

Good signs as Australian people awaken from liberties slumber

There have been several signs in recent weeks that the battle against extreme and excessive attitudes and laws is starting to bite in the community.

Comments on online news items and in blogs – in relation to alleged terrorism suspects arrested in Melbourne and proposed internet censorship by Communications Minister Conroy – are starting to show a decided swing towards being much more critical of the Rudd Government. In particular, people seem to be becoming increasingly suspicious of claims based on fear.

Part of the change may be attributable to a growing disenchantment with the Iraq and Afghanistan wars. The mood of the nation seems to be changing. It took five years for the injustice of the David Hicks situation to be widely recognised, but the good sense of the Australian people eventually held sway.

Now, it seems, the people are starting to be much more critical of government, police and security agency PR spin announcements which lack factual back-up. There is also rising concern that governments are prying too much into people's private business.

CLA and other liberties and rights groups have been lone voices for some time, but a swing seems to be on, as they say in politics. Other indications are:

Model Litigant: CLA's campaign for the federal government to abide by its statutory obligations is gathering momentum. A major conference last month heard Attorney-General Robert McClelland publically commit to being tougher on departments and agencies not abiding by their obligations.

Extradition: There are new draft laws on extradition which includes some of the safeguards CLA argued for in front of parliamentary committee. But more change is needed.

Independent Reviewer of Terror Laws: Moves are under way to establish this body under new legislation.

Review of Terror Laws: CLA, in a project led by Rhys Michie, is analysing the 450-page discussion paper issued by the A-G before making a submission. It is expected the hated sedition provisions will at last be abolished from Australian law.

Health ID system: CLA's contribution to the formal request for input has received wide publicity. We propose any new HID system operates to a set of five principles, and a monitoring body is set up to review, four times a year, how well the system is matching its principles. (See story later).

At the end of this month the National Human Rights Consultation Committee is due to report. As well, the internet filtering trial is ending.

The coming months will be important times for how well Australia lives up for former traditional civil liberties and human rights standards, and whether we get a new measuring stick to compare our freedoms against.

***LAST WORD:* Govt markets Comancheros member list to Hells Angels**

NSW authorities have marketed the full details – names, dates, addresses – of one bikie gang to another. No public servant has yet been charged with inappropriate behaviour. It is not known whether the Hells Angels plan to pay for the membership details of the Comancheros, who may be able to mount a complaint to the State's privacy authorities. *Read more at the end of this bulletin.*

CLA appears at Melbourne hearing on draconian crime amendments

CLA Directors Lance Williamson and CEO/Secretary Bill Rowlings followed up a written submission to the Senate Legal and Constitutional Affairs Committee with an appearance in late August before hearings in Melbourne.

Details are on the website of CLA's preliminary statement to the hearing, other additional submissions and the original submission on the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*.

The Bill will reverse the onus of proof dramatically: everyone in Australia will be suspect, and will have to be able to prove in court that their financial or other assets have been derived legally. Police and other law enforcement and similar bodies can target anyone on mere suspicion, not on reasonable belief.



Senators Hutchins, Parry, Fisher, CLA's Williamson, Committee Chair Senator Crossin and CLA's Rowlings. See details at: ***New law makes everyone a suspect*** <http://www.cla.asn.au/index.php>

Get ready for a huge internet blacklist you can't access

The pilot trial of internet filtering, set up with a handful of Internet Service Providers (ISPs) by Communications Minister Senator Conroy, is coming to a end.

It will be important to keep a closer than usual eye and ear on what the Senator - voted world internet villain of the year recently - is doing and saying. So far, his consistency in terms of what will and what won't be blacklisted has been appalling.

You can pre-empt Conroy's next statement now by [sending an email](#) to your local Member of Federal Parliament and Senators. On the website, simply enter your postcode to select your MP.

If you would like to tell others about it, the website is: <http://www.censorfree.com.au/emailMP.php>

In case anyone thinks that the proposed Rudd/Conroy black list will be simply what is currently 'Refused Classification', be aware that the current pilot trials are testing a blacklist about eight (8) times as big.

[Answer to Questions from Senator Scott Ludlam](#), Senate Question Time, 11 November 2008:

Senator Conroy – "The pilot will test filtering specifically against the ACMA blacklist of prohibited internet content, which is mostly child pornography, as well as filtering of other unwanted content. While the ACMA blacklist is currently around 1300 URLs, the pilot will test against this list as well as filtering of a range of URLs to around 10,000 so that the impact on network performance of a larger blacklist can be examined."

NSW recommends tort of privacy

The NSW Law Reform Commission has recommended Australia introduces a new national tort: invasion of privacy.

Anyone would be able to sue for any perceived invasion of privacy, with very low-level limits applying to newspapers.

NSWLRC chair James Wood said: "We advocate privacy interests are weighted against other important concerns such as the public's 'right to know' and the protection of national security".

However, writing in the SMH, lawyer/columnist David Marr says: "They also want to do away with two ground rules: what happens in public can be photographed and what's already on the public record can be republished. Neither are absolute rules any more, but the exceptions have, hitherto, been very carefully defined."

Others who oppose the proposal include the Law Council of Australia, the media Right to Know Coalition, the Law Society of NSW and the Press Council.

The NSW report harks back to a formal reference to them from the then NSW Attorney-General (and later federal Home Affairs Minister, and currently backbencher) on 11 April 2006.

Copies of *Invasion of Privacy* (Report 120) are available from the Commission or by download: www.lawlink.nsw.gov.au/lrc For a history of the tort of privacy, look up 'Brandeis' on Wikipedia.

New group set to start operating in Cairns and FNQ

A new CLA group is expected to start operating in Far North Queensland in coming months. CLA President, Dr Kristine Klugman, led a team to Cairns last month to meet with a range of people who might be involved.

Already CLA has strong support from two law firms - Bottoms English, and Silva Wettenhall – and from academics and students at James Cook University's law school at the Cairns campus.

Discussions held with former MHR Warrent Entsch were also promising, given his dedicated interest in liberties and rights associated with homelessness and environmental issues.

We'll keep members informed: if you know anyone in FNQ who might like to join CLA, please let the secretary know his or her contact details.

