



Law Faculty UPDATE

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From the Dean's Desk

January in the Faculty always has an unreal air to it - most academics are on leave, the Law Clinic is closed and the library has only a sprinkling of postgrad students. The one hot spot is of course the Faculty Office as offers of places in various degree programmes wing their way across the country, and beyond. But the 2009 Academic year will soon be in full swing, and alumnus and environmental activist Lewis Pugh will be the guest of honour at the Official Opening on 24th February.

I have had the pleasure of writing thank you letters as pledges and donations continue to come in, and I am much encouraged by the fact that we are edging closer to our target for the *Towards Sustainable Justice* campaign. I am also encouraged by the fact that South Africans are, for the first time in the Faculty's fundraising years, the biggest group of donors - New Yorkers are level pegging with Londoners for the first time too. March sees the finale of the 150th celebrations and I look forward to meeting many of you at the three scheduled events. (see p.6). We had thought to be in Gauteng this month but the annual Labour Law Conference in August is going to be a bumper one to mark 10 years of the event and it seemed appropriate to arrange an alumni event around one of the key note speakers. We will let you know details in due course. The point was made over and over again at the many farewells to Hugh that I have inherited a strong Faculty, and I have. And I am very aware that a key to that strength is all of you, your past and present successes, of your continuing involvement with UCT. I look forward to being part of the next chapter of (y)our story. Finally, on behalf of you all, I would like to wish Danie everything of the best for his new role as Deputy Vice-Chancellor. I have to confess feeling much deprived by his move down (up!) to Bremner, because I will miss his close proximity and advice, but the university as a whole will clearly benefit from his leadership. The Vissers (above) were part of the Faculty dinner to say farewell to Hugh, and we will say our formal farewell to Danie at an occasion soon.

With best wishes, PJ Schwikkard



UCT wins Moot

Law students Dylan-Thoms McDonald (researcher), Emma Webber (Oralist) and David Watson (Oralist), are off to Washington in March having won the South African round of the annual International Jessup Moot Competition; with them is their coach Shingi Mazunzu. In congratulating Wits for their individual performances before announcing the winning team, Judge Ian Farlam said, 'If this is the cream of the cream, the Justice System's future is secure.'

Towards Sustainable Justice...

I am very pleased to report excellent progress in relation to the Law 150 Campaign. We have just topped R20m and accordingly have achieved 80% of our initial target.

The vast majority of our alumni and friends are still considering whether to contribute to this cause and, if so, the extent of their contributions. In relation to the first issue, not since 1994 has South Africa so desperately needed outstanding, independent legal minds. The independence, stature and integrity of our judiciary are under considerable threat. Our Law Faculty has a vital role to play in producing law graduates of the highest quality to withstand these pressures and to uphold the values encapsulated in our constitution. We are confident that the faculty has produced and is continuing to produce graduates who impress those who employ them. The fact that 10 of the 27 clerks of the Constitution Court are

alumni speaks volumes. As to the second issue, the simple answer is "as much as you can". No contribution is too small. By way of illustration only, we have some 4 000 alumni of the Law Faculty. If each alumnus were to contribute an amount of R100 per month for five years, without any escalation, we would raise an additional amount of approximately R24 million. For our US and UK alumni, this would be equivalent to \$10 or £7 per month respectively. I fully appreciate that we are experiencing difficult times but would urge that you consider the extent of your contribution in that context. For what is a relatively small amount, you would be supporting an extremely valuable cause and making a real difference. We look forward to hearing from you as soon as possible.

David Nurek

Chair of the Law Endowment Advisory Board and Faculty Development Committee.

PS: The online form has been amended to include Law 150 (<http://www.uct.ac.za/print/dad/funddev/giving/>), pledge forms are enclosed again, and if all else fails, please feel free to email Pauline.Alexander@uct.ac.za



ILO appoints Kalula on Zimbabwe

The ILO has appointed a three person Commission of Inquiry to investigate complaints of non-observance by Zimbabwe of freedom of association.

The Commission consists of three members, Judge Raymond Ranjeva, (Senior Judge at the International Court of Justice), Dr Bertand Ramcharan (a member of the Permanent Court of Arbitration), and Professor Evance Kalula (Director of

the Institute of Labour Law at UCT). 'The Commission is similar to the 1992 Fact Finding Commission appointed to probe complaints by COSATU. In retrospect this has been seen as a factor in the galvanising of negotiation towards the 1994 democratic settlement in the labour sector,' said Kalula.

The Commission will sworn in at the ILO headquarters in Geneva next month. It is expected to complete its work by July.

Law 150 Donors

NB: total amounts reflect five-year pledge/once-offs

R3 million

Claude Leon Foundation
UCT Law @ work

R1 million

Kevin Dillon

R500 000

Investec (Lowenstein Trust)
Rob Knutzen (RC Offshore)
Ben Rabinowitz
Webber Wentzel

R100 000 – R150 000

Mauerberger Foundation
Jonathan Sacher

R50 000 – R100 000

Henry Blumberg, Gordon Casey, Marion Dixon, George Ellis, PJ Hope, David Nurek, Don MacRobert, Claire Palley.

