



# Law REVIEW



September 2008

## NEWS IN BRIEF

**Three A-rated researchers:** The Faculty now boasts three A, three B and three C-rated researchers, including (in Professor Cornell) the first A-rated female researcher at UCT. The other two A-rated researchers are Professor Clifford Shearing and Professor Danie Visser. For a full report on research read p.4.

**UCT on Law Commission:** Professors Judge Dennis Davis and PJ Schwikkard are two of seven legal professionals to have been appointed to the SA Law Reform Commission, the body that is mandated to review aspects of law with a view to their updating and improving.

**2008 Frantz Fanon Prize:** Drucilla Cornell's latest book *Moral Images of Freedom - A Future for Critical Theory*, has been awarded the 2008 Frantz Fanon prize by the Caribbean Philosophical Association. The award annually recognises groundbreaking work in postcolonial and critical theory.

**Accolade for refugee lawyer:** Fatima Khan was *Legalbriefs* lawyer of the month in May for the person who has made a difference. This is a wonderful tribute to her work over several years, to her staff at the Law Clinic, and to their collective and individual responses at enormous cost over the past three months in particular. More on p.2.

**International Award:** The LLB course on International Law *Inkundla yeHlabathi* (World Forum) has won the inaugural Teaching with Sakai Innovation Award, sponsored by IBM. Known locally as Vula, Sakai is an online learning portal developed by a consortium of leading universities including UCT, Cambridge and MIT.

## In Retrospect

by Hugh Corder



AS my deanship draws to a close, I hope you will indulge me as I take stock and cast my mind, our minds, back to 1999.

'The first three years were dominated by the move to the Kramer building, with 18 months of preparation and then eighteen months to 'bed things down', as it were. It was time-consuming but absolutely necessary, and it culminated in our having the Tambo family with us to open the Oliver Tambo Moot Court, a magnificent facility that had been made possible by the fund-raising efforts of John Hare.

'There were also the hugely difficult and stressful months of adapting to Mamphela Ramphele's leadership, and of being part of the Deans' fight for the recognition of their roles even as we adopted, and adapted to, the new devolution model. A

mistake I made was to take advice given from above and to try to run the Faculty with lower level administrative staff.

I have spent the last nine years paying for it, but happily I leave PJ with a strengthened Finance Office and Faculty Office.

'I did however make two sound decisions early on in a bid to meet the challenges of limited financial resources. One was to start the Professional Education Project, now the Professional Development Project, and the other was to appoint a Development and Marketing Manager. Established by Susan McElvaine and ably developed by Irèna Wasserfall, the PDP gives the Faculty a satisfactory 'third stream income.'

'Without Pauline Alexander, the Faculty would not have been able to do the full development programme that it has over the last six years, from publishing *A History* to this annual publication, Reunion weekends, the Ben Beinart Memorial lecture series, innumerable public events and indeed the Law 150 celebration itself.

'The staff development programme from 1998-2004 can also be counted as one of the successes of the Faculty, enormous as the management content of that initiative was. On the Research side, there were the initiative of appointing a Director of Research and of enhancing that with the effective administration of CLEAR by Sue Wright. Recognition in the form of two research chairs

and one, possibly two, funded chairs has been most gratifying.

'Despite some differences, there has been no major blow up with the students over the past ten years. This very sound staff-student relationship is extremely gratifying, and due both to good student leadership as well as much hard work.

'I do believe that we have achieved a sense of community, a sense of common values, and this was never more palpable than the extraordinary outpouring of grief over the death of colleagues in service over the last few years. I think of Mike Blackman, Ventia Lorenzo, Mike Larkin and Leslie Alexander.

'The Student Seminar for Law & Social Justice (SSLSJ) has just held its second three-day event, this time with seven universities participating. This initiative enjoys our financial and moral support which has been more than vindicated. Similarly gratifying has been the alacrity with which students took to the sixty hours of unpaid community service as a curricular requirement for the award of the LLB, introduced in 2005.

'Low points have been the repeated and increasing demands to account for, and report to, Government. Quality Assurance procedures for example, while necessary, are an absolute drain, and strain, on academics' time. Telling people that they haven't got the job or haven't got the promotion, have also been

a hard part of the job for me even though I know it goes with the territory. 'Transformation' in all its forms remains an elusive ideal.

'The good part of the job is of course being able to give accolades, and I have had the privilege of giving many. Some of them have been mentioned, but I want to add two more: the expanded work of the Law Clinic, and the establishment and now firm foundation of the Academic Development Programme.

'In the wider sphere, following on from a need to talk about the four year LLB, I wrote to my counterparts and since that meeting in the OT Moot Court in 2001, the SA Law Deans' Association has met twice yearly and is now a recognised body, with its own Constitution.

'As to the future, I will spend a year trying to recoup for lost time in the academic sense, mostly by reading but also by some dedicated research. I will return to the Chair of Public Law in January 2010 and will hopefully continue to be involved on an ad hoc basis in wider issues within the university and within the whole area of constitutional governance.

'PJ takes over with my good wishes and full support. She inherits a strong Faculty and a strong alumni base, and I would like to thank you all, both the internal and my external community, for the support and contributions that have been so much a part of these ten very good years.'

## Going into 2009

PJ SCHWIKKARD will take over as Dean from January 1st, 2009. A Professor of Criminal Justice, PJ's academic focus area is the Law of Evidence. Asked to comment on her focus for the Faculty, PJ said, 'For me the challenge of the deanship accommodates my passion for social justice and appreciation of the privilege of working in an academic environment.

'As a consequence of the excellent leadership provided by past deans such as Hugh Corder, Danie Visser and Dirk Van Zyl Smit the Faculty is a strong one which makes a significant contribution to legal education and intellectual discourse both nationally and internationally. It is also a faculty that is committed to meeting the needs of a transforming society. It is from this vantage point that a new Dean must craft a strategic vision that builds on past achievements and enhances the trajectory towards excellence and equity.

'The University mission statement and the faculty's statement of vision and goals clearly strive for excellence and equity in the African and international academic communities. As a law faculty we recognise the role law played in creating an oppressive and divided society and commit ourselves to 'teaching and research which is of the highest quality; developing all staff and students to their fullest potential; promoting an institutional culture founded on mutual tolerance, respect, understanding integrity and openness, one which values our common humanity and which celebrates and promotes diversity. In the pursuit of all these goals we hope to contribute to redressing the inequality and disparity that continues to exist within South African society.' (Extract from Faculty's Statement of Vision and Goals)

'For me there is a direct link between diversity and excellence. It is not sufficient for scholarship to sim-

ply be reproduced, it needs to be developed. Diversity is an essential tool in optimising this capacity to develop. Diversity allows us to broaden our vision of possibilities and question our claimed 'truths'. The way in which we interpret things is contextually contingent, on past, immediate and imagined future contexts. The interactions of diverse histories and traditions gives rise to multiple questions which allow us to expand the boundaries of our own and communal knowledge and in doing so reconstruct our institution. In order to do this we need to take measures to ensure diversity in both the student and staff body.

'If we are serious about addressing historical inequalities we should acknowledge that hierarchy is embedded in social structure and reproduced in the law faculty. Simply put - the lower down on the socio-economic ladder a student is the less likely they are to have



access to good schooling or a home environment that is conducive to developing advanced reading, writing and cognitive skills. If we simply take a student from a disadvantage background and place them in the Faculty it is far more difficult for them to succeed than a student coming from a middle class background. In order to successfully change the demographics of the student body in the law faculty we cannot simply lower entrance points. **Cont. on p.2**

# UCT responds to refugee Crisis

by Fatima Khan



THE XENOPHOBIC violence that started in Johannesburg in April 2008 spread in all its cruelty and severity to Cape Town on the evening of the 22nd May 2008. Despite the fact that this was anticipated the scale of the displacement (23 000 in the Western Cape) caught everybody off guard including the staff at the Law Clinic's Refugee Rights Project who have assisted victims of xenophobic violence on several occasions in the past (Masiphumelele 2006, Worcester March 2008, Delft, Khayalitsha, Muizeberg, Nyanga 2007).

On the morning of Friday 23 May, the Refugee Rights Project fielded calls from countless of their fear-stricken clients who were afraid to leave their homes as well as from others who were confronted by perpetrators of these heinous acts. The Refugee Rights Project staff immediately intervened by liaising with the South African Police Services to assist those affected reach places of safety. These were harrowing moments for members of the Project staff who have over the ten years of its existence assisted a huge number of clients, in fact in 2007, the project consulted with 5558 refugees and asylum seekers.

Later that day nearly 250 refugees arrived at the offices of the Refugee Rights Project at the Law faculty seeking assistance. With severely traumatized clients that obviously needed emergency relief, the Refugee Rights Project had to step outside their traditional role of attorneys to manage a humanitarian crisis. This with the assistance of the Rondebosch Police, initially at the Police Station and later at Rondebosch United Congregation church, they managed to place 1057 refugees in shelters in and around Cape Town with Jammie Shuttle providing the much needed transportation.

On Saturday morning the Project staff logged all the displaced people

that were assisted by them with the Cape Town Disaster Management team; health care with Medecins Sans Frontiers had been organized; and provision was made for the basic needs of the displaced people, including trauma counselling, with members of civil society. Many members of the UCT community (staff and students) came to the assistance of the Project staff.

It soon came to their attention that refugees who were housed at Community halls, church halls and mosques were moved by government to the Youngsfield Military base as well as other distant and remote places such as Soetwater and Silverstroom. Within hours it became apparent that refugees' rights were being



Ms Khan (centre) addressing the Speak Truth team (l-r Gloria Reuben (actress), Joyce Mends-Cole (UNHCR).

violated by the Military personnel and other officials at these sites. The Refugee Rights Project immediately intervened by liaising extensively with the military personnel at the Base explaining the refugee's right to freedom of movement amongst others. This intervention directly resulted in these rights being respected and in the media gaining access.

Other legal issues immediately

identified and addressed by the Project were the forced and undignified tagging of the refugees at these sites and the attempted unlawful registration of a people already documented. It was pointed out to the Minister of Home Affairs (in a series of correspondence), under whose ostensible authority this was being done, that the authority she claimed for the procedure did in fact not empower such registration and that the offensive questions on these registration forms had no basis in law. This led to the Minister retracting the initial unlawful registration and relying rather on powers in terms of the Immigration Act to grant residence for the undocumented migrants for a six months period. (Let's not forget how the Project staff dragged the Dean along to consult with Counsel on the Sunday afternoon.) Support and assistance from the entire Cape Bar to the Project Staff during time was very forthcoming and highly appreciated.

At the same time refugees were demanding a presence from the office United Nations High Commissioner in Cape Town (UNHCR). Project staff convinced UNHCR staff to come to Cape Town and establish a presence for the duration of crisis. In addition they also facilitated many meetings with civil society and the UNHCR protection unit.

A very important role identified by the Project staff during this time was the fact that they, via their clients, are a key source of information and at times life-saving information. In the same manner in which they informed the South African Police in May of this year of the impending attacks on foreigners and the exact areas where such attacks were likely to occur (not a single person killed in the Western Cape compared to 61 in Gauteng) they have once again done so (see attached Argus, article - Friday 5th September) in an attempt to avert such further brutal attacks and displacement of a vulnerable people that the entire international community has agreed to protect. Notwithstanding the fact that they have managed the crisis and have successfully highlighted the plight of refugees in South Africa, the Project staff remains committed to ensure that refugees' rights are not violated and in this regard they continue to engage and train and teach and inform South Africans in refugee rights.



# The Enduring Value of the Rule of Law

IT WAS appropriate that Law's 2007 honorary graduand, Lord Steyn, would speak to the Enduring Value of the Rule of Law on the day after the anniversary of the Universal Declaration of Human Rights of 1948. Extracts from his address follow:  
On 10 December 1948 in Paris the General Assembly by unanimous vote

of 48 with eight abstentions adopted the text. The abstentions came from Russia and its satellite nations, Saudi Arabia and South Africa. The South African representative warned:  
"[the Declaration] will undoubtedly be invoked as a source of moral rights and obligations, and may therefore lead to intensified internal

unrest and agitation..."  
"The passing of the Universal Declaration, albeit drafted as an aspirational text, was a momentous achievement," said Steyn. "Its first Article proclaimed that "All human beings are born free and equal in dignity and rights". The Universal Declaration has been the inspiration and

point of departure for all subsequent human rights texts intended to secure fundamental rights which were adopted in the next half century. That the South African Constitution is possibly the most advanced of all those texts is justifiably a source of pride for a new generation of South African lawyers. **Cont. on p.16**

# Speak Truth to Power



HR Defenders l-r: Bishop Tutu, Koigi wa Wamwere and Kerry Kennedy

ONE OF the most successful lunch time forums held in the Faculty took place on August 11th when UCT hosted Kerry Kennedy, daughter of the late Robert Kennedy, and a group of Human Rights Defenders.

Welcoming the team, the Vice Chancellor Dr Max Price said, 'I am very new here as you know, but already I am very aware of the fact that UCT sees itself as a university of and in Africa, and so it is a special pleasure for me to welcome such a diverse representation of Human Rights Defenders of Africa.'

Samuel Kofi Woods spoke to Transitional Justice in Liberia. He is currently Minister of Labour and under his leadership, Firestone, Liberia's largest rubber plantation is conducting the first democratic elections for a workers union in more than 80 years.

Koigi wa Wamwere, one of Kenya's best-known political prisoners, talked about the recent ethnic violence in his country, while Guillaume Ngefa Atondoko's subject was In Opposition in the DRC. It was his exposing of grave human rights abuses that brought him into conflict with Mobutu Sese Seko, and later with Laurent Kabila.

South Africa's Denis Goldberg, a Civil Engineering graduate of

UCT, winner of the Albert Luthuli Peace Prize and founder of the H E A R T Community, brought the topic of Speak Truth to Power to life by challenging the students to take up the mantle of speaking out in truth.

