News in Brief

Shearing appointed

Professor Clifford Shearing has been appointed to the Chair in Criminology as from 1 July, 2006. Clifford is a born South African who has spent much of his working life abroad, mainly in Toronto. He is one of the top criminologists internationally, has worked in NGOs in this country since the early 1990s, and the Austin National University in Canberra was involved in projects focused on dispute resolution. He wishes to develop this work in South Africa and the rest of Africa during his five-year contract with UCT.

Dutch honour Hewett

Margaret Hewett, Research Associate in Private Law, has been awarded an Ode van Oranje-Nassau (Officier) for a 2-volume work Voorda. Dictata. In 1887, the lecture notes, given in Latin to his students at the University of Utrecht, 1740 to 1760.

Uct Hosts SLTSA

The Society of Law Teachers of Southern Africa conference was hosted at UCT from 3-6 July, 2006. 150 delegates from all over southern Africa had a choice of over 100 papers to listen to.

Some questions posed by the opening speaker, Professor Tiyanjana Maluwa were: Where are the lawyers when the AU meets to discuss regional integration? Is there sufficient international law in the curricula of universities? Is the legal profession in Africa too controlled?

For a more comprehensive report on the conference see page 9.

Supreme Court Judge visits Law Faculty

By Catherine WynScuIley

Vuyani Ngalwana addresses an Alumni Leadership Forum.

Vuyani Ngalwana, a neat, youthful and trendy figure, is no grey corporate lackey. With his academic record (BA LLB, 1992; PG Dip Income Tax Law, 1995; Master of Laws in income tax, 1996, all from UCT), coupled with his formidable energy and desire to fight for the underdog, Ngalwana is poised to take on any organisation that fails to comply with South Africa's pension funds law.

Ngalwana, who has been the country's Pension Funds Adjudicator since March 2004, was the guest speaker at the UCT Alumni Leadership Forum on April 19.

In his speech, he likened himself to Rousseau's physician in The Social Contract who has to examine and cure the putrid issuing pension funds industry in South Africa as they resist reform.

"There are many 'whys' that the industry cannot bear to see 'touched'; it trembles at the sight of a physician that is the regulator armed with long-overdue regulation.

"Some have argued, unconvincingly, that reform in the industry is a dangerous and fruitless enterprise. They say it is dangerous because life companies will simply divert themselves of [the retirement fund]'s line of business', Then follows an ominous rhetorical question, 'Where will that leave us?" My facetious answer to that is - 'Perhaps better off.'

Ngalwana went on to illustrate some "industry evils" with summa ries and anecdotes of cases while giving details of issues around (1) lapsing of premiums leading to a reduction in benefits and payouts, (2) the complexities of illustrative or projected values for policies and (3) anti-competitive practices in the pension funds industry, particularly relating to transfers from one retirement annuity fund to another.

"The retirement industry has been in virtual autopilot mode for far too long," he said. But the good news is that our Pension Fund Adjudicator feels that he is well on his way to restoring to good health those pension funds and retirement annuity providers that hoodwink unsuspecting consumers with their unfair, prejudiced and illegal practices.
activists provided ‘evidence’ in the breakaway sessions. Later in the term a panel discussion on the proposed amendments to the laws governing the judiciary spoke to the role of academia in interrogating policy decisions of the executive.

On the staffing front, we were sad to say goodbye to Dirk van Zyl Smit, although we are already benefiting from continued collaborations with him in his ‘retirement’. We are pleased to have Clifford Shering, leading criminologist internationally, on board from July. Anton Fagan, homegrown NRF F-rated researcher, and Mike Larkin, top corporate law academic, are the two new Heads of Department, in Private and Commercial Law respectively.

On matters alumni, I know from the general feedback that this publication, the newsletters, alumni gatherings & reunions as well, for the Cape Town graduates, invitations to events on campus for lectures, are continuing to create a sense of the community that is the UCT Faculty of Law. I want to assure you that we plan to continue with, and indeed improve on, our relationships; please do keep on visiting the faculty whenever you can.

On a personal note, my fourth-month sabbatical was a wonderful change of pace and focus. In what remains of my extended term as Dean, I hope to continue to lead the strengthening of a Faculty which attracts top-flight academics to its ranks at all levels and from many parts of South Africa and the African continent. I will ensure that the student body remains a wonderful source of energy, intellectual ability, diversity and challenge. Finally, I would like to make as much progress as possible in engaging with you, our graduate ranks, to seek support for the many urgent tasks on which we have embarked.

WELCOME TO this the third annual report of the activities in the Faculty. In as dynamic an environment as that of UCT it is always difficult to comment on all that has taken place in the last twelve months, but one of the highlights to be the response by our students to the introduction of a compulsory community service component in the LLB adopted by the Faculty Board in 2004 and piloted in 2005. Law Review 2005 featured pictures of students teaching at Sithembele Matiso High and that has continued this year, as has the work of the UCT’s Law Clinic and the support of NCRO.

This community service has I believe gone some way in addressing what Judge Navsa, guest speaker at the opening of the academic year, refers to as the greatest danger we face in South Africa today: apathy in the face of the staggering poverty of most of our people. Alongside this awareness of law as a servant of the people, the students of the Faculty have done our UCT tradition proud. Orientation week saw the struggle lawyer Geoff Budlender citing cases of how judgments can get ‘bite’ to provisions of the Constitution whilst TAC
The UCT Law Clinic

LEGAL AID has long been a feature of the Faculty's daily life but with the appointment of Bev Bird as Director of the Law Clinic in 2004, the initiative has taken off. Apart from its work amongst refugees, the Clinic also assists the larger Cape Town community with regular evening clinics held in Hout Bay, Athlone and Retreat. Whilst this work serves to uplift and empower the communities concerned, it also benefits the students and therefore ultimately the legal profession as a whole.

This year, 87 senior law students have opted to do the Legal Aid & Legal Practice course run by the Clinic, encompassing not only an academic curriculum but, just as importantly, a practical component as well. The course offers students their first opportunity of putting their hard-earned legal theory into practice through their work at the evening clinics.

The Law Clinic is a registered law practice and as such conducts a wide range of litigation and represents its clients in numerous trials. The student ‘trainee attorneys’ are supervised by practising attorneys since they obviously cannot yet appear in court and cannot conduct their matters unaided. After each evening clinic, the students and staff discuss the various new cases that have arisen and decide what action to take. The cases handled by the students count not only in the real world of their clients, but also towards the students’ own final course marks.

‘I don’t know whether it is that the best students happen to be community-minded, so that the Law Clinic attracts the cream of the crop, or whether the course itself sharpens the students’ analytical skills but, whatever the reason, the outcome is that the Clinic students stand out in their overall LLB performance,’ said Ms Bird.

Aside from the Director, the staff at the Clinic comprises two litigation attorneys, two refugee attorneys and one candidate attorney. The Law Clinic is supported by the Attorneys’ Fidelity Fund and last year assisted, aside from the refugee families, some 400 indigent families, mostly women, with a wide range of legal problems.

An “Oscar-Winning” perfomance

ANY VISITOR to the Kramer Building might be forgiven for thinking that the doors on the southern side are in fact the main entrance. That is because the UCT Law Clinic is a veritable hive of activity. In fact, some 1644 refugee families sought and found help at the Law Clinic during 2005 alone.

The UCT Law Clinic has a proud history of providing legal assistance to indigent communities. This tradition of assisting the vulnerable was extended to refugees in South Africa when the Clinic became an implementing partner for the United Nations High Commission for Refugees (UNHCR). Refugees needing legal advice or seeking a durable solution, such as resettlement or repatriation, are assisted by the Clinic’s two refugee attorneys, Fatima Khan and Tal Schreier, helped by a number of remarkable, generous-spirited volunteers, well-schooled in international refugee law.