R15 000 – R50 000

Andrew Calderwood, Hannes Fagan, Andre Gautschi, Barry Halliday, Colin Hoffman, Paul Malherbe

R5 000 – R15 000

Mervyn Bennun, Stephen Berrisford, Jeff Bolus, Hugh Corder, Paul Kumleben
Jonathan Mayers, Richard Moultrie, Trevor Norwitz, Nicola Peart, Anthony Rademeyer, Pat Tebbutt, Kevin Trisk

R1 500 - R5 000

Pauline Alexander, Tina Barsby, Verne Grinstead, Justin Goldblatt, Maurice Habib, Brendan Hughes, Ismail Jamie, Michael Janisch, Stuart Mathews, Terence Matzdorff, Andrew Morrison, Sarah Morrison, Charles Smith

R150 – R1 500

Mathew Dalby, David Lenhoff, Kim Overdyk, Sarah Pfuhl, Jim McNamara, Ivor Schneider, Doug Scott, Frank Silbert, Andreas Vaatz, James Yeowart, Philip van der Merwe

On-going pledges: Jock Comrie, Mike Francis, Cecil & Neil Jowell, Melanie Thomas

New Scholarships & Prizes

Firms: Bisset Boehmke & McBlain, Bowman & Gilfillan, Deney's Reitz, Richard Goudvis & Craig Delpont Mathew Walton & Barry Jessop

Class of 1997: Steven Good, Dani Jaff-Klein, Simone Jowell, Georgie Letcher, Justine MacDonald, Yasmin Masithela, Sarah Morrison, Nel Scheugnet, Lee-Ann Tong

Diversity Scholarships - ongoing

Law firms: Deney's Reitz, Herold Gie, Edward Nathan Sonnenbergs, Werksmans

UK: Barry Dean, Nick Boydell, Kate Godfrey.



**Catherine
Bailey**
1967 – 2009
Prof Hugh Corder



The UCT Law Faculty has over the past three decades produced many women graduates who have gone on to great distinction in the practice of the law and more widely. I have been privileged to have taught and to have worked with many among them, but there is in my mind a particular group of such women which stands out. They graduated in the early 1990's, at a time when the political and constitutional changes in South Africa presented wonderful opportunities to contribute to righting the injustices of the past and creating a democratic and just society, and they took advantage of these circumstances to contribute magnificently in many ways. Catherine Bailey is one of those women. Her death has robbed us of one of our most committed and creative graduates. When she moved to London she sought ways of assisting young legal professionals from disadvantaged backgrounds to gain greater experience in practice, through her firm and in association with others. I met her on each of my visits to alumni over the past six years, and my abiding memory of her will be of a bubbling, positive and vibrant person, at a social function we held at SA House on 11th November, just two months' ago (see p. 6). We will miss her sorely, and send our deepest sympathy and love to her family and friends.

Chair in Constitutional Governance

The Faculty seeks to attract an outstanding constitutional lawyer to the above newly-established Chair. The successful candidate will be a leading academic, judge or practising lawyer, willing to take the lead in both teaching and research in the field. Further criteria for appointment include appropriate academic qualifications and experience, as well as a willingness to engage in public debate, to participate in law reform, to develop postgraduate research, and to build links with appropriate institutions nationally and abroad, on matters of constitutional governance.

The annual remuneration package, including benefits, for 2009 is R608 474. Please send a letter of motivation, a full CV, a one-page condensed CV, details of three contactable referees to Mrs R Daniels, (Ref: 1897), University of Cape Town, Rondebosch, 7700 by 27th February 2009. Email: Roslyn.Daniels.@uct.ac.za; Tel: +27 21 650 2220.

Contract vs conditions



I was so glad that both Edith and Linda (and my mother) could be with me on the day. We have had a long association, and I have observed, and appreciated, the long hours that they have worked and the fact that they have always done their work with pride.

'One of the developments in which we take great pride is the growth in our numbers of PhD students,' said Professor Hugh Corder, speaking at the December 2008 Graduation Ceremony. 'It is a source of even greater pride when a thesis of the calibre of this one comes from one of our own. Dr Rochelle le Roux's work is described by her supervisor, Professor Evance Kalula, as of the most impressive he has ever supervised, and he has supervised many. Her thesis was on the relevance of the contract of employment in modern employment. Given the central importance of balancing socio-economic rights with the limited resources of our developing democracy, this topic is very much an issue of the day,' said Corder.

'What I set out to do was to de-mystify the relevance of the contract of employment, to show that the contract is not as important as the relationship between employer and employee. What I did not realise was the extent to which a preoccupation with the contract can lead to the exploitation of vulnerable people,' comments Dr Rochelle le Roux. 'Lack of knowledge means that the domestic workers are amongst the most vulnerable of groups who are prepared to work for less, and to work in conditions that are not conducive to good employer relations.'

In answering the question as to the relevance of the contract of employment in modern employment, Rochelle le Roux explored three broad areas associated with the contract:

- the evolution of the contract of employment in South Africa and the dichotomy between the contract of employment and the independent contract;
- the forms of engagement of workers in the South African labour market;
- alternative regulatory models with specific reference to models that are consistent with the South African Constitution.

