

little extra time, and with lots of goodwill all round, I survived the process. I was, I must also say, enormously flattered to be asked, and it was a position in which I hoped I could make a contribution.

*Q: Is there continuity between your life and vocation as a practitioner and on the bench? Or is it an entirely new orientation?*

There is some continuity between life as a judge and life as a practitioner. Around 75% of my work as a judge is crime, which is familiar territory (albeit from a different perspective) for a former specialist criminal defence lawyer. There is also, however, much to learn and very different lenses through which to observe the proceedings, so a significant adjustment is clearly necessary. The civil litigation aspect of the position has been challenging, but intellectually rewarding.

*Q: The media made much of your folksy progressive/activist background. Is life as Judge Dearden more monastic?*

Life as a judge is much quieter, it's much slower, but in fact I've been able to get out more, and listen to and play more music, so it is certainly not more monastic. It does, however, inevitably change the nature of relationships within the legal profession, so I'm grateful for a circle of friends, acquaintances and interests outside of law.

*Q: What do you see as the main challenges to civil liberties today?*

The main challenges to civil liberties today are the increasing pressures on individual rights arising out of a post 9/11 world. We should never succumb to the belief that the ends justifies the means, and our commitment to the rule of law and the protection of individual rights and liberties is what underpins a modern, liberal democratic society.

*Q: Given the 'hired gun' and business demands of lawyering, what role can legal practitioners play in protecting civil liberties, especially in the present climate?*

Lawyers should be constantly vigilant and publicly so, to protect the rights of all in any society, be they weak or strong, loved or loathed, regardless of age, sex, race, religion, politics, sexuality, disability and/or any other attribute protected or respected by legislation, international covenant or basic human decency. In short, lawyers have an obligation to be at the forefront of public debate on respect for, and the protection of, human

rights and human dignity. In that respect it is gratifying to see the Law Council of Australia, for example, as a peak body of lawyers, active in the debates surrounding the death penalty and other pressing human rights issues.

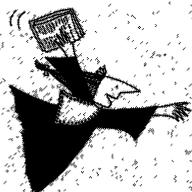
*Q: Can you comment on the challenges of representing unpopular clients and causes and the role of lawyers in that?*

When I practised as a criminal defence lawyer, I applied my solicitor's version of the Bar's cab rank rule — if someone was prepared to pay my fees and accept my advice, then they were entitled to my representation no matter who they were, and what they were alleged to have done. I still believe that a lawyer's role is to represent, ethically and professionally, even those with whom he or she would otherwise have no common ground. All are entitled to the protection of the law and access to competent legal representation of their choice. Integrity is a fundamental touchstone for a lawyer in practice in this or any other age.

*Q: Is there a new generation of O'Gormans and Deardens to staff the barricades of civil liberties? Or are lawyers today more prone to 'hunger in the belly' than 'fire in the belly'?*

I have an underlying belief that in every generation, there will be those who will rise to the challenges which confront us all. The wonderful US songwriter Si Kahn, in his song *They all sang Bread and Roses*, reminds us that 'in every generation/ there were times just like that time/ when folks like you and me who thought that they were all alone/ within this honoured movement/ found a home'. This song finishes with these words of comfort: 'Just as we have drawn our strength/ from those who now are gone/ younger hands will take on our work/ and carry on'. I have an unshakeable belief that 'younger hands' will carry on the battle from which I have retired, and will undertake that fight with all the passion and commitment that I and others of my vintage brought to the struggle over many years. I trust, of course, that I bring the values and beliefs that have underpinned my years as a solicitor and as a civil libertarian, to my role on the bench, and that all who appear in my court, whether as counsel, solicitor, litigant, defendant or witness, feel that they have been treated with the courtesy, respect and dignity to which all human beings are entitled. In that way, in a different forum, I believe that I too will 'carry on' the good work of other, far more eminent, jurists who have preceded me.

## MENTIONS



### PORTIA'S BREAKFAST 2006

TUESDAY, 31 JANUARY 2006

To celebrate the opening of the new Legal Year, the Victoria Law Foundation, in conjunction with 10 other agencies, will host

its annual Portia's Breakfast on Tuesday, 31 January 2006. This event is a festive, relaxed way to welcome in the New Year, and a great opportunity for informal networking across all sections of the legal community. Held from 8 to 10 am in Hardware

Lane, corner of Little Bourke Street, Melbourne. Optional gold coin donation to Women's Legal Service Victoria. RSVP to [contact@victorialaw.org.au](mailto:contact@victorialaw.org.au) with 'Portia' in the subject line, or tel 03 9604 8100.