Report to members for August 2009

Main activity to report was the trip to Cairns, 5-12 of August, by President and CEO. A number of successful meetings formed a core for a group in Cairns, to monitor local issues and participate in a national network. The main organiser is likely to be Mandy Shircore, lawyer, lecturer, and longtime legal aid and human rights activist.

Other links were created with the James Cook University at Cairns campus: Malcolm Barrett, lecturer in human rights and international law; Dr Sue Muloin, Equity Officer, law students Richard West, Santhosi Watapuluwa, Kayne Ballard, Janine Aitkin, Billy Colless, with lecturer Lynda Crowley-Cyr of Townsville campus to be approached.

We were guests of Mary Wellington, who runs PNG Womens Program on Cairns Community Radio station. We also met with Warren Entsch, ex MHR, re rights of gays, mental health and Janet Walder, case worker for Migrant Settlement Services Centacare and involved in Amnesty.

We also had very positive meetings with lawyers John Bottoms (and Gemma Levett) and Rowan Silva, who have joined CLA and are keen to participate.

Other meetings in the past month:

Prof Simon Bronitt, National Europe Centre re networking;

Dr Sev Ozdowski, Director, Equity and Diversity, University of Western Sydney, re National Human Rights Education and cartoons;

Dr Adam Tomison, Director, Australian Institute of Criminology re current projects;

Richard Croll re radio work, media monitoring and CLA's spokespeople;

Arved Von Brasch re net censorship (he is preparing a censorship article); and

Daryl McIntyre, National Film and Sound Archive re their holdings in relation to liberties and rights.

Hearings:

Invited and accepted to appear at Senate Legal and Constitutional Committee in Melbourne, attended by Bill Rowlings and Lance Williamson.

Submissions:

Several submitted, including important one on principles of Health ID.

New submissions under way, particularly on National Security Legislation discussion paper.

Membership and financial records: Treasurer and Assistant Treasurer working on updating system to new software.

Website: Improvement in style, layout and content continues. If you haven't visited the website recently, check it out at: <http://www.cla.asn.au/index.php>

Don't throw shoes: have your say on TV code

A draft code of practice for commercial television, proposed to replace the existing code, is currently out for public comment.

Viewers can comment on the rules that will affect what they see on commercial free-to-air television in future, including on the new digital multi-channels.

Comments go to Free TV, the industry body that represents commercial television broadcasters, by 25 September 2009. The draft code, explanatory materials and instructions for submissions are available on the Free TV website at www.freetv.com.au

The initiative follows two cases of TEN Melbourne seriously breaching privacy guidelines by showing inappropriate footage of family members after two major fires.

Australians muddle-headed about crime and justice

People think crime is increasing, when in fact it isn't.

The public view and reality also differ on other important issues: people overestimate the proportion of crime that involves violence and underestimate the proportion of charged persons who are convicted and imprisoned.

Australians consider crime to be an important issue: a large majority would like more spent on police and law enforcement.

Television, radio and newspapers are the major sources of information about crime, so any public confusion can be accurately sheeted home to these sources. A significant new fear is identity theft and credit card fraud and a third of people surveyed think a terrorist attack is likely in Australia.

In general, there is confidence in the police to respond quickly, less confidence in the courts (especially in regard to victims' rights) and little confidence in the prison system to deter offenders or rehabilitate prisoners.

Support for the death penalty has declined, and is now around 43%. There is wide variation in the views of people about the effectiveness of the government in controlling crime, with about one third each believing the government is successful, unsuccessful and having no view.

* Report recently released by the Australian Institute of Criminology: reference <http://www.aic.gov.au/publications/current%20series/rpp/101-120/rpp101.aspx>



Negus takes up as top cop

Tony Negus becomes Commissioner of the Australian Federal Police (AFP) on 7 September 2009.

He has worked for the AFP for 27 years in community policing, federal investigations, human resources, training and protection.

Since October 2007, he has been Deputy Commissioner Operations, with responsibility for high tech crime operations, border activities, international liaison

networks, economic and special operations, forensics and the International Deployment Group.

Mr Negus (pictured) holds a Masters Degree in Public Policy and Administration and a Graduate Diploma in Executive Leadership. He has also completed the Executive Leadership Program at Harvard University and is a member of the Australian Institute of Company Directors (AICD).

In June 2005, Mr Negus received the Australian Police Medal (APM).

He replaces Commissioner Mick Keelty, in the job since 2001.

According to the government media release announcing the Negus appointment, "Mr Keelty has demonstrated outstanding leadership during a period of significant growth in the size and complexity of the AFP's operations in Australia and abroad. He has also led the AFP through a challenging period, including events such as the 2001 September 11 terrorist attacks, the Bali bombings, the Jakarta Embassy bombing, the Indian Ocean Tsunami disaster and the 2003 Canberra bushfires. He has forged important relationships with law enforcement partners throughout the region."

However, the government was less fulsome in its praise for Mr Keelty in early 2008, just before the start of a judicial inquiry into his handling of the Haneef affair, when he proposed limiting media reporting of terrorism cases to when all legal matters had been finalised.

Keelty's tenure was a curate's egg, CLA believes. He did some good things in admittedly very difficult circumstances of massive concern about terrorism, but he also leaves a legacy of several Australians facing execution on death row in Bali because he or his officers chose to curry favour with Indonesian police rather than wait and arrest Australian drug runners back in Australia.

– illustration by CLA member Charlie Wood



UN envoy check on Australia's Indigenous people

The UN Special Rapporteur on the human rights and fundamental freedoms of Indigenous people, James Anaya, has been on a mission to Australia from 17-28 August.

The Special Rapporteur has been investigating the major challenges faced by Indigenous Australians to find a way to address problems, as well as to identify good practices. He will provide a formal report to the government.

Mr Anaya visited Canberra, Adelaide, Perth, Alice Springs, Darwin, Yirrkala, Groote Eylandt, Cairns, Sydney and Brisbane.

The Special Rapporteur will outline the visit's findings in a Country Report to be presented at a future session of the UN Human Rights Council.

Premier backs an A-G apologist

SA Premier Michael Rann has "full confidence" in Attorney-General Michael Atkinson, according to news reports.

The backing comes despite a large out-of-court payout over a defamation action against A-G Atkinson, the Minister who is supposed to know the law of the state, and who as a lawyer should know better.

