

Criminal Lawyers Association of the Northern Territory (CLANT)

FOURTEENTH BIENNIAL CONFERENCE JUNE 2013

VICTIMS OF THE SYSTEM

PAPERS & PRESENTERS

John Elferink MLA, NT Attorney-General & Minister for Justice



Aged 46, John Elferink was born in the Netherlands, moving to Darwin as a young child. He joined the NT Police as a 17 year-old cadet, rising to the rank of Sergeant, and was working as an Alice Springs based policeman at the time of his surprise victory in the outback seat of MacDonnell at the 1997 election. Mr Elferink was re-elected in 2001, and held the seat until 2005. In 2008 he was elected to the seat of Port Darwin. While in the police force he undertook a Bachelor of Arts by correspondence. While a parliamentarian, he did likewise to obtain a Bachelor of Laws, and was admitted to practice in 2009. His vision for his electorate is crime to be a rarity rather than constant.

Trevor Riley CJ (NT Supreme Court) – “Victims of the System: a view from the Bench”

The theme of the conference is Victims of the System. The sessions identify a variety of people who may presently be regarded as victims of the system. This paper will look at the relationship between the Judiciary and the other arms of government and comment upon the prospect that, rather than solving perceived problems, recent and proposed legislative schemes may create further victims.



Trevor Riley was appointed Chief Justice of the Supreme Court of the Northern Territory in 2010, having been a Justice of the Court since 1999. Chief Justice Riley had practiced at the Northern Territory Bar since 1985, and was appointed Queen's Counsel in 1989. He was President of the Northern Territory Bar Association from 1993 to 1997, and also served on many other bodies. He is a former part-time lecturer at the Faculty of Law at the Northern Territory University and he is an occasional lecturer in Advocacy.

Melinda Taylor, International Criminal Court, The Hague

The term ‘victim’ is often constructed in the mould of the prosecution, such that there is a pre-conception that all victims agree with and embody the Prosecution case theory. This is nowhere more apparent than at the level of the international criminal court – where persons claiming to have suffered harm as a result of crimes attributed to the defendant – are formally designated as ‘victims’ prior to any conviction, and are accorded the right to actively participate in the proceedings, which entails rights that are similar to those of the Prosecution. The term ‘victim’ at the international level also conjures up images of mass-suffering and vulnerability. Although the Defence have a direct interest in confronting witnesses and raising all matters related to their credibility, the legal dynamic according to which victims are considered as ‘innocent persons who have suffered at the hands of the defendant’ can negatively impact on the manner in which the Court has sought to balance the right of the defence to raise relevant matters, and the duty of the Court to protect victims from further harm and traumatising. I therefore intend to explore the notion of ‘victim-hood’ at the level of international justice, and the manner in which preconceptions concerning this notion have impacted on the presumption of innocence, the impartiality of the process, and the Court’s duty to ascertain the truth. The overweening focus on prosecution based ‘victims’ has also been deleterious to other more ‘hidden’ victims of international justice – which can include defence witnesses, defendants, the family members of defendants, and other court participants. The right of such persons to be recognised as victims and to be accorded a remedy has often been completely overlooked. In some cases, in their impetus to afford justice at all costs to prosecution style victims, some international courts and tribunals have even allowed defendants to be victimised, for example, by being held for several years in arbitrary detention. This raises the issue as to whether ‘justice for victims’ can or should be secured at the expense of the rights of the defence.



Melinda Taylor is presently working as Counsel/Deputy Head of the ICC Office of Public Counsel for the Defence (OPCD), International Criminal Court. Ms. Taylor established the OPCD in April 2006, and pending the recruitment of the Principal Counsel in January 2007, created and implemented its policies and mandate. Previously, Ms. Taylor has worked as a defence consultant at the Defence Office for the War Crimes Court in Bosnia and Herzegovina, and on defence cases before the International Criminal Tribunals for the former Yugoslavia and Rwanda (the ICTY and ICTR). Ms. Taylor has also worked as a legal officer for the UN Mission in Kosovo, and in the Office of Legal Aid and Detention at the ICTY. Ms. Taylor graduated with an Arts/Law degree from the University of Queensland, has a Masters in International Human Rights Law from the University of Oxford, and is admitted to practice before the New York Bar.