'Our democracy is a most precious but very fragile thing, and it is in your hands now' said Emeritus Bishop Desmond Tutu, as he too exhorted the hundreds of students in LT 2 to move in to the future.

The Dean, Professor Hugh Corder, gave a special welcome to Kerry Kennedy. 'Your late father made such an impact on this campus 42 years ago, and we are privileged to welcome his daughter back to UCT. We in the Law Faculty also feel privileged to have been chosen as your partner to launch the programme in Africa, in this the 60th year since the Universal Declaration of Human Rights.

'I was reflecting on how different a place South Africa is from when the 40th anniversary was celebrated in 1988; on that occasion I opened an art exhibition in Durban put on by Artists for Human Rights, a project of the Black Sash. We were in the depths of emergency rule, with no prospect of a relatively peaceful resolution in sight.'

**Going into 2009 cont. from p.1** 'We need to provide academic and financial support. The seeds for academic support have been well sown and I have no doubt that Julian Jonker will put us on a firm footing in establishing the law faculty's academic development programme.

'Hugh Corder and his team have also been very proactive in raising money for bursaries; - we need to build on this initiative, extend the number of bursaries and amount of financial aid to ensure that students have the basic physical necessities in order to enable them to take full advantage of what the university has to offer. It is in ways such as these that the pursuit of excellence can become inclusive rather than exclusive.'

# The Ubuntu Project

UBUNTU IS short for the African expression *umuntu ngumuntu ngobantu*. Directly translated it means that 'a person is a person through other people'. Professor Drucilla Cornell understands this as a principle of transcendence whereby people can overcome their own selfish interests and create an ethical community.

In 2003-2004 she initiated the Ubuntu Project as a pilot study funded by the Stellenbosch Institute for Advanced Study. The initial research conducted by Professor Cornell involved conducting a series of interviews with people living in the townships around the Western Cape as well as working as a sangoma's assistant. This led

to her organising two conferences to discuss how *ubuntu* could be 're-constitutionalized'.

In 2005 Professor Chuma Himonga brought her expertise in African customary law to the project when she joined as co-director. In 2007 the Ubuntu Project came under the auspices of the NRF Chair of Customary Law, Indigenous Values and Dignity Jurisprudence. The project aims to conduct research into three main questions:

- 1) How has living customary law developed in accordance with the new Constitution?
- 2) What role do ideals and values such as *ubuntu* play in the development of this law?

3) How have people used the principles and values of *ubuntu* in the face of the brutalities of apartheid? As part of the project there have been a number of interesting lectures, seminars and debates taking place. The list of speakers so far has included:

- Professor Jean Comaroff the Bernard E. & Ellen C. Sunny Distinguished Service Professor of Anthropology and Social Sciences in the College, and in the Clinical Scholars Program at the University of Chicago, USA;
- former Constitutional Court Judge Laurie Ackermann
- Professor's Gerhard Lubbe and Andre van der Walt of Stellenbosch University



Final years Mieke Krynow and Nyoko Muvangua assisted with arranging the Ubuntu-debate (Ackermann). Tutor Shaun Fergus in the background.

- Prof Philip Iya of the University of the North West
- the out-going Vice Chancellor of UCT Njabulo Ndebele;
- Mmatshilo Motsei author of *The*

- Kanga and the Kangaroo Court*
- and members of our own Faculty: Prof Danie Visser, Prof Anton Fagan and Dr Jaco Barnard-Naude.

# Academic Development Evolves

by Julian Jonker



WHEN THE Law Faculty decided to establish an Academic Development Programme (ADP), we knew that UCT had more than twenty years' experience in the AD field on which we could draw. However, tailoring a programme to suit the specific needs of an undergraduate law programme, as well as the changing needs of today's undergraduate students, necessarily involves a bit of trial and error. Therefore, at the beginning of 2008 and after a year's experience, we have already been able to make a few changes in order to enhance the new programme.

The ADP is designed to give support to young black South Africans who have the potential to succeed at university but who have possibly not had the opportunity at school to show this potential. We give students an opportunity to grow in every way by adding on an extra year to the undergraduate LLB. But this doesn't mean slowing the students down! If anything, they work harder than many first year students and focus intensely on their law subjects, gaining academic and professional skills that will be valuable for the rest of their careers.

It can be difficult to spot people who will be the right fit for the programme. Where previously we

had looked simply at candidates' Matric marks, this time around a team of Law Faculty staff as well as members of the Centre for Higher Education Development considered the candidates' profiles more holistically. We also confirmed that, since the programme is informed by the ethos of affirmative action, we would use the broadest definition of "black" in selecting potential candidates, and pay extra attention to real disadvantage, such as financial background and previous schooling opportunities.

Most notably, we have expanded the number of students, from 13 in 2007 to 22 students in the first year in 2008. It is a small increment, but it is a sign that we see the potential for the programme to continue expanding. Our teaching capacity is also expanding. Adeline Radloff, a graduate of Stellenbosch University's Law Faculty, and holder of a master's degree in linguistics, has been teaching the skills of essay writing and legal argument on a regular basis.

The result is a diverse and dynamic class of eager young students, representing all the language groups of South Africa, and with many unique and engaging personalities who nevertheless work together well. This is a class that one looks forward to teaching, every day of the week!

Moreover, we hope that the students themselves will see results. In the June tests, two of the 22 students earned first class marks in the core course, Foundations of South African Law. In the Law of Persons and Marriage the ADP class had a 70% pass rate! Here's looking forward to a bright future for the students as well as the Faculty's Academic Development Programme.

*Thanks to the generosity of alumni, six ADP students were given scholarships in 2007 and 2008 - Editor*

# Postgrad@UCT

## NEW IN 2009

### ENVIRONMENTAL LAW

The Institute of Marine and Environmental Law will be offering four new courses to postgraduate students undertaking LLM Degrees, MPhil Degrees and postgraduate Diploma's in Environmental Law; Principles of Environmental Law; Land use Planning Law; Natural Resources Law and Pollution Law. For further information contact *Alexander.Paterson@uct.ac.za*

### SOCIAL JUSTICE

An interdisciplinary LLM or MPhil in Social Justice that comprises four courses including:  
(i) Social Justice, Development and Law  
(ii) Social Justice in Practice  
(iii) At least one of the following: Governing under the Constitution: Law and Practice; International Protection of Human Rights; Human Rights Law or Administrative Justice and  
(iv) One of the following: Comparative Family Law and Human Rights in South Africa; Criminal Justice in Transition; International Environmental Law; International Rights of the Child; The Law in Operation and the South African Family Litigating the Bill of Rights; Prisoners' Rights and Comparative Prison Systems Refugee and Immigration Law and Policy in South Africa; Social Security Law; The Theories of Crime and Social Order; or Victims and Victimology: Theory, Policy and Practice

The course will expose students to different analytical frameworks and will prepare students to pursue different career options to those generally available to law students. For further information contact Marlese von Broembsen at *mardeo@icon.co.za*



The Centre of Criminology has launched two new projects - *Supporting and sustaining poor-focused environmental economies* and *Nodal Security Governance Group*. Their new high tech multi-media resource library (above) undergirds the success of such projects.

## Multilingualism and Law

THIS PILOT project aims to involve students in the collaborative writing of a legal glossary in isiXhosa. Law Faculty students at all levels (LLB and postgrad) with proficiency in isiXhosa have been invited to join. As lecturer Julian Jonker and final year Simona Mchuchu say, 'This is an opportunity to gain unique research experience, and also to shape a project that will further the position of African languages in the law classroom.'

## Fractional ownership



Anita Gihwala, Shelley Mackay-Davidson and Robert Gad collaborated to run a very successful workshop on Fractional Ownership in March. 'I am very grateful to this trio from ENS who gave of their time to contribute to a developing field of Property Law,' said Irene Wasserfall, manager of the Professional Development Project.

## Interesting lives in law

JULIAN JONKER organised a lunchtime series for students which profiled leaders in their, very different, fields. Three such were Lyndon Bouah, an advocate and legal advisor in the department of the Premier of the Western Cape, David Nurek who practised as an attorney for more than 30 years, culminating in his chairmanship of Sonnenberg Hoffman Galombik and who is now Regional Chairman Western Cape of the Investec Group, and has served on the boards of several large companies, and Justice Yvonne Mokgoro who was appointed to the Constitutional Court in 1994 and is also the Chairperson of the South African Law Commission, President of Africa Legal Aid, and an honorary professor at the University of Cape Town.

## Three A-rated researchers



1- Prof. Cornell, Shearing and Visser

## Research In the Faculty: 2003-2007

By Hugh Corder

THE TEACHING of and research in law at university level date back to the beginnings of higher education. Research has typically taken the form of the individual academic pursuing an intellectual project through the study of books and cases, advancing knowledge in the field by critical analysis of legal concepts and judgments of the courts.

From time to time, groups of scholars have collaborated to produce major works, often consolidating legal principle across a field of law or comparing the law of different national systems. This is the pattern which persists in the main today, with the trend to joint works and contributions across legal systems perhaps more pronounced than formerly.

The last twenty years have witnessed prolific output of published research which engages directly with reform of South African Law in the face of constitutional change, as well as contributing to the formulation of public policy in our democratic state. What follows are highlights of the past five years and an indication of what 2008 will bring.

### 2003

Perhaps the most important and exciting research initiative during the year was the staging of the weekend event for 'emerging researchers', at which about twenty young members of staff spent time with a few senior colleagues at a rural retreat.

Each participant had to distribute beforehand and speak to a draft paper, to which a fellow participant would respond briefly, the objective being the stimulation of interest in research and the production of peer-reviewed publications. This event was a resounding success, and we look forward to the continuation of this initiative, spearheaded by the Faculty Research Committee.

Three edited volumes in particular, in which the majority of the

contributions came from members of UCT, addressed major issues of public concern in a socially responsive way.

I refer here to the 2003 edition of *Acta Juridica* which focussed on Criminal Justice; to the novel approach to matters criminological in *Justice Gained? Crime and Crime Control in South Africa*; and to *The Fate of the Child: Legal Decisions on Children in the New South Africa*. The three volume Commentary on the Companies Act by Professors M.S. Blackman and R.D. Jooste, with Professor G.K. Everingham of the Commerce Faculty, represents the highest ideals of academic scholarship, and richly deserved the award of the 2004 UCT Book Prize. Full Report: [www.research2003.uct.ac.za/](http://www.research2003.uct.ac.za/)

### 2004

Much of the scholarly research done in the Faculty continued to be informed and complemented by the urgent need for law reform with the aim of achieving a measurable improvement in the level of social justice due to the majority of the population.

A review of the extension and development work done by all departments and the various research units demonstrated an admirable level of engagement with pressing national and regional concerns, such as policing, juvenile justice, the independence and accountability of the judiciary, judicial training, social security, sports law, family maintenance and social welfare payments, the law of evidence, environmental sustainability, prisons law, and so on. This made for an exciting intellectual environment: only a lack of capacity prevents much more such activity.

Key publications were: *Mixed Legal Systems in Compar-*

*ative Perspective* (co-edited by Professor Danie Visser and to which four members of the Department of Private Law contributed chapters) representing the culmination of a three-year programme in comparative Law (Scotland and South Africa).

*Customary Law in South Africa*, the third text in this area of the law written by Professor Tom Bennett.

*Introduction to Social Security Law*, another pioneering work co-authored by Professor Evance Kalula.

*South African Constitution: The Bill of Rights*, the second edition of this leading work, co-edited by Professor Halton Cheadle and Judge Dennis Davis, to which several other members of the Department of Public Law contributed. Full Report: [www.research2004.uct.ac.za/](http://www.research2004.uct.ac.za/)

### 2005

This year saw a significant increase in the publication of peer-reviewed articles as well as the publication of three substantial books, Jonathan Burchell's *Principles of Criminal Law*, Jan Glazewski's *Environmental Law in South Africa*, and Margaret Hewett's *Jacobus Voorda: Dictata ad ius hodiernum*.

What is not evident from the statistics, however, was the considerable effort expended within the Faculty in revitalising and restructuring the research enterprise. These tasks were been the responsibility of the Director of Research, Professor P.J. Schwikkard, appointed to this new position as a strategic intervention from the beginning of 2005 precisely to try to stimulate and streamline research within the Faculty.

Professor Schwikkard worked very hard, together with the Faculty Research Committee (FRC), and built on the foundations laid by her predecessor, Professor Danie Visser. The Faculty is indebted to them both for the leadership which they have displayed over the past few years.

At the research unit level, Professor Schwikkard initiated and achieved the creation of CLEAR (the Centre for Legal and Applied Research), which will gradually draw together all but one of the research units in the Faculty in a structure which aims to perform a co-ordinating and facilitative approach to their research activities, without unduly taking away their autonomy.

In this tenth year since the adoption of our final Constitution, it was good to note the increasing extent to which the research expertise in the Faculty was sought by individuals and institutions both nationally and abroad who were grappling with similar problems, in both developing and developed countries. Full Report: [www.research2005.uct.ac.za/](http://www.research2005.uct.ac.za/)

### 2006

The search for a Professor of Intellectual Property Law to fill the Chair established in 2005 with generous funding from the Innovation Fund finally bore fruit with the appointment of Professor Julian Kinderlerer, who has a distinguished career in the field of biotechnology and patent law.

Another important development was to be seen in Professor Jan Glazewski's grant from the NRF to pursue research in the Antarctic Treaty Area and Southern Ocean, together with his appointment by the Department of Science and Technology to chair the committee responsible for the Antarctic Gateway Project.

