

# LAW Matters

NEWS FROM THE MONASH LAW SCHOOL COMMUNITY

ISSUE 1/06

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Image courtesy of Nanotechnology Victoria.



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## DEAN'S MESSAGE

WELCOME TO THE FIRST EDITION OF THE NEW LOOK *LAW MATTERS* MAGAZINE. WE UNDERSTAND THAT AS BUSY PROFESSIONALS, FINDING TIME TO CATCH UP ON NEWS FROM THE LAW SCHOOL MAY BE DIFFICULT, SO WE HAVE CHANGED THE DESIGN, CONTENT AND TIMING OF OUR PUBLICATION TO MAKE IT EASIER TO READ AND, I HOPE, MORE INFORMATIVE AND RELEVANT.

Legal education is about more than formal learning in class, whether at the graduate or undergraduate level. Nor does it end at the conclusion of the formal enrolment period. Learning about the law takes place in the workplace, in schools and through the media.

The Law School takes its broader educational role through public lectures and seminars very seriously. On 9 March 2006, over 200 people attended Professor Richard Fox's valedictory lecture at the Monash Law Chambers titled *Sentencing in the Garden of Eden*. Ex-students, staff, friends and many others were entertained and enlightened about the principles of crime and punishment from the earliest days. Fortunately, Richard's retirement does not end his relationship with the Law School as he has been appointed an Emeritus Professor in the faculty and will continue teaching in our various programs.

On 29 April, a capacity crowd of 250 people packed into the Chambers to hear eminent law alumnus Lex Lasry QC speak about Australia's wavering attitude towards the death penalty at the faculty's annual Costello Lecture, a lecture series devoted to ethics and social justice and named after alumnus and World Vision Australia CEO Reverend Tim Costello, who presented the inaugural lecture in 2001.

On 17 May, Gary Banks, Chairman of the Productivity Commission will speak on *Reducing the regulatory burden: The way forward*, in the first of the new Monash Centre for Regulatory Studies' public seminars. In the following week, we will present the Great Law Week Debate on the topic *The road to hell is paved with good intentions: We have more to fear from the State than from terrorists* at the Windsor Hotel.

In late June, the faculty will run a major international conference at the university's Prato Centre in Italy on vexatious litigants entitled *Access to justice: How much is too much?*

Also in June, Dr Pam O'Conner will present an informative CPD lecture on *Electronic conveyancing – a standard gauge for Australian land systems* and in August, Professor Sarah Joseph will present her inaugural professorial lecture on the World Trade Organisation and human rights.

Together with the annual Lucinda Lecture on constitutional law issues, the Fiat Justicia lecture and other occasional lectures, these events allow students, staff, alumni and the broader public to actively engage with the Law School and with each other. Details of our events can be found at [www.law.monash.edu.au](http://www.law.monash.edu.au)

Education beyond the walls of Clayton and Bourke Street will also be expanded through the establishment of two new international internships in Israel at law firm Herzog, Fox & Neeman and at Friends of the Earth Middle East. For the first time this year, students will also be able to study a unit, led by staff member David Yarrow, at the Monash campus in Malaysia.

We look forward to your attendance and participation at some or all of our public events. If you would like to be kept in touch on a regular basis, you can register for our email updates by emailing [alumni@law.monash.edu.au](mailto:alumni@law.monash.edu.au)

**Professor Arie Freiberg**  
Dean, Monash Law School

## DIARY DATES:

### 17 May

Centre for Regulatory Studies lecture by Gary Banks, Chairman, Productivity Commission  
*Reducing the regulatory burden: The way forward*  
[www.law.monash.edu.au](http://www.law.monash.edu.au)

### 21 – 27 May

Law Week  
[www.vic.lawweek.com.au](http://www.vic.lawweek.com.au)

### 23 May

The Great Law Week Debate  
*We have more to fear from the State than from terrorists*  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 25 May

Monash Law postgraduate information evening  
[www.law.monash.edu.au/postgraduate](http://www.law.monash.edu.au/postgraduate)

### 1 June

Wine law symposium  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 6 June

Professional development lecture by Dr Pam O'Conner  
*Electronic conveyancing – a standard gauge for Australian land systems*  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 30 June – 1 July

Monash Law Prato conference  
*Access to justice: How much is too much?*  
(CPD accredited)  
[www.law.monash.edu.au/conference/prato](http://www.law.monash.edu.au/conference/prato)

### 18 July

Sentencing lecture by US District Court Judge Nancy Gertner  
*From omnipotence to impotence: American judges and sentencing*  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 2 August

Professor Sarah Joseph's inaugural lecture *Human rights and the World Trade Organisation*  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 6 August

Monash Open Day  
[www.monash.edu.au/openday](http://www.monash.edu.au/openday)

### 17 October

Professional development lecture by Associate Professor Stephen Barkoczky  
*A critical analysis of Australia's venture capital tax incentive schemes*  
[marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

### 16 November

2006 Annual Alumni Soirée  
[alumni@law.monash.edu.au](mailto:alumni@law.monash.edu.au)



“The problem is that at the moment the Government sees the principle of opposition to the death penalty as flexible. It shouldn’t be.”

# IS THE AUSTRALIAN GOVERNMENT **REALLY** AGAINST THE DEATH PENALTY?

By Lex Lasry QC

ONE OF THE EFFECTS OF VAN NGUYEN’S EXECUTION IN DECEMBER LAST YEAR IN SINGAPORE WAS THAT A SIGNIFICANT SYDNEY DRUG TRAFFICKER WAS PUT BEYOND THE REACH OF THE LAW. THE OFFENCE FOR WHICH HE PROCURED VAN NGUYEN AND FROM WHICH HE WOULD TAKE THE PROFIT WAS CONSPIRACY TO IMPORT HEROIN INTO AUSTRALIA.