Using a comparative approach it is shown that the contract of employment in South Africa is in a relative state of unification. However, some assumptions about its historical evolution and the influence of Roman and Roman-Dutch law are overstated, and more recent developments, such as tax legislation, arguably had a greater influence on the dichotomising of labour law. The study of the South African world of work illustrates that modern work is performed in diverse ways. After illustrating that labour law has both countervailing and social developmental roles, it is concluded that the contract of employment as traditionally understood is no longer capable of performing these roles. It is further claimed that a process of diversification (as opposed to the unification of the contract of employment) will help to redefine the contract of employment and this may extend the coverage of labour legislation to those who, bearing in mind the purpose of labour law, ought to be protected by labour laws. Finally, it is argued that the South African Constitution provides a ready paradigm within which to achieve such a process of diversification.





Celebrating Law 150

Reunion weekends can, by definition, never disappoint. 2008 was no different. Having been awed by Lewis Pugh and his Arctic swim, the 170 guests were then entertained by the Class interventions. First up was Pat Tebbutt who, in his inimitable way, painted a most entertaining picture of the eccentricities (and antagonisms) of the triumvirate of the 1940s, Wille, Wylie and Emmett. The other Class notes follow.

1958: At our farewell dinner half a hundred years ago, as we fifty-eighters girded ourselves to confront the world, I was the class speaker.

I told a seriously smutty joke, which elicited no more than a titter from my classmates and a reproving silence from Marina Powell and Janet Donaldson and others in the women's quarter. To my left, however, an appreciative guffaw from the dean.

Later, when Ben Beinart had his turn, he trumped me. You know the one, but I'll repeat it. Caesar tells Marc Anthony how he cleaned up the Vercingetorix – (Malmesbury accent) 'veni, vidi, vici' – I came I saw I conquered.. Aah, says the unassuming Anthony, with Cleopatra it was vidi, vici, veni – I saw, I conquered, I came.'

I went to Ben's funeral in Birmingham in the late 1970s. Afterwards, his son William showed me round the family house in Edgbaston. Ben's study seemed to have received the attention of an IRA bomber. The future professor of African history at Oxford gazed at the scene and said rather lamely, 'maybe I'll see if he left something for Acta Juridica'.

So, us! I will sound like an *oupa* when I say how much has changed. I could wake up in

Muizenberg at eight, hop on my Vespa 125 scooter and be at Hiddingh Hall at 8.30 in time to hear Tom Price expound on duty of care or watch D V Cowen flutter his handkerchief and tell us how to negotiate some instrument or other.

Thence to the Arts block for Ben and Wouter de Vos. The whole faculty in just one day. Three professors, and a lecturer from Stellenbosch to do the leftovers. All held together by the faculty secretary, Miss Dentz – did she have a first name?

And a host of young ringers and long-in-the-tooths from the local Bar filling in the year 4 and 5 half courses. And Reuben Turner, the ghoulish city pathologist, who looked as though he'd cut up his face and stitched it back rather badly.

In the early years, Jack Simons awakened us to the angst of our own country. He was so good I endeavoured to do Native Law and Admin II so that I could sit at his feet for a third year. I can recall the day his wife Ray Alexander was physically stopped from taking up her seat in Parliament. You wouldn't have guessed from Jack's demeanour in class that anything strange had happened in his life.

These were the years before the Extension of University Education Act removed blacks from the campus. Law lectures were attended by the likes of Dullah Omar; Ben Kies, guru of the Unity Movement; and the irrepressible city councillor Cissie Gool, squeezing in a degree between advising half of Cape Town how to survive the Group Areas Act. The judicial system survived the onslaught of apartheid's infamous laws and the benches packed with John Vorster clones. For that, I believe, we have to thank those who were educated in the law at liberal universities like

UCT. Though from what I've been hearing since my return, we cannot rest on our laurels. So, on behalf of the survivors of '58, the honourables and the 'umbles, and those like Reg Austin and myself, who've been away so long, I must thank Pauline Alexander for frogmarching us in for a nostalgic weekend. We'll be back ten years hence, all being well ...and alive, of course. Vuka SACS!

Denis Herbststein

1968 – The Law Faculty was based in Rosedale House at the Hiddingh Campus, the Arts & Drama students were also there and we were a rather conservative bunch by comparison. Our class only had 15, of whom nine passed in 1968, five passed later & one didn't finish. About 50% went into the legal profession.

Prof. Ben Beinart was a larger than life person who lectured us in Roman Law. I remember his love for Nederberg Cabernet because his tie was full of wine stains which caused his tie to take on the shape of his ample stomach!

I remember too that when the GSB was started he made it clear to the Dean that the Law School produced more top businessmen than did the GSB.

Prof. Wouter de Vos was Dean in our year and lectured us in Roman Dutch Law. His excellent lecture notes were roneoed for everyone (no Photostat machines then!).

Solly Leeman was a relatively new member of staff in 1968 and lectured us in criminal law & procedure. We all agreed that he was very interesting, competent and lively. Unfortunately he came from Stellenbosch!

Carl Scheppening

1978 This exercise has been fantastic. The fun and friendship that has flowed from all corners of the globe has been outstanding. It is incredible that we have located 52 of the 63 chaps from our final year. Sadly, two have passed on.