Two individual achievements bear special mention. Associate Professor Margaret Hewett's longstanding and productive work in translating and editing the work of the Roman-Dutch authorities was recognised by the award of the Orde van Oranje-Nassau (officier). Dr Jaco Barnard deserves mention too for his being given a UCT Fellows' Award in recognition of his outstanding research

achievements at an early stage of his career. Full Report: [www.research2006.uct.ac.za/](http://www.research2006.uct.ac.za/)

### 2007

An innovation in early 2007 was the appointment of a senior administrator, Sue Wright, to assist with every aspect of the co-ordination and reporting of research by both individuals and units, and the benefits of her great efficiency and conscientiousness have been increasingly evident.

Another aspect of the infrastructural support provided by the faculty to its researchers, be they academic staff or postgraduate students, was to be seen in the increasing prominence of the Ethics in Research Committee, under Anne Pope's leadership, which provided invaluable guidance, particularly in regard to research involving human subjects. In 2007, the Faculty Board adopted Ethical Guidelines for Research drafted by this Committee.

A further innovation in the year under review was the faculty Research Prize, open to those at senior lecturer or lecturer levels, for an excellent piece of research published in 2006. Two such prizes, generously sponsored by the firm of attorneys Cliffe Dekker, were presented to Jaco Barnard-Naude and Waheeda Amien at an event towards the end of the year. All in all this represents a substantially supportive environment for the pursuit of high-quality research and a remarkable improvement when compared with that which existed a decade ago.

As to research achievements and highlights, the year under review will in all likelihood be remembered as rather special for the faculty. Professor Clifford Shearing's DST/NRF Research Chair in African Security and Justice created an impressive infrastructure and began to deliver on its research plans. We were immensely pleased when a second Chair

was awarded to Professor Drucilla Cornell, who had joined us from the USA shortly before, with its focus on Customary Law, Indigenous Values and Dignity Jurisprudence. This means that two of the four SARCHI awards in Law throughout the country have come to UCT.

The national and international reputation of faculty members was further emphasised when the NRF ratings were made known towards the end of the year: the faculty now boasts three A, three B and three C-rated researchers. Professor Jonathan Burchell was elected as a Fellow of the University, while the third edition of his book on the *Principles of Criminal Law* received a Meritorious Publication Award from the University. Dr Danwood Chirwa received a Fellows' Award, given to a younger researcher of exceptional promise.

On the publications front, the long-awaited ninth edition of the leading private law text, *Wille's Principles of South African Law*, appeared early in the year. The book has been associated with the faculty over its 70-year history, and this edition marked a substantial revision to take into account South Africa's transition to a constitutional democracy since it was last published. Professor Francois du Bois did an outstanding job as general editor, while he and eight other members of the faculty contributed the bulk of the contents.

Two important conferences were held during the year (on Labour Market Regulation and on Dignity Jurisprudence), the proceedings of the last one making up the contents of the 2008 edition of *Acta Juridica*. Full Report: [www.research2007.uct.ac.za/](http://www.research2007.uct.ac.za/)

### Conclusion

These several initiatives are marked by an engaged, critical and productive approach to research, in both its "pure" and applied forms, characteristics which are the hallmarks of the research carried out in the Faculty in the past.

The Faculty is thus in an increasingly strong position to undertake the type of work expected of it, as South Africa grapples ever more seriously with issues arising from the imperative for legal and socio-economic transformation.

Research by students as part of their curriculum at all levels of degree in the faculty continues to thrive. All final year LLB students must produce at least one substantial piece of written research in order to graduate.

The move several years ago to expand and intensify the research component of the coursework LLM has now been consolidated, resulting in many good dissertations, some of which have been published and are reflected in the lists which follow.

Most pleasing has been the response to the initiative to attract doctoral students to the faculty, with more than twice the number of a few years ago now registered; the challenge now being to ensure successful completion of these degrees within a satisfactory time period.



## 2008: Research and Social Responsiveness

### HIV and the Law

An interdisciplinary collaboration has resulted in a series of workshops and a 200-page manual to prepare magistrates for some of the key implementation issues relating to the Sexual Offences Act. The project was funded by Ford and CIDA.

The Law Race and Gender Unit and the Gender, Health and Justice Research Unit, drew initially on clinical HIV expertise from UKZN and UFS. One of the aims was to provide magistrates with excellent clinical information on HIV, so that they could properly interrogate issues like "risk" of HIV transmission in a sexual encounter. A related aim was that the experts invited be readily available for the magistrates as a resource when dealing with difficult cases in the future - hence the need to forge relationships with experts at various other universities.

Nine workshops were conducted with magistrates (both regional and district court) in seven provinces on HIV and domestic violence, sexual offences, bail, sentencing, crimen iniuria and privacy. The workshops anticipated and prepared magistrates for some of the key implementation issues relating to the Sexual Offences Act, including compulsory HIV testing of alleged sex offenders.

In conjunction with Naledi, the research arm of COSATU, LEP conducted research into decent work. Decent work is a concept developed by the International Labour Organi-

zation to assess the quality of jobs. Six sectors of the economy in which jobs were supposedly created have been investigated: call-centres, cleaning, security, retail, construction and food manufacturing.

The CIDA workshops were used to complete the LRG Manual on HIV/AIDS and the Law for Magistrates and will be handed over next month to Justice College for incorporation into their training curriculum for magistrates.

### Labour and Enterprise Project

The Labour and Enterprise Project (LEP) has established a reputation as one of the leading institutions in South Africa doing research on non-standard work and informalization, and concepts developed by LEP have contributed to shape the national debate regarding the kind of jobs the economy is creating, and whether labour market regulation has any impact on job creation. Some examples are:

#### i. Decent Work

In conjunction with Naledi, the research arm of COSATU, LEP conducted research into decent work. Decent work is a concept developed by the International Labour Organi-

zation to assess the quality of jobs. Six sectors of the economy in which jobs were supposedly created have been investigated: call-centres, cleaning, security, retail, construction and food manufacturing.

#### ii. Collective Bargaining

In 2007 LEP produced a report on the problems that confront the bargaining council system in South Africa, particularly with the extension of bargaining council agreements, and well as collective bargaining taking place outside the bargaining council system. It proposed a number of far reaching reforms of the system, and specifically that government adopt a more permissive attitude towards thresholds for extending collective bargaining agreements. At the same time it cautions against ill-considered labour market 'reforms' that advocate scrapping the extension of such agreements.

#### iii. Costing Labour Regulation: The World Bank's Doing Business Survey

Over recent years it has become increasingly clear that one of the institutional pressures on the South African government to remove what are seen as onerous labour regulations has been the World Bank, through its Doing Business Survey. The Doing Business Survey purports to measure the cost of doing business in the different countries of the globe, by means of an objective methodol-

ogy. LEP decided to investigate how this methodology was applied in practice in the case of South Africa, together with Professor Paul Benjamin. The most important findings of this study were that the methodology utilised by the World Bank was fundamentally flawed. Moreover in the case of South Africa the scores arrived at were incorrect.

#### iv. Cooperatives

LEP has long argued on the importance of promoting cooperatives as a self-help strategy for poor communities, and with limited grants from the university and elsewhere has continued to conduct research on this topic.

#### v. Temporary Employment Agencies

Temporary employment agencies (or temporary employment services, as they are known in South Africa) continue to be an important area for research for LEP. The inappropriate manner in which these agencies are regulated was the subject of a comparative study on South Africa and Germany presented at the European Conference of the International Industrial Relations Association (IIRA) at Manchester in September 2007.

For further information on any LEP project email: [Sue.Wright@uct.ac.za](mailto:Sue.Wright@uct.ac.za)

### Acta Juridica 2008

The theme for this year's edition of the *Acta Juridica* is 'Dignity'. The collection of essays, which will be edited by Professor Drucilla Cornell and Dr Jaco Barnard is based on papers presented at the highly successful Dignity Conference, held at the Faculty on 26th and 27th of July 2007. The conference saw papers presented by a number of judges from the Constitutional Court, Supreme Court of Appeal and High Courts as well as prominent international and local legal scholars. The event coincided with the 2007 Ben Beinat Memorial Lecture given by Professor Jeremy Waldron of the New York University School of Law.

### PhD Seminar Series

As Chair of the Higher Degrees Committee, Professor Tom Bennett, runs a series of seminars throughout the year where doctoral candidates showcase their theses. The students bring problems to the table which are brainstormed by fellow students and academics that are present.

### CLEAR's administrator

Sue Wright, has an enviable Two Oceans race pedigree - five ultra marathons and five half marathons. This year was particularly memorable as it was a mother and daughter finish. Michelle (r) is a final-year student in the Faculty.

### Books of 2008

Cornell, D. *Moral Images of Freedom*. Schwikkard, P.J. *Possibilities of Convergence* (2007). Shearing, C and Wood, J. *Imagining Security*. Visser, D. *Unjustified Enrichment*

## Global Administrative Law in Africa

THE FACULTY and New York University Law School co-sponsored a conference on *Global Administrative Law Issues* in the African Region, which was held in the Oliver Tambo Moot Court in March.

Hugh Corder, who was the UCT convenor, described the conference as a great success:

'Both South African and overseas delegates were challenged by views put forward in the papers, and a plan was drafted for further research and co-operation between NYU and UCT Law.'

'Adding greatly to the significance of the event was the presence of South African Minister of Finance, Trevor Manuel, who opened the conference, NYU President John Sexton who was the riveting after-dinner speaker, and Kader Asmal who spoke on *Private Military Security*,' he said.

The papers will be published in the 2009 volume of *Acta Juridica*.

I-r Hugh Corder, Dennis Davis and Trevor Manuel.



### The ACA2K Project

THE AFRICAN Copyright & Access to Knowledge (ACA2K) Project is probing the relationship in African countries between national copyright environments and access to hard-copy and digital learning

materials.

The project is probing this relationship within an access to knowledge (A2K) framework - a framework which regards the protection/promotion of user access as one of the central objectives of copyright law.

This project, supported by Cana-

da's IDRC and South Africa's Shuttleworth Foundation, and managed by the Wits University LINK Centre in Johannesburg, began in October 2007. It has legal researchers in eight African countries (Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal and South Africa).

Lecturer Caroline Ncube and Researcher Tobias Schonwetter are part of the SA team.

The general objective of the ACA2K project is to empower researchers in the study countries (nodes) to develop the evidence necessary for stakeholders in their

countries to pursue development of copyright policy environments that maximise the opportunities for digital and hard-copy learning materials access.

Further details of the project are available on line at [www.aca2k.org](http://www.aca2k.org)

## DELpHE

IN MARCH Prof. Jwani Mwaikusa, who is the Head of the Department of Constitutional and Administrative Law at the University of Dar Es Salaam, visited UCT's Department of Public Law to discuss a collaborative research initiative on Accountability and Constitutional Implementation on the African Continent.

Prof. Mwaikusa's visit to Cape Town was part of the newly established partnership between UCT and the Universities of Dar Es Salaam -Tanzania and Warwick - UK, and kicked off the South-South element of a DelPHE funded partnership initiated by UCT's Prof. Christina Murray and Lia Nijzink.

Ensuring optimal Tanzanian input into planned collaborative research was the main aim of this visit but it also provided an excellent opportunity to discuss further cooperation in the areas of curriculum development and capacity building.

Prof. Mwaikusa's visit coincided with a Curriculum Day hosted by the Department of Public Law to discuss the use of cross-national comparison in constitutional law courses. The Department of Public Law is the lead partner in a South-North partnership established in 2007.



I-r South-South collaborators, Profs Mwaikusa and Murray.

The purpose of the partnership is fourfold:

- to generate comparative knowledge on problems of accountability and constitutional implementation in Africa, with a specific focus on institutions of accountability and accountability support;
- to feed this knowledge back into existing courses in Law and Politics at the Southern partner institutions;

- to build multidisciplinary capacity in comparative research methodology and teaching;
- to share research findings with a wider community of local and international academics and policymakers.

In research, the partnership project, entitled *Accountability and Constitutional Implementation on the African Continent*, brings together leading experts in the field of constitutional law, comparative politics and democratisation studies to investigate problems of accountability and constitutional implementation.

In teaching, the multidisciplinary and collaborative nature of the project aims to enhance existing courses in Law and Politics at the Southern partner institutions and enables the development of new courses.

The overall aim of this South-North partnership is to build on existing expertise at the partner institutions, while generating comparative knowledge that is relevant to the policy goal of developing and deepening democratic governance and accountable government on the African continent.

The Partnership is funded by the Development Partnerships in Higher Education - DelPHE Programme, of the British Council and the Department for International Development, UK.

### Of Sri Lanka, Holland, China and more



Fatima Khan (front) and Matilda Smith (back) with Sri Lankan Judges

THE FACULTY continues to play host to any numbers of groups from as far afield as Utrecht University and Yunnan Province. However, the Sri Lankan visit was unprecedented: 'We have never entertained a group of such very senior judges from the Commonwealth,' said Hugh Corder in his welcome address. 'These are uncharted waters for us, and we have been very pleased to have you with us.'

For their part, 'We had the benefit of having the vast learning and experience of the academics and judges in various fields of the South African legal system, blended with their wisdom and sensitivity to the traditions of their region. I have no doubt that this session with open the pathway to establish international linkage in the future with academic and counterpart judges, to discuss the legal problems in our region,' said His Lordship Justice Manth. The group visited for a second time in July.

## Criminology Series



THE CENTRE for Criminology ran a series of three seminars in April and May.

### Whose side are we on?

Over forty years ago Howard Becker famously argued that sociologists of deviance needed to ask themselves whose side they were on. Last year, Antony Altbeker published a book arguing that South Africa was 'a country at war with itself'.

Bill Dixon, a senior lecturer in Criminology at Keele University, returned to Becker's question and asked whose side critical criminologists should be on in this 'war', and what the implications are of adopting Altbeker's solutions to South Africa's 'crisis of crime', not just for the criminals he wants to see imprisoned in ever greater numbers, but for South African society and indeed for the discipline of criminology itself.