That always seemed to me to be a good reason to oppose the death penalty – it often results in other guilty people going free.

The campaign that preceded Van’s execution undoubtedly raised the profile of the death penalty debate in this country. For me the important issue now is the role and stand that Australia should take in such a debate.

The problem is that at the moment the Government sees the principle of opposition to the death penalty as flexible. It shouldn’t be.

One of my ambitions after the Van Nguyen case was to try to pressure the Federal Government into adopting a firm and uniform policy on the death penalty.

That means Australia is against the death penalty in all circumstances. We are against it for drug traffickers; we are against it for terrorists; we are against it as a matter of principle.

And what is the highly complicated main principle involved? Democratic Governments should not kill people.

“Death Penalty” does not convey the practical reality. The death of the prisoner is always preceded by months, years or even decades on death row wondering whether tomorrow will be the day. And then there are the methods – hanging, lethal injection, shooting and of course, the possibility of error. Juries make mistakes. Judges make mistakes. In death penalty cases the errors are uncorrectable. According to Amnesty, since 1973 in the United States, 122 people who were later found to be innocent, have been released from prison having been sentenced to death.

There appears to be plenty of evidence indicating that the death penalty is not an effective deterrent. I suspect that, in truth, many of those who are for the death penalty are for vengeance.

In Australia, the death penalty has been abolished since the 1970s. No one suggests that the rate at which crimes that attracted that penalty have increased since.

If the deterrent value of the death penalty is in fact not a real value, then one is left with retribution, and living as we do in a society said to be dominated by Christian ethics and led by politicians with religious convictions, how can there be any reason to consider the reintroduction of an antiquated and grotesque form of punishment?

There are two significant steps that Australia took in relation to the death penalty to demonstrate that, as a country, we are opposed to it as an appropriate criminal sanction in a civilised society.

In 1973, parliament passed the Death Penalty Abolition Act. Section four of that Act provides: *A person is not liable to the punishment of death for any offence.*

The second step was that in 1990, Australia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, advocating the abolition of the death penalty. That protocol has now been ratified by 57 states.

In the preamble to that protocol the following important statements of principle are expressed: Firstly that the ‘State parties believe that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights’, and secondly that ‘State parties are desirous to undertake an international commitment to abolish the death penalty’.

The Australian Government always expresses its opposition to the killing of Australians. But in the end, this is the problem. If the Australian position on the death penalty is not an equal position of opposition in all circumstances, including the worst of the worst, then its commitment to the UN Protocol is compromised and no one will take us seriously.

So let me look at some examples. With the outrage over the September 11 attacks on the US, in March 2003 both John Howard and Alexander Downer said they would support the death penalty for Osama bin Laden. John Howard was speaking to Fox News and basically trashed Australia’s anti-death penalty policy. Alexander Downer, with respect, showed the classic misunderstanding of the difference between the particular case and the principle when he said, “I personally have never supported the death penalty but in the case of Osama bin Laden, I don’t think that too many tears would be shed if he was executed, bearing in mind all the people he’s responsible for killing.”

So, it’s OK to execute some people. It’s the criminal, not the principle that matters.

In December 2003, the issue arose again in relation to Saddam Hussein. An article in *The Age* read:

*Prime Minister John Howard said today he supported the death penalty for Iraqi dictator Saddam Hussein. Asked if he would support the death penalty, Mr Howard told the Nine Network: “If it were imposed, absolutely.”*

*continued on page 8*



## Alumni highlights

WE ARE VERY PLEASED TO CONGRATULATE OUR STAFF AND ALUMNI RECIPIENTS OF AUSTRALIA DAY HONOURS AND DISTINGUISHED APPOINTMENTS

# AUSTRALIA DAY HONOURS 2006

### AM (Member in the Order of Australia)

#### Professor the Honourable George Hampel QC (staff)

For service to legal education, particularly in the field of advocacy training, and to professional organisations

#### Carol Judith Schwartz (BA 1977, LLB 1978, MBA 1988)

For service to business and commerce in a range of executive roles, and to the community through support for health promotion organisations, preservation of historic buildings and the arts

### OAM (Medal in the Order of Australia)

#### Jacob Fronistas

(BSc 1978, LLB 1980, LLM 1995)  
For service to the Greek community, particularly in the area of aged care

#### Gail Ann Owen

(BA 1974, LLB(Hons) 1976)  
For service to law, particularly through executive roles in a range of professional organisations

### Judicial appointments

#### His Honour Judge Julian Leckie SC

(BJuris 1968, LLB 1970)  
Appointed a Judge with the County Court of Victoria

#### Her Honour Judge Jeanette Morrish QC

(BJuris 1980, LLB 1982)  
Appointed a Judge with the County Court of Victoria

#### Master Jamie Wood

(BJuris 1976, LLB 1978)  
Appointment as a Master in the Supreme Court of Victoria

#### Magistrate Luisa Bazzani

(BA 1985, LLB 1987)  
Appointed to the Victorian Magistrates' Court

#### Magistrate Marc Sargent

(BJuris 1981, LLB 1981)  
Appointed to the Victorian Magistrates' Court

#### Magistrate Paul Grant

(BA 1975, LLB 1978)  
Appointed President of the Children's Court of Victoria

#### The Honourable Justice Anthony Cavanough QC

(BEc 1976, LLB (Hons) 1978)  
Appointed to the Supreme Court of Victoria

# MENTOR A STUDENT THROUGH THEIR LEARNING JOURNEY

THE LEGAL PROFESSION HAS A LONG HISTORY OF MENTORING; A TRADITION THAT IS EVIDENT TODAY WITH THE TRAINING PROVIDED BY SOLICITORS THROUGH ARTICLES OF CLERKSHIP AND BARRISTERS THROUGH READING COURSES.