### HOT TOPICS

Legal issues in plain language  
No 53: Same-sex families

This issue of *Hot Topics* looks at changes in relationship law

in recent years to afford legal recognition to same-sex couples. It examines the meaning of family and looks at a broad range of reforms across State and federal law. It also compares these to overseas developments.

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## IT'S NOT ACADEMIC

Tamara Walsh, a leading legal voice for social justice reform in Queensland, spoke to the *Alternative Law Journal's* Anthony Reilly and Graeme Orr about life as an academic activist.



Tamara Walsh

*Q: How did you become interested in social issues, and how did you decide to be an academic pursuing such issues?*

Like everything in life, it was all entirely by accident. I went straight from school to university and sort of fell into my course: I wanted to do law and I was interested in social work as well. I'm from Sydney and it's very competitive to get into law, and there was a fair chance I wouldn't get in, so I thought 'I'll do law or I'll do social work'. But I got into law and found out you could do a double degree with social work. I did that at the University of New South Wales, but not really knowing what I was doing there for some time. I thought many times about dropping out, and wasn't sure if it was what I wanted to do.

It was only at the end of my second year in social work, that I went on one of three student placements. My first was at a psychiatric hospital — again not my choice, you are just allocated a placement. At the hospital, obviously, a lot of people had severe schizophrenia, severe manic depression, and other psychiatric illnesses. It totally opened my eyes to a whole new world at a very young age. I was having to counsel and assist these people at 18 or 19. It threw me in the deep end. As a middle class girl I genuinely had no idea that people were so disadvantaged, found it so difficult to get by and faced so many severe social problems. That got my mind ticking and started

to get me outraged: in such a rich nation how could we have people living in such abject poverty, simply because they had severe illnesses and had no families to look after them? It gave me an insight into the extent of social exclusion.

When I went back to uni, doing a law degree, I started noticing these issues cropping up in the degree, for example in criminal law, but also in constitutional law in the lack of rights we have in this country. And I started linking this to the ideas I was having through my social work degree. Then I did a second placement at the Children's Hospital, Westmead. That was the clincher for me, because in that role — I was more senior in my degree and you are given more responsibility in later placements — I was put in many positions where I had to assist people who had no money. People with children in hospital saying things like 'Our fridge is broken and we have no money to fix it, and I have to take this sick child home — what am I going to do?' I was in a position where I had to do something for these people, and there was nothing I could do.

My supervisor said to me 'I don't know if you are really cut out for this kind of work' — because it really got to me — 'Maybe you should think about going into policy, where you could be in a position to help structurally rather than constantly trying to put bandaids on issues'. I took that on board at the time. When I returned to my law degree I was at the point of picking electives and getting more interested in issues. When I finished, I went into a job with the New South Wales Council of Social Services (NCOSS), as a policy project officer, doing work on justice issues where my two degrees intersected, helping with budget submissions and research. I did feel better there: I wasn't cut out to be a social worker, and I learnt so much from being at NCOSS, surrounded by very intelligent and passionate people.

So too at UNSW law school, a progressive law school, many of the academics impacted me greatly because they were keen to make a difference in their own way. Many viewed their role as educating students about issues, so students would go out and do something, and I took that on board and to heart.

*Q: Any academics in particular?*

Many, but one I remember is Prue Vines teaching legal systems in first year and covering prisons. Someone in class said 'Aren't we forgetting people in prisons are criminals? They *should* live in sub-standard conditions.' Prue turned around and said 'Clearly you have no understanding of the kinds of people who are there and why they are there.' And words to the effect of 'The vast majority of people in prison are serving short sentences for petty crimes: most are poor, many are indigenous. These are society's most disadvantaged people. The vast majority are not what we consider "criminals".' Again, as a middle class girl, this shocked me, I hadn't known that.

Some others were tutors, not well known academics, but who taught me important things here and there. Another who influenced me was Kevin Booker, my constitutional lecturer. He was very subtle in the way he taught, yet it was very obvious he came from a rights perspective.

*Q: Why did you move to Queensland?*

Lifestyle, no other reason. We just decided to move from Sydney.