Ian Fullerton and Richard Hugo-Hammond will be having a drink in Sydney this evening and hopefully the Aussies can get together with Harry Dixon and other contemporaries. There will be a UK gathering soon and perhaps Steve Rogut and Colin de Castro can conjure up something for the USA based classmates. Believe it or not, Zimbabwe, Oudtshoorn and Gauteng have the same number of '78 graduates (2). Not sure why Gauteng has so many. Many of you have mentioned how envious you are of the 22 of us who have remained in or returned to the Cape. About half of the class of '78 is still practicing law in one form or another the rest of us are trying to make a living. There is one more tale to tell. I have just had the most delightful chat with Johann Schiller. He wishes he too could be with us tomorrow and he sends his kindest regards



to you all. Surprisingly, Johann still remembers most of you. Johann is a senior officer at Alfa Laval and heads their international legal team. He mentioned that much of the material he covered under Roman Law and Analytical Jurisprudence is visited upon him daily. Letters of credit are simply stipulations. The whole issue of rights and duties crops up in everyday contracts. Some of you may know that Johann has remained in contact with Tom Bennett and Chris Forsythe. The latter is a full professor at Cambridge. **John Doidge** P.S. Greetings to Prof Forsyth. You will be pleased to hear that after several years of practice in an English Law jurisdiction, I think I have finally grasped the principles behind the *Wagon Mound* tort case on causation and the unforeseeable consequences of wrongful conduct that you lectured us in the Delict course!

Greetings also to Professor Hugh Corder, Barry Cohen and others who formed part of a memorable Law Faculty Rugby Tour of Eastern Cape Universities (Rhodes, Fort Hare and Port Elizabeth Universities) in June 1976. Best wishes to you all. Charles White, Melbourne.

1988 I came to the Wilfred and Jules Kramer law school as a transplant from the University of Port Elizabeth (“UPE, your campus by the sea” or “that bush university” as it was referred to by Denis Davis) in my penultimate year of LLB. When I arrived in February of 1987, the faculty was still housed in the PD Hahn Building with its steeply banked lecture theatres on the ground floor. 1987 was a year of the “troubles” with ongoing protests on campus against the then Government’s attempts to restrict access to students of colour through the quota system and a reduction in government subsidies for those universities which did not conform.

Whilst the protests were focused on the grass bank below the Sports Centre on the M3, these also spilled over onto campus with the police invading the campus from time to time in full riot gear, tear gassings protesters and staff, with the occasional birdshot being fired indiscriminately. This proved to be quite an eye opener for this plattelandse transferee, who was used to only mild forms of protests on campus at UPE when the canteen ran out of doughnuts. To my distress, lectures were not cancelled and proceeded “normally”.

On one occasion whilst attending Solly Leeman’s Criminal Law lecture late one afternoon, the lecture had just begun when the doors were flung open and 4 or so riot policemen burst in in full riot gear, kitted out with batons and sjambokke. Solly, without missing a beat says to them – “there are still a few seats at the back to the right”

In support of their land bound colleagues, the Air Force also took part in intimidating the students, buzzing the campus at odd times. Possible on the first of these occasions, a somewhat younger Hugh Corder was lecturing as the jets swooped over PD Hahn for the first time. Hugh dropped to the floor behind his lectern, sheepishly reappearing a few minutes later, and after dusting himself off, mumbled that he thought it was another squadron of Mercuriuses crashing into Devils Peak.

Some lecturers had good memories, others not. As a result of completing a number of courses at UPE, I was credited for some of my LLB courses. One of these was Roman Law, and as such, I was spared Reinart Zimmerman’s constant reference to the *Causa Data Non Secuta*. This did not spare me from my classmates’ constant mimicking....

I was not credited for the Advanced Contract course lectured by Belinda Van Heerden – I had already completed and I protested silently by boycotting her lectures – the fact that these were at 08h00 on a Monday was apparently not the real reason. I attended the first lecture of the year and the last, to see if Belinda would give away any hints regarding the exam. At the beginning of that last lecture, she asked me why I had attended only one lecture before that – a bit unnerving and I then started to fear for the exam and that I may be victimized. I decided to make up by approaching her in her office with a question before the exam to feign some interest in the subject. After posing the question, she simply answered (without referring to any notes) by saying that the point was covered in paragraph 7 on page 2 of the lecture notes for lecture 12 and referred me to a law report on her bookshelf and had me turn to page 365 at A-G for the answer!! Her phenomenal memory intimidated me and after hours of additional work to catch up, I only managed a flat 50% in the exam!

