had a rare — perhaps, unique — distinction in that its chorus ("who'll sue me this time, who'll sue me now" etc.) was cleaner than that of the original.

Like the students, the lecturers were either full time or part time. In their case there was a relevant distinction. Apart from the new members of staff, the full time law lecturers were the Dean (Professor Shatwell), Professors David Benjafield, Ross Parsons and Bill Morison, and Pat Lane, Bob Roulston and Deryck Thompson. Jurisprudence maintained or was kept in its separate place adjacent to the women's common room — in deference (one supposes) to the

controversy surrounding initial appointment to the Chair. It comprised Professor Stone, Professor Alexandrovitch and Ilmar Tamello, the latter two arriving in 1961.

Most part time lecturers were from the Bar. A.F. Mason taught Equity, L.W. Street — Bankruptcy, F.C. Hutley — Succession, J.A. Lee — Procedure, G.J. Samuels — Pleading, T.J. Martin — Evidence. Aleco Vrisakis, a solicitor, taught Conveyancing.

The first thing to go was the lift in the Phillip Street building. Stubbornness gave way to cunning: the lift developed an increasing tendency to lodge semi-permanently between floors. Our knowledge of the law extended to *Balmain New Ferry Co. Ltd. v. Robertson*. The slightly mobile upwards stairs became noticeably more mobile, including sideways and downwards.

The stairs and lifts were but a minor inconvenience to be replaced in short time by a grievance. Student photographs must be produced to the Dean's office. The printed notes would only be given to students who gave their student identity numbers and who appearances bore some resemblance to the produced photographs. There was talk (in the Phillip and the Balfour) of student protest. We produced our photos, memorised our student identity numbers and settled back to leisurely progress through the Law School; attending lectures when and if the lifts and stairs permitted.

It started as a rumour. Students who failed twice would be asked to show cause why they should not be excluded

from Faculty. It became a University By-Law. Some of us went to other faculties. Most of us remained, but patronage of the Phillip and the Balfour declined.

It is not clear who started it, or why, but it became a free-for-all debate on legal education. Should there be part time students? Were articles of clerkship of any educational value? Did the Law School provide a sound legal education? We worked a little harder, hoping to graduate before the authorities found it necessary to provide answers. Patronage of the Phillip and the Balfour suffered a further decline.

Later, it was asserted that there would be a new Law School. There were those who favoured it being sited on campus, those who favoured a city location, the cynics and the sceptics. The cynics (of whom there were a few) suggested that it be an annexe to the Stock Exchange. The sceptics (female) had no reason to suppose that those responsible for their mysteriously irrelevant urinal would make good this extravagant threat.

We finished more or less at the same time as the Phillip and the Balfour. They were demolished to make way for the new Law School with preprogrammed lifts, soundly constructed stairways and a new generation of students competing for entry on a quota intake which, as if by magic, caused the part time course to disappear.

Justic Mary Gaudron (1966)

***“The Ball at Shatwell’s Hall”**
(Air: *The Ball at Kerriemuir*)

Have you heard about the Law boys

And their Ball at Shatwell’s Hall?

There were four-and-twenty institutes

All dealing on the Law

Singing, who’ll sue me this time,
Who’ll sue me now.

The one that sued me last time
Has lost his action now

The Professor, he was there,
Sitting in the front,
Discussin’ on the theory
In Regina v. Hunt.

The Professor’s daughter,
she was there;
She had us all in fits,
A-sliding off the mantelpiece
And serving out the writs.

The Judge is in the courtroom,
The Lawyer’s in the chair;
You couldn’t see the plaintiff
For the wigs of curly hair.

(The Class of '36.)

A Vintage Year?

Enrolments at the Law School in the depression of the 1930's fell to a low level and in 1936 there were only 41 graduates. It was nevertheless an unusual year: the only Honours awarded were 4 First Class Honours.

Of the 41 graduates, one, C.E. Martin, became a State Minister and Attorney-General; two others were knighted, Sir Peter Heydon (Australian Ambassador) and Sir John Kerr (Chief Justice and Governor General); 8 became judges of various courts in the State including the Supreme Court — T. Falkingham, J.S. Ferrari, K.G. Gee, J.R. Kerr, C.C.