*Q: Why enter academia, rather than the 'caring' professions or policy or government?*

Again by accident. I came to Brisbane with every intention of getting a policy job, but it so happened at the time there were none. One thing I noticed not long after arriving is that there is only a limited non-government policy arena in Queensland. That led me to look for university jobs, because I thought the only other way I can be an advocate, if not working in an NGO, is to be in position where I can do my own research and advocate that myself. I happened to get a job in a law faculty [QUT]. I would have been happy to find a job in social work academia, but law was the first job I got.

*Q: What was the plan?*

To become known as an advocate such that if an issue arose that I knew something about, I could be called upon so I could provide a voice for people who weren't given a voice directly.

*Q: What sort of issues?*

Homelessness in particular, funnily enough probably because I had to walk past homeless people every morning in Sydney. Poverty, because at the Children's Hospital (and less so at the Psychiatric Hospital) I had to help people but couldn't. And people with mental illness, as I'd worked with them in the hospital.

*Q: The statement that you wanted to become known as an advocate would sound calculated to someone who has just bumped off things all his life. Is that intended? I understand the purpose behind having a profile, but it could also sound like the cult of celebrity, where you have to give a name to the issue before it can be recognised.*

Oh no! What I meant was I wanted to be in a position — having come from Sydney where there were plenty of people doing the speaking, my observation was that in Queensland there didn't seem to be as many people in such a position — to provide assistance, a voice. It's not calculating in the sense of getting a name for myself.

*Q: No I didn't mean that, but in terms of having a strategy to raise awareness, you knew you had to get into a position to be a kind of talking head.*

Yes. But I wanted to provide an informed voice, and to do that I had to inform myself, as it were.

*Q: Where did you get that kind of strategic insight, to be an activist?*

I had a lot of good teachers, most in social work and some in the law school, who were activists. By osmosis I guess, having watched them for six and half years at university. Also

at NCOSS, there were fantastic examples of people who had been working on particular issues for a very long time. I remember one woman saying 'I've been working on this change for eight years, and I've finally got it!' In my naivete I thought, 'Eight years is a really long time, how could you last that long!' Now, eight years doesn't seem that bad to me.

*Q: It is reminiscent of George Williams [Professor of Public Law at UNSW] describing how he didn't necessarily expect to do law, but that he started academic life with a clear set of issues he wanted to research and advocate. Like a politician saying 'I need a profile, a reputation, else I can't effectively advocate', rather than a traditional academic saying 'I'll become the expert who knows all there is in a field, but I won't speak to the media until I know everything about that field'. An activist would be immobilised by that.*

That's right. But if there is a disdain in academia towards activism and the media, I've not encountered it. I'm sure there is — perhaps colleagues who disagree with what I do are just being polite to my face. But I've genuinely met with nothing but support for what I do. I'm not sure everyone knows I think the way I've just described! But what you said about George Williams is exactly how I view it.

My head of school [Tamara is now at UQ] asked me before I took the job, 'Are you an activist or a scholar'. I thought he might want me to say 'I'm a scholar.' I didn't, I said 'I'm both. In order for me to be an activist I need to be a scholar.'

*Q: What was his reaction?*

He said, 'That's the answer I wanted. Anything else would have been untrue'.

*Q: At some universities there is a lingering sense that a true academic would be very wary of the media, because either you are liable to be misquoted, or to have to speak tendentiously or in ways where other academics might say 'She doesn't really know what she is talking about'. In the traditional liberal model of education you might feel you have to be dispassionate. Yet in the 'new' university, at every opportunity, media relations people want to push academics into the spotlight to talk about anything, for the corporate profile of the university.*

The only reason I do media is because it fits my model of what I am doing: the alternative position needs to be out there. If I'm the only one doing it, I'll put out a press release and I'll talk to the media on that issue. Again I'm not really sure how my university views it: I've just always done it, and that fits my goals.

*Q: Let's talk about one major report you wrote, 'From Park Bench to Court Bench'. How did it come about?*

I had a lot of support. It came about because, when I was new to Queensland, I was looking through legislation and I found the *Vagrants, Gaming and Other Offences Act*. And I thought what?! This must have been repealed ages ago! But it was still current then, it was an offence to be a vagrant. The first thing I did was write a submission to government asking 'Why is this antiquated legislation still on the statute books, when similar legislation was repealed in NSW in the seventies'.