Not as good a memory for Richard Brusser lecturing Company Law. He had a class list with a photo of each student next to their name. He would ask a difficult question and then refer to the list – without looking up “Mr. Mannion – would you care to answer?” We believed that the photo on the class list was not to help him remember the students, but to stop Mr. Mannion pretending to be absent by failing to respond! The fact that there was a photo didn’t stop Steff Sudweeks asking at least three questions every lecture to remind Brusser that he was in class. Despite the seriousness of the business at hand, we also took the time out occasionally to prank the lecturers. We had tax with Denis Davis late on Tuesday afternoons in our final year – lectures were in Leslie in those huge theaters designed for first year BCOM – to hold 300 students. About a third of the class sat in the front two

rows, whilst the rest sneaked to the back rows. Davis came in at the front and immediately set about the lecture and after about 5 minutes stopped and asked the front row where the rest of the class was – at this, the last two rows at the back erupted in laughter, only to be chased down from their seats to the front by Davis. **Craig Cunningham**

1990s I am from the class of that auspicious year, 1994. I was asked by some folks at my table to say something about the 1990s, as we couldn’t let the evening go by with nothing being said of that decade.

I want to focus on three things. Unlike in the 1980s when students were fighting for basic freedoms through protest and resistance, our era was the era of building the new democracy. Less heartening, it was also an era when students had to learn constitutional law as it was in the pre-93 constitutional dispensation, the interim Constitution and the final Constitution! We can mark the contributions that were made by various members of the Faculty to that process: Hugh Corder and Christina Murray were actively involved in the Codesa and Constitutional Assembly processes. Two prominent women from that time were appointed judges and have contributed to the development of the human rights jurisprudence and, in my view, are amongst the best judges we have: Kate o’ Regan (on the Constitutional Court) and Belinda Van Heerden (now on the Supreme Court of Appeal). Dennis Davis, now on the Cape Bench, also taught us and has consistently contributed in important ways to constitutionalism. All from this faculty. We were also taught by the giant of company law Professor Blackman. We were extremely fond of him, not only for his brilliance but because he gave us our examination papers in advance. And now he has recorded it all for us in his wonderful treatise on Company Law in South Africa. Tonight I want to mention Jan Glazewski because in the 1990s, there was a course on environmental law, the importance of which has been emphasised by Lewis Pugh in his talk. Being the first generation taught under the Constitution stands us in great stead, especially for us relatively youthful counsel who want to practise in the area. This is especially so for women who sometimes battle to get access to non-matrimonial work. On several occasions, I have been briefed on interesting constitutional matters simply to assist eminent senior counsel, who (at least in the early days) had little clue about what the Constitution was about! Unfortunately they seem to be learning quite fast. In our time, women were well represented in our classes. If I recall correctly, about 50% of my final year class were women and we fared well, at least as well



if not better than the men. Representation of black students was not good so I was very encouraged to hear yesterday, in Hugh's presentation, of the progress that the Faculty has made in that regard. Secondly, I want to say a thing or two about our Lewis Pugh, our guest speaker tonight, because we were in the same class and it is only tonight that I have decided to forgive him for tormenting me at the time. I'll paint you a little picture. Lewis was one of what I used to call the "commercial law boys". He sat with his crew in the back row. I was one of what might be described as the (I accept somewhat nerdy) public law girls: we sat in the front row. I was President of the LSC at the time and in that position regularly had to motivate proposals and report to the class on the issues of the day.

Lewis and I rarely agreed and just as he has been vocal tonight, Lewis regularly and clearly articulated a position. Only then it was often contrary to mine. So tonight, you see, might be the first time that Lewis and I actually agree on something, and yes, it is one of the most important issues of the day, climate change, and how important it is to respond in every way we can. So now I can happily encourage him to heckle and forgive him for heckling me in the past. It is a sad thing that so many of our classmates are no longer living in this country but, Lewis, it is great to see you tonight and to hear of the fantastic work you are doing. Thirdly, I want to share what this evening and our table conversation has made me think about the future. I am

very pleased to be sitting with Joel Baepi, who was in our day the President of the Black Law Students Forum, (the BLSF). For those of you who do not know, it was a structure set up to represent the interests of black law students. It was not intended as an alternative to the LSC but to complement it.

We have recalled some of the debates that we had at the time and the achievements of student leadership: student governance and BLSF representation on the Faculty Board, whether there should be anonymous marking of exam scripts (from the perspective of racial prejudice), whether Latin should be mandatory (once the statutory requirement had been abolished), creating a vac job programme to assist particularly previously disadvantaged students getting access to the profession.

It was inspiring to remember the work we did then and the energy with which we did it. Just as it was inspiring tonight to listen to Lewis remind us that we can achieve extraordinary things and make things happen if we set our minds to it. My hope is that we as members of the profession can draw on that inspiration and do all that we need to do to make transformation happen meaningfully in our faculties, in the profession and in the judiciary. It has been a wonderful evening and it is wonderful to see you all. Thank you.

Susannah Cowen

2000s When I report back to my contemporaries on the event, I will tell them that they had really missed out on an incredible

opportunity! I would like to congratulate PJ Schwikkard on her appointment and reminisce with her about Simon Gear who had provided the victim for many of our crimes in class (his offence being his failure to predict the weather accurately);

I enjoyed the hike up Table Mountain with Anton Fagan and making the relational transition from knowing him simply as our teacher to having him save our lives on precipices! I would like to remember affectionately named, Uncle Leslie, in the photocopying room, who made sure that we always had our course bundles, and a friendly smile and chat to go with them, as we stood outside his window on countless occasions.