Eric Pelsler, the Director of the Centre for Justice and Crime Prevention and Antony Altbeker, an independent researcher and author of *The Dirty Work of Democracy and A Country at War with itself*, responded.

**Multi-Choice Policing in Africa**  
Bruce Baker, Professor of African Security at Coventry University whose current research focus is informal and formal policing in post-conflict African states, shared the top table with UCT's Tom Bennett, Professor in the Public Law Department whose principal area of interest is the relationship between the State and unofficial legal orders.

Africanus Sesay a Masters Student contributed information about policing in Sierra Leone and Irwin Kinnes, a PhD candidate researching the policing of gangs, facilitated the discussion.

### Imprisoning Communities

Todd Clear a Distinguished Professor from the John Jay College of Criminal Justice, City University of New York discussed his new book *Imprisoning Communities How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*.

Lukas Muntingh of the Civil Society Prison Reform Initiative at the Community Law Centre, and Gideon Morris, Director of the Judicial Inspectorate of Prisons also spoke.

## GMO workshop



Professor Kinderlerer (left) was part of a workshop at Ca'tron, just outside Venice in May that addressed the ethics, regulation and IP issues resulting from the use of Genetically Modified Organisms.

A similar workshop will be held in Cape Town in September. This will be entitled *Risks, benefits and opportunities for the release of GMOs in the African Region* and will be held on 15-19 September 2008; it will involve well known international experts in the field.

Information regarding the workshop may be obtained from the ICGEB website, but applications should be addressed to [hennic@plantbio.co.za](mailto:hennic@plantbio.co.za)

## Sri Lanka Power Sharing Workshop



The Sri Lankan Association of War Affected Women's delegation

AFTER HER son was reported lost in action in 1998, Visaka Dharmadasa was determined that women could contribute to ending the conflict in Sri Lanka and established the Association of War Affected Women. She put together the delegation of 14 women who visited Cape Town hoping to learn

from South Africa's experience.

On 28 April UCT hosted a workshop for the Sri Lankan women. Participants were drawn from all major political parties in Sri Lanka and from all levels of government - the national Parliament, provincial legislatures and local councils. The Sri Lankan High Commissioner in Pretoria, Anura Rajakaruna, joined the group.

The workshop was driven by the belief that some form of power-sharing is necessary to resolve disputes in deeply divided societies. To secure such arrangements and to ensure that they endure requires the buy-in of elites involved in the negotiations and, crucially, the broad support of citizens.

Women can play a crucial role, as in many ways they suffer the brunt of the conflict.

Workshop participants were given insight into the debates, strategies and compromises that marked South Africa's constitution-making process, as leading politicians and community leaders, including Min. Lindiwe Sisulu, DA MP Sheila Camerer, Prof. Kader Asmal and ANC MP John Jeffery, Mary Burton, and Marian Matshikiza shared their experiences.

The South Africans all highlighted the challenges and opportunities for women politicians, during and beyond the peace process, urging the Sri Lankan group to build coalitions of women across party divides in order to ensure that they were fully represented during peace-negotiations. To support this process, the workshop included sessions on diversity and the role of women in peace-making.

## Environmental Law



SANDY PATERSON (l) also attended the SIDA Advanced International Training Programme: Education for Sustainable Development in Higher Education Institutions in Africa in Sweden in April and May this year and the IUCN International Workshop on Protected Areas of Law and Policy at the University of Ottawa in June where he was co-opted onto the Joint Task Force preparing one of six national case studies which will be integrated within the IUCN Guidelines for Protected Areas Legislation to be published in 2009.

MEMBERS OF the Institute of Marine and Environmental Law have convened various public meetings aimed at fostering public debate on contemporary legal developments in the field of environmental law.

Sandy Paterson, in his capacity as Western Cape Board Member of the Environmental Law Association, held a lively public meeting to debate recent amendments to South Africa's environmental impact assessment regime. The comments raised at the

meeting will be submitted to the Department of Environmental Affairs and Tourism. He and Jan Glazewski organised a public lecture by two visiting professors from the University of Oregon (Prof Bonine and Prof Kravchenko) which focused on the link between human rights and the environment, through an analysis of recent international and domestic case law.

For further details contact [Alexander.Paterson@uct.ac.za](mailto:Alexander.Paterson@uct.ac.za)

## Labour Law & Social Security

PROF EVANCE Kalula was one of the teachers at an international seminar held in Bordeaux, France from 29 June to 12 July.

He writes, 'it is a remarkable event which brings together a diverse group of about 80 participants of comparative labour and social law specialists, mainly consisting of doctoral students, young academics and practitioners from all continents.'

Leading academics and other experts in field are invited to give lectures. Doctoral students also make short presentations on their work.

The discussions that follow generate a lot of interest and encourage comparative research and networking'.

This year, Prof Kalula also facilitated the participation of two of his PhD students, Pamhidzai Bamu and

Fritz Nguishilwa. Their presentations were very well received.

The seminar is held under the auspices of the Geneva based International Society for Labour Law and Social Security and supported by the European Union. Although the seminar is usually held in Bordeaux, the possibility of hosting the event at the Faculty in 2010 is being explored

## Copyright in a Developmental State

THE INTELLECTUAL Property Research Unit hosted a workshop on *Reforming Copyright Law to keep pace with the Digital Age & a Developmental State*.

The workshop was organised as part of the Open Review of the South African Copyright Act ([www.copyright.shuttleworthfoundation.org](http://www.copyright.shuttleworthfoundation.org)), a joint initiative of the Shuttleworth Foundation and TRALAC (the Trade Law Centre of Southern Africa).

The review requests ordinary people to comment on the current legislation and the purpose of the review is to find out how copyright affects artists, musician, bloggers, software engineers, librarians and educators. Anyone can go to the review wiki on-line and participate.

UCT's Tobias Schonwetter spoke on Copyright Law & Access to Knowledge, Priya Chetty, a leading Johannesburg Information Technology lawyer spoke about the ef-

fect on copyright law of the Digital Revolution. How does copyright affect new media, was the theme of a fascinating talk about new licences and business models by the general counsel of iCommons, Paul Jacobson. Andrew Rens, Intellectual Property Fellow at the Shuttleworth Foundation then spoke on Development and Copyright, and explained how anyone can participate in the review by making their comments on the review wiki.



Rose Dale House, Hiddinghall Campus. An early home of the Law Faculty.

**IT WAS 150 years ago, with Act 12 of 1858, that the teaching of law in South Africa was launched, although the first lecture was not delivered until March 18th 1859. The early years were documented most eloquently by Professor Denis Coven in the history of the faculty, A History, that he co-authored with Danie Visser. It is to that source that we now turn.**

No legal system can survive unless it is taught scientifically, and in its proper historical setting, as part of a liberal education. 'Taught law,' said the great Maitland, 'is tough law,' by which he meant durable law. In short, the tide could not really turn in favour of the Roman-Dutch law in South Africa until a sound local tradition of tuition in its basic principles was built up.

If I were asked to single out the cause which, more than any others, set back the prospects of the Roman-Dutch law in South Africa during much of the nineteenth century, I would point to the lack of scientific training in Roman-Dutch law. As we have seen, the Charter of Justice required the judges to be British barristers, and confined eligibility to practise at the Bar to 'such persons as shall have been admitted as barristers in England, or to the degree of Doctor of Laws at our Universities of Oxford, Cambridge or Dublin'.

But it was training in Roman-Dutch law that was needed, not primarily training in English law. And, alas, there were no facilities for Roman-Dutch legal education locally, and very few abroad.

Indeed it is astonishing, when one considers the lack of educational facilities, that the local magistracy was able to function at all. The struggle of a South African boy for legal education was really grim, as appears from the pages of Borchers's Memoirs. P B Borchers was for many years the Civil Commissioner and Resident Magistrate of Cape Town, his experience extending from the days of Batavian Rule to the time of Sir George Grey. He tells us how he obtained 'a more extensive insight into matters

connected with the judicial department' by copying court records in a fair hand, and during spare hours in the evening he kept the protocol of Dr Gerrit Buyskes, an advocate and notary public in practice. His legal bible, he says, was Van der Linden's handbook to which he had been introduced by Lambert Shubberg, who had been President of the Court of Justice in the Cape under the Batavian Republic.

#### Towards 1858

But the need for legal education in South Africa was one thing; its satisfaction quite another. Who was to make a start? In 1857 a beginning was made in the South African College (the predecessor of our present University) by the Professor of Classics, Mr (later Sir) Langham Dale. He volunteered to add to his many teaching activities in the departments of Classics, English and Mathematics, some elementary instruction in law. But law teaching is a specialized business. Not surprisingly, the additional burden proved too much for Dale; his health broke and the law classes, if indeed we may call them such, were discontinued.

Fortunately, at the head of affairs in the Colony there were three men of quite exceptional vision and energy. Sir George Grey was Governor. Egidius Benedictus Watermeyer was in the full tide of his career as a judge of the Supreme Court and an honoured member of the community. John Fairbairn was still the guiding spirit of the influential *Commercial Advertiser*, and ever forward in the cause of reform. It is to the combined efforts of these three great men that we owe the beginnings of legal education in South Africa.

Fairbairn kept hammering away through the columns of the *Advertiser*. 'In cases involving such matters as liberty and property', he wrote, 'we cannot reconcile our minds to any Court that is not presided over by a professional lawyer, or by a man who has studied the law as a branch of science ... In time we have no doubt, every District Magistrate will be a man of this kind, but we may

say, without disrespect, that the time is not yet come.' The youth of the Colony, he urged, should be enabled to enter upon the study of law under proper direction, and an adequate educational qualification should be required of every candidate for a magistracy.

E B Watermeyer, for his part, was from time to time giving learned public lectures on such subjects as the Government of the Dutch East India Company; the Roman law; community of property; and the law of inheritance.

#### South African qualification

To Sir George Grey himself, the idea of a South African qualification for South African practice appealed strongly. It was all of a piece with his policy of self-help as the guarantor of self-government. The whole matter was accordingly placed on the Parliamentary Agenda for 1858, and the result was encouraging.

In the first place it was decided to establish a Board of Public Examiners. This was done by Act 4 of 1858, and among the examinations which the Board was authorized to conduct was an examination for a 'Certificate of the Higher Class in Law and Jurisprudence'.

The next step was to amend the Charter of Justice so as to authorize the Supreme Court to admit to practice persons who had obtained this Certificate. This was done by Act 12 of 1858, s 2 providing that in addition to the classes of persons who

might be admitted under the Charter of Justice, 'authority is hereby given to the said Supreme Court to admit all such persons as shall have obtained either of the two

Certificates of Merit and Attainment (issued by the Board of Examiners); and in addition to such certificate, the certificate of the Higher Class in Law and Jurisprudence'.

A salary of £300 per year was then voted to a law professorship, it being understood that the appointment would be made by the Council of the South African College, to which the Chair would be attached; and the occupant was to have a seat in the Senate. It now remained to fill the Chair and get the classes started.

On March 16, 1859, there appeared in the *Commercial Advertiser* the following notice: 'The Council of Directors of the South African College announce that they have, with the approval of His Excellency the Governor, appointed Johannes Henricus Brand, Esquire, LL.D., Barrister-at-Law, to be Professor of Law, with a seat in the Senate.'

#### Brand starts law series

Brand set to work immediately, and his lectures were an outstanding success, so much so that he was called upon to give encores for the public edification! He received, moreover, the full acclaim of the Press. Thus, on Saturday April 30th, 1859, the *Commercial Advertiser* recorded that '[w]e learn with pleasure that Mr. Professor Brand will repeat to-day at

3 o'clock p.m. the Introductory Lecture which he delivered at the opening of his course of Lectures on Law in the South African College at the request of a number of gentlemen who had mistaken or not known the time and place where he was to open his class, and who have heard how much they have lost by their absence. This class will, we trust, be well attended, not only by professional but by general students, who know how valuable a branch of knowledge is the Jurisprudence of Civilised Nations.'

The Senate was also pleased with its popular new Department. And in reporting to the Council of Directors, in July 1859 — in those days Senate reports were published in the local press — the Senate recorded that 'in the present session 102 students have attended the classes of the different Departments, 5 of whom have matriculated specifically with a view to the study of law. The establishment of two new Professorships, viz those for the study of Botany and of Law in connection with the College, appears to the Senate of no inconsiderable value.'

Professor Brand modestly reported as follows: 'A class for the study of Law has been opened in the College during the present session, numbering 8 pupils. The hour of attendance in the College is 10 a.m. on Saturday; and at 3 p.m. a second lecture has been delivered in Cape Town accessible to the public. The subject of the course has been — The Institutes of the Roman Law.'

# 150 years Faculty of Law University of Cape Town

#### Legal textbooks

Apart from Burton's *Law of Insolvency*, which had appeared in 1829, the first eighty years of the nineteenth century produced virtually no South African legal textbooks. An occasional manual of practice, or a reprint of a statute with a few notes appended to the text, yes; but no scientific works. By far the most useful books of real calibre were those written beyond our shores, especially those by William Burge and Joseph Story.

In 1882, however, the beginning of a change took place. In that year there appeared from the pen of one Caspar Hendrick van Zyl a book on *The Law Relating to Costs*. This consisted of a chapter of a comprehensive set of lecture notes on the *Theory of the Judicial Practice* which he had prepared for students during the years 1875-76. And in 1892 Van Zyl published the entire work. Mr Adrian Roberts has very justly observed that Van Zyl's books constitute a landmark in the study of Roman-Dutch law in South Africa; this is so not only because of their considerable worth in their day, but primarily, as I see it, because they originated — as so many of the really influential books have done — in the teaching of law.'

#### School of Law?

And so it was that in 1889 there appeared in the *Cape Law Journal* an eloquent plea from him for the establishment of a 'School of Law'.