The Monash Law Mentor Program fits into this tradition by introducing students to the mentor/mentee relationship at an early stage of their degree.

Currently in its fifth year, the program was established to fill a gap experienced by many students in their academic learning by providing them with the opportunity to learn from mentors who have studied law and are now working in the legal and other professions.

From guidance in career aspirations, academic pursuits or sharing of life experiences, mentors play a fundamental role in the student learning process. Mentors also introduce students to valuable networking opportunities.

People are usually motivated to become mentors by their desire to assist in the shaping of the learning experiences of students, to give back to their community and reconnect with the Law School.

Mentors often say the most rewarding aspect of the program is the role they play in the learning journey of students.

Involvement in the program is limited to one year but can be extended at the discretion of the mentor.

Monash Law is currently looking for mentors for 2006. To get involved, visit [www.law.monash.edu.au/alumni/mentor-program.html](http://www.law.monash.edu.au/alumni/mentor-program.html) or phone Anthea Tsismetsi on + 61 3 9902 0041.

# MARILYN WARREN APPOINTED LIEUTENANT-GOVERNOR

THE FIRST WOMAN TO HEAD THE SUPREME COURT OF AUSTRALIA AND MONASH ALUMNA, THE HONOURABLE JUSTICE MARILYN WARREN IS THE NEW LIEUTENANT-GOVERNOR OF VICTORIA.

The Lieutenant-Governor is appointed by the Queen on the advice of the Premier. If there is no Governor or if the Governor is unable to act for a substantial period, the Lieutenant-Governor assumes office as Administrator and exercises all powers and functions of Governor.

Justice Marilyn Warren (pictured right) took up the position in April.

She said she was honoured and delighted to receive the appointment.

"It's an opportunity to return to the tradition of the Chief Justice also holding the position of the Lieutenant-Governor, which had been in place for over 100 years until the 1990s," she said.

Justice Warren was appointed to head of the Supreme Court in November 2003 after a career that included roles as senior legal policy adviser to three Attorneys-General.

Justice Warren holds the degrees of Bachelor of Jurisprudence, Bachelor of Laws and Master of Laws from Monash.



## VALE

**Emeritus Professor David E. Allan, AM** one of the founding Deans of the faculty from 1971 to 1976 passed away in February. His contribution to the Monash Law School is greatly appreciated and he will be sadly missed.

# MONASH UNIVERSITY DISTINGUISHED ALUMNI AWARD

EACH YEAR, MONASH PRESENTS AWARDS TO ALUMNI WHO HAVE DEMONSTRATED OUTSTANDING PROFESSIONAL ACHIEVEMENTS, INSPIRATIONAL LEADERSHIP AND EXCEPTIONAL HUMAN QUALITIES.

Barrister and conservationist Simon Molesworth AM QC (BA 1975, LLB 1977) (pictured right) was recently awarded this accolade for his commitment to protecting the nation's natural heritage as chairman of the Australian Council of National Trusts and through his focus on the better formulation of environmental laws and policies.

Simon is one of Australia's leading environmental lawyers. He has been a councillor of the National Trust of Australia (Victoria) for 25 years, and national chairman of the Australian Council of National Trusts since 2001.

His interest in environmental law developed while undertaking his Arts/Law degree at Monash. Soon after graduating, Simon founded and led Australia's first environmental law association – the Environmental Law Section of the Law Institute of Victoria.

In 1983, Simon became the inaugural president of the National Environmental Law Association. A year later he was admitted to the Victorian Bar and took silk in 1995, specialising in environmental, planning, local government, heritage and natural resource law. He is also a founding member of the Environment Institute of Australia and has been the institute's national president since 1995.

In addition to his environmental law commitments, Simon is a long-term advocate for sufferers of Chronic Fatigue Syndrome (CFS). As national chairman of the CFS Association of Australia and president of the CFS Society of Victoria, he has campaigned to achieve better CFS support services and more funding for research into the illness.

In 1994, Simon was appointed a Member of the Order of Australia for his services to the community in the field of conservation and the environment and in 2003 he received a United Nations Association of Australia World Environment Day Award for Outstanding Service to the environment.

Monash has recognised Simon's work by honouring him with the 2005 Distinguished Alumni Award.



## END OF YEAR CHEER

FOLLOWING THE SUCCESS OF THE 40TH ANNIVERSARY GALA DINNER IN 2004, A NUMBER OF GRADUATES HAVE REQUESTED A YEARLY EVENT WHICH ALLOWS MONASH LAW ALUMNI TO MEET AND MINGLE. AS A RESULT, THE INAUGURAL ANNUAL ALUMNI SOIRÉE WAS HELD IN NOVEMBER LAST YEAR.

David Galbally QC, (pictured far right) one of Monash Law School's most charismatic graduates, spoke to the theme of *Lessons Learnt: Doing Time at Monash*, sparking a range of discussions amongst alumni on the changing face of the Monash Law School throughout the decades.

The evening was attended by over 100 alumni from the judiciary, the Bar, legal practice, government and the business community.

Amongst many others present were His Honour Chief Justice Michael Rozenes, Monash Law School Foundation Board Member Jack Hammond QC and Lex Lasry QC who was, at the time, working with Van Nguyen and his family. Members of the McCredie family, Dr Philip Opas OBE QC, and members of the Monash Law School Alumni Relations Committee who helped organise the event, also attended.

Thanks to all those who attended the Soirée and who responded to our 2005 alumni survey.

We will now organise one major social/networking event each year together with a number of smaller professional development activities to meet your needs as indicated in the survey.