I need to observe the changes that had taken place even in the short time since we left, for example, the compulsory community service seemed an essential addition that had only been talked about while we were students but seemed crucial in a country such as ours, and the bridging program that we'd witnessed the need for in observing the demographics in our own classes. It has been wonderful to see the faculty (and our relationship with it) in a new way: whereas, during our time, we had felt somewhat isolated (especially as law students on our own campus and with the reputation of keeping very much to ourselves), we now - through this event - had the opportunity to see ourselves as part of a historic institution and a community that stretched across the decades. Finally, congratulations Hugh on your leadership and on your invaluable contribution to the changes in the faculty. **Sindiso Mnisi**



November 11th - London

I-r Vice-Chancellor, Max Price, Catherine Bailey, Luke Kelly, Josie Lindop and Hugh Corder

Dates to diarise

Wednesday 11th March: Inaugural Mike Larkin Memorial Lecture 6pm; LT 3. Kramer. The lecture will be given by Professor Deakin on *Corporate Governance, Finance and Growth: Unravelling the Relationship*. Simon Deakin is Professor of Corporate Governance at the University of Cambridge. The talk will be preceded by a tribute from Michael Katz.

Saturday 14th March: Celebrating Tony Honore 9-5pm: Oliver Tambo Moot Court, Kramer. Professor Honore's 60 years of teaching the law will be the focus of lectures by Adv Jeremy Gauntlett SC, Justice Edwin Cameron, Professor Marius de Waal, Stellenbosch University and Professor Anton Fagan, University of Cape Town.

RSVP for both events: Shani.Vavruch@uct.ac.za or tel. 6505413

October 16th and 17th: Reunion weekend: The classes of '59, '69, '79, '84 and '89 congregate at UCT.



December 10th: Address by Claire Palley

For the third year in a row, a law graduate was honoured at the December Graduation.

In 2008, it was Claire Palley. The Class of 1952 was unanimous in their recall of her as 'a very brilliant classmate.' She has subsequently had a distinguished international career which can be summarized in the citation below her portrait in the National Portrait Gallery in London, which reads:

Lawyer. Born in South Africa. The first woman to be Law Professor in the UK and Dean of a Law School. Her writings are concerned with constitutional and human rights issues. She has made detailed examinations of the constitutional position of Northern Ireland, Rhodesia, South Africa and Cyprus and is now recognised as a leading international authority on these countries. She has been Constitutional Adviser to the Republic of Cyprus (1980-94; re-appointed 1999). She was also a member of the Lord Chancellor's Committee on Legal Education, a trustee and council member of the Minority Rights Group (1975-94) and the UK representative on the UN sub-commission on the Prevention of Discrimination and Protection of Minorities (1988-98).

Professor Palley's address was entitled *A Faculty Legacy: the Instrumentality of Law* and she began by saying 'Although we know that our lives are largely determined by circumstances of place and time, insufficient note is often taken of the ideas with which people interact. Universities are the supreme idea-inculcating and personality-shaping institutions for those who attend them.'

Palley went on to speak of the universality of perceiving of 'a golden age' within an age, of the influence of favourite savants, of the impact of fellow class mates. She drew an appreciative response when she spoke of the biggest change since her era – 'to understand the [current] Faculty Handbook one needs a law degree.'

People interested in hard copies of the speech should email Pauline.Alexander@uct.ac.za or fax 021 655 5662 giving postal details.

December 8th: Ben Beinart Memorial lecture

The sixth Ben Beinart lecture was delivered by Fred Schauer, David and Mary Harrison Distinguished Professor of Law at the University of Virginia. His topic was *Free Speech; does political rhetoric have limits?*

Prof Schauer's opening sentence was much appreciated by town and gown alike. 'I am not here to speak about free speech as an American. What I do want to do is focus on thinking about freedom of expression, especially political expression, with the assistance of the insights of decision theory'. 'But in order to do this we have to start by recognizing what I call The Big Mistake. The Big Mistake is the assumption that we protect freedom of speech and freedom of the press because of the harmlessness of speaking or writing. And if we believe this, we will then believe that speech can and should be restricted whenever it causes harm. The Big Mistake is a mistake because it is implausible to imagine that speaking is not often harm-producing, but a *right* to free speech exists not because of the harmlessness of speech, but despite the harm it may cause. And once we recognize that we protect harmful speech in the service of long-term values, then merely identifying some speech as harmful is not sufficient to justify regulation.

Still, once we recognize the consequences of speech, we must recognize that tolerating harmful speech, even if the right thing in most cases, is not without costs. Whenever we allow false speech because it might be true, for example, we allow the propagation of speech that is probably but not certainly false, often with harmful consequences. And so too with issues of hate speech, incitement, and many other free speech issues.

Thus the main question may be the "Who Decides?" question, but in the context of political speech it may be that there are particular risks involved when those with political power can make the determination of when attacks on them go beyond the bounds of the reasonable. Just as we may distrust police officers to be the final determiners of when to search a private residence, and just as we may distrust academics to make all decisions about academic freedom, so too may we distrust the judgments of those with political power about when attacks on those with political power go too far.