Deputy Chief Magistrate, Andrew Cannon, sued Mr Atkinson for comments during sentencing remarks in 2008. It was alleged words like "daft" and "delusional" were used by Mr Atkinson in relation to the magistrate's suggestion that overcrowded jails could justify lighter prison sentences.

Mr Atkinson last month said it was "regrettable that legal action occurred between senior state legal officers. In March 2009, I apologised to Dr Cannon ... this (the payout) formally concludes this matter and follows from my apology, made some time ago," he said.

Of course, Mr Atkinson doesn't have to pay personally: State Cabinet has decided the people of South Australia have to pay for what Mr Atkinson apologised for .

The Premier said Mr Atkinson did not breach the Ministerial Code of Conduct. "I have total confidence in Michael Atkinson," Michael Rann said. "No-one in this state's history as Attorney-General has done more to toughen up the law and that's why the judges don't like him. That's why a whole range of lawyers around town don't like him, but he's got my support to speak out," ABC News reported.

Mr Rann is half right: Mr Atkinson has "toughened up" the law, but whether SA law is anywhere near the fairest and/or most just in Australia is another question.

An Attorney-General defaming someone is like a Transport Minister driving at 50kmh over the speed limit: it may not breach the Ministerial Code of Conduct, but it is hardly 'Conduct Becoming' the relevant Minister.

And an Attorney-General forced to apologise for his language becomes an expensive luxury when he costs state taxpayers a reported \$211,000 (\$175,000 settlement including costs and interest, plus \$36,000 government costs).

If A-G Atkinson can apologise and suffer no personal penalty over defamation law, why should anyone else in SA suffer a penalty if another law is broken? Perhaps Mr Rann's Cabinet could decide to also pay the bikie gangs' costs – and damages – for their court appearances?

Mr Atkinson's personal credibility is not enhanced by this episode.

Mr Rann alludes to a pre-existing lack of trust and respect among judges and lawyers in South Australia: now the defamation fiasco makes Mr Atkinson look like a duck that's lost its quack.

Jockeying will now begin for who is to become A-G in the 2010 Rann Government, if the current Premier is re-elected. <http://www.abc.net.au/news/stories/2009/08/13/2655144.htm>

Premier takes over Justice portfolio

South Australian Premier Michael Rann appears to be taking over the Justice portfolio: he is proposing that filming and photography be allowed in SA courtrooms.

He says the move – based on a model from his birth country, New Zealand – could stem criticism that the courts are 'closed shops'.

"We're not suggesting the American approach or a holus-bolus approach to this," he said. "But the NZ approach seems to be approved by the lawyers, the judges and the media in providing greater opening up of the courts, greater access, greater scrutiny but maintaining the dignity of the court process, which is very important."

Mr Rann started being more outspoken on Justice issues after Cabinet decided to pay more than \$200,000 to bail Attorney-General Atkinson out of a defamation suit.

<http://www.abc.net.au/news/stories/2009/08/17/2657528.htm>

New law allows long arm to reach across borders

A new law – the Law and Justice (Cross Border and Other Amendments) Bill 2009 – lets police, magistrates and officials operate across State and Territory borders in Australia's central desert.

The Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands cover some 450,000 sq km, straddling the borders of South Australia, Western Australia and the Northern Territory.

The Cross Border Justice Scheme overcomes jurisdictional issues. It also allows evidence by audio or audiovisual link in interstate proceedings.

The same Bill extends the range of subpoenas that can be served in civil proceedings between Australia and NZ. It is yet another example of major changes to the legal system developed through the Standing Committee of Attorneys-General (SCAG) without proper public consultation.

Who's your pick for an Orwell in 2009?

The annual Orwell awards name and shame organizations, technologies and people who have invaded – or threaten to invade – the privacy of average Australians.

By contrast, the Smith awards (named after Orwell's '1984' hero who opposed Big Brother) acknowledge people who protect us from privacy invasions.

You can nominate someone for the Orwells and/or the Smiths.

Details are set out on <http://www.privacy.org.au/bba> ...nominations close on 11 October 09.

Orwell categories this year are:

- Worst Corporate Invader: for a corporation showing blatant disregard for privacy.
- Worst Public Agency or Official: for a government agency blatantly disregarding privacy.
- Most Invasive Technology: for a technology which is particularly privacy-invasive.
- Boot in the Mouth: for the 'best' (most appalling!) quote on a privacy-related topic.

The Smith Awards are for the categories of:

1. Best Privacy Guardian: meritorious act of privacy protection or defence.
2. Lifetime Achievement: outstanding services to privacy protection.

This year, for the first time, the public are invited to vote for the nominees at the BBA2009 Awards functions held concurrently in pubs in at least Sydney and Canberra. Details of venues will be available after nominations close.

Stamper coming to battle against failed drug laws

In October, the Australian Drug Law Reform Foundation is bringing Dr Norm Stamper to Australia for debates, talks and media engagements about drug policy.

Stamper, a police officer for 34 years, was chief of the Seattle Police Department from 1998 to 2000 and executive director of the Crime Control Commission for three years.

He proposes significant drug law reform, believing the "war on drugs" has actually been a war on people. He believes:

- regulated legalisation would make suburbs and citizens safer and healthier; and
- the "war on drugs" has failed and turned into a war on people, costing thousands of lives and costing the US \$69 billion a year;

Stamper is an advisor to Law Enforcement Against Prohibition (LEAP), a drug law reform organisation of former and current police officers, US government agents and other law enforcement agents who oppose the current way the 'war' on drugs is being carried out.

Debate needed on health records: CLA contributes principle concepts

Groups frustrated by lack of transparency on e-health have formed a coalition to pressure the federal government to release secret documents and engage in an open debate over plans for a national patient Health Identifier system (HID).

The Consumer-Centred E-Health Coalition is a response to "government secrecy and lack of consultation" launched by the Australian Privacy Foundation, the Public Interest Advocacy Centre, Cancer Voices and the University of NSW's Cyberspace Policy and Law Centre.



They claim a narrow focus and limited opportunity to comment on HID and associated privacy issues – key components of a broad e-health rollout, says convener Juanita Fernando (pictured), chairwoman of the APF's health committee.