The clinic was recently acknowledged by one of its clients, Mr Jimmy Rakaka, an asylum seeker from Bukavu in the Eastern DRC where some of the most intense fighting has taken place in recent times. A young university student whose studies were rudely interrupted, Mr Rakaka arrived in South Africa with no discernible possessions or support. He was given the initial legal advice that he sought at the refugee Clinic and thereafter, in his words, a great deal of “support, kindness, trust and mentorship”, particularly from Fatima Khan. Overwhelmed by the treatment he had received, Mr Rakaka returned to the Clinic some time later with his own oscar award for Fatima Khan.

Refugee attorney Fatima Khan, Law Clinic Director Bev Bird and client Jimmy Rakaka.

Jessica Blumenthal & Shaun Fergus, winners of the Western Cape Client Counselling Competition, and runners up nationally, discuss the case with Gadja Parker, a Law Clinic attorney.
In the best of Company (Law)

Professor Mike Larkin is appointed to head up Commercial Law

During the thirty years of teaching at Wits, a steady flow of writing in accredited journals, and an array of involvements within the law faculty, the wider university and the outside community, Professor Mike Larkin brings not only wisdom and experience to the Commercial Law Department, but also an enormous regard and liking for both students and staff.

My great good fortune is always to have been - and still to be - placed in the very best of company!” says this well respected Company lawyer.

I’ve always been surrounded by wonderfully gifted people while I studied and during my career, and this makes it hard to go too far wrong.”

The move to UCT was about a new experience. I liked it a lot when I visited here last year, and after working here for six months, I like it more. It’s a warm and vibrant place, and my colleagues - the academic, library and administrative staff - are extremely impressive, as well as helpful and friendly.

I have enjoyed the fact that frank exchanges of views, and sometimes fierce debate, do not seem to threaten good existing personal relationships.

I admire the way that UCT, in an age that insists that universities are accountable in a very formalized way, have respected this demand but tried at the same time, wherever possible, to ensure that measurements of performance relate to quality, and are appropriate for a university.

The role of a head of department

‘I THINK that the department has been doing very well. Commercial law is such a wide area. It is also in its nature that it is incredibly fast changing. Nor is it often easy to have meaningful access to what is actually taking place. Part of the response of the department to all this has been the very sensible one of concentrating on its strengths, and it has many strengths. Another has been to cultivate good connections with legal practitioners, which is something that we could probably do even more about. My own experience at UCT already is of a clear readiness on the part of practitioners to give generously of their time and expertise by coming to lecture especially to our Master’s students. In this way we are able to complement what we already do in these classes by having legal practitioners bring into the lecture room the latest issues that are confronting the subject. The benefits for our students, for ourselves and, we hope, for the practitioners themselves, are enormous. Practitioners and academics have very different roles to fulfil, but we depend crucially on each other.”

‘A third strategy has been to choose carefully what areas needed to be developed. Well before I got here, colleagues in the department had seen the importance of building up expertise in areas such as the international dimensions of economic and commercial law which have been comparatively neglected in this country, in competition law which is a subject that has grown up so quickly, and in the subject which seems destined also to grow up very quickly in the future, information technology law.

These processes are all well under way and they need to be continued and enhanced.”

‘But there is always something new happening. We need to be as creative as possible. What has been tried with some success, and so we have been encouraged to consider doing on a greater scale, is to change, at times, our teaching patterns. If we teach intensively in short periods we are able to bring together a richer mix of teachers and students. We are able to teach together with academics from other local or overseas institutions, with legal practitioners, as well as with academics and professionals from other disciplines. And we are able to have classes made up of traditional students and those who would currently attend courses offered by the faculty’s already very successful professional education programme. These would typically be legal practitioners, but in many areas of commercial law, the benefit of having students who are not necessarily lawyers but have a professional knowledge of the area is very valuable. Our task, and the task of our colleagues - the academic, library and administrative staff - are extremely impressive, as well as helpful and friendly.

I admire the way that UCT, in an age that insists that universities are accountable in a very formalized way, have respected this demand but tried at the same time, wherever possible, to ensure that measurements of performance relate to quality, and are appropriate for a university.

Two other important components of this outside legal community are the legal profession, and academics and professionals from other disciplines.

The challenge today is to make the above things happen. I was used to an academic world in which they would happen quite naturally and spontaneously.

As universities have become larger and more complex, doing what comes naturally is no longer sufficient and there is a need to rely more on systems and procedures but, at the same time, not to let these dominate either.

‘There seems to me to be an excellent relationship between staff and students in the faculty. Students are given plenty of room to contribute, and they make the most of this. The LSC, and so many individual students whom I have come across in the department, are used to a system and no end of good ideas. The great service that students always do for academics is to keep us in touch with current issues and concerns and never to allow us to forget the great problem areas of our society.

Particular challenges?

‘LLM programmes would benefit greatly from having multi-disciplinary components incorporated into them. One gathers that in the United States, a current practice among legal academics is the doing of a doctorate in a discipline other than law.”

What is happening though is that the need for some training in law is being felt more and more widely. And, of course, this means that it is not necessarily training in commercial law that is being sought. One thinks immediately of subject areas such as constitutional law, administrative law, international law, criminal law, and intellectual property law, to mention only a very few areas of need. At the same time, more and more, those professions who have always required a proper grounding in commercial law, like the accounting profession, are also starting to see that they have a need too for a broader training and to cover other areas of law as well. All this poses the difficult question of how the teaching of service courses should best proceed.

‘Not surprisingly, at the same time, lawyers themselves are seeing the need to be better and better trained in disciplines outside law. I was pleased to learn that the UCT LLB degree contains a course in numeracy skills.

I think that the LLM, no longer a postgraduate degree, should possibly move further in this sort of multidisciplinary direction. Certainly, LLM programmes would benefit greatly from having multi-disciplinary components incorporated into them. One gathers that in the United States, a current practice among legal academics is the doing of a doctorate in a discipline other than law.”

Department of Commercial Law

Head of Commercial Law, Professor Mike Larkin.
In defence of the Constitutional Court: litigating socio-economic rights and the myth of the minimum core

THIS ARTICLE, written by Commercial Law lecturer Karin Lehman, was recently awarded third place by the Human Rights Academy of the American University Washington College of Law for its 2006 Human Rights Award, by a jury composed of the following experts in international human rights law: Gudmundur Alfredsson, Ann Blbery, Denise Dora, Asbjorn Eide, Sarah Joseph, Scott Leckie, Diego Rodriguez-Pinzon. Extracts are published below and the full text is available from lehmannk@law.uct.ac.za

CONSTITUTIONAL SCHOLARS, and human rights activists, had high hopes for the “transformative potential” of the Constitution. Today, ten years into our post-apartheid constitutional democracy, approximately 40% of South Africans remain unemployed, approximately 30% have either no or inadequate housing, about the same number do not have access to piped water in their dwelling or on their site, while close on 40% do not have access to hygienic toilet facilities. About 50% survive, somehow, on an income of less than R500 per month. Life, for the majority of South Africans, remains appallingly hard, despite the socio-economic promises of the Constitution.

It is not surprising that scholars, activists and the poor themselves are disappointed, and feel that the Constitution has not realised its promise, that of transforming the lives of South Africa’s poor. In their disappointment, scholars and activists seek to apportion blame to all three branches of government. The legislature and executive are criticised for failing to formulate and implement policies and programmes which prioritise the needs of the poorest of the poor, while the judiciary, more particularly the Constitutional Court, is criticised for its failure to hold the other branches sufficiently to account for their failures.