Langsworth, R. Else-Mitchell, J.F. Nagle and M.E. Pile; 4 pursued careers outside the law — F.N. Braund as a grazier, P.R. Heydon as a diplomat, L.C. Holmwood as a Public Service and university administrator and J.B. Robinson as a company executive. Two Graduates were later appointed lecturers at the Law School — J.D. Evans in Equity and R. Else-Mitchell in Constitutional Law. Most of the other graduates were admitted as solicitors and a number of them are still in practice or are consultants to legal firms.

In 1986, to mark 50 years from Graduation, 25 of the surviving graduates held a Jubilee Dinner at the Royal Automobile Club of

Australia on the precise anniversary of graduation, 9 May, and on 9 September 1988, 16 of those surviving again assembled together at the University & Schools Club to recall their experiences and recount their careers at the law and elsewhere since graduation. The photograph identifies those present. Absent because of illness were H.A. Bond, L.C. Holmwood, A.J. Williams and K.E. Williams, whilst J.R. Kerr and R.H. Tobias were abroad.

It is envisaged that the surviving law graduates of 1936 will repeat this event in the year 1989 or 1990. Was it not in truth A Vintage Year?

The Hon. Justice E R Else-Mitchell, C.M.G.



From left to right; 1. K.G. Gee, 2. K.C.F. Harris, 3. P.R.L. Laurence, 4. W.A. Conway, 5. R. Else-Mitchell, 6. W.L.W. Hungerford, 7. J.H.F. Nagle, 8. F.H. Walker, 9. M.E. Pile, 10. J.H. Peoples, 11. B.J. McDonald, 12. M.F. Morton, 13. L.G. Scott, 14. P.E. McMaster, 15. J.S. Ferrari, 16. J.B. Robinson

At the end of 1988 Patrick Harding Lane retired from the Challis Professorship in Law. The following is taken from the tribute delivered by the Dean at a meeting of the Faculty of Law on 6 December 1988.

Having graduated with First Class Honours and the University Medal in Law in 1957, Professor Lane commenced his law teaching career as a Lecturer in Law in 1958. After the completion of an LL.M. by thesis, which was awarded First Class Honours in 1960, he was promoted to Senior Lecturer in 1961. He spent the 1960/61 academic year at Harvard University where he completed the Harvard LL.M. and from that transferred to the S.J.D., a degree conferred in March 1965. He was promoted to Associate Professor in 1966 and in October 1972 was appointed to the Chair of Law. He was appointed Challis Professor in January 1987.

It has been in the field of Federal Constitutional Law that Professor Lane has distinguished himself as a pioneer and pre-eminent scholar. His output in the area of constitutional analysis has been prolific and penetrating in both article and book form. His extensive work on "The Australian Federal System with United States Analogues" was to become the basis for the award of the degree of Doctor of Laws at this University which was conferred in December 1973. That work has since been developed and taken new shape in his "Commentary on the Australian Constitution". His other books, all in current use,

include the Fourth Editions of "Manual of Australian Constitutional Law", "Introduction to the Australian Constitution" and the Second Edition of the "Digest of Australian Constitutional Cases".

On a more personal note, Pat Lane did not parade his exceptional academic credentials but pursued his teaching and research with self-effacing modesty. His encyclopaedic knowledge of constitutional cases and his capacity for instant recall of relevant passages from High Court judgments left generations of students spellbound. After overcoming their initial astonishment, students soon warmed to his genuineness and lack of pretence.

Although he did not seek out administrative tasks, he was called upon to act in a variety of administrative capacities, including that of Head of Department, all of which he despatched with quiet efficiency and fairness. He was also a confidant of many junior members of staff who took the trouble to seek him out and who testify to the very genuine concern which he held for their personal welfare and academic development.

Portrait of the Late Professor D G Benjafield, C.B.E., D.Phil Oxon

Former students of the Faculty of Law and its friends will remember the late Professor Benjafield with admiration, respect and affection. He made great contributions to legal research, to academic life and to the law in general (serving not only as an eminent barrister but also as a Law Reform Commissioner); he was a loved husband, father and a friend. Apart from his writings and the memories of those who knew him, there was no testimonial to him in the University for all to see.

At the invitation of the Chancellor, Sir Hermann Black, and the Vice-Chancellor, Professor J M Ward, with the support of His Excellency, The Lieutenant-Governor of New South Wales, Sir Laurence Street, a request for donations for the commissioning of a portrait was launched by a generous initial donation by the University. The response was immediate and considerable with contributions from the judiciary, the profession and present and former members of the University.