The larger point is that freedom of speech is in some sense a conservative idea, in the non-political sense of that term. Vigorous criticism of officials and their actions may prevent bad officials from doing bad things, but will also prevent good officials from doing good things. When we guard against unchecked power of bad officials, in part with a vigorous free speech regime, we disable good officials with good policies and good motives, but that cost may be a lower cost than the cost of failing to guard against bad officials with bad motives and bad policies. In this sense free speech is a risk-averse strategy and in some sense a conservative one.



UDHR in Tshivhenda

In the 60th year after the Universal Declaration of Human Rights (UDHR), UCT was proud to celebrate the translation of this ground-breaking document into Tshivhenda. Appropriately, the document was celebrated first in Thohoyandou, on December 1st 2008, but as International Day, December 10th, fell on the same day as Dr Palley's talk, the evening was rounded off by a formal reading of the Tshivhenda version of the UDHR. Dr Palley is pictured here with Professor Corder, Public Law lecturer and initiator of the project, Aifheli Tshivhashe and the two students who worked on the translation, Ropfiwa Sithubi and Fulufhedzani Ravele.



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Cowen on Law: selected essays edited by Susannah Cowen



It was fitting that the launch of this collection coincided with the 150th celebrations, as D V Cowen featured prominently in the reminiscences of alumni from the '40s & '50s; he was of course a student here from 1935 to 1939 and a lecturer and professor from 1946 to 1961 with two stints as Dean, from 1947 to 1949 and from 1958 to 1960.

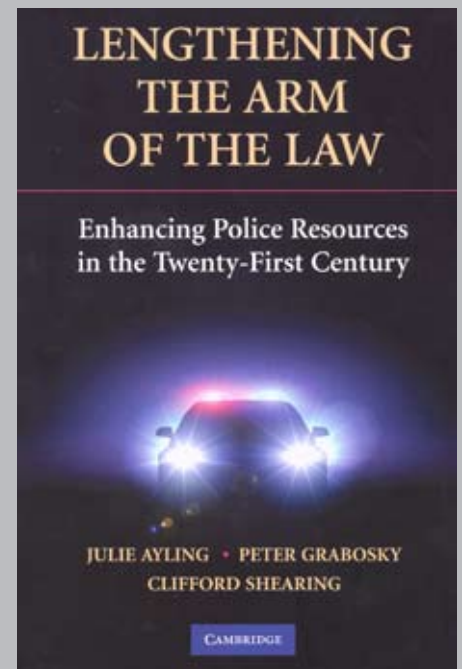
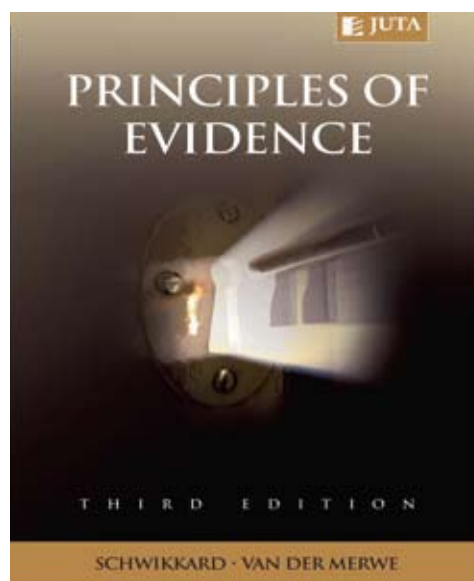
Cowen on Law: Selected Essays is a collection of previously published and unpublished essays by Denis Cowen in a wide array of subjects matters in law. There are ten chapters which comprise the selected works, each of which is introduced briefly by a current leading thinker in the particular field. The book is introduced by Justice Laurie Ackermann in a chapter which provides biographical information and some analysis of the works. Speaking at the launch, Susannah Cowen concluded with a couple of extracts that she felt

resonated down the years. The good lawyer should try to discern, behind the selfish rivalries of the hour, the quest for rules and standards of conduct reflected in the behaviour and aspirations of right-thinking men and women faced with the dominant realities of their time and place. It is this type of law graduate which it is my hope to see produced in South Africa. Inaugural lecture, 8 April 1947. Such is the vastness and complexity of the human enterprise which we call by the ambiguous word 'law', and such has been the diversity of different lawyers' ways of seeing and valuing the materials with which lawyers deal, that any lawyer's knowledge of his subject must necessarily be fragmentary, and must necessarily evolve while there is still sap in his intellectual being. That has been and continues to be my experience. Sectional title, 1978 I have reluctantly come to the conclusion that nowadays most (I do not say all, but far too many if not most) lawyers tend to regard the practice of the law as a business. They seem to have forgotten the basic distinction between a business and a learned profession. Circa 1990 Orders can be placed through cserv@juta.co.za

Principles of Evidence caters for the needs of students, scholars and practitioners alike.

The new edition of this best-selling work strikes a balance between the theory of the law of evidence and its practical application in a constitutional setting. Special attention is given to constitutional issues, the impact of these constitutional provisions on the Anglo-South African law of evidence, and the extent to which some of them may be subject to constitutional challenges.

The new edition includes a discussion of the provisions of the electronic Communications Act relating to the law of evidence.