Fortunately, the South African College Council was willing to begin work afresh on building the Faculty whose foundations had already been laid thirty years earlier. And Van Zyl was asked to accept an academic appointment. His lectures were never dull. It is said that he had a knack of illustrating even the most dry-as-dust point with a memorable illustration. He was at the same time a thoroughly sound lawyer, one of Professor Brand's protégés, and had distinguished himself as a law student at the South African College. He was an enthusiastic advocate of the importance of legal history; and one of the first men in South Africa to support the idea of codification.

Numbers grew rapidly under Van Zyl, and he was given an assistant, Advocate Shiel, in 1892. Van Zyl remained at the College until 1896, long enough to establish the Department, and then felt the need to reduce his commitments. However, during the comparatively short period of his lectureship there were more successful candidates for the LLB degree than during the whole of the preceding fifteen years. And by the turn of the century, the number of persons being admitted to practice on overseas qualifications was beginning to be exceeded by those with South African qualifications.

It was fitting that in 1910 the University of the Cape of Good Hope conferred upon Caspar van Zyl the degree of LL.D, honoris causa. Seldom has this honour been more richly deserved. It is fitting, too, that



(l-r) At the formal donation of the Brand van Zyl Collection: J C Smuts, Gideon Brand van Zyl and Vice-Chancellor, Dr T B Davie

(through the generosity of his son, the late Governor-General, Major G B van Zyl) Dr Van Zyl's fine library now belongs to the Law Faculty which he had served so well.

After Dr Van Zyl's resignation in 1896, and until the University of Cape Town obtained its Charter in 1918, the Faculty continued to be served by practising members of the legal profession... Van Zyl's immediate successor was Adv A J McGregor, for many years also a judge in the Orange Free State.

Among those who succeeded McGregor in the years before the granting of our University Charter, were Adv (later Mr Justice) F G Gardiner; Adv (later Mr Justice) L E Benjamin; Adv W Porter Buchanan (Benjamin and Buchanan were appointed lecturers in 1898); Adv W R Toms; Adv (later Mr Justice) R P B Davis; Adv (later Mr Justice) J E R de Villiers; Adv (later Mr Justice) G G Sutton; Adv A F Russell (later Sir A F Russell, Chief Justice of Southern Rhodesia); Adv (later Mr Justice) C G Gutsche; Adv F Reid; Adv (later Chief Justice) A v d S Centlivres (later Chancellor of the University) and Adv (later Mr Justice) R R B Howes. The Faculty owes a deep debt of gratitude to these men.

Lectures in the old days were for some time given in the Master's Meeting Room in the old Supreme Court at the top of Adderley Street, but after 1896 the College Council made determined — and it would seem largely successful — efforts to insist that lectures be given in the

College Buildings in Government Avenue.

#### New Chapter: 1916

The year 1916 began a new Chapter in the story of legal education in South Africa. In that year, by Acts 13 and 14 of 1916, provision was made for the creation of the Universities of Stellenbosch and Cape Town; and they came into legal existence in 1918. Both Acts of Incorporation provided for the establishment of faculties of law. The Cape Town Act specifically provided that the old South African College should become and be incorporated as a University, thereby maintaining continuity with our early history. What was new, however, and of the greatest importance, was the decision taken by the University authorities to appoint full-time professors of law.

At Cape Town it was decided to begin with one full-time professor, assisted by several part-time lecturers drawn from the Bar. Professor George Wille was appointed to the Cape Town Chair of Roman-Dutch law in 1920; and with the appointment in South Africa of full-time professors of Roman-Dutch law, it could, I think, fairly be said that the future of that system was assured.

Professor Wille served the Faculty with distinction until his retirement in 1945. During those years he prolifically and greatly enriched the legal literature of South Africa; and put us all deep in his debt. Under his guidance, student numbers steadily increased; and as the law courses developed, it became clear that the small staff could not do all that was required. Accordingly, in 1923 a Chair of Roman Law and Jurisprudence was established out of funds raised in memory of Mr W P Schreiner; and in 1925 a third Chair of Law was established.

The first occupants of these two Chairs were respectively the late Professor J Kerr Wylie (1924-1948) and the late Professor Eric Emmett (1925-1945). Both of these men made notable contributions to South African legal literature. Meanwhile, student numbers continued to grow



ABOVE: Sir Johannes Brand, first Professor of Law and later President of the Orange Free State.

BELOW: prof George Wille, first full-time Professor of Law in the University of Cape Town, 1920 - 1945



until 1939, 74 were registered in the Faculty.

After World War II numbers increased rapidly; and today 288 (2004) students are registered in the Faculty. New courses have been added to the curriculum for the LLB degree, as well as for candidate attorneys and candidate accountants; and the full-time staff has been augmented by three senior lectureships.



PD Hahn Building, 1973 - 1987.

*"We must stand together in creating the new South Africa. When our work is done, let all look with hope and encouragement because she will have demonstrated that it is possible for people of different colours and different races and nationalities to live together in peace and friendship, sharing a common sense of nationhood and humanity."*

*Oliver Tambo, February 1993*



Wilfred and Jules Kramer School of Law, 1988 - 2000.



October 2007  
The Editor, The Cape Times

Sir,  
We write as professors in the Law Faculty at UCT. We do so in our personal capacities, in order to express our deep disquiet at the events surrounding the Judge President of the Cape High Court. We do so for several reasons which strike at the heart of the attempts to build a constitutional democracy, to which we are committed. We do so with great sadness.

John Hlophe's appointment to the Cape High Court was unprecedented, not only because he is black and had overcome severe personal disadvantage, but also because he was the first academic ever to be

appointed to such office in South Africa. He has a distinguished intellect and academic pedigree, which we were pleased to recognise by inviting him to accept a position as Honorary Professor in this Faculty in 1999, an appointment which was renewed for a second term that expired in 2005. On the occasions that he attended and spoke at academic events on this campus, we appreciated his grace, acuity and humour.

We have noted the allegations against him and the controversies in which he has become embroiled with much concern, both for him personally and for his office as Judge President. The development and sustainability of the Constitution which underpins our entire system of law and governance depend fundamentally on the unquestioned integrity and impartiality of the judiciary, both in fact and in appearance. As we know only too well in any number of spheres, perceptions are often more

powerful than reality, so any doubts about judicial integrity need immediate, full and reasoned investigation and resolution. For many months, we have waited anxiously for the Judicial Service Commission to resolve the matter of the payments to Judge Hlophe by the Oasis group, anticipating that the matter would be at least explained, or better resolved, by the JSC, as it is mandated to do by the Constitution. We have kept public silence on this issue, out of respect for the proper process.

We are dismayed by the outcome, which cannot but damage the judicial process. Over the past few years, many of us have been involved in supporting the judiciary when debate arose about the proper separation of powers between the executive and judiciary, in the face of apparent attempts at legislative interference with judicial independence. We did so in the belief that judges were the most appropriate authority to take

action, for example, to investigate and resolve allegations of judicial misconduct. The Constitution currently imposes this duty on the JSC, before any steps can be taken by Parliament and the President to remove a judge from office.

In a matter of such extraordinary importance for the health of our democracy and legal system, we find the process and findings of the JSC in the case of Judge Hlophe (and note that in conducting what investigations it did, the JSC functioned without those of its members who are politicians holding public office) both opaque and inexplicable. We call on the JSC urgently to remedy this situation, by providing at least sufficient details of the evidence before them and their reasoning in reaching the conclusions which they did.

We note that the JSC has found that when Judge Hlophe gave permission to Oasis to sue one of his

colleagues on the Bench, Judge Desai, he was in receipt of some form of regular funding from Oasis, and that he failed to disclose that fact. Whether or not Judge Hlophe had received permission from the late Minister of Justice, Dullah Omar, to receive such payments (and whether or not such permission could properly have been given), it was manifestly wrong of him not only to remain silent about that fact, but also to act in any way in the matter. In our view, his actions have damaged the reputation of the judiciary. Judge Hlophe should consider whether his continuation in high judicial office in our legal system will not further damage our constitutional democracy.

Hugh Corder (Dean), Paul Benjamin, Tom Bennett, Halton Cheadle, Anton Fagan, John Gibson, Chuma Himonga, Dale Hutchison, Evance Kalala, Mike Larkin, Christina Murray, P J Schwikkard, Clifford Shearing, Danie Visser



### Mike Larkin 1950 - 2007 teacher, leader & friend

After just 22 months with the Faculty, Professor Mike Larkin was killed in Rondebosch as he was walking home. His impact is reflected in the excerpts below, and his legacy lives on both in the renamed LSC scholarship and in an annual memorial lecture.

"We were so lucky to be taught by Mike Larkin, we the intermediate class of 2007. We will always remember how privileged we are!" Mishinga Seyuba, student

"Mike was a wonderful leader and a real father figure to many of us younger members of staff; the corridor in commercial law feels so empty without him." Jane Franco, lecturer

"After his short time at UCT, I am sure that all of you came to know Mike as a wonderful colleague and the very special person that he was. We will all miss him enormously and it will take forever to come to terms with the brutal nature of his death." Glenda Fick, Dean of Law, Wits

"Kind, gentle, intelligent and not lacking in humour, his death is certainly a loss for UCT Law School. What saddened me was the manner of his death; the violent and arbitrary killing of an innocent man." Adam Pike, Alumnus

"I am writing to express my outrage and terrible sadness at the death of Prof Larkin. I remember him as a gentle, passionate, patient and learned man, who had time for us when we were articulated clerks at Edward Nathan." Omphemetse Mooki, mentoree

"Pray for us, Mike, from the courts of heaven. *Deducat te angeli in Paradisum. In tuo adventu suscipiant te martyres, et perducant te in civitatem sanctam Ierusalem. Chorus angelorum te suscipiat, et cum Lazaro quondam paupere aeternam habeas requiem.*" Simon Donnelly, seminarian

### In memory of Mike

THE INAUGURAL Mike Larkin lecture on March 11th 2009 will be given by Professor Simon Deakin, the Robert Monks Professor of Corporate Governance at the University of Cambridge. The provisional title of his presentation is *Corporate Governance: Appropriate models for the 21st century*. In addition to corporate governance, Simon also has a keen interest in labour law and some of his recent publications include *The Law of the Labour Market* (with Frank Wilkenson) and *Labour Law* 4 ed (with Gillian Morris).

### Staff Seminars

The faculty continues to enjoy the leaven of visiting academics and some of the staff seminars heard in the last year are:

- Socio-Economic Rights: Making Fundamentals Work for the Poor:* Dr David Bilchitz
- Imprisoning Communities: The Effects of Concentrated Mass Incarceration in the United States:* Professor Todd Clear
- Regulation of the Private Security Industry:* Dr Sarah Percy
- Violence and Masculinity* (and film *Imbala: Ritual of Manhood of the Gisu of Uganda*): Suzette Heald
- Gangs, Policy and Dignity in Cape Town:* Steffen Jensen
- The Asmal Report: What is the future of the Chapter 9 institutions?* Pierre de Vos
- The constitution making process in Iraq:* Paulos Tesfagiorgis
- Comparing Affirmative Action Programs in the U.S. and South Africa for Purposes of Assessing Compliance with the International Convention on the Elimination of Race Discrimination:* Professor Connie de la Vega
- Human Rights and the Environment - Linkages and Case Law:* Professors John Bonine and Svitlana Kravchenko
- Does international democracy promotion work?* Professor Peter Burnell
- From Outrage to Courage: Women taking action for health & Justice:* Professor Anne Firth Murray
- Legal Culture and Transformational Constitutionalism:* a series by Professor Karl Klare

### UDHR in Tshivenda

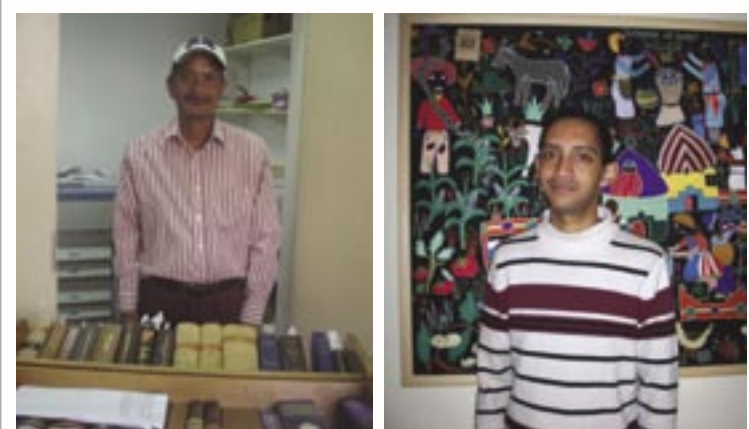
OPENING THE *Speak Truth to Power Forum* on August 11th, Professor Hugh Corder announced:

"It is with some pride that I tell you that this December 10th, UCT will do a formal reading of the soon-to-be-published Tshivenda version of the Universal Declaration of Human Rights (UDHR).

One of the lecturers in Public Law, Aiheli Tshivashe, who himself is from Venda, noticed that on the UN website the UDHR is in nine of the eleven official South African languages.

He, his colleague in the faculty, Salim Nakjavani, and two Venda speaking students, have translated the document and will launch it in Thohoyandou in October.

### 'If it wasn't for Les & Wes'



The late Lesley Alexander Wesley Barry

THE STUDENTS all agree: 'We would never have passed our LLB without Les & Wes.' Wesley Barry is still very much with us, but sadly, Les is not, and it is not only the students who are missing him.

Tributes at Lesley Alexander's funeral service came from across the spectrum of the Law Faculty Community. Acting Judge Esther Steyn spoke of not only his extraordinary knowledge of legal texts but also of his ability to treat each person as his first priority. Dorothy Lucjeko spoke of his unfailing sunny nature and of that naughty twinkle in his eye.