Greg Smith SM (NT) – “NT – Last Frontier of a Penal Colony: Everything you always wanted to know about blackfella incarceration in the NT but were afraid to ask”

The rate of imprisonment of Aboriginal men in the NT is rising rapidly and with new mandatory sentencing laws pending likely to continue rising exponentially. The heavy rates of incarceration of Aboriginal men in the Northern Territory are primarily related to violent crimes committed by them against Aboriginal women and children. The main reason to incarcerate is to protect the victims. A significant secondary driver of incarceration is repeat and serious drunken driving. The main reason to incarcerate is to protect potential victims, predominantly, Aboriginal men, women and children. A growing cause of incarceration is cannabis and kava offending. The main reason to incarcerate is to protect the health and wellbeing of Aboriginal men, women and children. Restricting the liberty of Aboriginal people for their own protection has a long and not necessarily honourable tradition. This paper will trace the history of protection and control of Aboriginal people as a continuing theme in post 1788 Australian history. The modern Northern Territory experience is the culmination of the nation's journey through colonisation, acknowledgment of indigenous rights and then dealing with the outcome when they collide with universal human rights. You as criminal lawyers will be asked ultimately to confront your role as important participants in the institutions of Justice which bear the ultimate sentencing responsibility.

Education: The Catholics. The Sisters of Mercy, Christian Brothers and Carmelite priests in the suburbs of Melbourne. They are presumably all under investigation for you know what.

University: B.A/LI.B Monash Clayton and University of California San Diego. Presumably they will someday be investigated for being hippies and Marxists.

Working life: Legal Aid Commission of Victoria/ Fitzroy Legal Service/Victorian Bar/NAALAS and NTLAC. Mostly in the process of being defunded for being do-gooders.

Other stuff: Executive Producer, 'Impunity', a documentary which investigated extra judicial executions in Guatemala in the 1980's shown on SBS back in 1992. Remember investigative journalism.

Still playing footy with the NT AFL masters.

President Big Rivers Hawks u/18's, the reigning NTFL premiers.

Magistrate, Northern Territory

Sydney Tilmouth DCJ (SA) – “The Wrong Direction: A case study and anatomy of successful Australian criminal appeals”

A review of successful criminal appeals across Australia in a seven and a half year period to 31 December 2012 produces a number of unexpected results. The study demonstrates that appeals succeed mostly in relation to unreasonable or unsupportable verdicts, and then in descending order on the topics of similar fact evidence, procedural error in the summing up itself, error in defining the elements of offences, complaint evidence in sexual cases, error in correctly defining the applicable mental element or intention, excesses by prosecution counsel, lies by an accused, procedural errors, consent, self defence, expert evidence, fresh evidence, complicity and delay (Longman warning). The most surprising finding is that judge induced error in the course of summing up to juries is all too common, followed by an equally surprising number of excesses by prosecuting counsel leading to miscarriages of justice. Another unexpected conclusion relates to what appears to be a disproportionate number of appeals allowed in Victoria as compared with other jurisdictions.



Judge Tilmouth was admitted in 1973 in South Australia. In 1973 he became the first solicitor with the Aboriginal Legal Rights Movement (SA), becoming its Senior Solicitor in 1977. He served as Director of the Legal Services Commission of S.A. from 1984 to 1987. He was founder and Head of Edmund Barton Chambers Adelaide SA, taking silk in 1989, and has appeared in numerous High Court matters. In 1991/1992 he was a special war crimes prosecutor for the Commonwealth of Australia. Judge Tilmouth was appointed to the District Court of South Australia in 2005. He is the Author of “Australian Criminal Trial Directions”, as well as a contributor to numerous other works on advocacy. Judge Tilmouth is a Faculty member of the Australian Advocacy Institute, and has taught throughout Australia, and in the United States, Bangladesh, and Singapore.

Jenny Blokland J (NT Supreme Court) – “Unnecessary suffering – Violence against Aboriginal Women in the Northern Territory: A discussion of contemporary issues and possible ways forward”

The paper will seek to examine the issue of violent crimes committed against women by persons in intimate relationships focussing on the Aboriginal community in the Northern Territory. Her Honour seeks to examine this long entrenched problem with a mind toward recommendations as to what might be done to address the problem from a judicial perspective, but also what might be done in the way of possible government action, preventative campaigns, advocacy by CLANT and the broader legal profession.



Jenny Blokland was appointed as a Judge of the Supreme Court of the Northern Territory in April 2010. At the time of her appointment, Justice Blokland was the Chief Magistrate of the Northern Territory, having held that position since 2006. Prior to that Justice Blokland had been a magistrate, legal practitioner and legal academic. She is the co-author (with Stephen Gray) of 'Criminal Laws Northern Territory, published in 2010. She is a former President of CLANT and now a Life Member.



Sarah Huggett DCJ (NSW)

In 1993, Sarah Huggett joined the Office of the Director of Public Prosecutions. Whilst at the ODPP, she was the sole instructing solicitor in the prosecution of the backpacker killer Ivan Milat, and undertook an exchange to the Crown Prosecution Service in the UK. In 2001, she was called to the New South Wales Bar, and over the ensuing decade she prosecuted serious criminal trials, including a large number of complex sexual assault cases, and served on the NSW Sexual Assault Review Committee and the NSW Bar Association Criminal Law Committee. In 2009, she lectured in Los Angeles as an Adjunct Professor at the Loyola Law School in Comparative Criminal Law. In September 2012, Sarah Huggett was appointed a Judge of the District Court of NSW.