Frustrated by the slow pace of transformation, scholars have described the Constitutional Court’s socio-economic rights jurisprudence as “limited”, “deficient” and “jurisprudentially flawed”. The criticisms suggest that the court has had the opportunity to a more effective agent of social change, but has passed that opportunity by. The opportunity presented to it, say many of its critics, was to give concrete meaning to the individual socio-economic rights in the Constitution by identifying the minimum core of each of the rights that have come before it.

Had the court done so, the executive would have a clearer understanding of what the Constitution requires in terms of progressive social delivery, and individuals would find it easier to hold the executive to account for its failure to deliver their most pressing needs.

Are these criticisms justified? I think not. The minimum core approach advocated for is both conceptually and pragmatically misconceived. In criticising the critics, I argue that the court was right to reject the minimum core approach for it is inappropriate as a tool of judicial decision-making.

I consider the court’s reasonableness approach jurisprudentially sounder than the proposed minimum-core alternative. There is one aspect of the court’s jurisprudence with which I take issue, and that is the court’s repeated insistence that it will not examine how the public purse is spent. It is this aspect of the court’s jurisprudence, in my opinion, that should be the target of vigorous criticism.

The paper commences with an overview of the three principal socio-economic rights cases to date, Socbramony, Groothoom and Treatment Action Campaign.

The paper emphasises the factual backdrop against which the court made its decision in each case, a context too often glossed over by critics who approach their analysis at an abstract level of abstraction that downplays the difficult, and purely utilitarian, nature of the choices they argue the court should be engaging in.

Beginning with an examination of the cases, and then moving on to a consideration of the minimum core concept itself, the paper hopes to demonstrate that the choice of criterion used in extracting a minimum core are utilitarian rather than principled, and as such inappropriate in the context of litigation related to the enforcement of an individual’s rights.

The paper then moves on to argue that the processes involved in arriving at the content of civil-political and socio-economic rights are quite distinct: the former are a matter for interpretation, the latter for determination. As such, it is disingenuous to argue that all that is required of the court in identifying the minimum core is that it interpret the socio-economic right in the same way it has in done in the context of civil-political rights.

The paper concludes that the true discontent informing constitutional adjudication about socio-economic rights is with the government’s macro-economic policy choices, and with the government’s broad budgetary allocations. It is with this choice of neo-liberal macro-economic policies that prioritise growth rather than redistribution, and with the government’s decision to spend twice as much on defence than on either the provision of education and health, R22.5 billion compared with R11 and R9 billion respectively. The former are not open to constitutional challenge, but why should the latter not be?

On the face of it these are choices that should outrage. Critiquing the court for its refusal to adopt jurisprudentially dubious reasoning is misdirected. The minimum core concept is inherently flawed, and its adoption could lead to outcomes that exacerbate rather than alleviate poverty, as spending is shifted from one type of social spending to another, from less urgent social needs to more-urgent social needs, rather than from an inessential to an essential expenditure.

A minimum core strategy may help some poor, but it may well be at the expense of other poor.

Zero-sum litigation will not benefit the poor. If it is disproportionate defence-spending that is hurting the homeless and jobless and those without adequate water and sanitation and education, then it is that that should be challenged, and the court’s refusal to entertain such challenges that should be criticised.

First international conference on Access to Knowledge

Hosted by the Information Society Project, Yale Law School 21 – 23 April 2006

UCT’S JULIEN HOFMAN was invited to speak at this conference on the subject of exceptions and limitations in the law of copyright.

‘Access to Knowledge’ is a wide term which includes all those concerned about how knowledge is used. As the Conference website puts it: ‘The first goal of the Yale A2K Initiative is to come up with a new analytic framework for analysing the possibly distortive effects of public policies relying exclusively on intellectual property rights. Beyond this aim, the A2K initiative seeks to support the adoption and development of alternative ways to foster greater access to knowledge in the digitally connected environment.’

‘There were about 300 people from 40 different nationalities attending the conference,’ said Hofman. ‘They were lawyers, economists, librarians, and representatives of government, NGOs and IGOs working in this area.

‘The presentations were extremely wide-ranging from a paper on how French chefs protect their recipes to papers on the economics and politics of access to knowledge and proposals for law reform.

‘Representatives of organisations that fund work in this area were also present. I discussed the possibilities of funding with representatives from the Open Society Foundation, the Canadian International Development Research Centre and the European International Institute for Communication and Development.

‘A representative of the last mentioned institute was interested in sending people from Africa to UCT to follow courses in law and other related areas.

‘I have arranged to work with members of the Yale Information Society Project to prepare the paper I presented for at the conference for publication.

‘We have agreed to collaborate in writing further papers in the same area of law.

‘It was also possible to meet with others researchers from Africa who took the initiative and to begin to formulate an African research programme to which we can all take part,’ he said.

Lawyers, as spiders, are a nuisance to autocrats


FOUR CENTURIES ago, Francis Bacon observed that ‘laws were like cobwebs; where the small flies were caught and the great brake [sic] through.’ The cowboys, incendiary devices and idling caspurs of the Crossroads area in June 1986, demonstrate the validity of this assertion vividly, and make lawyers mindful of the ephemeral nature of their trade. Yet let us stop a moment at this image of the cobweb, for at least two further points germane to my theme.

First, I am reminded of the healing, restorative effects in medical folklore that we can all take part,’ he said.

Well-known struggle lawyer, George Bizos SC.

Lawyers, as spiders, are a nuisance to autocrats.

plotters in Shakespeare’s Henry VI [Part 2] were referring when they said that, after coming to power: ‘The first thing we do, let’s kill all the lawyers.’ This is our task. Lawyers, as spiders, are a nuisance to autocrats.

Access to Knowledge Conference & Comments

Conferences & Comments
Constitution making & Sudan

By Christina Murray

ON JANUARY 9, 2005, a peace agreement between the Government of Sudan and the Sudan People’s Liberation Movement ended two decades of conflict between the north and south. The limitations of an agreement between just two parties are evident today in Darfur. But, it has brought a fragile peace to much of the south. The crux of the agreement is a six-year ‘interim period’ during which both sides must build national unity. After that period, Southern Sudan is entitled to a referendum on self-determination. A flurry of constitution-making has followed the Peace Agreement. An Interim National Constitution (INC) was adopted in July 2005; and an Interim Constitution for Southern Sudan (ICSS) came into effect in December 2005. And, in February this year, delegations from the ten states in Southern Sudan met in Rumbek to agree on a ‘model’ state constitution on which to base their state constitutions.

Christina Murray was at the Rumbek conference to provide technical support. Her job ranged from ensuring that the extension cord (perhaps the only one in town) was not lost to discussing alternative models for the appointment of state judges and the relationship between the state executive and legislature. But, she says, ‘the most valuable thing that a South African brings to processes like these is an understanding of the difficulty of translating ambitious constitutional ideas into practice. The tough experience of establishing provincial and local governments in South Africa gives one a real sense of the need for realism and a sober assessment of what is possible and what is not. The Southern Sudanese, who are strongly committed to decentralised government, take South Africa’s experience very seriously.’

Many of the delegates had travelled far to get to Rumbek. Accommodation was poor and the venue – the best in the war-ravaged south – rudimentary. Moreover, many southerners are unsure that the peace will hold or that the north will honour its commitments. Nevertheless, engagement in the constitution-making process was intense. A few delegates had held senior posts in the national government in the past but many had limited formal education and some admitted that before the conference they were not even sure what a constitution was. All were extremely patient. Days were long and discussion intense, especially when the small group of women at the meeting demanded more rights in the new constitutions and one of the men said that no aspect of traditional law was harmful to women.