**Diary date reminder: The 2006 Annual Alumni Soirée will be held on Thursday, 16 November 2006. To keep abreast of all of our alumni activities, visit [www.law.monash.edu.au/alumni](http://www.law.monash.edu.au/alumni)**





# MINISCULE TECHNOLOGY MASSIVE IMPLICATIONS

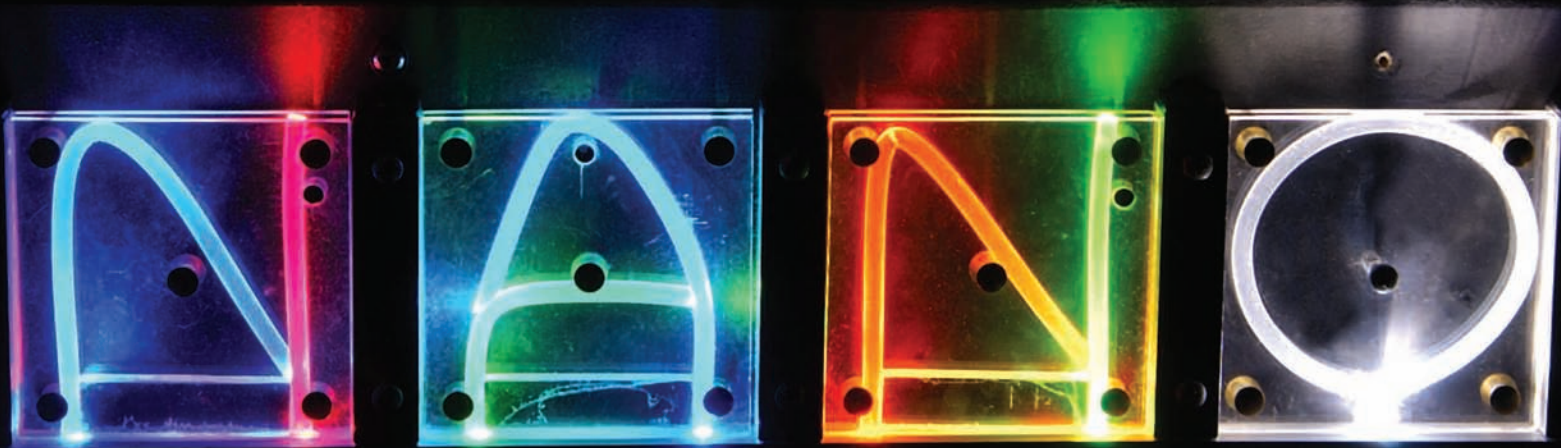


Image courtesy of Nanotechnology Victoria.

EARLY DETECTION OF CANCER, CARS WITH REMARKABLE FUEL ECONOMY, STAIN RESISTANT AND WRINKLE-FREE CLOTHES, LONG LIFE FOOD, SURGERY-FREE REDUCTION OF WRINKLES – SUCH ADVANCES ARE JUST THE TIP OF THE ICEBERG IN POTENTIAL BREAKTHROUGHS MADE POSSIBLE THROUGH THE USE OF NANOTECHNOLOGY – A FORM OF ENGINEERING THAT ENABLES THE MANIPULATION OF MATTER AT AN ATOMIC LEVEL.

Nanotechnology has been heralded as the new technological revolution. The ability to precisely manipulate matter at a discrete and invisible level sets this promising research apart from all other technology we've seen to date.

**This emerging scientific discipline is defined by its tiny scale: a nanometer is a metric unit equal to one billionth of a meter – or one ten-thousandth the width of a human hair.**

New advances are made possible and new products, devices and processes can be developed promising to transform many diverse industries.

The benefits of nanotechnology are vast – smaller, smarter, smoother, cheaper, stronger, safer and cleaner products and processes are now a reality.

Commercially, the production of consumer products incorporating nanotechnology has already begun. Nano compounds and particles are being used in sunscreens, cosmetics, coatings and paints.

You can now purchase stain-resistant clothing, dirt-resistant bathtubs and electronic equipment such as the iPod Nano, all of which have been manufactured using nanotechnology to improve performance and usability of the product.

Further applications of this new technology range from vitamin tablets which are absorbed the moment they enter the mouth, anti-graffiti paint and tennis racquets with strings that do not break.

This miniature technology has enormous economic implications. In 2004, spending on nanotechnology research and development totalled \$US8.6 billion and industry commentators speculate that its global market value will reach \$US1 trillion per annum by 2015.

It is expected that a second generation of nanotechnology products will emerge involving more complex nanostructures within five to 15 years. Computer hardware will become microscopic improving drug delivery and biopolymers and allowing state-of-the-art materials for military combat.

Further into the future the third generation of nanotechnology, known as molecular manufacturing, is likely to feature computer directed nanoscale robots capable of precise manipulation of atoms to form complex devices and machines.

As extraordinary as this emerging area is, like any new technology it brings with it a range of issues that can impact on our social, health and environmental wellbeing.

It is therefore important that as this technology advances, a suitable regulatory regime governing applications advances at the same rate. This will provide safeguards to ensure appropriate use of nanotechnology and a broad acceptance by the public.

A team of researchers from Monash University Law School is gaining an international reputation for leadership in the area of nanotechnology regulation. Director of the Monash University Centre for Regulatory Studies Professor Graeme Hodge, lecturer Dr Karinne Ludlow and PhD candidate Diana Bowman are leading the discussion in Australia.

In 2006, Professor Hodge and his team will host a two-day workshop in Melbourne attracting scholars from across disciplines to evaluate the regulatory requirements of this technology.

This conference will bring together lawyers, sociologists, scientists and regulators from around the globe.

Professor Hodge says the event will take a multidisciplinary look at the regulation of nanotechnology and will articulate the lessons learned from earlier technologies and products including stem cells, genetically modified products and asbestos.

"We want to learn what different jurisdictions are doing around the world and advise the Australian Government on sound policies for the future," he said.

"While the commercialisation of nanotechnology has only just begun, there has been limited debate on associated regulatory and legal aspects, including product safety, privacy and civil liberties, occupational health and safety, intellectual property, as well as international and environmental law.