Megan Voller (CDPP, NT) – “The Commonwealth’s practical responses to supporting victims of human trafficking participating in the Australian criminal justice system”

This presentation provides an overview of the Australian Government’s response to human trafficking with emphasis on victim support through the *Support for Trafficked People Program* and the *Human Trafficking Visa Framework*. The Support Program is delivered nationally by the Australian Red Cross and is divided into the following streams:

- Assessment Stream
- Extended Assessment Stream
- Justice Support Stream
- Temporary Trial Support Stream

The Human Trafficking Visa Framework enables foreign nationals who are suspected of being trafficked to remain lawfully in Australia if they do not already hold a valid visa. It is supported by 3 types of visas. The Commonwealth Director of Public Prosecutions has implemented its own measures to assist victims of human trafficking with the publication of a Victim’s Policy, supported by Witness Assistance Support officers.

Megan Voller is currently the Senior Assistant Director of the Darwin Office of the Commonwealth Director of Public Prosecutions and has held this position for the last 2 ½ years. Megan has been employed by the CDPP for 20 years, some of that time in the Policy Branch in Head Office and the balance in the Melbourne Office. She has extensive experience in prosecuting all manner of federal offences with particular emphasis on large scale tax fraud and drug importations. Prior to taking up her post in Darwin Megan was the Professional Development and Training Officer in the Melbourne Office of the CDPP and navigated the implementation of the *Criminal Procedure Act 2009* and the *Uniform Evidence Act* for federal prosecutors in Victoria.

Tamzin Lee and Kelly Goodwin – “I want to drop those charges’ Aboriginal Women as victims of family violence”

In the Northern Territory and particularly in remote Top End communities family violence is a common experience. Here, approximately 64% of assault victims are female, and an Aboriginal woman is 23 times more likely to experience family violence than a Non-Aboriginal woman. When discussing violence, women victims express sadness about the current situation and a desire to see change, yet almost every victim, at least at some point, wants to drop the charges. In sharing the stories of these women we will look at the many factors and influences that may contribute to a victim of family violence wanting to drop charges. By considering their experiences and the realities of their lives we are able to move towards a better understanding of the pressures faced by women victims of family violence. From this point, we can consider the ability of the current system to reduce incidence of family violence within the Northern Territory and consider ways in which the system can better respond. For women who have experienced family violence, the hurt doesn’t necessarily stop at home.



Tamzin Lee is the principal legal officer of NAAFVLS, the North Australian Aboriginal Family Violence Legal service. NAAFVLS provides legal assistance and support to Aboriginal men, women and children who identify as victim survivors of family violence and live in remote Top End Northern Territory Communities. Prior to this Tamzin was a family violence and sexual assault prosecutor with the ACT DPP.



Kelly Goodwin was admitted to practice in Victoria in 2010. He commenced work at Mykyta Lawyers and volunteered at the Footscray Community Legal Centre. Kelly came to the Northern Territory to work at the Northern Australian Aboriginal Family Violence Legal Service before commencing work in his current position at the Domestic Violence Legal Service in Darwin.



Colin McDonald QC, Frans Hendra Winarta and Russell Thirgood – “On death row: Titus Ani”

Titus Ani is a Nigerian national who has been on death row in Kerobokan Prison, Denpasar, Bali for over 8 years following his conviction on drugs charges. A pro bono team of Australian lawyers, including CLANT's Colin McDonald QC, Brisbane barrister Roland Peterson, and Russell Thirgood and Jeremy Munce of McCullough Robertson Lawyers, is currently preparing his case for extraordinary judicial review in Indonesia's Supreme Court, with the object of having his sentence commuted to a term of imprisonment. Mr Ani's legal team considers that his case has merit, with reasonable prospects of success. In addition, it could set a precedent which would lead to the lives of many other similarly circumstanced condemned prisoners in Indonesia being saved. CLANT has previously donated \$10,000 to meet some of the expenses in this case, and on 5 November 2012, following consultation with Members, the CLANT Committee resolved to commit a further \$20,000.