Judge Vincent Saldanha wrote it: 'I studied law at UCT during the early eighties. I recall with great fondness the ever smiling and helpful Leslie. In fact I recall spending late Friday afternoons with him and Tommy Prins at a local pub in Mowbray where after far too many beers we discussed and solved all the problems of the world. Leslie like the rest of us had strong views about the difficult political and social problems of the eighties. But besides the seriousness of our conversations we simply had lots of fun and enjoyed the warmth and company of good friends.

May you the family of LESLIE take great pride in the fact that Leslie served UCT, its staff and more importantly its students with great diligence and commitment. He has touched the lives of many law students and Faculty members and will always be remembered with a great sense of gratitude.'

### New Professors



Professor Hanri Mostert (BA LLB LLM LLD (Stell)) joined the Department of Private Law in April, after having been with the Law Faculty of Stellenbosch University for the preceding eight years. She teaches property law and will be introducing a new course in Comparative Land Law to the Masters' programme.

Prof Mostert has published extensively, both locally and internationally, on issues related to land law. Her doctoral thesis was published internationally, as a monograph in the reputable series, the "Schwarze Reihe", of the Max Planck Institut für ausländisches Öffentliches Recht und Völkerrecht. The book deals with the influence of the constitutional property clause on the development of land law. Prof Mostert is co-author of the 4th and 5th editions of *Silberberg & Schoeman's Law of Property*. She has also contributed to *LAWSA* and the *Annual Survey of South African Law*.

Most recently, she has contributed to the property law section of a leading German law commentary, the *Nomos BGB Kommentar*. Prof Mostert specialises in mineral law and has authored / co-authored several publications in this regard, including a comprehensive commentary on the new mineral and petroleum law of South Africa.

Within six years of entering the post-doctoral research arena, Prof Mostert was awarded the official status of an "Established Researcher," within the ratings framework of the South African National Research Foundation. From this institution she has received two generous research grants of four and five years respectively, to investigate interrelated themes about the origins of principles of landownership and their impact on debates about development and globalisation; and the creation of new types of land title. She is a *Georg Forster Fellow* of the Alexander Von Humboldt Foundation in Germany. She also is a fellow of the *Commonwealth Scholarship and Fellowship Programme*. She has worked abroad on various research projects, specifically at the University of Reading in the United Kingdom; and the University of Freiburg and the University of Heidelberg in Germany. She has been invited to speak at several international conferences and institutions. The most recent of these were at the Institute for Advanced Legal Studies in London and the UK National Committee of Comparative Law / Society of Legal Scholars meeting in Durham, 2007; and the Oxford Round Table in 2008.

Prof Mostert provides supervision and guidance to a number of Masters' and Doctoral students. She supervises the innovative student research programme entitled *Land Law Watch* which has developed a web-based platform ([www.landlaw-watch.co.za](http://www.landlaw-watch.co.za)) for the critique of developments in land law. She is also a member of the Law Reform project 25 of the South African Law Commission.



Assoc. Prof Tshepo Mongalo (B. Proc *Summa cum Laude*), LLB (Natal), LLM (Cambridge) joined the Faculty on 1st July as an Associate Professor in the Commercial Law.

'As the Former Project Manager for Company Law Reform within the Consumer and Corporate Regulation Division of the Department of Trade and Industry (dti), Tshepo was responsible for managing the process of corporate law reform, which led to the revised Companies Bill 2008 recently introduced into Parliament as the Companies Bill B-61 of 2008,' said Professor Rochelle le Roux, Head of Department. 'We welcome the combination of industry experience and academic acumen that he brings to the Faculty.'

Tshepo is Corporate Law Consultant at Edward Nathan Sonnenbergs Inc. and has been appointed as the Advisory Committee Member of the South African Law Reform Commission on Project 25 which is aimed at statutory law revision of the legislation administered by the dti. A former Research Assistant to Justice LWH Ackermann and a former Lecturer and Senior Lecturer in the Business Law Department of the University of Natal, Durban, he has been a Visiting Scholar at the University of Nottingham, where he taught Contract Law, and is also the recipient of the prestigious Colenso Scholarship at St John's College, University of Cambridge.

During his tenure as the Project Manager for Company Law Reform, Tshepo was a member of the Executive Committee of the Consumer & Corporate Regulation Division of the dti; was a Reporter on Company Law Reform to the Standing Advisory Committee on Company Law in South Africa a body appointed in terms of s18 of the Companies Act, 61 of 1973; he often represented the Department of Trade & Industry in South Africa APRM (African Peer Review Mechanism) National Governing Council; was a leading government representative in the NEDLAC Task Team on Company Law Reform and represented the dti in the African Union's initiative on

the Harmonisation of Business Laws in Africa.

He is the author of the acclaimed *Corporate Law & Corporate Governance: A Global Picture of Business Undertakings in South Africa* and the Principal author and general editor of *Forms of Business Enterprise: Theory, Structure and Operation* and of a number of articles on corporate law and corporate governance published in recognized journals and popular magazines and newspapers.



Assoc. Prof Richard Calland was appointed to the Department of Public Law (which now includes the Department of Criminal Justice) as an Associate Professor in August 2007. He teaches constitutional and human rights law, administrative law, and specializes in the law and practice of the right to access to information and whistleblowing protection.

Calland comes to UCT from Idasa where he was programme manager of the Political Information & Monitoring Service. In 2000, he founded the Open Democracy Advice Centre (ODAC), a law centre based in Cape Town, which promotes the 'right to know', advising whistleblowers, advocating law reform and taking test case litigation on access to information. He continues to play a role at Idasa as Acting Manager of the Economic Governance Programme that was initiated in January 2007, and serves as part-time Executive Director of ODAC.

He is a member of the Transparency Task team of the Institute for Public Dialogue at Columbia University, which is led by Professor Joseph Stiglitz. He has in recent years served as an expert consultant to the Carter Center, the foundation led by former US President Jimmy Carter, advising on various transparency projects in Bolivia, Jamaica, Nicaragua, Peru and Mali. In South Africa, Calland writes a fortnightly political column for the Mail and Guardian newspaper, 'Contretemps', and is a regular commentator in the media.

In 2005, he spent two terms at Cambridge University, as a visiting scholar at the Lauterpacht Centre for International Law. In 2006, he spent a month as a visiting lecturer in constitutional law at the law department of Meiji University, Tokyo. Before coming to South Africa in 1994, Calland practiced law at the London Bar (called in 1987 at Lincoln's Inn). He holds an LL.M from the University of Cape Town, a Diploma in World Politics from the London School of Economics and an BA(Hons) Law from the University of Durham.

### ON THE MOVE

THE FACULTY was sad to say goodbye to Esther Steyn (now an Acting Judge) and Julien Hofman (now in the UK). We wish them well and look forward to their continued informal association with us.

Danwood Chirwa as been promoted to Associate Professor, and Graham Bradfield to Senior Lecturer. Danie Visser (one of 17 profs) and Jaco Barnard (one of three senior lecturers) were given UCT excellence awards.

Jonathan Burchell has been made a Fellow of UCT, and Danwood Chirwa was given a "Fellows' Award", an accolade given by the Fellows to younger researchers of exceptional achievement for the level at which they are appointed.

### Kramer goes green



PROFESSOR CORDER's zeal in insisting on tap water over bottled water is legendary across the university, and so no one was surprised when Tom Herbstein (son of Dennis, 1958) was appointed to turn Kramer green.

Tuesday lunchtimes in the Common Room bring boxes of Harvest of Hope vegetables, bristling (literally) with nettles and all matter of good things, and organic popcorn and coffee are available too. All manner of subjects have also been deconstructed with a week in August offering the following documentaries:

**Something Fishy** looks at the catastrophic environmental effects of mining, the leaching of heavy metals into the Olifants River and the inadequacy of the local law in preventing it.

**Black Gold** documents how, as westerners revel in designer lattes and cappuccinos, impoverished Ethiopian coffee growers suffer the bitter taste of injustice. In this eye-opening expose of the multi-billion dollar industry, Black Gold traces one man's fight for a fair price.

**Darwin's Nightmare** is set on the shores of Lake Victoria and is an Oscar nominated tale about humans between the North and the South, about globalisation, and about fish.

**Coconut Revolution - The Bougainville story** with a population of only 160,000 Bougainvillea has managed to close and keep closed one of the biggest mines in the world. They have held their ground for a decade with antique weapons and home made guns. These people have taken on the biggest mining company in the world and won.

The culminating event was a discussion featuring Cormac Cullinan and Professors Philander and Black on *How can African Development be compatible with sustaining a habitable planet?*

### Revamped PPS



Thanks to the on-going support of the Professional Provident Society, one of the smart rooms has just been revamped. 'The PC capacity has been increased by 30%, the layout is more practical and there is a tit-and-play laptop point mounted in the lectern. This is aside from the lovely aesthetics of the room,' comments IT Manager Jenny Erasmus. For lecturer Debbie Collier (above) 'it is great to work with equipment that facilitates teaching and enhances the learning experience.'

## June 2008 - MPhil, PhD & Honourand



l-r: Lecturer Danwood Chirwa and his wife, Naomi



l-r: Dr Beric Croome with supervisors Jooste and Corder



George Bizos (c) with Deans past & present

### Law Firm Scholarships

ON THE premise that the judiciary can only be as transformed as the professionals it is composed of, at the end of 2005 Prof Corder wrote to leading law firms and asked if they would partner with us by giving scholarships to students of academic merit who are from disadvantaged backgrounds.

*Dencys Reitz, ENS, Herold Gie and Werksmans* responded and so it was in 2007 that we were able to offer six students R20 000 each towards their tuition fees.

The conditions of the scholarship continuing are that the students pass all subjects; students are invited to vac programmes and if offered articles by the firm, must accept or reimburse the firm.

Feedback is positive on both sides, with most firms opting to fund further students in 2008.

### Inaugural Dean's Awards

EACH YEAR the faculty holds two events at which those who have achieved class medals, prizes and scholarships are recognised. This year Professor Corder initiated Dean's Awards for Service for achievements of LLB students outside the lecture hall, in student and community activities whether of a cultural, sporting or similar nature. 'Each year I am struck by how many students do fantastic things and it gives me great pleasure to recognise today, four such young people,' said Corder.

**Matthew McConkey:** Chairman UCT hockey club, WP & SA under 21 Hockey and coach to UCT ladies and Bergvliet High first teams

**Tembelani Mayosi:** Best forward of the 2008 Varsity Cup tournament UCT Rugby Club Captain 2004/5: SA Universities 2005/7

**Brendan Studti,** gm & trustee of uThando leNkosi Haven House for orphaned children, Diepriver; used own savings and then raised R2.1 million

**SLLSJ Organising team:** for initiating the most successful weekend away as - Students for Law & Social Justice



The students who tutor at New Elsleben High on Saturday mornings go armed with peanut butter sandwiches for the learners. Sandwich makers l-r are Irena Wasserfall, Linda Goliath, Sue Wright, Hugh Corder and Beryl Pillay

### LLB students Community Service

SINCE 2006, all LLB students have had to complete at least sixty hours of unpaid community service as part of their degree.

Last year the Law Faculty embarked on a pilot project to promote awareness and resolutions of various legal issues affecting many terminally ill patients affiliated to hospice. The work was funded by Open Society Institute (OSI) and was done under the auspices of the Hospice & Palliative Care Association of South Africa (HPCA).

As part of their Community Service, six intermediate and final year students made presentations to social workers and care-givers at a workshop at St Luke's Hospice, Kenilworth. The presentations were on four key issues that had been identified by social workers, namely wills, social grants, debt and unfair dismissal.

These proved to be very

successful and in November 2007 the workshops were extended to service, on a weekly basis, as part of the 60-day training programme (held three times a year) at St Luke's in Lentegeur Hospital, Mitchell's Plain. Approximately 50 community members are selected for each programme and after successful training are allocated to care for terminally ill patients (in some cases as many as four).

The evaluation of the pilot project was workshopped in June 2008 and a recommendation was made that the Department of Health, responsible for the curriculum for care-giver training courses, formally include the legal aspects workshopped by the students, into the training programme.

This is an accredited course, and due to the success of the pilot project in Cape Town, the programme has been adopted by other Law Schools.

### Of Moots and Mock Trials...

#### Mock Trial Competition

THE UCT team of Robin Bizony and Ross Wynne made it into the finals of the Intersarsity Mock Trial competition in Durban, the best result for UCT thus far in this annual competition.

Twelve universities competed in a mock trial that was adjudicated by a High Court judge, with a magistrate and an advocate acting as her two assessors.

'In the end UCT was placed second, losing honourably to Rhodes which was a consistently outstanding team that we felt deserved to be declared the overall winner of the competition,' comments Bev Bird, Director, Law Clinic.

#### All Africa Human Rights Moot

THE UCT team, consisting of Emma Webber and David Watson, participated in the 17th All Africa Moot Competition which this year was held in Pretoria. They did very well, finishing 3rd out of 48 Anglophone teams, with only the University of Pretoria and Stellenbosch University scoring higher marks. David earned the seventh highest score for in-

dividual oralists in the Anglophone competition. Two comments sum it up: 'We would like to say thank you so much for Faculty support - The moot itself was both educational and a lot of fun. Our exposure to students from across Africa highlighted for us what a privilege it is to attend UCT. From our conversations about law with fellow students it is evident that UCT expects its students to

engage far more critically with the law than at many of the other Universities in South Africa and Africa. We certainly hope the Faculty continues to support the All Africa Moot. To paraphrase Justice Mosenke, this competition is fostering the sort of law students that should ensure that the current generation of dictators in Africa is the last. *Emma Webber and David Watson*



and wish to have the same experience. *Matilda Smith, Law Clinic*

#### International Moot Competition

The UCT Faculty of Law hosted the National Rounds of the 2008 White & Case South African Jessup Moot Competition from 30th January until the 1st February 2008.

Teams from South Africa's top law schools competed in

the competition which dealt with topical and controversial issues in international law including rendition, conditions in detention, torture and the legality of military commissions under international law.