By the end of the week, each state delegation had a constitution on a flash drive to take home to its government – and almost a promise from USAid to provide a computer to read it on. Since then, all but one of the ten state constitutions of the southern states has been adopted by the brand new state legislatures.

It has been argued that the detainees belonging to the Taliban should be classified as combatants under Article 4A(1) or 4A(3) of the Geneva Convention. On a textual reading of the Convention, they are then entitled to POW status. If it is correct that the requirements of Article 4A(2) also apply to such armed forces, then the entitlement to POW status still needs to be determined individually in terms of Article 5, where there is doubt over a combatant’s entitlement to POW status. If this latter interpretation is correct, then some corrective drafting to the Convention, to make it clear that the 4A(2) requirements are also applicable to armed forces as described in 4A(1), would be desirable. If applicable, it was argued that Protocol I would entitle Taliban detainees to POW status, and also to have any doubt as to their status clarified by a competent tribunal.

Regarding Al Qaeda members, it has been shown that, whilst the organisation cannot be a state party to the Geneva Conventions, Al Qaeda combatants can be POWs due to the Convention’s status as customary international law, and could in any event be entitled to POW status in terms of Article 4A(1) or (if applicable) in terms of Article 4(1) of Protocol I. Issues raised by the extension of POW status to such combatants were discussed, highlighting difficulties surrounding POW status as a matter of the Al Qaeda organisation. However, it was argued that despite these difficulties, it would be preferable to recognize those Al Qaeda members entitled to such status as POWs.

It is worth emphasizing once more that members of either group who have committed war crimes, or acts of violence unconnected with the armed conflict in Afghanistan, may be prosecuted for such acts notwithstanding any entitlement to POW status. Where there is doubt as to detainees’ status, Article 5 entitles detainees to be treated as POWs until a competent tribunal has resolved their status. There seems to be enough doubt around the status of the detainees to warrant the application of Article 5. The Inter-American Commission on Human Rights has remarked that: ‘It is not sufficient for a detention power to simply assert its view as to the status of a detainee to the exclusion of any proper or effective procedure for verifying that status... and where... doubts continue to exist concerning the legal status of the detainees.’

The Guantanamo detainees should thus retain, for the present, the protection of the Convention by being treated as POWs. Their status can hardly be said to have been “determined by a competent tribunal” on the basis of an executive declaration by the United States Government. Neier notes that: “[A] suspected al Qaeda terrorist captured...must be treated as a prisoner of war until a court says he is not entitled to such status.”

While the nature of the tribunal may be determined by the captor, it is clear that a tribunal envisaged by Article 5 should comply with certain basic requirements. The U.S. Field Manual defines a “competent tribunal” as a board of at least three officers, acting in terms of prescribed procedures. Accordingly, the United States has failed to comply with Article 5 of the Geneva Convention, since the determination that the detainees do not have POW status appears to have been made by the President alone, and not by an appropriate tribunal as envisaged by Article 5. Protocol I, if applicable, provides similar protection.

Once detainees are classified as POWs, certain consequences follow from that status. Should the U.S. eventually prosecute any of the detainees entitled to POW status, then Article 105 demands that the prisoner be entitled to qualified legal counsel of their choice. Reports suggest that the U.S. is not complying with this provision by denying detainees legal representation. Perhaps most fundamentally, those detainees entitled to POW status and against whom prosecution is not pending should be released in terms of Article 118.

For this provision to apply, it is not necessary for a formal armistice agreement or peace treaty to be concluded - it is simply necessary that hostilities have actually ceased. The length of detention is of particular concern because, as we have seen, the Presidential Order in terms of which the detentions are authorised applies to non-U.S. citizens, and purports to deny them the right to seek relief from a court. By contrast, a U.S. citizen would at least have the right to challenge the legality of their detention in court, which would compel the military to disclose whether he or she was being held as an enemy combatant. This can be seen as serious discrimination between U.S. and non-U.S. citizens.

It is perhaps this issue, the prospect of seemingly indefinite detention without any imminent prospect of release, which has evoked the most controversy regarding the status of the Guantanamo Bay detainees.

It is hoped that this paper has provided a framework in terms of which this uncertainty can be brought to an end, by showing how detainees’ entitlement to POW status means that those responsible for acts of violence prior to the conflict in Afghanistan, or for violations of the laws and customs of war, may still be prosecuted for such offences, even if they are accorded POW status.

How are Human rights reconciled with anti-terrorism?

A colloquium in June 2006 in Ottawa sought to provide some answers and UCT’s Cathy Powell was there.

Are Guantanamo Bay detainees entitled to Prisoner of War Status?

Extract from the winning essay for the Mike Cowling prize, by Chris Octroy (2005)

Constitutional Law was the focus of a two-day conference in Cape Town in March. Pictured above are ACLU delegates I-r Babacar Kante (President of the Constitutional Court – Senegal), Belinda van Heerden (Supreme Court of Appeal – South Africa), Stephen Churches (South Australian Bar and Adelaide University), Christina Murray (UCT – South Africa) and Djedjro Meledje (University de Cocody – Ivory Coast). The papers are available on www.uct.law/publiclaw
Constitutional Interpretation: memory builds bridges

THE RESEARCH Unit for Legal and Constitutional Interpretation (Rulci) is a collaboration between the Faculties of Law at UCT, UWC, and Stellenbosch. The annual Rulci colloquium on Constitutional Interpretation and Theory aims to provide a venue for scholarly exploration and exchange of critical knowledge amongst scholars who engage critically with constitutional theory and legal discourse in general. This engagement has at its heart a concern with participation in the continuing search for new avenues through which legal theory and praxis may positively contribute to the lives of the excluded, the marginalized and the vulnerable in different South African communities.

Rulci’s annual colloquium came to UCT in October 2005. It aimed especially to facilitate and stimulate exchange between emerging and established scholars. Mindful of this aim, we extended a special invitation to Dr Kristina Bentley of the Institute on Women, Gender and Globalization at Harvard University, for the second session of the colloquium. Dr Bentley, the author of Gender Mainstreaming: Where from? Where to? (2003), has contributed significantly to the study of gender mainstreaming.

In discussing the colloquium, Dr Bentley referred to the need to move from the conceptualization of “gender mainstreaming” to its implementation in practice. In her contribution, Dr Bentley used the concept of “judicial mindset” as an example to illustrate the practicality of gender mainstreaming. She argued that judges need to be informed about gender mainstreaming in order to apply it in their judgments. She also highlighted the importance of legal education in the training of judges.

Dr Bentley also discussed the role of legal theory and praxis in the development of gender equality. She argued that legal theory can provide a framework for the practical implementation of gender mainstreaming, while legal praxis can provide insights into the practical challenges of implementing gender mainstreaming.

Dr Bentley also discussed the importance of legal education in the training of judges. She argued that judges need to be informed about gender mainstreaming in order to apply it in their judgments. She also highlighted the importance of legal education in the training of judges.

In conclusion, Dr Bentley emphasized the need for a change in the mindset of judges in order to implement gender mainstreaming in practice. She argued that judges need to be informed about gender mainstreaming in order to apply it in their judgments. She also highlighted the importance of legal education in the training of judges.

Gender Mainstreaming: Where from? Where to?

IN 1975, the first World Conference on Women was held and a World Plan of Action was developed to guide the global community in achieving three main objectives: full gender equality and the elimination of gender discrimination; the integration and full participation of women in development; and an increased contribution by women in the strengthening of world peace. In an effort to further this process, a strategy known as ‘gender mainstreaming’ was employed. To date, while gender has become a buzzword and a flagship for government programs, a gap remains between the concept and its implementation on the ground.