The portrait, which will hang in the Law School Library, is being painted by Mr Noel Thurgate and it is anticipated that it will be completed towards the middle of this year. The surplus will be used for the purchase of books for the Law School Library selected from fields of Professor Benjafield's expertise.

(Dr) Robert Stein

The period from the establishment of the Faculty of Law in 1855 until the present time has seen dramatic changes in the availability of postgraduate studies. Although there existed provision for the award of Degree of Doctor of Laws (LL.D.) from an early date, in the period 1855-1965 the degree had been awarded only four times. It was not until 1950 that the Faculty first introduced LL.M. by thesis. By 1965 the degree had been awarded to eight candidates for theses dealing with constitutional law, international law, jurisprudence and succession.

In 1964 the Faculty introduced a Master of Laws by coursework based on New York University Law School's highly successful programme. An LL.M. by coursework could be obtained by the candidate satisfactorily completing four subjects together with a research paper in one of the subjects undertaken.

In the early years there were 11 subjects offered including Death, Estate, Gift and Stamp Duties, Industrial Law, Restrictive Trade Practices and the Constitution, Comparative Law of Contracts, Income Tax Law, two subjects in Jurisprudence and four subjects in Criminal Law and Criminology.

In 1988 there are twenty three subjects offered in the Master of Laws Coursework programme. The present programme offers candidates excellent opportunities to specialise in such areas as Taxation (Taxation Law I, Taxation Law II, Taxation Law

III, Taxation Law IV) and Corporations Law (Public Company Finance, Securities Regulation), Consumer Protection (Consumer Protection Law, Restrictive Trade Practices), Criminal Law and Criminology (Principles of Criminal Justice, Causation of Crime and Treatment of Offenders, Criminal Statistics and Methods of Research, Forensic Psychiatry), Jurisprudence (Aspects of Law and Justice, Aspects of Law and Social Control, Aspects of Legal Reasoning, The Family in Law and Society, Uses of Logic in Service of the Law, Law of the European Communities). Other subjects offered include Industrial Law, Administrative Law, Indonesian Law, International Business Law, International Transport Law, Restitution.

LL.M. Coursework Candidature

LL.M. coursework numbers have continued to grow. In 1977 there were 332 candidates; this increased 442 enrolments in 1986. In 1987, 383 students were enrolled in the LL.M. degree by coursework. The higher graduation rate at the beginning of 1987 accounted for the reduction in numbers.

The LL.M. by coursework has been an outstanding success. It attracts not only graduates from the Sydney law schools but also interstate and overseas candidates. For many young graduates it has become almost a condition of their employment that they undertake the degree. It is a tribute to the foresight of the Faculty and the quality of its

courses and teachers that it has been such a success. In 1986 and 1987 the LL.M. by coursework had the highest enrolment of any Faculty of the University of Sydney for postgraduate degrees by coursework.

Despite the increase in the number of candidates attempting the LL.M. by coursework, the number of candidates completing the degree remained very small. The major reason for non-completion was the requirement that candidates complete a 20,000-30,000 by-law paper. This was of considerable concern as C.T.E.C. viewed very critically courses where the completion rates were low. It was sought to remedy this problem by amendments to the resolutions governing the degree. The effect of these new resolutions has been to allow a candidate to obtain an LL.M. by coursework degree at the pass level on satisfactory completion of four coursework subjects. The requirement of an additional bylaw paper (now called an honours dissertation) was



Carolyn Sappideen
Sub-Dean 1984 to 1987)

retained for the award of the degree with honours. These amendments have had the desired effect. These changes have attracted criticism both by the committee appointed by C.T.E.C. and members of the Faculty on the ground that a postgraduate degree may be obtained without the necessity of doing substantial research work. This deficit will be remedied by the requirement that each candidate must undertake in at least one of their courses a long essay in lieu of the annual examination in that subject.

Thesis Candidature

The last ten years have also seen a very substantial increase in the number of thesis candidates enrolling in this Faculty. In 1977 there were 9 candidates enrolled in the LL.M. by thesis and 4 enrolled for the Ph.D. At the end of 1986 the LL.M. thesis candidates had increased to 20 and Ph.D. enrolments to 14 and in 1987



Stanley Yeo Postgraduate
Sub Dean 1989

there were 22 enrolments in the LL.M. by thesis and 20 enrolled in the Ph.D. degree.