"The warning bells are starting to toll and we believe that we can already see regulatory gaps emerging.

"Public attitudes towards nanotechnology will play a crucial role in its development and application. We need only look at the recent example of genetically modified crops to see that public opinion has the potential to influence policy and regulation.

"This also impacts on potential investors who may be influenced by actual and potential community and shareholder risk. We need to consider how to communicate the benefits, as well as the risks of nanotechnology to the community to ensure the public is fully informed and the full potential of nanotechnology is realised," Professor Hodge said.

In examining current Australian regulation and the legal framework for nanotechnology, Hodge and Bowman suggest that the convergence of scientific domains with nanotechnology is resulting in a blurring of traditional decentralised regulatory boundaries. They identify six key areas that regulatory research must focus on for nanotechnology – product safety, privacy and civil liberties, occupational health and safety, intellectual property, international and environmental law.

"Governments must take a proactive role in addressing each of these issues to avoid the regulatory failures and public misconceptions associated with earlier technologies.

"While governments have invested heavily in nanotechnology research and development programs, they have also been arguably unenthusiastic about implementing new regulatory frameworks for risk minimisation," says Diana Bowman.

Patent rights to researchers, governments and private investors; chemical testing standards for nano-scale particles; laboratory safety standards for nanoparticles; and the potential applicability of the United Nations conventions on chemical and biological weapons are just a few of the regulatory issues that we now face.

Bowman believes that in each of these circumstances we need to investigate whether current legislation is adequate as well as the possibility for nano-specific legislation.

There is, at present, a fundamental lack of knowledge about the regulatory frameworks best suited to this sector in Australia. However it is clear that nanotechnology appears to be sufficiently different to past technologies and products, such as biotechnology and pharmaceuticals, to warrant separate consideration and legislation.

**"Governments have not yet established nano-specific legislative mechanisms to oversee this new technology. As the gap between commercial advances and the community's expectations for regulatory protection grows this may need to change," says Diana Bowman.**

Nanotechnology promises to transform medical diagnosis and health treatments, provide cheaper and effective methods to purify water, more efficient energy sources and lighter, faster and less expensive materials and electronic products.

Yet while future nanotechnology applications promise major advantages to humanity, like any new technology a darker side may exist. Self-replicating nano-devices and nano-biosensors, military applications and programmable genocide are not beyond the realms of possibility.

As we enter what may be the 'nano-age', where nanotechnology is so commonplace it appears in everything we manufacture, we face an enormous array of social and legal challenges. We must carefully consider the implications of this, and our responsibility to ensure the safest and most effective use of this incredible technology.

*For further information on the regulation of nanotechnology, visit [www.law.monash.edu.au/regstudies](http://www.law.monash.edu.au/regstudies) or email [diana.bowman@law.monash.edu.au](mailto:diana.bowman@law.monash.edu.au)*



Image courtesy of Nanotechnology Victoria.

#### **THE FOLLOWING PAPERS PROVIDE ADDITIONAL INFORMATION ON THE COMPLEX AREA OF NANOTECHNOLOGY REGULATION:**

- > Bowman, D.M. and G.A. Hodge (in press 2006), *Nanotechnology: Mapping the Wild Regulatory Frontier*, Futures.
- > Hodge, G.A., D.M. Bowman, and P. Binks (2005), *Governing the Invisible: The New Regulatory Frontiers of Nanotechnology* paper presented at the second annual Integrated Conference, Prato, Italy, 26-29 October 2005.
- > Hodge, G.A., D.M. Bowman, and P. Binks (2005), *The Big Business of Small*, Monash Business Review, 2005. 1(2), 24-29.
- > Hodge, G.A. and D.M. Bowman (2004), *Governing Nanotechnology: Setting the Regulatory Agenda*, Journal of Contemporary Issues in Business and Government, 10(2), 18-33.



# PRESTIGIOUS EUROPEAN EDUCATION IN HUMAN RIGHTS FOR ARTS/LAW STUDENT



MONASH ARTS/LAW STUDENT JESSIE TAYLOR WILL SPEND 16 MONTHS IN EUROPE LATER THIS YEAR AFTER BEING NOMINATED FOR AN ERASMUS MUNDUS SCHOLARSHIP TO COMPLETE A MASTER OF HUMANITARIAN ACTION.

The Erasmus Mundus scholarships are an initiative of the European Commission valued at \$57,000 to encourage European higher education throughout the rest of the world.

This is the first year a Monash Law student will be able to participate in the program. It has been made possible as a result of the Monash Asia Institute joining NOHA – a European Union consortium of universities – as a ‘third country’ partner institution. Monash is the only Australian university involved in the consortium.

The scholarships are funded by the EU and one scholarship will be awarded to a Monash student each year for the next three years.

Jessie, who completed a thesis on the European holocaust as part of her Arts honours degree and is now finishing honours in Law, will travel to Uppsala, Sweden in September to begin an intensive induction program.

She will then head to one of eight European universities to complete a specialist stream of units.

The final component is a research and fieldwork placement, which could see Jessie travel as far as Afghanistan.

Jessie, 23, has been working with asylum seekers and refugees in Australia for more than three years, and hopes to practise law in this area after completing her studies.

“With the detention regime slowly settling down, recently I’ve been able to assist people with finding housing and employment, dealing with Centrelink and overcoming other barriers that arise after the ordeal of detention,” she said.

“It’s been a very defining experience. The way human rights law is bandied around as a political football greatly angers me.”

Before starting her scholarship, Jessie will travel to Switzerland to undertake the Monash Law School’s Castan Centre Global Internship at the United Nations Commission on Human Rights.

Jessie will be offered a full PhD scholarship on her return from the Erasmus Mundus scholarship to complete a doctorate in the Monash Asia Institute. The PhD scholarship is a joint initiative of the institute and the Faculty of Arts.