On March 29th 2006, the Law Faculty’s Democratic Governance and Rights Unit hosted a seminar designed to facilitate cross-country discussion of the strengths and limitations of South Africa’s gender mainstreaming to date. The discussion was structured around the sharing of knowledge between local stakeholders and four students from Harvard Law School’s Human Rights Programme – now taught by Rashida Manjoo (previously of the Law, Race & Gender Unit at UCT). A participant from the Institute of Justice and Reconciliation, and herself a Harvard graduate, Karin Alexander, writes her impressions. ‘In the first session, local practitioners presented perspectives on the success of gender mainstreaming in South Africa.’

‘Dr Kristina Bentley of the HSRC analysed the role of Chapter 9 institutions – including the Commission for Gender Equality (CGE) – in the promotion of gender equality in South Africa. She noted some successes but highlighted the limitations presented by an overly broad mandate and a lack of funding. Judge Nathan Erasmus then outlined the history of equality jurisprudence in the country and the necessity for further training and sensitization of judges in relation to human rights issues and, the contexts and constraints faced by citizens who come before the courts. Lastly, Sibongile Ntladze of the Women’s Legal Centre presented a civil society perspective. She noted that the due to the problems of definition, understanding and articulation, gender mainstreaming has been treated as an end itself and hence has failed to achieve the promotion and protection of gender equality and women’s human rights. She argued that gender mainstreaming is a process that should occur before decisions are taken to determine how they will impact both men and women; it cannot simply be targeted on once agendas have been set. In the second session, the Harvard Law students presented their comparative perspective on South Africa as a case study for gender mainstreaming. Mary Anne Franks outlined the global shift to gender mainstreaming, asking the question whether as an institutionalized language it has lost its radical potential. Alexis Leeb then contextualized South Africa’s human rights and gender commissions within a global framework, highlighting the range of options South Africa faced and the range of options its institutions have created for other contexts. In their presentations, Erin Thomas and Jessie Rousman turned to consider specific institutions in South Africa. Jessie discussed the unique trends in the way the Constitutional Court and other legislation have applied the constitutional provisions on gender equality. In contrast to America, the South African constitution has produced a judicial structure that favours a contextual analysis and substantive interpretation of equality. The question however is whether the legislative route is the appropriate route, given limited resources and historical associations, may have with the courts. Finally, Erin examined the CGE’s legislative and judicial interventions with regard to gender equity and highlighted two problems. The first, that the CGE makes recommendations that do not take cognisance of resource preservation and funding constraints. The second that, as with anything, limited resources can prompt the prioritisation of certain issues over others. How is to decide which issues warrant use of their scarce resources?”

‘In discussion, Alexander concluded, “it was agreed that South Africa’s gender mainstreaming has been state-centred. This has resulted in both the technocratisation and depoliticisation of issues of gender. In addition, civil society feels that gender mainstreaming may be irrevocably undermined by its unintended consequences – sideling of women’s issues; whether it make sense to separate women’s issues from human rights issues; and the maintenance of the status quo when men are brought into the process (necessary though it is to have their participation in gender questions).” Rashida Manjoo agreed with participants that there was a critical need to measure the effectiveness of the national and provincial gender machinery in gender equality. She stressed that civil society is a crucial component in holding accountable institutions created in Chapter 9 of the Constitution. These institutions were created to strengthen democracy and “the price of democracy is eternal vigilance”, especially by civil society.
Law librarians visits Duke

UCT’s BALO Booi recently returned from a three-week internship that was made possible by the Starr Foundation through the Information Transfer Network that is being developed by NYU Law Library (ITN).

‘An enticing schedule was compiled by Dick Danner of the Duke Law Library (DULL) to make sure that I learn and experience as much as possible from the internship,’ said Booi. ‘The Duke Law Library has one of the largest collections of legal materials in US with approximately 622,400 volumes and they subscribe to 735 serial titles (includes both journal titles and legal reports series). With regard to foreign and comparative law scholarship, the library’s subject collection strengths rest with Intellectual Property (France), Environmental Law (Germany) and Negotiation/ADR (India).’

‘The library is also a member of the Consortium of Southeastern Association of Law Libraries (COSELL). Through COSELL Libraries the law library is able to borrow interlibrary loans materials without fees. These interlibrary requests are done in-house, rather than by the main library as is the case with us. Circulation statistics for the 2004-2005 calendar year shows that the law library has sent 660 items to other campus libraries (the head of collection services was quick to say that items received was significantly higher than items sent).

‘Above all this, the library offers 24/7 week service and off campus access to databases/resources to its users,’ said Booi. ‘Although UCT does provide offcampus access to our e-resources with the exception of Justus, we do not offer a 24-hour access to the library. My concern was about losing a lot from the collection because of theft and the answer was that this rarely occurs at Duke, and the rare Book Collection is the only collection with restricted access.’

The internship program included visits to University of North Carolina Law Library, North Carolina Central University Law Library and Duke’s Perkins Library. ‘A big thank you is owed to the staff members who were willing to spare their time to give informative tours and share their valuable professional experiences,’ I was so amused to find that we share some similar experiences when it comes to client behaviour! ‘These libraries have a small collection of South African law material. ‘The NCCU law library has been just renovated and the head librarian is willing to keep contact with me (UCT Law Library) to discuss the development of their South African law collection. I was so delighted to hear that they are willing to have such a collection in their library.’

Booi had no hesitation is answering the question about a key difference between SA and the USA – it is the level of information skills their library users already have. ‘They are not as demanding as ours because they know how to ‘search’; a lap-top is entry level for them!’

THE DEMOCRATIC Governance and Rights Unit in the Faculty has recently visited for the first time the superior court judiciary in the following English-speaking African countries: Botswana, Kenya, Lesotho, Malawi, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

The focus of the research has been to assess the levels of judicial independence in each country, with reference to institutional and statutory provisions affecting the judiciary, the procedure for the appointment of judges, their security of tenure and conditions of service.

The published report devotes a chapter to each country and then an evaluation of the country’s compliance with the major principles of judicial independence. A discussion of significant cases follows. This survey addresses one part of any commitment to fair process through the law, but a necessary part at that. Formal independence is a precondition for the substantive independence which is the ideal. The degree to which each of the 11 judicial systems approximates to a substantially independent mechanism varies, although the general picture is not one of a happy one. Based on the conclusions and recommendations it seems that the following matters need most urgent attention.

Firstly, appointment processes are critical in ensuring that the right people become judges. The Judicial Service Commission (JSC) model is widely accepted; however, the tender, processes, and responsibilities of the commissions vary. Most JSCs have few members, with the 23 in the case of South Africa being the most remarkable. There is also a strong majority of ‘non-lawyers’ in the latter, which sets it apart from the pattern in the other countries.

The critical issue in all cases is the degree to which the various members of the JSCs are ultimately responsible to the head of the executive, or to the majority party in the legislature: if most of the members of a JSC are indeed beholden to one or both of these bodies, then much of the purpose of having a JSC disappears.

A further source of concern is the appointment of very junior judges to the operation of a JSC. Clearly, a complete lack of accountability is as undesirable a quality as subservience to another arm of State. Transparency of the process and decision can be a powerful countervailing force in support of independence.

As regards the outcome of JSC activity, it is clear that women are grossly under-represented on the bench. Even in the case of the relatively developed South African legal system, there are typical gender imbalances, with women much of the purpose of having a JSC. Women do provide off-campus access to databases to its users, ‘said Booi. ‘Although UCT does provide offcampus access to our e-resources with the exception of Justus, we do not offer a 24-hour access to the library. My concern was about losing a lot from the collection because of theft and the answer was that this rarely occurs at Duke, and the rare Book Collection is the only collection with restricted access.’