Colin McDonald was admitted as a solicitor in Victoria in 1975, and went to the Victoria Bar in 1980, where he read with Frank Vincent. Colin moved to the Territory in November 1981 to work as a solicitor with the North Australian Aboriginal Legal Aid Service. In 1984 he joined the Northern Territory Independent Bar, and in 1986 became the founding President of CLANT, of which he is a Life Member. He was appointed Queen's Counsel on 24 January 1997. He was president of the NT Bar Association from 1997 to 2000, a member of the Australian Indonesia Institute between 1989 to 1994, and has chaired numerous Boards and Committees, including the Royal Darwin Hospital Management Board and the Northern Territory Museums and Art Galleries Board. He was Head of Chambers at William Forster Chambers, Darwin, from 1998 until his retirement in 2010.



Frans Hendra Winarta is a leading Indonesian human rights lawyer, and a founder of the Indonesian Institute on Anti Discrimination. He completed his Bachelors degree in law in 1970, his Masters in 1999, and his PhD in 2007. He is a member of numerous professional, commercial and dispute resolution organisations, both nationally and internationally, and is an Arbitrator with the International Chamber of Commerce. Frans Hendra Winarta has acted as counsel in many high-profile Indonesian cases.



Russell Thirgood is a construction law expert. He practises predominantly in the resources industry and the development of infrastructure of national significance. His clients include North Queensland Bulk Ports Corporation, Queensland Rail, Whitehaven Coal and Bucyrus Australia. He advises in relation to procurement strategies, tender processes, contract negotiation and execution, contract administration, conflict avoidance mechanisms and dispute resolution. Russell is a leading authority on alternative dispute resolution. He is a qualified adjudicator and the editor of the nation's pre-eminent alternative dispute resolution journal 'The Arbitrator and Mediator'.

Dr Olav Nielssen (UNSW) – “Justifications and rationalisations for the Civil Commitment of sexual offenders after the expiry of their sentences.”

Most states now have provisions for the continued detention and supervision of sex offenders after their sentence has expired. Orders under these laws are generally made after “risk assessments” made by psychiatrists and psychologists about the likelihood of reoffending. This paper reviews the development of the legislation, the NSW experience, discusses the scientific limits of predicting human behaviour and considers the ethical problems of participating in schemes that throw out long established legal principles.



Dr Nielssen (MBBS, M Crim, PhD, FRANZCP) is a psychiatrist in private practice in Sydney and has appointments to St Vincents Hospital in Sydney and the NSW Mental Health Review Tribunal. He is also a consultant to Macquarie Access remote mental health treatment service and performs a weekly clinic at the Matthew Talbot Hostel for the homeless. His research interests include violence in psychotic illness, the epidemiology of suicide and the scientific limits of risk assessment

Mark O'Reilly and Madeleine Rowley (CAALAS, Alice Springs) – “The invisible client: people with cognitive impairments in the Northern Territory's Court of Summary Jurisdiction”

This paper will discuss the significant gaps in the Northern Territory criminal justice system's response to people with cognitive impairments, particularly in summary matters. Through case studies and an examination of the research on the issue of people with cognitive impairments in the criminal justice system, this paper will chronicle some of the key problems caused by the shortcomings of the legislative scheme and the lack of appropriate resources and services available for people with cognitive impairments involved in, or at risk of entering, the criminal justice system. The authors will argue for reforms to the system to facilitate the diversion of people with cognitive impairments from the criminal justice system, to enable the courts to adopt a therapeutic response to those who enter the system, and to improve the responsiveness of the system to the specific needs of people with cognitive impairments.



After a career in teaching, Mark O'Reilly took up law, and in the Northern Territory has worked both with the Northern Territory Legal Aid Commission and the Central Australian Legal Aid Service, where he has been its Principal Legal Officer since 2005. Mark is a Community Visitor pursuant to the *Mental Health and Related Services Act NT*, and has appeared in many matters involving Part IIA (“Mental impairment and unfitness to be tried”) of the *Criminal Code NT*.



Madeleine Rowley is a Research Officer with CAALAS, working closely with CAALAS' civil, criminal, family and welfare rights practice groups and with CAALAS' prison support and youth justice teams, to identify key policy and law reform issues affecting Central Australian Aboriginal people. After graduating from the University of Newcastle with a B Arts/B Laws (Hons) in 2010, Madeleine worked in the administrative law team at the Crown Solicitor's Office in NSW, where she provided legal services to the NSW government in relation to a broad range of public law matters. Madeleine has a strong interest in improving social justice for Aboriginal people through effective law reform and policy development.