QUT gave me a small grant — \$2000, a bit of pocket money — to help write *From Park Bench to Court Bench*. There was

also \$3000 from the Attorney General Rod Welford and \$3000 from the homeless project at Commonwealth level. So I worked on a very, very small budget and used that to pay research assistants to sit in court and view cases. Other than that I did the research myself.

Caxton Legal Centre was also developing an interest in it, and they were putting together an action group in co-ordination with the Homeless Persons' Legal Clinic at the time, part of the Queensland Public Interest Law Clearing House. We set up a group, which still exists, the Rights in Public Space Action Group (RIPS).

*Q: What were you hoping to achieve?*

I suppose I wanted there to be a document that could be referred to. And it was intended to be an advocacy document, to set up the issue, to convince people there was a problem and to go on and put forward possible solutions. I looked here, there and everywhere, Australia and overseas, to find what other jurisdictions were doing, so that any policy or government person could say 'we'll take our pick'.

*Q: Eventually a Summary Offences Bill was enacted that did not implement the reforms you were advocating. How did you feel?*

Bitterly disappointed. For me it was a bit of a defeat. Particularly the new public nuisance offence and begging offence: things that make no sense, and are experienced as very oppressive provisions. More people will come before the courts because of these offences, more fines, more imprisonment, essentially for behaviours associated with homelessness. I'll still be sending my research assistants into court and getting results back that literally make me cry. For me it means more individuals affected, especially with fines skyrocketing, putting them in an even worse position.

*Q: Tell us how your 'Incorrections' report on Corrective Services came about.*

To cut a long story short, it all started in New South Wales. I worked with Eileen Baldry, an activist academic who was an inspiration to me when I was at NCOSS, on a project about a new women's prison. She was involved in a campaign to stop that prison being built, and I did some policy work on that. When I moved up here I was interested to see if things were better or worse, and found out they were worse, which I didn't think was possible, but anything is possible in Queensland! I started research and that led eventually to the *Incorrections* report. At the end of 2003, I was approached by a number of prisoner advocacy groups, including Sisters Inside and Catholic Prison Ministry, who had joined with Uniting Care Centre for Social Justice and a number of other groups to fund a research project into prison release policy and practice. They asked me if I'd undertake the research and write the report and I agreed. I ran focus groups and conducted research for the next 12 months, and the report was released at the end of 2004.

*Q: Governments are good at managing the media. Do you ever feel outgunned?*

Absolutely yes, but also no. Sometimes I think, 'How can I argue against all their resources and people?' But actually it is really easy in practice. A lot of what they say is not true, callous or shows no understanding of the issues on the ground. What

I try to do is not so much say what I think, but to give people they are ignoring a voice.

*Q: How do you relate activism back to other aspects of academia such as teaching and administration, especially since courses in social welfare law are not always popular with undergraduates seeking commercial careers.*

I don't do a lot of administration [with a 4 month old baby] but I am and will soon again be involved in areas I care about, such as equity committee where one can try to assist Indigenous and low-income students.

I position myself in teaching so I am teaching in rights-based subjects. I teach an applied human rights course, and it is easy for me to teach what I know about. So I teach human rights in a context of Australian issues, teaching about homelessness, corrections, women's and children's issues. It gives me an opportunity to talk about what I do.

*Q: So you weave your research into the core law curriculum?*

Yes. Human rights law is an elective, but in constitutional law I probably teach a different course to most academics, because when I teach constitutional law I usually throw in anecdotes from my research and how it relates to cases and provisions we are studying. In constitutional law concerning government and political processes I can talk about meeting with ministers, having been in a position of being a player in that setting. Where it is relevant and of interest, I can show how things work in practice.

Also I'm trying to invigorate students, by letting them know about these issues so that hopefully, when they graduate, I'll have some allies. I always say this to them: 'Pay attention, you'll be out there soon, and I need some allies'. And I think a few will be!

The reports 'From Park Bench to Court Bench: Developing a Response to Breaches of Public Space Law by Marginalised People' (in association with QPILCH Homeless Persons' Legal Clinic and the Rights in Public Space Action Group) and 'Incorrections: Investigating Prison Release Practice and Policy in Queensland and its Impact on Community Safety' (in association with various community groups) are available via <<http://www.law.uq.edu.au/?page=26370&pid=1786>>