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Law librarians consults in Botswana

AT THE suggestion of Judge Pat Tebbutt, currently the Judge President of the Botswana Court of Appeal and previously a judge of the Cape High Court (also President of the UCT Convocation for many years) a member of the UCT Law Library staff, Pamela Snyma, visited the High Court Library in Lobatse.

The library needed a major reorganization and advice on matters such as weeding and new purchases; print v electronic; and general guidance on good law library practice.

‘We have had some difficulty sourcing Botswanan materials and this was also an excellent opportunity for Pamela to meet people, acquire materials that we are missing, and make arrangements for the future,’ said Law Librarian Amanda Barret. ‘It was also a good opportunity to give her a walk about the library when you consider how UCT has benefited from the generosity of the Starr programme.’

Ms Snyma has published guides on South African Legal Research (on the LLRX and Globalex sites), and has almost finished compiling a guide on Zimbabwean Legal Research. While at the Botswana she worked closely with a range of Commonwealth judges, including British Law Lords, judges from the West Indies, and judges from other African countries.

Judicial Institution of Southern Africa

A report by Professor Hugh Corder

Copies of the report are available from Linda van de Vijver at vdvijver@law.uct.ac.za

Law REVIEW

Libraries and resources
THE SOCIETY of Law Teachers of Southern Africa (SLSTA) 2006 conference was hosted at UCT from 3–6 July where 150 delegates from all over southern Africa had a choice of over 100 papers to listen to. UCT lecturer and overall organizer, Constantine Bekker, said that the SLSTA conference is for law teachers to exchange ideas and experiences on teaching styles and methodology.

Who better to open the conference than former UCT law professor, Tiyi-anjala Maluwa. A graduate of Cambridge University, Professor Maluwa holds the H. Laddie and Linda P. Montague chair at Pennsylvania State University Dickinson School of Law.

His subject was Legal Education in the Age of Globalization: What lessons can African universities learn from others? Quoting the German philosopher Martin Heidegger, who famously observed that sometimes what matters most is to ask questions rather than provide answers. For him, what is most important is that African legal educators engage in a dialogue and conversation aimed at addressing at least the following questions:

What has been the impact of globalization on legal education in Africa? What challenges do legal educators face as they try to prepare their students to practise law in the new, borderless world? What is the role of lawyers and legal educators in shaping national and international policies that lie at the core of the globalization process? In raising the last question, Professor Maluwa rhetorically asked what role can lawyers played in the ongoing discussions under the auspices of the African Union regarding the project of regional integration?

Professor Maluwa also made some suggestions relating to what African universities should be doing to address the challenges of globalization. He noted that the legacy of colonialism and subsequent externally imposed structural adjustment programmes of the 1980s have left lasting effects on the economies of most states in Africa - which have in most cases resulted in declining resources and funding for education and other social services. He then went on to suggest that perhaps African universities could learn from the experience of those American law schools that have started drawing up strategies aimed at addressing the impact of globalization on legal education in the US. These include:

• Involvement of international faculty: inviting or importing teaching staff from other countries (whether on a permanent or visiting basis) to teach specialized courses and bring an international perspective to the institution and students;

• Broadening the teaching of international law and other international courses beyond the traditional public international law course that is commonly taught in almost all law schools in Africa (to include international commercial law, international banking, human rights, international criminal law, international environmental law, international trade law, etc);

• Student exchange programmes: encouraging and assisting students to study in foreign law schools (both within and outside Africa) for shorter or longer periods (expanding the few existing “studyabroad programmes”);

• Admission of foreign students and internationalization of the programs offered by the law school; and

• Expanding the research capacities of law schools into areas and disciplines that are key to globalization.

Appreciation to
Prof Philip Slayton
of Law, University of Western Ontario, who presented a paper on corporate manslaughter in Ontario, is well deserved. His subject was Corporate Manslaughter - does reform matter?

Prof Hariich Jain, Visiting Professor at the GSB and Professor Emeritus at the MGD School of Business at McMaster University, Canada: Employment Equity in the International Context

Marvin Krierso, the Vice President and General Counsel of the University of Michigan: Affirmative Action and University Admissions: Legal Landscape in the US.

Prof Philip Slarton, former Dean of Law, University of Western Ontario: Lawyers Gone Bad Money, Sex and Malpractice in Canada's Legal Profession

Prof Julie Stewart, University of Zimbabwe: Gender Equality, Human Rights and Tradition: Conflict or Compromise?

Some Methodological Thoughts

Tracey Robinson, University of Barbados: Judging a Region: Crisis, legitimacy and transition in the Commonwealth Caribbean

Sope Williams, lecturer in the Law of Obligations at the University of Nottingham: Public Procurement and Corruption: The South African Response:

Public Law held a video link conference on the constitutional transformation of the common law and customary law. It was co-presented with the New York School of Law. The speakers were Karl Clare of Northern Eastern University in the USA, a leading Critical Legal Scholar and author of a leading article on transformative constitutionalism, and our own Dennis Davis.

The Institute of Criminology ran a series of seminars with the theme The Politics and Logistics of Doing Criminological Research: Challenges and Controversies.

Jonny Steinberg engaged in an interactive question-answer discussion on the research process undertaken during the writing of his book The Number (for which he won the Alan Paton Award) in which he delves into the life of a Pollsmoor Prison gangster.

Sasha Gear, from the Centre for the Study of Violence and Reconciliation, spoke of her research experiences during the compilation of her book Daai Ding.

Roger Field, Doctoral candidate at UCT, Senior Maritime & Marine Law Consultant at Webber Wentzel Bowens, also spoke.

Law, globalization & southern Africa

In UCT the tradition of inaugural lectures is well established but in October 2003, a new era in the tradition of Law at UCT arrived with the appointment of a new Dean of Law. Prof. Johnnie Steyn, Visiting Professor of Criminology since 1982 and Dean of Law from 1990-1995. He chose as his theme Imagining the South African Prison. Prof. V destroys this narrative.

Following from the Kampaala Declaration an African prison inspectorate was set up under the auspices of the African Commission for Human and Peoples’ Rights. The emergence of an international prison inspectorate operating under the United Nations Convention against Torture is also now a real likelihood, and I hope that South Africa will ratify the Optional Protocol to the Convention which will bring the new inspectorate into effect. Careful scholar has continued to refine many of the ideas that initially attracted me to this field. Sociologically, we now know much more about the way the prison system is structured and the power of the prison gangs to the attention of a wider public. It demonstrates a surprising degree of legitimacy even in the inherently confrontational environment of the prison; and about how dynamic security based on such rules can avoid the use of brute force by the authorities.

In South Africa dedicated scholars have continued to study controversial aspects of imprisonment, in spite of barriers being placed in their way. But I digress. Empirical researchers have done us proud in recent years. For example, Sasha Gear’s Daai Ding, a study of sexual abuse in prison, is a powerful call on us to propose more imaginative ways of managing the prison system, to reduce the cooperation of corruption brings to this sphere of prisoners’ lives. Prison biography too has continued to give us fascinating glimpses of prison real:

Johnny Steinberg's The Number has brought aspects of the coercion exercised by prison gangs to the attention of a wider public. It demonstrates Johnny Steinberg’s The Number has brought aspects of the coercion exercised by prison gangs to the attention of a wider public. It demonstrates the very powerfully the need to reassert the protection that prison law is supposed to provide to prisoners, not only against the abuse of official power but also against their fellow prisoners.

