

# Human rights observer panel

The International Law Section of the Law Council of Australia (LCA) has established a Human Rights Trial Observer Panel. The LCA is seeking suitably qualified practising or retired lawyers to join the new Panel. Nicholas Cowdery AM QC has already agreed to be one of the co-chairs.

Below is an edited copy of guidelines for trial observer missions, which the LCA Executive recently adopted. A full copy is available from the LSNT.

The LCA has always been deeply interested in promoting the principles of the rule of law and the importance of international human rights in the broader community. It is a member of a number of international legal organisations dedicated to upholding the rule of law, including the International Bar Association (IBA) and LawAsia.

This interest has seen the LCA participate in the work of, for instance, the IBA Human Rights Institute and, on an ad-hoc basis, send Australian lawyers on trial observer missions.

In the current global security climate, greater pressure has been placed upon legal organisations such as the LCA to promote the importance of the preservation of the rule of law.

The LCA's International Law Section has responded to this need by resolving to adopt a set of formal guidelines detailing the circumstances in which trial observer missions might be sponsored by the Law Council.

## When the LCA will consider sponsoring trial observer missions

The broad test to be applied in each case will centre on whether there are grounds for reasonable suspecting that the trial may be unfair or improper in any respect, having regard to universal human rights standards. A trial may be considered unfair for a number of reasons including:

- \* the absence of an independent judge; or
- \* the curtailment of an accused person's access to independent legal representation, or to a lawyer of their own choosing, having regard for the rules of practice in the applicable jurisdiction; or
- \* ongoing detention without charge

and/or without a statement of reasons for arrest; or

- \* a curtailment of rights in trial proceedings, for example failing to recognise the principles of the rules of evidence, or the curtailment of the right to cross-examine prosecution witnesses.

Although the primary purpose of any observer mission is to impartially observe and report upon the process followed during a trial, even where it may be suspected that the accused's right to a fair trial may be infringed upon, it is foreseeable that cases may arise where the overall interests of human rights are not served by sending a trial observer. The primary objective of trial observer missions must always be to encourage the observation of basic human rights standards.

In making a decision to recommend sending an observer, the Human Rights Observer Panel will need to carefully balance these competing considerations to ensure that the overall interests of human rights are best served by the presence of an observer.

No set of criteria can ever completely account for the array of factual scenarios which might present to the LCA in its future consideration of prospective trial observer missions.

## Basic approach

In undertaking trial observations the LCA will concentrate its efforts in the Asia-Pacific region and will seek to cooperate with, rather than duplicate, the efforts of other human rights organisations, especially those associated with the legal profession.

## Selection of cases

If a recommendation is made by the Co-Chairs of the Panel, the LCA President, in consultation with the LCA executive where appropriate, will determine whether it is appropriate to send LCA trial observers to a

case. The recommendation may be made by the Co-Chairs of their own volition or at the request or in conjunction with the other recognised bodies.

## The Co-Chairs

The Co-Chairs will be appointed by the Executive of the LCA's International Law Section (ILS) in consultation with the President.

The Co-Chairs will be lawyers with a sustained interest in human rights issues, high level experience in the field of criminal or international law, and a deep commitment to upholding the rule of law.

## Panel Membership

Eminent Australian lawyers may apply to the ILS to become part of the Panel, the intention being that the Panel will include a large number of suitable qualified Australian practising or retired lawyers from whom trial observers may be drawn from time to time.

Candidates must have demonstrated competence in international, human rights or criminal law and procedure as well as the necessary relevant experience, whether as a judge, prosecutor, defence lawyer, advocate or in other similar capacity.

The Co-Chairs will approve the appointment of applicants to the panel having regard to their experience and qualifications, together with a demonstrated interest in and commitment to human rights issues.

Preference in appointment to the Panel will be given to individual members of sections of the LCA.

The Co-Chairs may, if they think fit, remove a person's name from the Panel if that person is no longer in a position to accept a request to undertake trial observation for the LCA or for any other reason.

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## Objectives of trial observer missions

The objectives of each trial observer mission will depend largely upon the circumstance of the individual case. However it will be important to clearly define the objects of any mission. Trial observer proposals submitted to the President will normally provide a detailed list of trial observe objectives.