Increases in thesis candidature has put an enormous strain on resources, particularly in the area of International Law although this has eased with appointment of a new lecturer with interests in the area. The rising number of thesis candidates has made the Faculty more sensitive to the special needs of postgraduate thesis students. Facilities for postgraduate students have been improved. Word processing facilities have been made available for thesis candidates and a room has been assigned as a postgraduate common room, equipped with a notice board and coffee urn.

The most important step has been however the introduction of the Postgraduate Seminar series. These seminars have been specifically directed to the problems of thesis candidates in the hope of alerting both candidates and their supervisors to potential problems before they occur. The seminars have also had the important function of letting postgraduate students get to know each other. The Committee for Postgraduate Studies provided a grant for the seminar series in 1987 and has provided continuing support for 1988. Such topics as "What is a Thesis?", "How to know when you are half way through and how not to give up" were covered in the first seminar series in 1987. The seminars have been very successful and as far as we are aware are the first of their kind in an Australian law school. It is anticipated that the seminar series will be run every year.

Conclusion

We can be justly proud of the continuing success of postgraduate programmes in this Faculty. These programmes may not, however, continue to grow unrestrained. The impact of the introduction of fees is not yet known. For the time being, at least, the issue of postgraduate quotas can therefore be avoided.

Carolyn Sappideen
Senior Lecturer in Law.
(Mrs Sappideen was Sub-Dean (Postgraduate) from 1984 to 1987)

At its meeting on 24 July 1987 the Faculty of Law resolved, subject to a number of conditions, that the Law School should be moved to the main University campus from its present location in the city.

Reasons for Relocation

The location of the Law School has for a long time been a sensitive issue, but circumstances which once weighed heavily in favour of a downtown Law School have either vanished or at least diminished in importance. The system of articulated clerkship which required students to spend a number of years as clerks in law firms during the course of the LLB degree has been replaced by the College of Law. Law is now taught primarily by full-time staff. The use made in undergraduate subjects of part-time teachers drawn from the profession, significant and valuable though it remains, is now very limited.

Only in the postgraduate area can a strong case still be made that convenience of students and part-time staff is best served by holding classes in the city. Most coursework students in our LLM and Diplomas are employed full-time and attend classes in the evening. Extensive use is made of practitioners to teach in areas of special expertise and interest. The growing importance of the postgraduate programme certainly influenced the decision to remain in the city when the present building was planned. Our postgraduate programme has continued to grow and is the acknowledged leader in its field in the country.

But the needs of the LLB must in the end take precedence, especially if separate arrangements can be made for postgraduate classes. Moving the Law School to the main campus is not incompatible with a "downtown presence" for certain purposes. It will be important to continue to teach postgraduate courses in the city after such a move has taken place. One of the conditions attached to the Faculty resolution in support of the move was the retention or acquisition of city premises by the University to provide for such needs.

If law properly lays claim to being a University discipline — and there is no doubt that it does — teaching and research in law can best be undertaken within the broader university community where staff and students have easy access to other disciplines, particularly in the humanities and social sciences, and are able to make full use of all of the facilities provided by a large university such as the University of Sydney. This view has always been held by those who have argued in favour of the location of the Law School on the main University campus and, with the abolition of articles and the decreasing dependence on part-time teachers, has gained increasing support. I can do no better at this point than to quote from a graduation address given by Sir Anthony Mason, Chief Justice of the High Court, at the University of Sydney in April 1988.

In my days the Law Course was strictly geared to professional practice. So the Law School was located off-campus, removed from the beguiling distractions of

University life and other academic pursuits. The attitude of mind evidently reflected the robust belief that an understanding of other branches of learning was unnecessary and might actually have a corrupting influence on the developing legal mind. Today wiser counsels have prevailed and the Law School is to take its rightful place on the campus as an integral element in the University.

Quite apart from these arguments of principle, practical considerations alone present a compelling case for relocation. In the first three years of Combined Law (Arts/Law, Economics/Law, Science/Law) which makes up approximately three-quarters of the total number of LLB students, all law subjects (six under the new curriculum) are taught on the main campus by staff based at the Law School. This is a totally unsatisfactory arrangement. The very limited staff/student contact which this permits and the lack of a significant law presence (including library facilities) on the main campus is seriously detrimental to students. The amount of staff time lost in commuting between the Law School and the main campus in order to give classes is wasteful of scarce staff resources.