This brings me back to the law and the image of the prison of our constitutional democracy. One of my regrets about leaving now is that there is not yet a new edition of South African Prison Law and Practice, for I had hoped to incorporate much of this new research in order to strengthen the argument for prison law as an effective shield against abuse. It would have been a pleasure to do so directly on the Constitution and the international and comparative law that we may now quite freely as authorities. The tragic early death of Ronald Louw robbed me of an enthusiastic collaborator. I hope that some other scholar will come forward to take his place. Even allowing for difficulties not of its own making, it is clear that the Department did not make sufficient use of the years that it had to get to make satisfactory the requirements of the Act before it was brought into effect. It should now be held to account publicly and fearlessly where it does not provide what it is constitutionally and legally obliged to do. I hope that the Judicial Inspector will use the clear requirements of the Act, which is now fully in force, as a template for his reports, and that the courts will craft imaginative remedies when prisoners appeal to them because their rights are being violated.

Finally, as I laid at the beginning of this lecture, I did not choose imprisonment as the focus of my study but drifted into it. In the light of my early intellectual heroes, C. Wright Mills, I have tried to combine the insights of biography and history in order to imagine the South African prison. To this I have added a very un-Mills-like concern with the details of the law and its operation. When I reflect on the legal framework of the South African prisons now, I am not sure we have got there at all; but I have enjoyed the journey and am deeply thankful to all who have accompanied me on it,” he said.
1940 BG Barnes 

Basil is retired and lives in Kokstad.

1948 AMP Magal

Judge Magal was admitted at the Durban Bar from 1975 - Feb 1991 and took silk in 1991. He served as a Judge of the High Court of South Africa from 1991 - 2002.

1953 MM Seligson

Milton's career has been both academic and judicial. He was admitted at the Cape Bar in 1953 to practice, I enjoyed using my legal skills for many years and is now retired.

1957 M Hodes

Michael was at Jan S de Villiers Attorneys as an Associate. He completed his articles from 2001-2002 and is now a director of the firm.

1959 D Kemp

David is the Nominated Director at the Durban Bar Foundation. He served on the governing body of the Bar from 1980-1983.

1959 MM Seligson

Milton's career has been both academic and judicial. He was admitted at the Cape Bar in 1953 to practice, I enjoyed using my legal skills for many years and is now retired.

1959 D Kemp

David is the Nominated Director at the Durban Bar Foundation. He served on the governing body of the Bar from 1980-1983.

1960 ME Bennun

Mervyn is currently a Honorary Research Associate in the Faculty of Law at UCT after teaching law at the University of Exeter until 1998.

1960 JT Ginsburg

Jack received the Lawyer Society prize in 1960 for the highest marks in the final examinations and was Senior Partner of a Chambers in Wellington until 1992.

1960 NN Rubin

After spending some 13 years on the staff of South Africa's Institute of Advanced Legal Studies in London, Neville went on to serve with the ILO (in Geneva, Brussels and New Delhi) for the next twenty years, retiring at the end of 1990.

1961 S Schechter

Neil retired between February 2003 after 40 years in practice.

1962 BC Brown

Brian retired from the Zimbabwe Public Service last year and still lives in Harare.

1963 MH Hodgson

Michael spent a year travelling in between his 25 years in practice in London and Johannesburg. He has had 13 years in commerce, mainly with Investment Trust, and is still interested in the world of Opera, Ballet, Music and Sport.

1965 DJ Davies

Peter joined the SA Diplomatic Service before doing his National Service in 1972. He was a partner with Spier & Fisher in Gauteng, SA and Jersey, Channel Islands.

1965 RM Fulton

Rob has specialised in corporate and contractual joint ventures, both transnationally (Canada) and with multilateral agencies. He chairs the Board of Governors of Ahmadu University.

1965 IF Gomes

John is a former partner and former Chairman at Clifford Dekker, Cape Town. He serves on the Law Faculty Development Committee.

1965 RG Read

Blairda was recently appointed one of ten founding members of "Child Rights International" and he lectures at the Universities of Stellenbosch and the Western Cape.

1966 GH Crompton

Clive is a Queen's Council practising at the Bar in Hong Kong where he has been a member of the Bar since 1993 and heads a Chamber of 25 barristers.

1967 K Walds

Yasuf has been practising as an attorney since 1970 on his own account. He chairs the Gauteng Provincial Rental Housing Tribunal and is also the alternate Deputy Chairperson of the Consumer Affairs Court of the Gauteng Provincial Government.

1967 JN Boydall

Nick is a Council General at ENS, UK. He qualified as an advocate in 1967 and is a specialist in property law.

1968 LR Serwerer

Louis was admitted as an Attorney and joined his Johannesburg Bar in 1970 where he is still practising. He took silk in 1987 and has held various offices, including that on the bench, but preferred life at the bar.

1968 PJ Schoeman

Paul practices in Durban in 1968.

1970 JT Joubert

John did a PG Dip in Maritime Law and is a Past President of the Maritime Law Association of SA. He practices in Cape Town.

1972 PM Cronion

Paul is practising as an Attorney, Notary and Commissioner in his firm's property department.

1973 JM Block

Judith was Managing Director of Exchange Data International Limited. She is also a Liberal Democrat (in Geneva, Brussels and New Delhi) for the next twenty years, retiring at the end of 1990.

1973 KH Hendry

Keith has returned to South Africa from the UK where he worked for Clifford Chance in Belgium. Keith is now consulting to Bowman Gilfillan.

1974 GM Boulterd

Geoff recently joined the Cape Bar. He previously worked at the Legal Resources Centre and the Department of Land Affairs for four years. In 1974 he was elected Chair of the UCT Councill

1974 T Morris

Trevor left SA in 1985 and worked in the City of London until 1992. He opened a firm of solicitors in Sydney in 2001 and is now running a company in Sydney.

1975 RA Flax

Ronnie lives in San Diego, California, and has been in the US for over 5 years. He now practises from his office in UK, for many years. And his brother have a business in the USA in medical research areas - his brother is a UCT trained physician.

1975 TJ Frank

Then is a practising 'silk' at the Windesock.

1977 NJ Adami

Norman began his career with SAB- Brentz Beverages (SA) Ltd (SAB), in 1979, and has held a number of senior positions within the group. Since 1994, he has been a Group president and chief executive officer of Miller Brewing Company in 2003.

1978 JF Hayde

Garth has been practising as an Advocate and Solicitor in Cape Town since 1995.

1980 LT Barlow

Leanne worked at the Masters Office from 1986 to 1992 before becoming a partner. She occasionally works for private clients.

1980 MJ Carrington

Mark did his MBA at Wits in 1987 and is now running his own management consultancy which he founded after a career in Management Consulting that spanned Johannesburg, London, Hong Kong and Sydney.

1980 R Chessman

Dick is a Director of Fairbridges Property Consultants. He is married with five children and a dog.

1980 A Chera

Amanda was an Non-practising Attorney of the High Court of South Africa at the Natal Law Society until 1992 where she practises. She took silk in 1987 and has held various offices, including that on the bench, but preferred life at the bar.

1980 PJ Schoeman

Paul practices in Durban in 1968.

1980 S Sussor

Since graduating, Spilios has been working for private clients.

1980 DA Parer

Dorthea is with the National Prosecuting Authority in Pretoria, Gauteng.

1980 GS Redman

Geoff did his MBA part-time at GSB from 1991 to 1992 and now practices as an Attorney in Cape Town.

1980 PW Stelling

Paul is practising as an Attorney, Notary and Commissioner in his firm's property department.

1980 JE Trisk

Janet is teaching systematic theology and spirituality at the Anglican College of Transfiguration in Grahamstown. She completed her PhD in 1984 and is now a Professor of Religious Studies at UCT in 2002 and is presently licensed for a PHD.