Lengthening the Arm of the Law: Enhancing Police Resources in the 21st Century: Ayling, J., Grabosky, P. & UCT's Clifford Shearing

Relentless fiscal pressures faced by the public police over the last few decades have meant that police organisations have had to find new ways to obtain and harness the resources needed to achieve their goals.

Through entering into relationships of coercion, commercial exchange, and gift with a wide variety of external institutions and individuals operating in both public and private capacities, police organisations have risen to this challenge. Indeed, police organisations are increasingly operating within a business paradigm. But what are the benefits of these relationships and the nature of the risks that might accompany reliance upon them?

This book examines these new modes of exchange between police and 'outsiders' and explores how far these relationships can be taken before certain fundamental values – equity in the distribution of policing, cost-effectiveness in the delivery of police services, and the legitimacy of the police institution itself – are placed in jeopardy.



Welcome to new staff

Public Law

i. Environmental Law

Loretta Feris from Pretoria will join us in July as an Associate Professor. A graduate and PhD from Stellenbosch, she has taught in Washington DC and Pretoria and is a Law Commissioner for the International Union for the Conservation of Nature. Her other expertise is in International Trade law.

Peggy Gumede, a graduate of Fort Hare with an LLM from UKZN, will teach some business law as well as environmental law.

PS Congratulations to Advocate Jan Glazewski!

ii. Criminal Justice:

Associate Professor **Wouter de Vos**, formerly of the University of Johannesburg (RAU), Stellenbosch and Rhodes, is regarded as one of the leading procedural lawyers in this country, and is a member of the Magistrates Commission. He is an NRF-rated researcher and will be teaching Criminal Procedure and Evidence at LLB and LLM level.

Dee Smythe (LLB Cape Town) returns to us, having earned a JSM from Stanford as a Fulbright Fellow in 2004. She has been working for the past four and a half years with the Gender, Health and Justice Research Unit at UCT and is about to submit her Stanford JSD thesis on an empirical study of police discretion. She will be teaching in criminal justice and is an expert in the new sexual offences legislation.

Congratulations to past staff member Esther Steyn on her appointment as a judge in KZN.

Commercial Law

Six new appointments have been made.

Professor **Alan Rycroft** will take up the Chair of Commercial law on 1st April. This is the Chair which Mike Larkin occupied at the time of his death. Alan comes from UKZN; he is a leading labour lawyer and expert on alternative dispute resolution, with more than a passing interest in international commercial arbitration. The new lecturers are:

Carias Chokuda, LLB Hons (Zimbabwe), Exec MBA (Africa University, Zimbabwe), LLM (with distinction in Commercial Law, UCT), legal Practitioner and corporate banker. **Kathy Idensohn**, BA, LLB (cum laude) UCT, LLM (Cantab), formerly of this Faculty, latterly at the University of Gloucestershire, UK.

Ndivhuwo Nengome, LLB (University of the North) LLM (Potchefstroom University), and recently from University of Venda.

Helena Stoop, LLB cum laude (UP), LLM in Mercantile law (Stellenbosch)

Marlese von Broemson, LLB (UCT), MA (UWC) joins us to run the new Masters in Social Justice

Private Law

i. General

Tjakkie Naude (BA, LLB, PhD, Stellenbosch), a Y-rated researcher and visiting fellow at the Oxford Institute of European and Comparative Law, will co-teach Commercial

Transactions Law and look to developing a Masters in Consumer Protection Law **Amanda Barratt**, alumnus, Head of the Law Library since 2002 and soon-to-be Dr Barratt, will be involved with the Academic Development Programme as well as teaching Law of Persons & Marriage.

ii. Intellectual Property & Policy Unit

This new centre is greatly strengthened by three appointments (with four post-docs due in July); Senior Researcher: **Djims Milius**, a graduate of Montreal and Sussex, he did his PhD at Sheffield; *Researcher:* **Toby Schonwetter**, a home-grown doctoral student whose field is the Law of Copyright; Fellow: **Johanna von Braun**, a graduate of Columbia and Sussex and soon-to-be PhD from UCL, whose interest is Public Health.

iii. Law Clinic

Rebecca Chennells, a graduate from 2008, is the new candidate attorney in the Refugee Rehabilitation Project, and **Siyaam Ali** returns to us as Attorney-extraordinaire after a year in the public sector.

Moving up

Salim Nakhjavani has been promoted to Senior Lecturer, and **Julie Berg** and Kelly Phelps have moved from "entry level" to "lecturer level." **Raymond de Wet** steps ably up from ten years with the Library to Departmental Assistant.

New in 2009: Departmental administrators



The Faculty has long been aware of the tremendous responsibility and complex workload of its administrators in the academic departments, and so as from January three administrators were appointed.

They are l-r Doris Mwambala (Public Law), Chezlyn Elissac (Commercial Law) and Mandy Bedin (Private Law),

UCT top of attorney admissions

Samantha Brass (2007) won the Ephraim Kluk prize for the highest aggregate of any candidate in the jurisdiction of the Cape Law Society in the Attorneys Admission Examination for 2008. The jurisdiction includes Port Elizabeth, Grahamstown, George and even Umtata.

Commenting on the achievement Samantha said, 'It is a reflection on the outstanding education I received, and I feel privileged to have obtained my LLB from UCT.'





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