## FACULTY FAREWELLS PROFESSOR FOX

PROFESSOR RICHARD FOX, ONE OF THE LAW SCHOOL’S MOST DISTINGUISHED SCHOLARS DELIVERED HIS VALEDICTORY LECTURE PRIOR TO RETIREMENT FROM MONASH AT THE END OF MARCH.

The lecture, ‘Sentencing in the Garden of Eden’, held at the Monash University Law Chambers, discussed crime and punishment, which have been the focus of Professor Fox’s academic career.

He told the audience that the case of Adam and Eve is engraved in Judaic, Christian and Moslem memory as the first breach of the law; as the first criminal prosecution; the first sentencing decision; and the earliest known act of clemency.

“The conduct of the defendants raised, for the first time, the moral, legal and psychological tensions between the duty of obedience to authority and the encouragement in individuals of autonomy and self-determination which may challenge the dictates of authority and to that extent risk being considered subversive.

“It raised issues of trust and its breach; ignorance versus knowledge; self-awareness and its relationship to shame as a sanction; the effects of manipulation and corruption; the origins of sin; the concepts of individual and collective guilt; the diverse objectives of punishment; and the prediction and control of future dangerousness,” he said.

Professor Fox joined the faculty in 1972 as a senior lecturer and was appointed to the position of professor in 1991. During his time in the faculty, he held several senior positions including Associate Dean (Student Affairs) and, most recently, Deputy Dean.

Professor Fox was awarded the Monash University Vice-Chancellor’s Award for Distinguished Teaching in 1994 and remains one of the most popular lecturers in the Law School.

He received the Academy of the Social Sciences in Australia Inaugural Medal for Research Excellence in 1987 and was awarded a Doctor of Laws by Monash in 1990. Professor Fox also chairs the Board of Management of the Australian Institute of Criminology, a position he has held since 1998.

Dean of Law Professor Arie Freiberg said Professor Fox had made a significant contribution to the faculty, the law and the legal community and had been a mentor to staff and students for more than three decades.

“On behalf of Monash Law School staff and students, past and present, we thank Richard for his dedication, contribution and support over the past 34 years,” Professor Freiberg said.

*A full copy of Professor Fox’s paper will be published in a forthcoming 2006 edition of the Monash University Law Review.*



# PRIZE CEREMONY RECOGNISES LAW SCHOOL'S FINEST

MONASH LAW SCHOOL'S ANNUAL PRIZE CEREMONY HELD EARLIER THIS YEAR AT THE COUNTY COURT OF VICTORIA RECOGNISED THE FACULTY'S TOP STUDENTS.

Students who received the highest result in each undergraduate unit offered by the faculty were awarded prizes generously donated by sponsors.

Dean of Law, Professor Arie Frieberg, hosted the event. He said that recognising and encouraging exceptional achievement contributes to the personal and professional growth of students and is a vital element in the development of a university education.

"The financial rewards offered with our prizes are only made possible through the generous support of the many sponsors, who join with us in recognising the efforts of our high achievers," he said.

Monash Law graduate Will Fowles, who recently became the youngest ever member of the exclusive Melbourne Cricket Club Committee, presented an inspiring keynote address and congratulated the academically outstanding group of young men and women.

"As high achievers within a group of other high achievers at a high achieving law school within a high achieving university your biggest liability may well be the pressure to succeed. Don't let it be. Fall down, stuff things up, commit the world's greatest faux-pas, get bruised, laugh inappropriately, break things. And if that all sounds like a typical Friday night then try it during the day."

He concluded by urging the future leaders of the law, industry and society to take risks, to throw their names in the ring and to back themselves when nobody else will. "Risk is a necessary ingredient in the journey that will deliver your dreams. So go chase life, immerse yourself in it and don't be scared to tread a different path," he said.

The Monash Law School would like to thank Judge Michael Rozenes for the use of the County Court and Chief Justice Marilyn Warren for her attendance and continued support of the Chief Justice's awards. Many thanks must also go to the following sponsors for their support of the 2006 prize ceremony recognising achievement in the 2005 academic year:

- > Allens Arthur Robinson
- > Arnold Bloch Leibler
- > Australian Advocacy Institute
- > Australian Workers Union
- > Blake Dawson Waldron
- > Clayton Utz
- > Corrs Chambers Westgarth
- > County Court of Victoria
- > Davies Collison Cave
- > Freehills
- > Grice & Grice
- > Hall & Wilcox
- > Herbert Geer & Rundle
- > Holding Redlich
- > Hunt & Hunt
- > International Commission of Jurists
- > LexisNexis
- > Mallesons Stephen Jaques
- > Monahan + Rowell
- > National Australia Bank
- > Office of Public Prosecutions
- > Phillips Fox
- > Supreme Court of Victoria
- > Taxpayers Australia
- > Thomson Legal & Regulatory
- > Transport Accident Commission
- > Victorian Institute of Forensic Medicine



# SIBLING SUCCESS

THE VAN GRIEKEN FAMILY HAS CERTAINLY TAKEN THE LAW INTO THEIR OWN HANDS.

Siblings Luke, Caroline and Jason (pictured below) have chosen to couple their varied interests and aspirations by pursuing different double law degrees. All three are set to enter the work force with a Bachelor of Laws from Monash University.

Caroline, the eldest, completed her Science/Law degree in 2004, brother Luke is currently in the fifth year of an Engineering/Law degree and the youngest Van Grieken, Jason, is in the third year of his Commerce/Law degree.

The three siblings said their motivation for a career in the law came from their successful uncle, Monash Law graduate Andrew Broeren (BEC/LLB '92/94), who is currently the Director of Structured Capital Markets at HSBC in London. They fondly remember his interesting stories and anecdotes about the study of law, which provided both insight and inspiration for their study choices.