Dr Peggy Dwyer (NSW Bar) – “Crisis in Custody: The death of Kwementyaye Briscoe 21 years after the Royal Commission reports”

On 5 January 2012, at around 11.45pm, Kwementyaye Briscoe died alone in a cell in the Alice Springs Watch House. Although prisoners who watched him gasp for breath called out for help, and although police charged with his care had an obligation to check him at 15 minute intervals, it was another two hours before his body was discovered in the early hours of the following morning. Kwementyaye was 27 years of age. He had committed no crime, but was being detained in “protective custody” because he was thought by police to be so intoxicated that he could not care for himself. The NT Coroner found that Kwementyaye died as a result of a combination of a acute alcohol intoxication, positional asphyxia and aspiration, and that his death was allowed to occur because of multiple failings on the part of individual police officers and senior management, as well as systemic failures. Over two decades have passed since the Royal Commission into Aboriginal Deaths in Custody and yet many of the recommendations remain to be implemented and some of the lessons learnt appear to have been quickly forgotten. This presentation discusses the extensive reforms introduced by NT police after Kwementyaye’s death and argues that other Police services around Australia should heed the lessons from this tragedy, before another death in custody forces their hand.



Peggy Dwyer is a barrister at Forbes Chambers in Sydney and has a varied practice specialising in criminal law, inquests and commissions of inquiry, environmental crime and medical disciplinary work. Peggy was admitted to the Bar in 2010 after over 10 years of work as a solicitor advocate. She has appeared in jury trials in NSW, Western Australia and the Northern Territory. From 2000 to mid 2005, she was a lawyer at the Aboriginal Legal Service in Sydney and from mid 2005 to 2008, she was the managing criminal lawyer for the North Australian Aboriginal Justice Agency (NAAJA), based in Darwin. In 2000, Peggy was awarded a doctorate from the University of Edinburgh and her Ph.D focused on trafficking in synthetic drugs and precursor chemicals. From 1995-1996, she was an Associate to Justice Michael Kirby, Justice of the High Court of Australia, and a former patron of CLANT.

Stephen Odgers SC (NSW Bar) – “The High Court and criminal law: 2012-2013”

This paper will discuss leading High Court judgments in the field of criminal law, procedure and sentencing in 2012 and 2013.



Stephen Odgers SC was a founding members of Forbes Chambers, Sydney. He practices in all areas of criminal law but his particular specialisation is criminal appeals. 1981-1985: Senior Law Reform Officer, Australian Law Reform Commission. 1986-1988: Senior Lecturer, Faculty of Law, University of Sydney. 1989: Admission to the NSW Bar. 1991-present: General Editor, Criminal Law Journal. 1996-1999: Member, Bar Council, NSW. Bar Association 2000: Appointment as Senior Counsel. 2001-present: Member, National Criminal Law Liaison Committee, Law Council of Australia. 2002-present: Chair, Criminal Law Committee, NSW Bar Association. 2006: Adjunct Professor, Faculty of Law, University of Sydney. Books by Stephen Odgers include: Australian Criminal Justice (4th edition, 2009) (with Mark Findlay and Stanley Yeo) Principles of Federal Criminal Law (2nd edition, 2010) Uniform Evidence Law (10th edition, 2012) Sentence – The law of sentencing in NSW courts for State and Federal offences (1st ed, 2012)

Dina Yehia SC (NSW Public Defender) – “Mandatory Sentencing of 'People Smugglers': Politics or Justice?”

The paper deals with the legislative provisions relating to the prosecution of people smugglers with particular focus on the mandatory sentencing regime that applies.



Dina Yehia SC is the first female NSW Deputy Senior Public Defender. She commenced her legal career in 1990 as a WALS solicitor based in Dubbo, appearing in courts throughout Western NSW. Dina was the solicitor for the Boney family during the Royal Commission into Aboriginal Deaths In Custody. In 1999, Dina took up an appointment as a Public Defender, and initially appeared in District Court matters both in Sydney and in regional centres including Moree, where she was the Public Defender for 4 years. In 2005 she commenced Supreme Court trial work. For two years from February 2008 she appeared in the terrorist trial at Parramatta Supreme Court. Dina was admitted to silk in 2009. Dina’s practice now involves Supreme Court murder trials for the most part, with some appellate work.

Jay Williams (NSW Bar) – “The Nauru 10 and the Habeas Corpus Challenge”

On 23 April 2013 writs of habeas corpus were filed in the Supreme Court of Nauru for 10 asylum seeker detainees facing charges of riot and wilful damage. It was contended on their behalf that they have suffered deprivation of liberty and unlawful detention in violation of the Constitution of the Republic of Nauru and the relevant principles of the 1951 Convention and its 1967 Protocol on the Status of Refugees. This case exemplifies the serious and profound humanitarian and legal issues faced by the Nauru 10 and other detainees under the ‘No Advantage Regime’ and offshore processing of refugee determinations.