The \$98m HID system is due to start next year, and the government's discussion paper proposes quick fixes to overcome legal obstacles in the short term, while promising wider consultation down the track, Karen Dearne wrote in *The Australian's* IT section.

Meanwhile a survey has shown that people see HIDs as a new national identity number, sparking considerable community concern: Galexia conducted the unpublished privacy impact assessment (PIA) in 2006.

"Apart from the Tax File Number and proposals for actual national ID cards (the Australia card in 1985-87 and the Health and Welfare Access card in 2005-06), the (health identifier) is the most significant proposal for a comprehensive national identification product," the consultancy firm warns.

For CLA's submission, go to: http://www.cla.asn.au/Submissions/2009/090814eHealth.pdf?zoom_highlight=health+id#search=%22health%20id%22

Police want new powers to control parolees

SA Police want to scrap safeguards around warrants...however, even SA's Victims of Crime Commissioner Michael O'Connell believes the move could lead to over-policing.

Once again, police – through the police association – are trying to shape SA law based on one-off incidents: this time a rampage near Yunta occasioned the call for wholesale change.

Police union spokesman Mark Carroll wants to be told where paroled people live and what their parole conditions are, keeping a secret database on SA citizens who have served their time.

"If we knew where (a paroled person) was living (and) his parole conditions (a parolee could be) taken out of circulation earlier," he said, according to an ABC report.

QC Frances Nelson says if offenders do breach conditions, police have to apply to the Parole Board for a warrant. Police don't like having to apply for a warrant: they want that process scrapped and open slather access to full details on paroled people.

SA Attorney-General Michael Atkinson is reported to be siding with the police and be willing to single out another group in the SA community for special police surveillance, like the bikies. This time, it will be innocent people who have served their time and are trying to get their lives back into order. – with help from <http://www.abc.net.au/news/stories/2009/08/10/2650711.htm>

CCC holds inquiry into stun gun use

WA's Corruption and Crime Commission is inquiring into the use of stun guns by police.

Police Commissioner Karl O'Callaghan told a parliamentary committee last month that 68 complaints had alleged stun gun misuse since the weapons were issued in 2007. Four complaints have been upheld and 24 complaints are still under investigation.

The CCC investigation has apparently been under way for some time. "The commission is aware of a range of concerns about the police use of (stun guns) and is currently inquiring into the issue," a CCC spokesman said, according to Debbie Guest, writing in *The Australian*.

CLA is monitoring police use of stun guns, and how police forces maintain them.

Four appointed to ARC

Attorney General Robert McClelland has announced appointments to the Administrative Review Council (ARC) which advises the government.

- Roger Wilkins, Secretary of the A-G's Department since 2008.
- Professor Robin Creyke, on the Council since 1999, is Alumni Chair of Administrative Law at the ANU College of Law. She is also Senior Member of the Administrative Appeals Tribunal in Canberra.
- Andrew Metcalfe, first appointed as a member of the Council in 2003, and has been the Secretary of the Department of Immigration and Citizenship since 2005.
- Dr Melissa Perry, first appointed in 2006, has practised at the Bar since 1992.

Two in three Australian companies leak data

Two in three Australian organisations experienced a serious data breach in the past 12 months, according to a survey by the Ponemon Institute.

The Institute, commissioned by data encryption company PGP, paid 482 IT security professionals in Australia to answer questions around the protection of their data.

Some 69% of respondents said they experienced at least one data breach in the last 12 months, up from 56% in 2008. One in four of those companies that experienced a data breach suffered five or more breaches in the 12 months, up 22% on 2008.

Of those organisations that did admit to losing data, 65% chose not to inform the public - a figure the report's authors said was "sure to add to the demand for Australia to adopt data breach notification laws similar to those in the United States." <http://www.securecomputing.net.au/News/152610.two-in-three-australian-companies-leak-data.aspx>

AUSTRALIAN BRIEFS

Telstra pays up for breaking rules: ACMA, the communications authority, has fined Telstra more than \$100,000 because people on the Do Not Call register have been receiving Telstra telemarketing calls even after the company was alerted to the problem. The \$101,200 fine came after a 12-month investigation into breaches of register, which has 3.5 million phone numbers where people have formally asked not to receive marketing calls. Telstra blamed human error and a breakdown of processes for its sins.

Commission seeks info on info: The NSW Law Reform Commission has launched a community consultation website/blog to collate people's experiences of accessing personal information held by government agencies. <http://www.lawreformnsw.com.au/access-to-personal-information/> Abi Paramaguru, Legal Officer, NSWLRC. E: abi_paramaguru@agd.nsw.gov.au P: 02 8061 9263.

Lowdown on parliamentary allowances and staffers: Two updated reports from the Parliamentary Library: <http://www.aph.gov.au/library/pubs/BN/2009-10/parlrem.htm> Parliamentary Allowances, Salaries of Office and Entitlements, by Deirdre McKeown, Leanne Manthorpe and Cathy Madden, provides relevant data, hyperlinks and documents on the remuneration of Australian federal parliamentarians, including travel and electorate allowances. <http://www.aph.gov.au/library/pubs/RP/2009-10/10rp03.htm> The Members of Parliament (Staff) Act 1984 Framework and Employment Issues provides comprehensive information on the Members of Parliament (Staff) Act 1984 (Cth) employment framework including recent developments, staff figures, and staffing trends. – from Democratic Audit of Australia

Aussie law students go to school in Geneva: Murdoch University of WA is offering a law program focused on international human rights law in Geneva in 2010. Murdoch U's School of Law will offer the three units directly relevant to human rights law during a three-week period from 19 June to 9 July 2010 as part of the International Human Rights Law Program at the Centre international réformé John Knox in Geneva. Details: Dr Fernand de Varennes Ph 08 9360 6510 <http://www.law.murdoch.edu.au/academics/geneva2010.html>

INTERNATIONAL

Stun gun battle escalates with new, more powerful weapon

A new shotgun-style stun gun that fires wireless electric shock projectiles up to 30m is being marketed by the American manufacturer of stun guns.

Termed an extended range electronic projectile (xrep), the projectile will reportedly latch on to a person with barbed electrodes and deliver a 500-volt shock.