The Van Griekens join a number of successful Monash Law family groups including the Garrison brothers, who also all have a double degree with law. Anthony Garrison (BEC/LLB '78/80) is a partner at law firm Mason Sier Turnbull; Adam Garrison (BA/LLB '84/85) is the director of Wetherby Capital and Peter Garrison (BA/LLB '78/80) is Chief Solicitor for the ACT Government.



## IS THE AUSTRALIAN GOVERNMENT REALLY AGAINST THE DEATH PENALTY?

*continued from page 1*

Recently the tables were turned over the apostasy issue and Mr Howard was taking a different tack over what was happening in Afghanistan. The ABC reported:

*"Prime Minister John Howard says he will be personally protesting against the possible execution of an Afghan man for converting to Christianity. The man is on trial in Afghanistan for converting from Islam to Christianity and Mr Howard says he will be writing to President Hamid Karzai to express his unhappiness. Mr Howard has told Southern Cross Radio the case is appalling. "When I saw the report about this, I felt sick – literally," he said. "It's an appalling thing, that we are fighting, we are putting the lives of Australian soldiers on the line and this sort of thing is allowed, I mean this is outrageous."*

He is right to be offended. I am outraged by this too but then again, I am outraged by every execution.

Unfortunately, the effect of these kinds of public statements by our leader sends a message that Australia's position is not inflexible and that in particular circumstances Australia would not object to executions.

So what does all this mean? Why is it important? It is obvious. Australia would regard itself as a leader in the Asian region where many countries have a death penalty.

We are a country which aspires to a leadership role in relation to human rights and democratic values. It is those kinds of broad principles that have underpinned all sorts of international roles for our country.

The Australian Government must understand that a hot and cold approach to the death penalty depending not just on whether it is an Australian, or the nature of the offence, but on the Government's measure of the public mood about either the particular crime or the person, completely dilutes our standing on the issue.

It means that we cannot lead and cannot have a significant effect of the kind we have signed up to under the Second Optional Protocol.

In my opinion, the arguments in favour of the death penalty as a protecting deterrent are flawed. The arguments against the death penalty, based on human dignity, forgiveness and compassion are overwhelming.

Visit [www.law.monash.edu.au/alumni](http://www.law.monash.edu.au/alumni) for a full copy of Lex Lasry's paper: 'Australia and the death penalty – are we REALLY against it?' which was presented at Monash Law School's annual Costello Lecture on 29 March.

# MONASH ALUMNUS TO HEAD CHILDREN'S COURT

MONASH LAW GRADUATE AND ONE OF VICTORIA'S TOP MAGISTRATES, PAUL GRANT, (BA/LLB '75/78) HAS BEEN APPOINTED AS THE NEW PRESIDENT OF THE CHILDREN'S COURT OF VICTORIA.

Mr Grant, one of the state's deputy chief magistrates, becomes only the second person to fill the position, following the retirement of the inaugural president, Judge Jennifer Coate, also a Monash Law graduate.

"Judge Coate returns to the County Court to expand her judicial experience in that jurisdiction," said Attorney-General Mr Rob Hulls.

Mr Hulls said the Victorian community was fortunate to have a judicial officer of Paul Grant's calibre to take over at the helm of the Children's Court.

"A long-serving magistrate, Paul Grant has served as a magistrate since 1988, as Deputy Chief Magistrate since 2003 and as Supervising Magistrate for Koori Courts since 2004.

"He has also been a member of the Metropolitan Regional Aboriginal Justice Advisory Committee; Health Services for Abused Victorian Children Advisory Group; the Victorian Child Death Review Committee and the former steering committee for the establishment of Aboriginal Community Justice Panels.

"Mr Grant has been a dedicated and extremely effective magistrate and I have no doubt that the Children's Court will benefit from the breadth of his skills and experience."

Mr Grant resigned from his position as a magistrate and other related roles ahead of his appointment as a Children's Court judge. His five-year term as head of the Children's Court started on 1 May.

Mr Hulls also paid tribute to Judge Coate, who was appointed as a judge of the County Court and the first President of the Children's Court of Victoria in June 2000.

"A former senior magistrate at the Children's Court, Judge Coate has made a magnificent contribution over a long period in all her roles," Mr Hulls said.

"Judge Coate has been an exemplary first president, constantly providing outstanding judicial skills, improving administration and acting as a superb representative of the court in legal forums and the wider Victorian community."



# INTRODUCING ANN MONOTTI

“AS THE NEW ASSOCIATE DEAN OF POSTGRADUATE STUDIES I WOULD LIKE TO WELCOME YOU ALL TO THIS NEW SECTION OF LAW MATTERS, WHERE WE PLAN TO HIGHLIGHT POSTGRADUATE AND PROFESSIONAL DEVELOPMENT NEWS AND EVENTS.”

A postgraduate qualification in law brings many benefits. Our courses are rewarding, intellectually stimulating and at the cutting edge of legal knowledge and discovery.

As a postgraduate student you will have the opportunity to meet other like-minded professionals enabling you to build your networks, embark on ground-breaking research and enhance your knowledge and skills – significantly increasing your career development opportunities.

Look out for other interesting and relevant professional development lectures, postgraduate courses and postgraduate units, and events, which we will highlight on these pages.

I look forward to meeting some of you over the coming years.

Find out more about our wide range of postgraduate courses at our **Postgraduate Information Session** on Thursday, 25 May 2006 from 6 pm at the Monash Law Chambers in the CBD. To register email [graduate@law.monash.edu.au](mailto:graduate@law.monash.edu.au) or phone + 61 3 9641 6206.