With over 20 years of experience in the academic, government and legal sectors, prior to coming to the Bar, Jay spent five years studying the traditional law, culture and country of a remote Indigenous tribe from Central Arnhem Land. Upon returning to Sydney, Jay commenced at Redfern Legal Centre in Sydney, NSW and was a legal researcher at UTS. Jay holds a Master of Law and Legal Practice, with a major in International Law at the University of Technology, Sydney and a Bachelor of Arts from the University of Melbourne with a major in Political Science and Social Theory. With a primary focus on human rights law, Jay has been involved in several major public policy research projects and has been published by leading peer reviewed journals, including the International Journal of Human Rights.

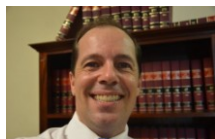


Mark Thomas & Carl O'Connor (Darwin Asylum Seekers Support and Advocacy Network) – “Human Rights Abuses in Darwin Immigration Detention Centres”

Darwin is now the detention centre capital of Australia with around 2,600 asylum seeker detainees. A Menzies School of Health Research study estimated that around half of all asylum seekers detained in Darwin in 2011 were admitted to the Royal Darwin Hospital Emergency Department, large numbers of those as a result of self harm and psychological problems. This presentation will consider the current situation in the three Darwin detention centres and two case studies: the detention of people because they are a person of interest to the Australia Federal Police; and the forced deportation of Sri Lankan asylum seekers from Darwin as they have been “screened out” of the protection process. Those interested in assisting Darwin asylum seekers can find out more at www.dassan.org.



Carl O'Connor is a Darwin solicitor and spokesperson of the Darwin Asylum Seeker Support and Advocacy Network (DASSAN). Through DASSAN, Carl has spoken to the local, national and international media in relation to asylum seekers detained in Darwin and has also been involved in DASSAN campaigns and advocacy.



Mark Thomas is a barrister at John Toohey Chambers in Darwin. From 1988 to 1996, he was an Aboriginal Legal Service solicitor advocate in crime in Redfern, NSW. From 1996 to 2007 he worked for the NSW DPP including two years in Prosecution Group 6, which was largely devoted to the prosecution of police, (and a man named Mr Six and John Laws) as well as stints at the Sydney, Penrith, Campbelltown, Newcastle and Lismore offices. From 2007 to 2011, he was a Senior Crown Prosecutor in the NT DPP in Darwin. Mark works at a range of matters at the bar in Darwin, primarily crime, both defence and Crown, at summary, trial and appellate level as well as migration, coronial and administrative matters. Mark has an interest in travel and riding bicycles.

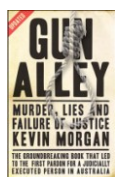
Lyma Nguyen (Civil Party Counsel, Cambodia) – “Representing Minority Victims in Genocide Trials”

In 2010, the Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (ECCC) charged four senior leaders of the former Khmer Rouge regime with genocide against two minority groups, the Cham and the ethnic Vietnamese. This presentation examines the role of minority victims of mass crimes in a genocide trial, using the specific case study of a group of ethnic Vietnamese survivors who joined as civil parties before the internationalised criminal proceedings at the ECCC. From the personal perspective of an international pro bono civil party lawyer who has been involved with victim representation at the ECCC for five years, the presentation highlights the challenges involved with including minority narratives into a larger context of a mass atrocity trial. The description of the participation process for these civil parties to date also highlights how victim participation in a criminal trial can shed light on larger human rights issues affecting a minority group. In the present case, a number of ethnic Vietnamese civil parties have sought access to, or recognition of, Cambodian nationality through a request for “collective and moral reparations” under the Court’s Internal Rules.



Lyma Nguyen currently works as a Senior Legal Officer/Prosecutor with the Commonwealth DPP, based in Darwin. Lyma has worked at the Federal Attorney-General’s Department (Criminal Justice Division and Human Rights Branch), as well as DIAC and the Queensland DPP. She speaks English, Vietnamese and French and is a Law and Justice Civilian Expert on the register of the Australian Civilian Corps. In 2009, Lyma was admitted as an International Civil Party Lawyer before the Extraordinary Chambers in the Courts of Cambodia (ECCC). In collaboration with national colleagues from Legal Aid of Cambodia, Lyma acts pro bono for ethnic Vietnamese minority victims of Cambodia’s genocide, foreign nationals and members of the Cambodian diaspora. In 2013, Lyma received the Prime Minister’s Endeavour Executive Award for this work. For more information about Lyma’s work at the ECCC and the special interest groups she represents, see www.civilparties.org.