A second and increasingly urgent practical problem is created by the inability of the existing building to accommodate the current needs of the Law School. The paradoxical effect of the recent and necessary improvements to poor staffing in the Faculty has been to stretch the existing building to its limits. Despite extensive renovations, including conversion of recreational and tutorial space into staff offices,

the accommodation is both inadequate and increasingly inflexible.

The Future of the Phillip Street Building

The existing building can be disposed of only with the consent of the State Government. Discussions between the University and the Government concerning the sale of the building are now at a very advanced stage.

Considerable interest has already been shown in the building by a variety of prospective purchasers. The building's future is therefore uncertain but it is possible that a part of the building or its replacement will be set aside for the University to continue to offer programmes in the city, including postgraduate courses in Law.

The Campus Location

No final decision has yet been reached on how the Law School is to be rehoused on the main campus. One attractive solution which has already been thoroughly investigated is the restoration and conversion of the Anderson Stuart Building (the old Medical School), currently occupied by the preclinical departments in the Faculty of Medicine. It is ideally located and its historic character is well suited to a major humanities-based Faculty such as Law. Unfortunately, the cost involved in the restoration of the Anderson Stuart Building and, especially, the relocation of its present occupants far

exceeds the proceeds likely to be available from the sale of the Phillip Street Building, and there is little prospect of the University being able to attract the additional funds in the near future.

There is no other existing building on the main campus which is both suitable and available for occupation by the Law Faculty. Possible locations for a new purpose-built Law School are therefore currently under consideration by the University's consultant site planners.

To assist in the planning process the Faculty has prepared a building brief which attempts to identify the long term accommodation needs of the Law School, taking into account expansion in full-time staff and the need for flexibility in timetabling and teaching arrangements. It was a condition of the Faculty's commitment to relocate that the building occupied by the Law School should retain the Law Library as an integral part of its teaching and research activities. Current University policy dictates that teaching space be shared amongst Faculties and Departments and it is, therefore, unlikely that a new building would contain all the teaching space required by the Law School, although it is expected that an adequate number of small class rooms would be included to accommodate tutorials and small-group teaching needs.

The Timetable

Once a decision on the campus location of the Law School is reached it would still take between three and four years to plan and erect a new building. Assuming that the negotiations between the University and the State Government reach a satisfactory conclusion, it is hoped that the timing of the sale of the existing building will be organised to ensure minimum disruption to the work of the Faculty in its move from the city to the main campus.

The resolution to relocate was a relatively painless process when compared with the difficulties of implementation, but the Faculty is determined that its commitment to move will be matched by the provision of a first-rate building suitable to its long term needs and free of the limitations which the existing building presents. Future issues of the Sydney Law Reports will keep readers informed of progress.

Colin Phegan
Dean

Feminist Legal Studies

In the past twenty years, several new approaches to the analysis and criticism of law have appeared. One of the most interesting and important of these is Feminist Legal Studies. This area does not owe its development directly to the critical legal studies movement or to any other specifically legal analysis. Its roots lie in the long history of the feminist movement as a political force for social change. Like feminism as a whole, feminist legal analysis has come a long way from the early days of what used to be called "Women's Liberation".

Feminist legal scholars and lawyers ask questions such as: Why do women seem so often excluded from any kind of social or legal analysis? Do assumptions which are inherently male underlie our legal structure? If so, how and why? How can this be changed? Do we want to change it? Feminists very quickly began to look at law or selected areas of law and to approach them from an often highly critical perspective. But, any analysis critical of legal studies in relation to women must also ask whether there is any common basis of female experience which relates to or is affected by law? Is there an alternative, female perspective? Could reform of the law help to more effectively reflect women's perspectives, or are the inequities so endemic that real reform is impossible without radical change to the underlying social structures? What do we really know about women and law?

The most difficult step is the conceptualization of a feminist method with which to understand and examine law. The language that we use; our acceptance of abstract concepts as somehow valid or "pure"; our reliance on confrontational, adversarial techniques in practice and, possibly in certain types of teaching (eg. the Socratic method) — all of these more structural questions themselves affect legal study and criticism and are of concern to feminist scholars. Is there an alternative to accepted methods of practising and learning the law? This leads to another question that feminist legal scholars are now asking: Is there a distinctive feminine voice that all women share which differs from a voice which can be described as masculine? Some empirical studies would seem to suggest that women see the world in terms of relationships, responsibility, caring, context, communication, whereas men see the world in abstract terms of right and wrong, fairness, logic, win/lose, and that they ignore context and relationships. It is said that the male view is the dominant view in our legal system, the view which has been treated as "normal" and "universal". The feminine perspective is ignored and devalued. Can we include a "feminine voice" in the law?