The final round of the competition was held in the Cape High Court and was presided over by the President of the Supreme Court of Appeal, the Honourable Mr. Justice Craig Howie, Judge Ian Farlam of the SCA, Dennis Davis and Nathan Erasmus of the Cape Provincial Division, and Tanneke Heersche, Executive Partner of the international law firm White & Case which sponsored the competition.

The UCT Team (Emma Webber, Shingi Masanzu and Tongayi Masvikwa) coached by Chris Oxtoby, finished third in the final rankings, though the team achieved the highest raw score. Shingi Masanzu won the award for top oralist and Tongayi Masvikwa placed third. The competition was won by the University of the Witwatersrand with the University of Pretoria as runner-up.

Final year Desiree Lundstrom did an outstanding job of co-ordinating the competition; it will be hosted at UCT again in 2009.

## Facta non verba: Law Students' Council 2008

By LSC President Shingi Masanzu



OUR THEME for our term in office was *Legal Social Consciousness*, and we sought to focus on communication with the student body and issues of social responsiveness. Our term in office began at the end of 2007, on a tragic note, with the untimely death of Professor Mike Larkin. The Final Year class were taught by Prof Larkin in 2007, and he was a much loved and admired member of the Faculty. Seeking to memorialise the positive and profound impact that Prof Larkin's kindness, generosity and warmth had on his students, the LSC Scholarship was this year renamed the Mike Larkin Memorial Scholarship.

The LSC began 2008 on a high note by welcoming 140 new students in a successful Orientation week program. We were supported by an

enthusiastic and enterprising group of volunteer Orientation Leaders drawn from senior students in the Faculty. From the skits, songs and speeches, Orientation was an eventful and enjoyable start to the year. As a follow on from this, our mentorship program saw 24 mentors, again composed of volunteers in senior years, matched up with 85 new students. In a bid to keep the lines of communication, between the Faculty and students, open, the LSC also hosted several Dean Speak Easies, at which the Dean gamely took on a wide range of often difficult questions from students!

The tumultuous events taking place outside of the Faculty and University also featured on the LSC's agenda this year. We are highly conscious of our role and responsibility, as law students, to advocate for social justice and maintain a sense of social consciousness in our communities. Thus, in the wake of the events at the University of the Free State earlier on in the year, the LSC seized the opportunity to set up a discussion board on issues of racism and transformation. This successful initiative saw many students airing their views and sharing their concerns and frustrations with fellow students over a two week period. The LSC, in con-

junction with the Faculty Office also lead the Law student body's reaction to the xenophobic attacks. Many students generously donated clothes in the Faculty's Winter Clothing Drive conducted as part of the wider University campaign to collect food and clothes for those affected by the attacks.

The LSC has also been proud to be associated with and to support a range of student activities throughout the year. Of note, the Student Society for Law and Social Justice has just recently held its seminar and the Black Law Students' Forum tutoring program in Nyanga has grown from strength to strength. Students from the Final Year class organised an impressive Final Year Deaf, and are currently finalising the Yearbook for that class.

Elections for the LSC of 2009 are underway at the time of writing. The LSC of 2008 will no doubt be happy to hand over to a new LSC! It has been a challenging year, but also one marked by many successes and much growth. As the year has progressed, the LSC has taken major strides in fulfilling its objectives, and has adopted an increasingly consolidated and focused approach to its mandate.

We have no doubt that future LSCs will continue to build on the foundations laid by our LSC and by LSCs before us.

### Legal education and constitutional transformation



KRAMER QUAD was packed for what turned out to be a lively debate. Justice Yvonne Mokgoro, Advocate Geoff Budlender and Professor Anton Fagan (above) looked at legal education and constitutional transformation. The aim was to critically examine the current approach to legal education at universities, particularly with regard to the constitution. Questions relevant to the issue were:

- Is legal education too focused on technical aspects and rules of the law and not enough on the constitution and its values? Linked to this, should the constitution be treated simply as a legal document and taught as such, or should it be regarded as a system of morals and values and taught as such.
- Should the law be taught according to the current public/private law divide?
- Are law students being properly prepared to practise in a post-apartheid South Africa? To what extent will changes in the approach to legal education and the constitution actually change things in practice?

### PRIZES: 2007

#### FINAL YEAR LLB

- INA ACKERMANN PRIZE:** Best Student in Commercial Transactions Law *Emma Wormald*
- RODMAN WARD PRIZE:** Best essay written by a student on an aspect of Corporate Governance *Olivia Rumble*
- BOWMAN GILFILLAN PRIZE:** Best Student in Revenue Law *Fatima Osman*
- JUDGE SCHOCK PRIZE:** Best final year LLB student *Emma Wormald*
- JUTA LAW PRIZE:** Best Final Year LLB student *Emma Wormald*
- D B MOLTENO PRIZE:** Best Student in courses in Public Law *Doron Isaacs*
- SOUTH AFRICAN SOCIETY FOR LABOUR LAW PRIZE:** Best Student in Labour Law *Megan Britz*
- THE GERING PRIZE:** Best student in Commercial Transactions Law *Emma Wormald*

#### INTERMEDIATE YEAR LLB

- ADAMS AND ADAMS PRIZE:** Best Student in Corporation Law *Lisa Bolt*
- BRINK COHEN LE ROUX INC. PRIZE:** Best Student in Law of Contract *Suzanna Harvey*
- IONANN PRIZE:** Best black female student from SADC, who wants to make a career in criminal justice *Shingira Masanzu*
- LEXISNEXIS BUTTERWORTH PRIZE:** Best student in Civil Procedure *Shingira Masanzu*
- LEXISNEXIS BUTTERWORTH PRIZE:** Best intermediate LLB year student *Janice Bleazard*
- MIKE BLACKMAN MEMORIAL PRIZE:** Best results in Corporation Law *Lisa Bolt*
- TW PRICE MEMORIAL PRIZE:** Highest overall marks in preliminary and intermediate in Private Law *Shingira Masanzu*

#### PRELIMINARY AND UNDERGRADUATE STUDENTS

- BEN BEINART MEMORIAL PRIZE:** Best Student in Comparative Legal History and Foundations of South African Law *Noni Munge*

#### OTHER PRIZES

- ENGEN PETROLEUM PRIZE IN MARINE LAW:** Best combined results in Marine Law courses *Philippus Snijsman*
- CAPTAIN BOB DEACON MEMORIAL PRIZE:** Best Student in Shipping Law *Belinda Sciba*
- SPOOR AND FISHER PRIZE:** Best student in Intellectual Property Law *Emma Wormald*
- BAR COUNCIL MOOT PRIZE:** Best participants in a series of moots in the faculty *Jacob Wiese & Janice Bleazard*
- SONNENBERG HOFFMANN AND GALOMBK INC PRIZE:** Divided equally among students whose essays have been accepted *Responsa Meridiana Doron Isaacs, Mieke Krynaux, Mark Oppenheimer, Waripany Pepple & Emma Wormald*
- SPOOR AND FISHER PRIZE - LEGAL WRITING:** Best article accepted for publication in *Responsa Meridiana Doron Isaacs*
- SIR FRANKLIN BERMAN PRIZE:** Best Student in International Law *Michael Lesego Swartland*
- SOLLY KESSLER MEMORIAL PRIZE:** Best essay submitted in Constitutional Law *Doron Isaacs*
- YASH GHAI PRIZE:** Best Student in Constitutional Law *Calli Ann Ferreira*

### GRADUATION DAY



### Who will speak for them? If not us, who?

GRADUATION DAY is always a day to remember but in 2007 it was especially so thanks to the stirring words of the guest speaker Richard Spoor - alumnus (1983), asbestos-activist, advocate for the silenced. 'An advocate is one who speaks for another and the right to legal representation is a foundation of the law.

The Bill of Rights Section 39(i) is the licence for justice,' he said.

'What a privilege to be part of a profession that has a love for justice and an abiding hate for injustice, but without sustained attention, we just don't see injustice. There is a huge injustice out there, an enormous scope for your advocacy!' said Spoor.

## Thanks alma mater

**Olofolahan Adeleke** finished his LLB degree in 2007 and started his Masters in Commercial Law here at UCT in the second semester. He writes: 'I just wanted to express my gratitude to you for all the times I applied to you during the course of my study for an international fee waiver which you always granted. I really appreciate that. Thank you.'

**Vuyelwa Kuuya** (2006) is now a research fellow at Cambridge working on a project on Corporate Complicity in Human Rights Violations. She writes: 'After leaving UCT I went to do an LLM in Corporate Commercial Law at UCL. Thank you very much for giving me the chance to complete my LLB despite the fact that I faced so many difficult circumstances during my LLB.'

**Michael Eastman** (2006) writes: 'I have found that [a UCT] grounding means that, with a little hard work, there is little or no qualitative difference between the best students from UCT Law School, and students from Yale, Harvard, Oxford or Cambridge, with whom I share many classes. Although there is undoubtedly a gap between UCT and Yale, I count myself very fortunate to have had the wonderful opportunity to have gained a degree from UCT Law School, and I will always look back on it with fond memories.'

Thank you once again for having provided some direction for my academic work in Cape Town. Here at Yale I have met many leading experts in the fields of bioethics, human rights law and international law, one of those being the Dean of the Yale Law School, Harold Koh, whose work and insights are proving very helpful to me.'



**Reunion Weekend 2007. 1977:** front l-r Nicola Peart, Johnny Abel, Kevin Dillon, Hugh Corder, Frances Paton, Graham Paddock Middle: Walter Geach, Kevin Daniel, Marcus Bowman, Andre Gautschi, Jonathan Sacher, Dirk Kemp. Back: Nigel Meintjies, Leonard Schneider and Phil Gallie

### Graduation 2007



At High Tea with Prof Corder is Rufaro Gweshe and her parents

### Abe Swersky (LLM 1987)

1926 - 2008

Writing to his son Clive, Prof Corder spoke of Abe Swersky as 'a good friend of this faculty and a leading attorney in this city for many years.' He formed Abe Swersky & Associates in 1953 and became a champion of women's rights - successfully handling many high-profile cases in this area. In his private life he championed the causes of horse racing and golf and was matchplay champion three years running at Milnerton Golf Club.

### Sibongile Mashinini

1983 - 2008

Sibongile died in a road accident in Johannesburg. Prof Corder wrote to her mother to express the faculty's sympathy saying: 'we remember this lovely young woman with great fondness.'

## UCT in Hamburg

by Prof Hare

AN INVITATION to teach again this year at the Summer Academy of the International Tribunal of the Law of the Sea in Hamburg in August gave me a another most welcome chance to see many of our German shipping law graduates on their home turf.

What made me really happy was to hear their stories of the networking that is going on. Like Thore's case in which UCT shipping lawyers where acting both for and against Allianz (his firm of underwriters). The case settled well because, as one of them put it, they had both been taught the same approach at UCT. They put their heads together, drew on their UCT roots and both clients went home satisfied (or equally dissatisfied).

And we are now reaching the stage where the more senior graduates have been instrumental in employing our more recent graduates. Arne Stelzer (2005) is joining Steffen Maelicke (1999 - who was one of the first to come to us) at Dabelstein & Passehl. Christian Finner and Jan-Niklaas Brons recently joined Volke Leucke, Tim Schlemmer and Clemens Hillmer at Ince & Co, one of the larger specialist shipping firms in Hamburg. Clemens has since moved across to Watson Farley & Williams to concentrate on ship financing, but UCT alumni still make up a sizeable portion of Ince's shipping department. Vincent Mayerhofer is soon to join Clemens at WF&W and Jan-Niklaas Brons flew in from Israel where his shipping family had launched their first bulker.

PS: Nina Briskorn is an in house lawyer with the Otto Group, Hamburg and Daniel Perlawitz is the Manager, Contracts at Bombardier Transportation; Dirk Warthbaum is also in Germany and Jean-Francois Peters is in Belgium.



**New York:** Joint event with SACCA (the South African Chamber of Commerce America) at which Judge Dennis Davis spoke; he chats with Alan Richter (UCT alumnus and SACCA Board member) before the event.



**Reunion Weekend 2007. 1982:** l-r Pete Smuts, Cathi Albertyn, Steve Koen, David Coltart and Derrick Fine

## NEWS SNIPPETS

**Locally:** Douglas Molepo is a director at ENS, Justin Harcastle heads up Webber Wentzels, Meagan Hendricks is a partner with Walkers Inc. Mark Dittke is an Environmental Attorney and Ken Silke is CEO of Silke Financial Services, a Risk and Investment Consultancy. Nomzamo Mji is doing her pupillage with the Island Group in Gauteng.

Hayley Galgut had, by the age of 30, successfully litigated three law-reforming cases for women's rights in the South African Constitutional Court and one in the Supreme Court of Appeal. Specifically, she represented the applicants in *Bhe v Minister of Justice and Constitutional Development*, in which the Constitutional Court ruled unconstitutional the principle of male primogeniture in African Customary Law so that women and all children other than the first born will be entitled to inherit from a deceased relative's intestate estate.

**On the East Coast of the USA:** Laura-Lee Atkinson-Hope is a law clerk at DPW while Justin Goldblatt is in the banking finance group of the same firm; Jonathan Mayers is in-house counsel for Renaissance Technologies, a technical trading-based hedge fund.

At the UN, Fink Haysom is a special advisor to the Secretary General (having served as the head of the Office of Constitutional Support in the United Nations Assistance Mission for Iraq from April 2005 - August 2006); Fred Soltau (1996) is working at the Division for Sustainable Development, having graduated with his PhD from Pace University in May this year (watch this space for his book *Fairness in Climate Change*); Saras Jagwanth, a previous member of staff at the faculty, works as a Social Affairs Officer in the Division for the Advancement of Women.