The makers say it will allow police to safely immobilise suspects from a much greater distance than before – existing stun guns fire darts up to 7.5m – and then give them time to reach the target before he or she could move.

Current stun guns deliver a five-second shock, which can be re-triggered. The new shock will last for 20 seconds.

Last month the co-founder of the main stun gun manufacturer, Rick Smith told analysts the wireless systems would "leave more of a mark", according to a report in *The Guardian*. "It's a bigger projectile to reach out to extended ranges," he said. "It's moving faster; it's going to, potentially, cause a much bigger bruise, contusions. It's going to be a pretty bad thing."

<http://www.guardian.co.uk/politics/2009/aug/23/new-taser-gun-police>

UK's new Supreme Court replaces Law Lords

The Supreme Court of the United Kingdom opens for business on 1 October. In lay language, it replaces the Law Lords as the final court of appeal in the UK.

The new court continues a tradition begun in 1399 when the House of Commons stopped hearing legal matters. It will sit in the Middlesex Guildhall building in one corner of Parliament Square in London.



The official badge of the new Supreme Court was granted by the College of Arms in October 2008. It comprises the symbols for both Omega (representing finality) and Libra (symbolising the scales of justice), in addition to the four floral emblems of the United Kingdom: a Tudor Rose, representing England, conjoined with the leaves of a Leek, representing Wales; a Flax for Northern Ireland; and a Thistle, representing Scotland.

– badge details from Wikipedia

Appeals from Australia to England federally were abolished by Acts in 1968 and 1975, and from the States by an Act in 1986. A rump power exists in the Constitution for an appeal over disputes between the Commonwealth and the States, but the High Court would have to grant leave to appeal and it has said it never would.

World war on drugs: Mexico gives in to reality

Mexico last month took the controversial step of no longer prosecuting people carrying small quantities of marijuana, cocaine, heroin and other drug – aiming to free up prison space and wean addicts from their drugs.

Instead, people found with drugs for "personal and immediate use," according to the law, will be referred to free treatment programs and considered patients, not criminals.

The decriminalization effort is intended to free up prison space for dangerous criminals and to better wean addicts away from drugs.

Under the new law, a police search that turns up a half-gram of cocaine, the equivalent of about four lines, will not bring any jail time. The same applies for 5 grams of marijuana (about four cigarettes), 50 milligrams of heroin, 40 milligrams of methamphetamine or 0.015 milligrams of LSD.

The battle against the drug cartels, which has resulted in more than 11,000 deaths since President Felipe Calderon took office in December 2006, will continue unabated, officials insist. Revising drug possession laws, in fact, will help focus the drug war more effectively, they say, and allow greater targeting of dealers and principals.

Prisons in UK overcrowded: change drugs policies?

Two-thirds of prisons in England and Wales are overcrowded, with some jails holding hundreds more inmates than they were built for.

There are 8,865 more prisoners inside the UK prisons system than it was designed to hold, according to the Prison Reform Trust.

Shrewsbury prison is the most overcrowded, at 179% of normal capacity, followed by Swansea and Dorchester. One of the largest prisons in England and Wales, Wandsworth in south London, is at 150% capacity, with 1,650 inmates in spaces intended for 1,107.

A total of 88 out of 140 jails were over their certified normal accommodation level – defined as providing "decent" standards. The trust last month warned that "sentence inflation" meant too many people were being locked up: will the UK adopt the Mexican solution?

<http://www.guardian.co.uk/society/2009/aug/25/prison-reform-trust-jails-overcrowded>

NGOs call for change to self-protective voting bloc

Liberties and rights groups have called on the UN Human Rights Council to change how members are elected and end the bloc system that allows countries charged with widespread abuses to sit on the council, Reuters reported last month.

In an appeal sent to the 47 governments on the HRC, a total of 74 non-governmental organisations (NGOs) also urged an end to the election of its members by regional states and making sure that every seat is open to contest.

"We call on all UN member states to bring vote trading arrangements and uncompetitive elections for the council to an end ... The credibility of the council and its ability to respond to human rights violations hang in the balance," the NGOs declared.

The HRC (northern) autumn session is held in Geneva in September.

The HRC is dominated by a bloc of developing countries with regular support from Russia, China and Cuba, which all shield each other from any substantive criticism or censure. Members whose records are often criticised by international rights organisations include Egypt, Kyrgyzstan, Pakistan and Saudi Arabia. The US joined the HRC this year after a three-year boycott.

<http://in.reuters.com/article/worldNews/idINIndia-41806120090817?pageNumber=1&virtualBrandChannel=0>

DNA evidence can be fabricated, scientists show

Scientists in Israel have demonstrated that it is possible to fabricate DNA evidence, undermining the credibility of what has been considered the gold standard of proof in criminal cases.

The scientists fabricated blood and saliva samples containing DNA from a person other than the donor of the blood and saliva. They also showed that if they had access to a DNA profile in a database, they could construct a sample of DNA to match that profile without obtaining any tissue from that person.

"You can just engineer a crime scene," said Dan Frumkin, lead author of the paper, which has been published online by the journal *Forensic Science International: Genetics*. "Any biology undergraduate could perform this." The wrong DNA material could be planted at a crime scene.

Dr. Frumkin is a founder of Nucleix, a company based in Tel Aviv that has developed a test to distinguish real DNA samples from fake ones that it hopes to sell to forensics laboratories.

http://www.nytimes.com/2009/08/18/science/18dna.html?_r=2

Terrorism powers used against children

The UK's official reviewer of terrorism legislation last month criticised the London Metropolitan police for stopping and searching 58 children aged nine or younger using terrorism powers designed to fight al-Qaida.

The children were stopped in 2008 and all were under the criminal age of responsibility, which is 10. None were apparently involved in terrorism.

According to figures from the Metropolitan Police Authority, in 2008 the Met used terrorism laws to stop and search 10 girls aged nine or under, and 48 boys. A total of 2,331 children aged 15 or under were stopped by Met officers using terrorism powers.

Section 44 of the Terrorism Act 2000 gives police the power to stop and search people in areas deemed by senior officers to be at risk of terrorism. A constable does not need to have reasonable suspicion, and use of the power has been controversial.

Last year the Met carried out 175,000 searches using section 44.