1985 MH Alexander

Murray has been practising as an attorney and has made a partner in 1980. Murray has acted as the head of the Labour Relations team at the firm's Durban office since 1994.

1985 R Marcus

Marcus is currently at Clifford Dekker, Cape Town.

1985 APM Robinson

Andrew did an LLM (UWS) in 1987. He is a Director of Denys Reidt Inc., Durban, in the Admiralty Trade & Transport Department.

1985 OL Rogers

Owen is the Chair of the Cape Bar Association.

1985 AR Shulko-Douglass

Alasdair has been a member of the Cape Bar since 1989.

1985 E van der Horst

Eleonore practised as an advocate and member of the Cape Bar from 1989 to 2000. In 2001 she took a suba

1985 S Zuckon

Sol was appointed as an Advocate in 1985. He was a member of Investec Private Bank in Cape Town from 1993 to 2001 and at present, is a Managing Director of Investment Consultants in Cape Town.

1985 PM Naungathi

Priscilla is a Senior Partner in her own firm, Munangati & Associates, and is a Board Member of a Transmission Company and Medicines Control Authority of Zimbabwe.

1985 MM Konson

Mark is a Partner in the Wimeny Consulting Group. He is a Past President of the Maritime Law Association of SA. He practices in Cape Town.

1985 A Carrington

Linda was a Judge in the 2003.
THE YEAR started for us in the last term of last year - not the best time! We were swamped with work and on top of that decided to take it upon ourselves to redo the whole Law Orientation for the first year students. That was just the start of the madness that has been our year in office so far. I have had the most fantastic time. I’ve met my hero, some other really important people and made amazing friends.

Our mission as a council this year has really been to focus on transformation and give the word some meaning. So much is said about it, but none of us really knew exactly what we were supposed to do about it. Redoing the Law Faculty Orientation was the start of our campaign to make the Faculty a friendlier place for students. All students coming into law for the first time were sent an invitation to attend, including second year BA, BCom and BBusSci students. The attendance was probably record-breaking but that might have something to do with the sponsored Nando’s lunch! The students got to mingle with each other over two days and were entertained by Judge Davis, among others. The highlight of the event was the HIV/AIDS workshop that was held for the first time. Students were split into groups and had to answer a legal question involving HIV/AIDS issues with the assistance of a Faculty staff member and an HIV positive volunteer from a support group.

Law Faculty opening. We like to think that we represented the spirit of transformation within our Faculty and had some fun showing the students there a bit of diversity of culture - thanks to Jen, Shams and Taku.

In order to keep up student spirit, we carried on with our (now in the last three or four years) tradition of going to Groot Constantia for a day of fun in the sun during April. A bit of soccer was played and a bit of wine was tasted - a nice way to relax and enjoy the glorious Cape weather with friends and the crazy dog.

Not everything has been fun and games, however. At the end of last year for the first time, we made a formal arrangement with the advocates at the Cape Bar to allow student shadowing for a couple of days in November. The students who participated enjoyed the experience immensely. The work programme is in progress at the moment with the student shadowing of prosecutors at the Wynberg Magistrate’s Court.

Another great event that we organised this year was the debate between George Bizos and Deputy Minister de Lange. The event was a huge success and attended by about 400 people. The idea came from students in the intermediate year class who have subsequently formed an interest group that is going to keep up to date with any legislation in the works affecting the legal profession. The revolutionary student spirit is well and alive.

The work programme is in progress to change the world, but a difference is made to each individual person that is affected. I hope that what we’ve done this year will be carried on in future years and our dream of putting together a student scholarship comes true. I’d like to thank Jeremy, Jeanette, Brandon, Shameema, Josette, Mike, Jaclyn and Takudzwa for their hard work and dedication over the year. Last year somebody said to me, “a student is nie a mens nie” - they were wrong. A student can do great and amazing things, maybe only if they’re in the right environment, and that environment is being provided for us in the Law Faculty, so thank all the staff who have been so dedicated and supportive.
Alumni in Gauteng  By Heather Irvine

THE NEW YORK University and University of Cape Town schools of law held a joint alumni breakfast function in Johannesburg in October. The guest speaker was Professor Eleanor Fox, who is the J. Derenberg Professor of Trade Regulation at the NYU School of Law and a member of the International Policy Advisory Committee for Antitrust to the Attorney General of the United States Department of Justice.

Professor Fox was introduced by Judge Dennis Davis, a Judge of the High Court of South Africa and Judge President of the Competition Appeal Court.

He observed that Professor Fox is a highly regarded authority on competition regulation worldwide, and in particular, has a unique understanding of the principles underpinning both the American and the European antitrust regulatory regimes.

Her work was recently cited in an important case heard by our own Competition Appeal Court - in fact, whilst she was sitting in the court room during her recent visit to South Africa!

In an interesting discussion of the history, genesis and effects of international trade regulation, Professor Fox highlighted a number of theoretical perspectives on globalization as well as its different, and some times contradictory, implications for emerging economies such as South Africa.

Some interesting questions were posed about the relationship between our own system of competition law and international trends in antitrust regulation, as well as the manner in which globalization has impacted on the South African legal and economic systems.

Despite being held on a working day during the busiest time of the year in Johannesburg for commercial lawyers, the event was well attended and it provided an excellent opportunity for graduates of both law schools to network.

The alumni would like to extend our sincere thanks to Webber Wentzel Bowens for graciously offering to host this wonderful event, and to Pauline Alexander for organizing it.

Keep the news coming

‘IN HIS welcome to alumni earlier this year, Deputy Vice Chancellor Thandabantu Nhlapo made the statement that a university is only as good as its alumni; if that truism is true, it is no wonder my role in the Law Faculty is such an easy one,’ said Development Manager Pauline Alexander.

‘Take the December 2005 issue of Advocate for example and UCT contributions make up 30% of the text – from Norman Arendse to Duncan Ntshiba, Milton Seligson, Susannah Cowen, Fatimah Euop, Alan Magid and a review of Prof Burchell’s book. Take the annual newsletter of the SYRE foundation and there are our recent graduates Lacob, Mayers, Goldblatt & Williams. Hugh Corder has had his fair share of column inches in South African newspapers as has Pensions Fund Adjudicator Vuyani Ngabwana and human rights advocate, Richard Spoor; and that’s before we talk of our eminent professor-judge on etv.

This is all by way of a caveat, lest I have forgotten to include your CV update. But more importantly it is to extend you my thanks for staying in touch. Please keep the news coming - I am under no illusions that these Alumni pages are what you all read first,’ she said.

OBITUARIES

THE FORMER Judge President of the Transvaal, Victor Hiemstra, died in Pretoria on Monday 1 May 2006. He was 91. He joined Die Burger after leaving school and studied part-time at UCT where he obtained his LLB degree in 1936. Hiemstra joined the Pretoria Bar in 1943, and took silk in 1953. A year later he was appointed a judge in the Transvaal division. He was Chief Justice of what was Bophutatswana for seven years before returning to Pretoria where he was Judge President of the Transvaal until his retirement in 1984.

Judge Jolyon Knoll (1975) passed away in July this year. One of her colleagues described her as ‘all that a judge should be: dedicated, hard-working, scrupulously fair and compassionate, respected by fellow judges and by members of the legal profession. Despite a very demanding career, her family came first. She is deeply mourned by her family and friends.

Another Ben-ism

Leon Getz

At THE dinner in 1959 to celebrate the 100 years of Law at UCT, Centenarian was the guest speaker. His speech went on and on ...Finally, it was time for the toast and Ben Brinart said 'Thank you Chief Justice for your charming remarks. However, I have to confess to an irresistible niggle that the toast to the 100 years would last into the celebration for the 200 years!'