The United Nations has identified five primary objectives for trial observation missions. These are:

- \* First hand monitoring in order to prepare an objective and impartial report on proceedings;
- \* The presence of an observer will make the participants (particularly the judge and prosecutor) aware they are under scrutiny, influencing them to be fair;

- \* The presence of an observer is a symbol of international concern about the fairness of the trial;
- \* The presence of an observer sends a message to the defence, the defence attorney and the defendant's supports a sense of international assistance and renewed confidence; and
- \* First hand monitoring will help to make sure justice is done, and seen to be done.

Unless the Co-Chairs for any reason propose to the contrary, it will be assumed that these objectives apply to any LCA mission.

## Observer reports

In the course of the trial observation and at the conclusion of the trial, the trial observer will provide reports to the President and the Co-Chairs. The

President, after consultation with the Co-Chairs, has authority to release the report in whole or in part as he or she thinks fit.

The observer is not entitled to release any reports to the media or make any public statements which do not accord with the official media protocols of the LCA.

## Administration

The Panel is under the administration of the International Law Section of the Law Council of Australia. The Executive of the ILS may, with the approval of the President, amend these rules from time to time as it deems appropriate.

Any interested parties can contact the Law Society NT for further information.①

# Judas: an imaginary life of Judas Iscariot

Who exactly was Judas Iscariot and what were his real motives? Was he the great betrayer, or as Kim Kilvington asks in *Judas: An Imaginary Life of Judas Iscariot* was he simply a victim of circumstances?

According to the publishers, Longueville Media, this novel challenges readers to examine their sometimes blind acceptance of tradition and the nature of truth.

*'What is truth?' Pilate might ask. 'Truth,' I would answer, 'is whatever you can make people believe.'*  
Judas Iscariot

Kim Kilvington is a solicitor with the Central Australian Aboriginal Legal Aid Service (CAALAS) in Alice Springs. This is Kim's first novel, but he started working on it about a decade ago and has worked on it periodically ever since.

Through Kim's religious upbringing he developed an interest in Christianity and testing its basis.

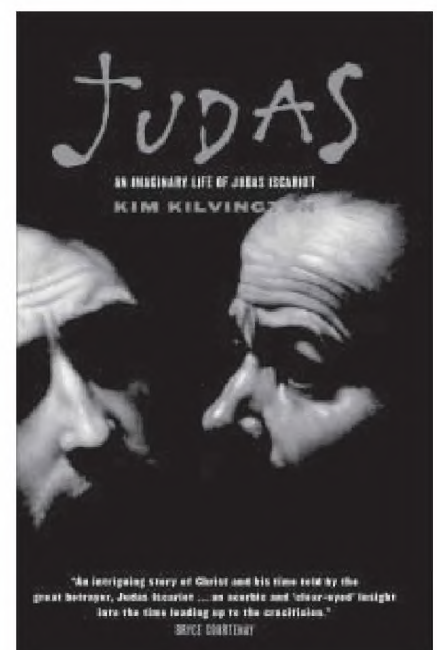
After reading an article stating that a survey had found Judas Iscariot was the second most hated person in history, behind Adolf Hitler, Kim wondered about Judas' life and

"I am a complex person, and not a very happy one. But what is happiness? Is it a bowl of gruel when hungry? A woman who slips off her veil on a cold night and reveals broad avenues of teeth shining wet in their ordered rows, like a field of wheat in the valley of Ghar? Or is it a mother hugging you and whispering in your ear, 'You are Judas, my beloved son.' For that is my name: Judas ... Judas Iscariot"

- Excerpt from Chapter One.

whether he was just a man in need of a good defense lawyer.

According to Kim, this book can be read on several levels: as a story about the life of Judas Iscariot; as a defense of Judas; or as a more



serious investigation into the motivations of Jesus.

*Judas: an imaginary life of Judas Iscariot* can be ordered through Tower Books on Tel: 02 9975 5566. The recommended retail price is \$24.95.

For further information contact Longueville Media, Tel: 02 9386 0081, Fax: 02 9680 4660, Email: david@longmedia.com.au or visit www.longmedia.com.au ①