<http://www.guardian.co.uk/politics/2009/aug/18/met-police-stop-search-children>

300 children a day have DNA taken by police

More than 300 children a day have their DNA swabbed by police and added to the UK national database.

Already 412,670 youngsters under 15 have their genetic profiles stored; adding 15 to 17-year-olds, the total rises to 1.1 million.

DNA samples from children as young as 10 are kept regardless of whether they were ever charged with any crime. Critics say police arrest entire groups simply to swab their DNA for checking against future crime scenes.

There are about 5m people on the DNA database in the UK, the largest in the world. Of these, at least 850,000 are innocents never convicted of a crime. On this basis, around 200,000 of the children on the database are also innocent.

The samples were taken under rules introduced by former Prime Minister Tony Blair which allow suspects to be swabbed as soon as they are arrested.

<http://www.dailymail.co.uk/news/article-1205867/300-children-day-added-DNA-database-400-000-15s-Big-Brother-roll.html?ITO=1490#ixzz0NvPybnJp>

Defence bar faces cuts to fees

Defence barristers in crown court cases in the UK face cuts of up to 23% in their fees under Ministry of Justice proposals to reform the \$4bn a year legal aid budget.

Justice ministers are also proposing a 20% cut in the \$380m a year budget spent on expert witnesses and want to introduce a single flat rate legal aid fee for all police station work.

Lord Bach (pictured), the legal aid minister, said the proposals to rationalise some of the criminal legal aid payments were necessary, irrespective of economic circumstances. He said the reforms were needed to protect and increase access to civil legal aid, the bill for which had risen by 30% to \$1.6bn over the past four years. <http://www.guardian.co.uk/uk/2009/aug/20/legal-aid-reform-barristers-solicitors>



US may join International Criminal Court

US Secretary of State Hillary Clinton has signalled the Obama administration may sign up to the international criminal court, the body that pursues war criminals strenuously opposed by the Bush administration.

Speaking at a public meeting in Nigeria last month, Mrs Clinton expressed regret that the US has not yet joined the ICC. The court, set up in 2002, has pursued dictators allegedly responsible for genocide and other war crimes.

"This is a great regret that we are not a signatory. I think we could have worked out some of the challenges that are raised concerning our membership. But that has not yet come to pass."

<http://www.guardian.co.uk/world/2009/aug/06/us-may-join-warcrimes-court>

National ID card cloned in 12 minutes

The UK's prospective national ID card was broken and cloned in 12 minutes, the Daily Mail newspaper reported.

The newspaper hired computer expert Adam Laurie to test the security that protects the information embedded in the chip on the card.

Using a Nokia mobile phone and a laptop computer, Laurie was able to copy the data on a card that is being issued to foreign nationals in minutes. He then created a cloned card, and with help from another technology expert, changed all the data on the new card. This included the physical details of the bearer, name, fingerprints and other information.

<http://www.computerweekly.com/Articles/2009/08/06/237215/uk-national-id-card-cloned-in-12-minutes.htm>

Attacks on homeless people surge

Police and researchers in the USA are seeing a surge in unprovoked attacks against the homeless, with states bringing in laws to treat such assaults as hate crimes.

In October, Maryland will become the first state to expand its hate-crime law to add stiffer penalties for attacks on the homeless. At least five other states are considering similar steps: the District of Columbia approved a measure last month, and a similar bill was introduced to Congress.

The National Coalition for the Homeless has documented a rise in violence over the past decade, with at least 880 unprovoked attacks against the homeless at the hands of non-homeless people, including 244 fatalities.

Sometimes, researchers say, one homeless person attacks another in turf battles or other disputes. But more often, they say, the assailants are outsiders: men or in most cases teenage boys who punch, kick, shoot or set alight people living on the streets, frequently killing them, simply for the sport of it, their victims all but invisible to society.

http://www.nytimes.com/2009/08/08/us/08homeless.html?_r=1

British woman wins rights over dying law

Britain's highest court gave a ruling last month that could finally remove the fear of prosecution from people who travel to Switzerland to help relatives kill themselves.

In a unanimous ruling, the Law Lords ordered the Director of Public Prosecutions to immediately draw up a policy that would spell out when prosecutions would and would not be pursued against the relatives of the person who has died.

The ruling was strongly in favour of Debbie Purdy, 46, who has multiple sclerosis and who has been fighting to protect her husband, Omar Puente, should he accompany her to a clinic in Switzerland that specialises in euthanasia. She had argued that the British law was unclear and that uncertainty surrounding the issue breached her human rights.

DPP Keir Starmer promised after the ruling to produce an interim policy by 30 September. The decision was the last by the House of Lords: it will reconvene in October as the nation's Supreme Court. <http://www.guardian.co.uk/society/2009/jul/30/debbie-purdy-assisted-suicide-judgement>

Far-right on the rise in Germany

The annual report of the Federal Office for the Protection of the Constitution, Germany's domestic intelligence agency, showed that far-right crime rose last year by 16% across the country.

Most offences were classified as propaganda crimes – painting swastikas on Jewish headstones or smashing the windows of restaurants run by immigrants – but politically-motivated violent acts like murder, arson and assault accounted for 1,042 of the nearly 20,000 crimes recorded, a rise of 6.3% over 2007. And these violent crimes turned out to be far more commonplace in parts of the former East Germany. Saxony, with roughly 5% of the country's population, accounted for 12% of the violence classified as far right in nature, the report said.

The far right is on the rise across Europe. Xenophobia is gaining in Germany among youth, with Muslims being singled out. A recent two-year government survey of 20,000 German teenagers classified one in seven (about 14%) as “highly xenophobic” and another 26% as “fairly xenophobic.”

Sniffer dogs to go on trial: are they legal?

Using sniffer dogs to identify people carrying drugs is wrong in principle and ineffective in practice according to the UK's Release organisation, which has set out to prove so in court.

Release is taking legal action against the British Transport Police (BTP) to determine if the use of sniffer dogs to detect drugs is lawful. If successful, the case will require the police to stop using sniffer dogs for this purpose, says Claudia Rubin.

The case was sparked by an incident in which Release's executive director, Sebastian Saville was searched last year by the BTP at Camden Town underground station following a positive indication by a sniffer dog. Saville had no illegal drugs in his possession.