ASSOCIATE PROFESSOR  
ANN MONOTTI

## SECOND SEMESTER – ENROL NOW

# 2006

GAIN PROFESSIONAL DEVELOPMENT POINTS BY ENROLLING IN ONE OF THE FOLLOWING UNITS WHICH ARE OFFERED ON AN ASSESSED OR NON-ASSESSED BASIS. STUDENTS WHO CHOOSE TO UNDERTAKE ASSESSMENT CAN OBTAIN CREDIT TOWARDS A MONASH LAW MASTERS OR GRADUATE DIPLOMA. SECOND AND WINTER SEMESTER UNITS:

- Administrative justice issues in tribunal adjudication
- Advanced negotiation and mediation skills
- Children's rights in international and domestic law
- Case studies in regulation
- Competition law
- Design law and practice
- Human rights in the global economy
- Indigenous rights and international law
- Intellectual property and the internet
- International trade finance: law and practice
- Law of employee relations
- Law of the internet (online)
- Negotiation, mediation and process management skills
- Occupational health and safety
- Overview of intellectual property
- Payment systems and electronic banking law
- Principles of privacy and freedom of information
- Regulation of Australian water resources
- Regulatory methods
- Shareholders' remedies
- Trademarks and commercial designations
- Utility regulation: law and practice
- What works in regulation?



## In vino veritas... but what about the labels? EU-Australia wine law symposium

***Méthode Australienne: The EU-Australia wine law agreements and the creative Australian response to restrictions on product names and labelling***

The evening will combine illuminating presentations from intellectual property and wine law experts together with a stimulating tasting of some quality European and Australian wines.

**Vicki Waye** – Adelaide University Law School  
*From Pyrenees to Porongurup*

**Steve Stern** – Corrs Chambers Westgarth  
*War stories and wine treaties*

**Professor Mark Davison** – Monash University Law School  
*Of wine, cheese and GIs: keeping Australia 'unfeta-ed'*

**Date:** Thursday, 1 June 2006

**Where:** Monash University Law Chambers  
472 Bourke Street, Melbourne

**Time:** 6.30 – 9 pm

**RSVP:** Friday, 26 May 2006. Phone: + 61 3 9905 2326  
Email: [marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

**Cost:** \$20 (inc. GST)

If you require further information or are a wine producer and interested in promoting your product at this event please contact Dr Matt Harvey on + 61 3 9905 3318 or [Matt.Harvey@law.monash.edu.au](mailto:Matt.Harvey@law.monash.edu.au)

If this seminar is relevant to your professional development and practice, you are entitled to claim one CPD unit if you are in attendance for the full hour of presentations.

21-27 May 2006

**Law Week**  
www.vic.lawweek.com.au



## 2006 Great Law Week Debate

Witness two teams of internationally respected Monash Law graduates debate this topical and highly controversial legal issue at the annual Monash Great Law Week Debate.

Social justice activist and CEO of World Vision Australia **Tim Costello AO**, together with human rights advocate **Julian Burnside QC** and Barrister and former world debating champion **Meg O'Sullivan**, will argue that we do have more to fear from the State than from terrorists. But proving this point won't be easy against the quick wits of ABC radio personality **Jon Faine**, the insight of global terrorism expert **David Wright-Neville** and oral skills of former world debating champion **Kylie Lane**.

**Will Fowles**, the effervescent Monash Law graduate who recently became the youngest ever member of the exclusive MCC Committee will act as moderator.

### Date

Tuesday, 23 May 2006

### Time

6 pm sharp

### Where

The Windsor Hotel  
103 Spring Street, Melbourne

### RSVP

Email: [marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)


Phone: (03) 9905 2326



## The road to hell is paved with good intentions

We have more to fear from the State than from terrorists

### Gain CPD accreditation at this conference



### Access to justice: How much is too much?

The legal and medical issues arising from querulous or vexatious people

From 30 June to 1 July 2006, Monash Law School will host this conference on the increasingly complex legal and medical issues raised by vexatious litigants who pursue their grievances beyond reasonable bounds.

The event, to be held at the Monash Prato Centre in Italy, will bring together international legal and medical professionals and will provide an opportunity to address current issues and possible solutions.

For further information visit [www.law.monash.edu.au/conference/prato](http://www.law.monash.edu.au/conference/prato), phone + 61 3 9905 2630 or email [legal.conference@law.monash.edu.au](mailto:legal.conference@law.monash.edu.au)

### Sentencing lecture by US District Court Judge

In July this year, Monash Law will host a public lecture by US District Court Judge Nancy Gertner: **From omnipotence to impotence: American judges and sentencing.**

### When

Tuesday, 18 July 2006, 6.15 pm sharp

### Where

Monash University Law Chambers, 472 Bourke Street, Melbourne

### RSVP

Email: [marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

Phone: + 61 3 9905 2326

Judge Nancy Gertner graduated from Yale Law School, where she served on The Yale Law Journal. She began her career as a clerk for Chief Judge Luther Swygert, 7th Circuit, Chicago, Illinois (1971-1972). In 1994 she was appointed by President Clinton to the United States District Court for the District of Massachusetts. Judge Gertner has taught at Harvard, Boston College, Boston University, Northeastern University, and the University of Iowa law schools. She is a Charles R. Merriam Distinguished Professor at Arizona State Law School and has been teaching sentencing at Yale Law School for the past five years.

## LAW Matters

*Law Matters* is published bi-annually in May and September and is the official newsletter for the Monash University Law School.

Want to include something in the next edition of *Law Matters*?

If you have an interesting story or something you wish to say, please contact Jodi Rockman on + 61 3 9905 2630 or email [jodi.rockman@law.monash.edu.au](mailto:jodi.rockman@law.monash.edu.au)

Every effort will be made to include contributions however space is limited. Please understand that items may be edited or not included.

### For additional copies

Contact Jodi Rockman on + 61 3 9905 2630 or [jodi.rockman@law.monash.edu.au](mailto:jodi.rockman@law.monash.edu.au)

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