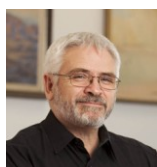
Play Reading – The CLANT Players directed by Rex Wild QC – “The Murder in Gun Alley; the wrongful conviction of Colin Ross”



The body of 12 year-old schoolgirl Alma Tirtschke [who had been sexually assaulted and strangled] was found in Gun Alley Melbourne on 31 December 1921. Colin Ross, proprietor of a nearby wine salon, was convicted of her murder. Following unsuccessful appeals, he was hanged on 24 April 1922, only 115 days later. His trial was conducted in an atmosphere of public fervour, offers of reward and great controversy. He protested his innocence throughout. After dedicated research by writer Kevin Morgan, a Petition for Mercy was presented to the Victorian Government in 2005 and in 2008 Colin Ross was ceremoniously pardoned. No doubt, he felt much better! This story will be told by the CLANT play readers and will be the 10th consecutive such contribution at the Conference devised, scripted, produced and directed by CLANT Life Member Rex Wild QC. Twenty delegates will contribute.

Howard Bath (NT Children’s Commissioner) – “Vulnerability, risk and justice for children and young people in the NT”

This presentation will examine recent data on the wellbeing and safety of children and young people across the NT and the services designed to address vulnerability and risk. It will include a brief review of the compelling research around the longer-term impact of exposure to chronic stress and trauma in childhood, which has implications for a child’s capacity to succeed at school, to maintain social relationships, and to safely manage emotions and impulses. The known links between involvement in child protection services and later risk of involvement with youth justice will also be explored along with some implications for policy and program development.



Dr Howard Bath has been the NT Children’s Commissioner since June 2008. In his current role he has a particular focus on the safety and wellbeing of vulnerable children and families, a majority of whom are Indigenous and living in town camps or very remote communities. In 2010 he was co-chair of an Inquiry into the child protection system in the NT which produced the *Growing them Strong, Together* report. He has a long history as a practicing Clinical Psychologist, agency director, trainer and researcher in child and family services with a particular interest in services for children and young people with high needs in the child protection and juvenile justice systems.



Jared Sharp (NAAJA, NT) – “How can we bring culturally strengthening approaches into the NT Youth Justice System?”

This presentation reports on the author’s recent Churchill Fellowship to Canada, the United States and New Zealand to investigate culturally strengthening practices to enhance procedural justice and reduce the over-representation of Aboriginal adults and young people in the justice system.



Jared Sharp is the Managing Solicitor of the Advocacy Section, North Australian Aboriginal Justice Agency. The Advocacy Section leads justice reform, supports Aboriginal people whilst in custody as well as to reintegrate back into the community, and assists Aboriginal people and communities to engage with the legal system. Jared has practiced as a criminal lawyer in the Northern Territory and WA in both the adult and youth jurisdictions and is a nationally accredited mediator. He was the only non-government member of the NT Youth Justice Review Panel and is currently on the NT Law Reform Committee.

David Heilpern SM (NSW) – “Exclusion of evidence under s138 of the *Evidence Act* for police misconduct relating to arrest”

This paper explores two issues involving illegal or improper actions of police in the context of criminal trials. The first is the prospect of exclusion of evidence under s138 of the evidence Act, and the key differences between this exclusion and the common law approach. The second is the concomitant issue where an offence has an element of “the execution of duty”. The written paper will analyse these issues in detail, considering the leading authorities and academic commentary. The oral paper will consider the issues from the examples of two cases dealing with practical applications of the principles.



David Heilpern has been a Magistrate of the Local Court of New South Wales for 15 years. He has presided over circuits at Dubbo, Batemans Bay and now Byron Bay. For five years, David was the Senior Civil Magistrate for New South Wales at the Downing Centre in Sydney. David spends considerable time off the bench as a trainer in Judicial Education particularly in the Pacific. Prior to his appointment, David was a radical hippy lawyer from Nimbin, and an academic at Southern Cross University for ten years. Section 138 has haunted David ever since *Carr’s* case where he was the Magistrate in 2001.

Melinda Taylor, International Criminal Court, The Hague – “In Zintan”

As lawyers, we tend to have an innate belief and confidence in the ability of the law to protect us. It was therefore an extremely disconcerting and disturbing experience for me to be thrust into a situation where the law had no meaning, and my rights and those of my client were completely subjected to the vagaries of political negotiations and manoeuvrings. This is exactly what happened last June when three ICC colleagues and myself were illegally detained in Zintan, Libya for almost a month during the course of an official ICC mission. It was an experience I would never wished to have undergone, but it did give me certain valuable insights concerning what it is like to be searched and threatened at gun point, and to be held in incommunicado detention in what was essentially a hostage situation. I would like to share those insights and potential recommendations for a lawyer representing a client arrested and detained in such circumstances during my presentation.