Gender and the Law at Sydney Law School

One half of the student population at Sydney Law School is female. An increasing number of teaching staff is also female. The fact that women are now present in the Law School

in significant numbers has not up until recently generated much thinking or planning as to what, if anything, this may mean. It may be the case that most of our women students are essentially competitive high achievers like the men and that no real distinctions between male and female students exist. Recent events and anecdotal evidence however seems to suggest otherwise. Overt sexism, jokes denigrating women and obvious insensitivity are recognised and, increasingly, no longer tolerated by either female or male staff and students. Unfortunately, overtly sexist behaviour still occurs in the Law School.

There is also now some explicit recognition of feminism and gender in areas of substance. A few subjects contain specifically women's concerns on their syllabi including Family Law, Anti-Discrimination Law, Criminology, Alternative Dispute Resolution and Legal Institutions. Over the past year there has also been a series of talks and seminars addressing feminist issues. In particular the 1988 AULSA Conference held at Sydney Law School included a key-note address by Professor Catharine MacKinnon on Feminism and the Law. Other talks during 1988 included faculty seminars by Sandra Bern of the University of Tasmania, Professor Lucinda Finley from the United States and Professor Katherine O'Donovan from the United Kingdom by way of Hong Kong. In addition Professor MacKinnon gave a general seminar on "Pornography". There was an in-house seminar on Feminist Legal Studies by Dr. Hilary Astor, Christine

Chinkin and Shelley Wright who then repeated their efforts during a well-attended and enthusiastically received student seminar. It is hoped that there will continue to be discussions and seminars amongst both staff and students in the coming year.

Finally there is an increasing emphasis on reviewing teaching techniques and the classroom environment in the light of gender-related issues. There has for some time been a Faculty Resolution which states "that the Faculty of Law actively encourages the use of non-sexist language by teachers and administrators in the Faculty in line with policy adopted by Senate." Most recently Faculty passed the following Resolution:

"The Faculty of Law recognises the right of all persons to equality. In particular, the Faculty of Law is committed to ameliorating inequalities between women and men by employing the following measures:

1. All materials produced by faculty members for circulation to staff or students should be written so that the female and male pronouns appear alternatively or conjointly; and words denoting the male or female sex should not be used in reference to persons in general as in, for example, "man" or "mankind" where humanity in general is meant or "housewife" where the reference is generally to any person who works primarily in the home without pay.

2. In-house casebooks and materials should reflect the presence of women in non-stereotypical roles in more or less equal proportions with men in non-stereotypical roles. There

should be sensitivity to women's issues demonstrated in the choice of materials used. These factors should also be considered in selecting published text books.

3. Where teachers select for classroom use, or as required reading, materials which omit significant legal issues relevant to the historic or current inequality of women, or inadequately represent women and women's interests, the teacher should make efforts to compensate for such inadequacies through discussion and presentation of the materials or by the use of supplementary materials.

4. Behaviour in the classroom or elsewhere should reflect the standard of gender neutrality already accepted by this Faculty in relation to language. Neither women nor men should be portrayed in stereotypical, pejorative or derogatory terms. Students should be made aware, where necessary, that stereotypical, pejorative, derogatory or gender biased language and behaviour is inappropriate.

5. Faculty members should be conscious of and encourage the efforts of students who attempt to develop thoughts and theories concerning the relationship between discrimination and the law." As has been said elsewhere: "The value messages in the "hidden curriculum" of legal education relate to two separate but overlapping issues. The first is whether there is equality in education. Does our behaviour as teachers (or as students) convey, whether we mean it or not, a lack of commitment to the value of sexual equality? Does our behaviour convey the

message to women "you are not equal"? Secondly, there is the question of education for equality. Are we teaching, in a normative sense, that women ought not to be treated as equals? Even if we were only aiming to produce basic competence as lawyers, this would be an important question. Lawyers who do not comprehend the ways in which women are oppressed in our society will hardly be able to represent women clients effectively."

Shelly Wright, Lecturer in Law
Hilary Astor, Lecturer in Law
Christine Chinkin, Senior Lecturer in Law
Eilis Magner, Lecturer in Law.