Release argue that Saville was unlawfully searched and detained, and that these actions constituted a breach of Saville's fundamental human rights of freedom of movement and respect for private life, as well as constituting a trespass to his person. These kind of civil liberties are what distinguish our own society from the authoritarian and repressive ones that we loathe and fear, according to Rubin.

What Australia fights for: women go hungry if they don't sate men's hungers

A new Afghanistan law lets Shia men deny their wives food if they refuse to obey their husbands' sexual demands.

President Hamid Karzai had promised not to implement an earlier version of the same law.

The new legislation grants guardianship of children exclusively to their fathers and grandfathers, and requires women to get permission from their husbands to work. The law and its repressive measures contradict the Afghan constitution and international treaties signed by Afghanistan.

<http://www.guardian.co.uk/world/2009/aug/14/afghanistan-womens-rights-rape>

Angry world wants Burmese woman set free

World leaders are calling for the immediate release of Myanmar pro-democracy leader Aung San Suu Kyi, whose house arrest has been extended for another 18 months for 'violating security laws'. She has spent 14 of the past 20 years under house arrest.

Australian Foreign Minister Stephen Smith urged Burma's military regime to set her free immediately. Even the normally silent South-East Asian neighbours of the country also known as Burma expressed disappointment at the sentence.

The UN called for immediate release and the US, the European Union, Britain and France were among those who condemned the verdict. <http://news.bbc.co.uk/2/hi/asia-pacific/8195830.stm> China called on nations to "respect Burma's judicial sovereignty".

More Chechnya rights activists murdered

The head of a Russian charity and her husband have been found dead in Chechnya a day after their abduction, the Memorial human rights group said last month.

The bodies of Zarema Sadulayeva, of the Let's Save the Generation charity, and her husband were found near the Chechen capital, Grozny. Armed men seized the two from the offices of Ms Sadulayeva's charity. The case follows the earlier abduction and killing of prominent human rights activist Natalia Estemirova and other murders of rights activists.

Action Network calls for ban on Indonesia's Kopassus

More than 50 US organisations recently urged the US Government to "strictly prohibit any US cooperation with or assistance to the Indonesian Special Forces (Kopassus)" in a letter sent to President Obama, Secretary of State Hillary Clinton and members of Congress.

The letter was coordinated by the East Timor and Indonesia Action Network (ETAN). John M. Miller, ETAN's national coordinator, said Kopassus, more than any other Indonesian military unit, stood accused by the Indonesian people of some of the most egregious human rights violations.

He said the history of Kopassus human rights violations, its criminality and its unaccountability before Indonesian courts extended back decades and included human rights and other crimes in East Timor, Aceh, West Papua and elsewhere. A recently published Human Rights Watch reported detailed ongoing Kopassus human right violations in West Papua, he said.

Australia trains, and trains with, Kopassus. – from UNity, UN Assn of Australia newsletter

<http://www.etan.org/news/2009/07kopassus.htm>

EU criticises Iran post-election trials

European nations have strongly criticised the latest trials in Iran over the unrest that followed the disputed presidential poll.

Iranian workers at the French and British embassies and a French national were among dozens of detainees to appear in court in Tehran.

The EU presidency said action against any EU national or embassy would be seen as an act against the whole bloc. The UK and France also spoke out against the trial. http://news.bbc.co.uk/2/hi/middle_east/8191858.stm

UN official warns Venezuela over proposed media laws

Proposed media laws in Venezuela could be used for political intimidation and would seriously curtail press freedom and potentially criminalise legitimate dissent, an independent UN human rights expert warned last month.



Frank La Rue (pictured), the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, said the draft 'Special Law against Media Crimes' presented to Venezuela's National Assembly, "would involve serious violations of the right to freedom of opinion and expression... if adopted in its current form."

Mr La Rue said he was especially concerned that the draft laws included the concept of "media crimes," which he warned "could be used as a tool for political intimidation, which may lead to the criminalisation of dissent and criticism."

He appealed to the National Assembly to incorporate international human rights principles in the draft laws. Venezuela is party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of opinion and expression and defines when the right may be restricted. http://www.unityunaa.info/media_matters.html

US courts demand 'probable cause' before freezing assets

A US federal court ruled for the first time last month that the US Government cannot freeze an organization's assets under a terror financing law without obtaining a warrant based upon 'probable cause'.

The government must give the organization notice of the basis for freezing its assets and a meaningful opportunity to defend itself.

The ruling came in a lawsuit filed in November 2008 by the American Civil Liberties Union, the ACLU of Ohio and several civil rights attorneys on behalf of KindHearts for Charitable Humanitarian Development, Inc., an Ohio-based charity.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) froze KindHearts' assets three-and-a-half years ago without a warrant, notice or a hearing, based simply on the assertion that OFAC was investigating whether the charity should be designated as a "specially designated global terrorist (SDGT)". <http://www.aclu.org/safefree/discrim/40774prs20090819.html>

INTERNATIONAL BRIEFS

'Blackbeard' Obama will keep on kidnapping: The Obama administration will continue the President Bush practice of rendition – capturing terrorism suspects and transporting them to third countries for interrogation, but pledges to monitor their treatment to ensure that they are not tortured. President Obama's Interrogation and Transfer Policy Task Force made the announcement last month, in part to offset the impact of a long-withheld report by the CIA inspector general, written in 2004, that offered new details about the CIA's brutal tactics in interrogating terrorism detainees. <http://www.nytimes.com/2009/08/25/us/politics/25rendition.html?th&emc=th>

UK denies free speech over Guantanamo: A former Guantánamo guard planning to address a support group for inmates of the camp was denied entry to the UK, held at Heathrow Airport, then

deported back to the USA late in August. Terry Holdbrooks, an outspoken critic over treatment of prisoners at Guantánamo, said that immigration officials told him he was refused entry because he was unemployed and living in rented accommodation in the US, raising suspicions he would not leave the UK. The former soldier, who converted to Islam after discussions with prisoners at Guantánamo, was due to address a meeting by Cageprisoners, a support group that paid for his ticket. [Story: The Observer](#)