Dean Mildren QC RFD AM (A/J Supreme Court NT) – “Lawyers as Victims: A Romp through Literature and Politics”



Dean Mildren was appointed as an Acting Judge of the Supreme Court of the Northern Territory in 2013. Prior to his appointment he served as a Justice of the Court from 1991 - 2013. A barrister since 1980, Justice Mildren was appointed as a Queen's Counsel in 1983, and was President of the Northern Territory Bar Association from 1987 -1991. Amongst many other offices he has held, he was twice President of the Northern Territory Law Society. Justice Mildren was a Judge Advocate from 1986 - 1996 in the Australian Army Legal Corps (ARES), rising to the rank of Colonel. He lectures part-time at the Northern Territory University having been appointed as an Adjunct Professor of the University in 1997. He is the author of the history of the Supreme Court of the NT, ‘Big Boss Fella All Same Judge’ (2011), and is a Life Member of CLANT. In 2013 he was made a Member of the Order of Australia.

Suzan Cox QC (Director, NTLAC) – “Judicial Bullying”



Soon after her admission to practice in 1979, Suzan Cox took up a position as a legal aid defence lawyer in Papua New Guinea. She was living and undertaking further study in New York in the early 1980s when she was offered her first job in the Northern Territory, with the Central Australian Aboriginal Legal Aid Service in Alice Springs. Suzan subsequently moved to Darwin to take up a position at the Northern Territory Legal Aid Commission, where she has been its Director since 2002. In 2004 she, along with Raelene Webb QC, became the first woman in the Northern Territory to take silk. Suzan has long been an active CLANT member, and in 2011 was made a Life Member.



Stephen Lawrence (NSW ALS, Dubbo) – “Beyond *Fernando*, over representation and the sentencing of Aboriginal people”

In August 2013 the High Court of Australia will hear the appeal of *William Bugmy v Regina* and for the first time in decades examine principles said to be applicable to sentencing Aboriginal offenders. Mr. Bugmy will ask the High Court to follow the Supreme Court of Canada in its approach to the sentencing of Aboriginal people. Mr. Bugmy's solicitor Stephen Lawrence will discuss how and to what extent the orthodox purposes of sentencing allow courts to take into account the historic and contemporary realities of Aboriginal life in Australia when sentencing an Aboriginal person.



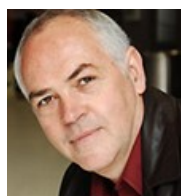
Stephen Lawrence is an Australian criminal lawyer with a background in both prosecution and defence advocacy. He currently works as the Principal Legal Officer (Western Region) with the Aboriginal Legal Service NSW/ACT where he manages the ALS legal practice across western NSW and represents Aboriginal accused in trials on indictment as a solicitor advocate. Stephen has previous international experience working as a public defender in post-conflict Solomon Islands between 2004 and 2007 where he mainly appeared in conflict-related trial matters and in 2011 as a Kathryn Wadia Fellow with the International Legal Foundation in Ramallah, Occupied Palestinian Territories where he assisted in establishing a Palestinian public defender service. Stephen is a deployable register member with the Australian Civilian Corps specialising in transitional justice and legal aid.

Chris Cunneen (JCU) & Melanie Schwartz (UNSW) – “Justice Reinvestment in Australia: Reasons for Caution”

Justice Reinvestment (JR) is an approach to reducing imprisonment rates that is being implemented, with very positive results, across numerous states in the USA. There is interest in JR at the highest political levels in Australia, with advocacy groups touting JR as the best strategy for tackling high incarceration rates and particularly Indigenous over-representation. But should we be full steam ahead with JR in the Australian context? This paper will present some reasons for pause.



Melanie Schwartz is a Lecturer in the Faculty of Law at UNSW. She teaches criminal law and into the Indigenous programs in the Faculty. Melanie is currently a Chief Investigator on an ARC Linkage grant exploring the civil and family law needs of Aboriginal and Torres Strait Islander people in Australia (<http://www.jcu.edu.au/ilnp/>). She is also a CI on two ARC Discovery grants: the Youth Punishment Project explores our attitudes to the punishment of young people, and the Australian Justice Reinvestment Project investigates the potential for a justice reinvestment approach to reducing incarcerating levels to the Australian context.



Professor Cunneen has a national and international reputation as a leading criminologist specialising in Indigenous people and the law, juvenile justice, restorative justice, policing, prison issues and human rights. He taught criminology at Sydney Law School (1990-2005) where he was appointed as Professor in 2004, and served as the Director of the Institute of Criminology (1999-2005). Chris has held research positions with the Indigenous Law Centre (UNSW), and the NSW Bureau of Crime Statistics and Research. Between 2006 and 2010 he was the NewSouth Global Chair in Criminology at UNSW and continues as a Conjoint Professor at UNSW Law Faculty. He is also an Adjunct Professor at the Institute of Criminology, University of Victoria, Wellington, NZ. He is currently Tropical leader in Justice and Social Inclusion at The Cairns Institute and School of Law, James Cook University.