Kayum Ahmed is a Fulbrighter in Washington DC and Nic Marais has just started at Yale and writes: "I've got Guido Calabresi for torts, which is enough motivation to be here by 8am!" Paul Malherbe lives and works in Cambridge, Massachusetts where he is vice-president of Quantitative Economic Solutions, an economic consulting firm that specializes in patent and antitrust cases.

**Near & further East:** Reshma Inderjeeth is now at the International Commercial Law Unit of Vaughan & Associates in Paris. Antonija Stanich is Senior Legal Counsel for the World, 300 reclaimed islands located in the Arabian Gulf; David Becker is also based in Dubai. He is with the International Cricket Council and lectured on a short course on Sports Law at UCT in March.

Yvonne Asamani is Programme Officer in Environmental Governance at the UN University-International Leadership Institute in Amman. Bridget Turner (Riley), is a tax principal at BDO Spicers, New Zealand. Bernard Whaley and Clive Grossman have been joined in Hong Kong by Giles and Debra White. Giles took over as Linklater's Asia managing partner in January.

**Harare:** David Morgan, Rhodes scholar and President of the Zimbabwe Rugby Union in the 1980's who took Zimbabwe to the first rugby World Cup in New Zealand and Australia, writes in: 'The Faculty has made magnificent contributions to the training of lawyers and development of the law and legal systems in Southern Africa. I am extremely proud of the University's achievement and grateful for the opportunity to pass through its portals.'

A great many lawyers in Zimbabwe have started their legal careers at UCT including judges, at least one attorney general, advocates and attorneys. In my own firm, Coghlan & Welsh, David Lewis, Alex Master-son, Alan Bruce Brand and Crae Garret are UCT graduates (three of us have served as senior partners) The senior partners of two other large law firms in Harare in the last few years are also UCT products, Lindsay Cook and Dick Turpin. *Editor: We note with great regret the death of two veteran alumni in 2008, Byron Venturas and Sam Whaley.*

**...and from Bulawayo:** By dint of fate Harry Holderness did not join the family firm Scanlan & Holderness! As was the case for many of his peers, Harry spent a chunk of his early working life in the army, also playing squash and hockey for various Rhodesian teams. He moved to South Africa in 1976 and is in-house counsel for a firm in Pinetown.

David Coltart (see Class of 1982 p.14) has been practising in Bulawayo since 1983 and is also an MDC Senator; his talk on *My life and times with Mugabe* was a highlight of the Reunion Weekend in 2007.

**Skye Foundation awardees:** Jason Brickhill spends time between Gauteng and Oxford, where he is doing a MSt in International Human Rights; Alistair Price is at the Con Ct but planning doctoral study; Kerry Williams is an associate in the public law unit at Webber Wentzels. Sindiso Mnisi is finishing her D.Phil at Oxford.

**Of Lloyds & London:** Holman Fenwick & Willan is the shipping law firm of 2008. The judges referred specifically in their citation to the role played by HFW's shipping team on the headline incident involving the "MSC Napoli". Hugh Livingstone (1973), Head of the Shipping & Transport Group, commented that 'a particular thanks must go to all of the team who worked on the Napoli, but this is an award for, and recognition of, the achievements in the market of all at HFW, and the team ethic which underpins it'. *Editor: Other alumni at HFW include Marcus Bowman and Rory Gogarty.*

**Robert Cleaver:** After graduating in 1992, Robert Cleaver worked briefly as an assistant to Prof Zimmermann in the law faculty at Regensburg University before doing a BCL degree at Oxford University. He is now a partner at Linklaters LLP in London and specialises in mergers and acquisitions and equity offerings, with a particular focus on Africa and natural resources.

## Environmental Award

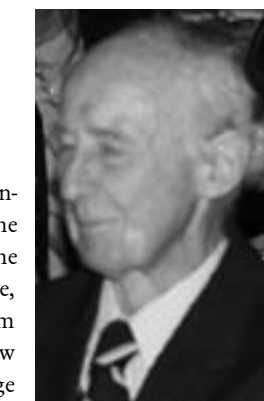
CORMACK CULLINAN, an Hon. Research associate in Public law, is part of the EnAct and Cullinan & Associates team. Their mission is to support their clients to be architects of sustainable communities by giving them innovative and practical legal, policy and strategic advice.

This year, EnAct received a M&G merit award for innovative environmental strategies that improve business performance; they received a special commendation from the judges who praised its pioneering leadership and the important battles it has won in changing mindsets both locally and globally.

## 'Mick' Corbett

1923 - 2007

Tribute by Professor Hugh Corder



"JUDGE CORBETT had a remarkably distinguished career in every way. After service in the Second World War in which he was wounded, he qualified in law at both UCT and Cambridge, England. (He received an Honorary LLD from UCT in 1982, and was made an Honorary Fellow of Trinity Hall, Cambridge, the premier college for the study of law at that institution, in 1992).

He started practice at the Cape Bar in 1948, during which time he also lectured part-time at the UCT Law Faculty, before his appointment to the Bench in 1963. His elevation to the then highest court in the country, the Appellate Division in Bloemfontein, in 1974 was a swift one, which reflected the general respect with which his work as a judge was regarded. This has been described (by Professor Ellison Kahn in the 1997 South African Law Journal) as follows:

"... [Judge] Corbett enjoyed a high reputation for his conscientiousness, for his superb ability in deciding questions of fact and law, for his meticulous care in expressing his judgments with clarity, and for his extreme courtesy to counsel."

He gave important and innovative judgments across all fields of law. I would describe him as a person of unwavering commitment to justice, of complete integrity, and of quiet dignity in all he did, both on and off the Bench. He became Chief Justice in February 1989, in which office he served till the end of 1996, overseeing the transition to democracy.

It is this aspect which I wish to emphasise. Judge Corbett made abundantly clear his commitment to the rule of law and a Bill of Rights for South Africa in 1979, at a time when it was extremely unpopular, to say the least, to express such views. That a serving judge should venture into such territory was also extremely unusual. He did so on the occasion of the First International Conference on Human Rights in South Africa held at the UCT Law Faculty in January 1979 as part of the celebrations of the 150th anniversary of the university. This conference gave rise to the establishment of the organisation, Lawyers for Human Rights. Judge Corbett gave the opening address, in which he called for the adoption of a Bill of Rights for South Africa. He did so in an astute and practical manner, as the following quote from his speech indicates:

"... I am not sure that a bill of rights can be effectively introduced in any way other than as part of a constitutional compact entered into between the peoples in a state and, therefore, by way of some form of national convention."

He also made it abundantly clear that this would go hand in hand with the power of a court to hold Parliament, the Cabinet and all forms of government to the standards set out in a written constitution. This is in fact exactly what did occur in this country in the period 1990 to 1994, so his remarks were prescient, to say the least.

The consistency of his commitment to justice, despite the framework of unjust laws in which he had to operate as advocate and judge is clear, as is shown by three incidents more than 40 years apart.

In 1951, he served as the Cape Western representative of the War Veterans' Torch Commando, the organisation which mobilised ex-servicemen against the early apartheid policies. In the second half of the 1980s, he was seldom selected by the then Chief Justice Rabie to hear appeals from cases brought to challenge the states of emergency under which this country was ruled at that time, probably - although we cannot know this for certain - because of that commitment.

In one of the few cases in which he formed part of the appellate panel, Attorney General Eastern Cape v Bloom in 1988, he gave the judgment for the court which upheld the basic principles of natural justice even in the face of the emergency regulations which provided for "no-bail certificates". And in his last judgment in 1996, he took the commitment to procedural fairness even further, admittedly against the background of the Bill of Rights, in holding that officials of the TRC were under a "general duty to act fairly" even to alleged perpetrators of gross human rights.

Service as a judge is not easy at the best of times. It requires unshakeable honesty and the willingness to work enormously long hours, often under trying circumstances. Under apartheid, there were many calls for judicial commitment to justice rather than the law, failing which judges should resign. A few courageous lawyers chose to serve on the bench despite the injustice of apartheid, believing that this was the best route through which to keep the spirit of the rule of law alive. Judge Corbett was one of those judges."

"His contribution is not easily encompassed. He has achieved distinction as legal scholar, as writer, as advocate and as a judicial officer. Throughout his career a passion for justice and a sensitivity to racial discrimination were combined with intellectual rigour and clarity of thought."

President Nelson Mandela at a State Banquet in honour of Chief Justice Corbett where the Order for Meritorious Service (Gold) to South Africa was conferred upon him. 11 December 1996.





## University of Cape Town Law Staff 2008

- Back Row:** A Hutchison, S Nakhjavani, Prof R Jooste, J Berg, A/Prof J Cartwright, M Mbebe, A Paterson, G Bradfield, S Wagener, C Rademeyer, S Paschke, M van den Berg, J Jacobs
- 4th Row:** I Wasserfall, S Vavruch, C Moitui, M du Plessis, M Bedin, V Sarig, E Atkins, T Herbstein, P Allen, E Ahrens, K Quarterman, S Fergus, J de Jager, M Britz
- 3rd Row:** R Gweshe, V Stemmett, F Khan, P Norris, D Mwambala, S Wright, P Alexander, J Erasmus, V Toleni, A/Prof D Chirwa, B Mwambala, B Bird, M Smith, K Appolis
- 2nd Row:** S Ronnie, B Pillay, D Lucejko, W Gajjar, Prof J Glazewski, A Pope, LA Tong, K Phelps, Dr T Kruger, N Bobo, A/Prof T Mongalo, R Gherasim, T Voskuil, Y Moodley, F Khan
- Front Row:** Prof C Himonga, Prof A Fagan, Prof J Burchell, Prof R Christie, Prof T Bennett, Prof D Visser, Prof E Kalula, Prof H Corder (Dean), Prof PJ Schwikkard, Prof J Hare, Prof H Mostert, Dr A Barnard-Naudé, W Amien, J Jonker, A Tshivhase
- Absent:** Prof C Shearing, A/Prof R le Roux, D Collier, L Draai, C Ncube, L du Toit, Prof C Murray, A/Prof R Calland, Prof P Benjamin, Prof S Burman, Prof H Cheadle, Prof D Cornell, Prof J Gibson, S Godfrey, L Goliath, T Gutuza, Prof D Hutchison, Prof J Kinderlerer, K Lehmann, N Mayosi, M Sigonyela, J Theron, Assoc. Prof E van der Spuy, J Yeats

### The Enduring Value of the Rule of Law cont. from p2.

‘Under leaders of stature the United States of America and Britain played an honourable and constructive role in the creation of a network of international treaties and international institutions. These two nations played their part in developing the international rule of law. They helped to create the rule-based framework in which organized life among the community of nations can survive in tolerantly decent form.’

Lord Steyn then spoke about the lawlessness of the so-called war on terrorism waged by the United States of America since 9/11 with the energetic support of the United Kingdom government. ‘It is a story which has been told in meticulous detail by Phillippe Sands in his book *Lawless World : America and Making and Breaking of Global Rules*. He looked at how the international rule of law has been damaged since 9/11. Moving from Guantanamo Bay to

the pretext for the Iraq invasion of 2003. Lord Steyn then moved to the role of Britain in the Lebanese conflict.

‘I would commend a passage in the 1988 lecture *Pursuit of the Idea*’ in Turin of Isaiah Berlin. Earlier in his career Berlin adopted a rather relativist view: often he was skeptical of the value of fundamental universal values. But in 1988 he described what he called the requirements of a decent society. He explained:

‘Priorities, never final and absolute, must be established. The first public obligation is to avoid extremes of suffering. Revolutions, wars, assassinations, extreme measure may in desperate situations be required. But history teaches us that their consequences are seldom what is anticipated; there is no guarantee, not even, at times, a high enough probability, that such acts will lead to improvement. We may take the risk of drastic action . . . but

we must always be aware, never forget, that we may be mistaken, that certainty about the effects of such measures invariably leads to avoidable suffering of the innocent. So we must engage in what are called trade-offs, values, principles must yield to each other in varying degrees in specific situations. Utilitarian solutions are sometimes wrong, but, I suspect, more often beneficent. The best that can be done, as a general rule, is to maintain a precarious equilibrium that will prevent the occurrence of desperate situations, of intolerable choices – that is the first requirement for a decent society; one that we can always strive for, in light of the limited range of our knowledge . . . A certain humility in these matters is very necessary.’

‘Many of the U.S. and British political leaders from the time of World War II, on both sides of the Atlantic – Roosevelt, Truman, Churchill and Atlee – had the qualities of great courage but also humility in the face

of grave decisions.

Drawing my remarks to a close I return directly to Iraq. In the cabinet of Prime Minister Blair two things were forbidden. The first was to say that the Iraq war was a disaster. The second was to say that the world has been made a more dangerous place as a result of the foreign policy of President Bush and Prime Minister Blair. The pretences had to be kept up. But the public does not believe these fairy tales. Of course we now have a new Prime Minister. He and most of his present cabinet were loyal members of Mr Blair’s cabinet.

‘What, if anything has changed? Where does Britain now stand on Iraq? The presence of brave British soldiers in Iraq does not help the Iraqi people. Of course, we will have to help to repair what was destroyed in part by our governments’ reckless adventure. But how do we get out of Iraq? When the USA was mired in Vietnam that question was posed. The American people gave the

answer. They said at that time “we can get out with ships and planes”. That is how Britain can and should get out of Iraq thereby at last doing something for the Iraqi people. But Britain will pay for a long time a price for an abdication by our government of independent responsibility in foreign affairs and for playing a part with the Bush Administration in undermining the international rule law.

‘Nevertheless, we must move on from the tragedy of 9/11, we must move on from the total obsession with the war on terror, and we must try to restore the foundations of an international rule of law worthy of the name. At the same time we must remember that if democracy could be destroyed in the Germany of Kant, Beethoven and Goethe, it can happen elsewhere. As Isaiah Berlin observed, a certain humility is necessary.’

The full text is available at: [www.news.uct.ac.za/lectures/misc/](http://www.news.uct.ac.za/lectures/misc/)