Facebook backs down on privacy: Facebook agreed late in August to better protect the personal data of users worldwide after negotiations with Canada's privacy commissioner. Users of the social networking website will have more transparency and control over information provided to third-party developers of applications such as games and quizzes, Canadian Privacy Commissioner Jennifer Stoddart announced. As well, Facebook will make it clear that users can delete their accounts, not just deactivate them, if they do not want their information kept indefinitely. Information about non-users will also be better protected. <http://www.smh.com.au/technology/security/facebook-to-tighten-user-privacy-protection-after-canada-talks-20090828-f1q9.html>

Facebook faces lawsuit over privacy: Facebook users filed a civil suit in the USA last month, alleging the social networking site violates California consumer privacy laws. The lawsuit was filed in California's Orange County Superior Court on behalf of five users. They are seeking a jury trial for damages and lawyers' fees. The plaintiffs are two children under 13, a user of the original Facebook, a professional photographer, and an actress and model. The 40-page complaint accuses Facebook of violating California privacy and online privacy laws by disseminating private information to third parties for commercial purposes. <http://software.silicon.com/security/0.39024655.39490607.00.htm>

Sri Lanka renditions Tiger: The Colombo government reportedly captured the latest Tamil Tiger leader, Selvarasa Pathmanathan, in Thailand last month and renditioned him to Sri Lanka for interrogation. The kidnapping is another atrocity in a 25-year-old war between the Sinhalese majority and the Tamil minority that has killed about 100,000 Sri Lankans. The government claims to have won the war, but is in danger of losing the peace if it engages in illegal international behaviour. <http://www.cbc.ca/world/story/2009/08/07/sri-lanka-tamil-tiger-pathmanathan354.html>

Baha'i trial postponed: The trial of seven Baha'i leaders imprisoned in Iran has been postponed until 18 October. They have been held at Tehran's Evin prison without formal charges or access to their lawyers since May 09.

Stun gun use jumps 30%: UK police are using stun guns about 30% more in 2009 than in 2008, reports show. They used the electrical discharge weapons 226 times from January to end-March 2009 – up from 174 in the last three months of 2008. Police forces in England and Wales recently issued stun guns to officers not carrying traditional firearms. <http://www.independent.co.uk/news/uk/crime/police-taser-use-up-nearly-a-third-1773294.html>

Watchdog will keep eye on justice tribunal: The UN and Cambodia have announced an agreement to establish an anti-corruption watchdog to oversee the tribunal set up to bring to justice the perpetrators of the country's notorious 'killing fields' genocide over three decades ago. <http://www.un.org/apps/news/story.asp?NewsID=31750&Cr=Khmer+Rouge&Cr1=>

DATES:

31 Aug-1 Sept, Parramatta, NSW: Indigenous young people, crime and justice conference, hosted by Aust. Inst. of Criminology, NSW Comm. for Children and Young People, the NSW A-G's Dept. and Australian Human Rights Commission. Details: <http://www.aic.gov.au/>

1-4 Sept, Sydney: XIX World Congress, International Society for Labour and Social Security Law, <http://www.labourlawsydney.com/>

2-4 Sept, Darwin: Aust. Law Librarians' Association conference. http://www.alla.asn.au/index.php?option=com_content&view=article&id=222&Itemid=371

7 Sept, Canberra: Cambodia and Human Rights: Memories of former special representative: Michael Kirby, ex-High Court judge. Public lecture - free. 1-2pm Hedley Bull Centre. RSVP: rsvp@law.anu.edu.au

17-20 Sept, Perth: 36th Australian Legal Convention, <http://www.law09.com.au/>

21 Sept, world: International Day of Peace

1-2 Oct, Canberra: Sex Discrimination Act Silver Anniversary conference, plus its future in light of a possible Equality Act and a Charter of Human Rights, Old Parliament House & The National Museum of Australia. Info: http://law.anu.edu.au/coast/events/sex_discrim/conference.htm

2 Oct, Sydney: Protecting Human Rights Conference, Art Gallery of New South Wales, details: www.gtcentre.unsw.edu.au

7-9 Oct, Canberra: Aust and NZ Sports Law Assn conference: www.anzsla.com.au

4-9 Oct, Madrid, Spain: Intntl Bar Assn annual conf.,: <http://www.int-bar.org/conferences/Madrid2009/>

29 Oct, Canberra: Conference on the International Court of Justice's first matter, the Corfu Channel Case. <http://law.anu.edu.au/coast/events/Corfu/conf.htm>

29-31 Oct, Frankfurt, Germany: World Religions and their Influence on Legal Systems: <http://globalday.legal-profession.org>

9-12 Nov, London: First Workshop in e-Healthcare Information Security <http://www.comp.dit.ie/e-HISec> in conjunction with The 4th International Conference for Internet Technology and Secured Transactions (ICITST-2009) <http://www.icitst.org/> Registration enquiries: Belinda McDonald gtcentre@unsw.edu.au

11-14 Dec, India: 10th International Conference of Chief Justices of the World - Global Symposium, <http://wmgd.net/symposium/2009/invitation.html>

12-13 Nov, Canberra: CIPL/ANU Public Law weekend, including annual Sawyer lecture and dinner.

10 Dec, world: Universal human rights day

2010:

4-7 May, Melbourne: Non-adversarial Justice: Implications for the Legal System and Society conference, E: ajja@law.monash.edu.au (Call for papers closes 1 Feb 2010)

10/10/10, World: Target date to start the CLA-promoted death penalty moratorium – 10/10 for Life.

LAST WORD: Govt markets Comancheros membership to Hells Angels

NSW prison authorities inadvertently faxed confidential details of the Comanchero motorcycle club members to a rival gang, the Hells Angels. The list contained the names of every known Comanchero member in NSW and their dates-of-birth and addresses.

The list was handed up by a police prosecutor and then faxed by staff at a Central Local Court registry to corrective services officers at Long Bay Jail. The list was given to Mr Padovan, a Hells Angels member in Long Bay who was arrested after the Sydney Airport brawl in March. Authorities were supposed to have sent him a list of his own club members, whom he is banned from seeing. It would appear the NSW Government does not believe he should be banned from seeing the Comanchero members.

<http://www.smh.com.au/national/secret-list-of-bikie-club-members-accidentally-sent-to-rival-gang-20090806-ebjm.html?skin=text-only>

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