ASSOCIATION OF INDEPENDENT SCHOOLS OF QUEENSLAND

MEETING, BRISBANE GRAMMAR SCHOOL, 19 MAY 1983

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The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

LAW REFORM AND THE YOUNG

The Australian Law Reform Commission is not an educational body. Though I have some association myself with educational institutions and agencies, I am not, in the normal sense, an educator. The Law Reform Commission is one of 11 bodies established by Federal and State Parliaments and Governments to advise them on the improvement of the legal system.

A friend of mine, when asked what it was like being a judge, as compared to being a barrister, answered succinctly. 'It's all right. You find the tension goes out the window with half your income'. Having abandoned the barristerial role, and more than half the income that goes with it, I am not in the position where I can offer legal advice. It would be quite wrong for me to offer you a short thesis on the respective legal responsibilities of schools to pupils, parents and teachers or the responsibilities of teachers to pupils and parents and so on. You have all heard about the value of free legal advice. You have also heard of the person who relies on himself for legal advice. I can only suggest that it would be preferable to seek advice on such topics from time to time from the distinguished legal profession of this State. In saying this, I am not merely looking after the interests of other lawyers. I am seeking to protect myself from the twin dangers of straying from the path of what is proper and from offering erroneous legal advice on which you may rely. Because we live in a society growing in its litigiousness, one must be cautious about offering gratuitous opinions. Especially should one be so cautious when one holds judicial office. I want to end up in court — but not as a defendant!

The Law Reform Commission has had a number of tasks relevant to the law as it affects young people. Because we are a Federal Commission, our projects have been confined to Federal and Territory laws. Most of the law on education, whether in public or private schools, is State law in Australia. This is an additional reason for caution on my part. Federal officials learn to be circumspect in commenting on State laws, nowhere more so than in Queensland.

Nonetheless, some of the work of the Australian Law Reform Commission can be relevant to State law, either because a valid Federal law will override State law or because of the provision of models which may be followed in the States. Thus, one of our early reports related to criminal investigation. It was confined to investigation by Federal Police. It recommended specific protection to young people being interrogated by Federal Police. Those protections were accepted by the former Federal Government. They are incorporated in the Criminal Investigation Bill which the new Government has promised to reintroduce later this year.

A major report was delivered by the Commission in 1980 concerning child welfare laws in the Australian Capital Territory. The report dealt with the whole range of the law governing children and young people. It addressed the position of young children in employment. It dealt with the need to secure the protection of children from exploitation and the desirability of preserving the right of children, in appropriate circumstances, to engage in employment. Specific attention was paid to employment in light work, employment in a family business and employment in specially hazardous occupations. There is, of course, detailed legislation in Queensland on all of these matters.

One matter which has been before the Law Reform Commission for some time is the protection of privacy. A report on this topic, confined to the Federal sphere and the Commonwealth's Territories, will be sent to the printer within a month. The report should be tabled in Federal Parliament later in the year. One of the issues it addresses is the privacy of personal information. This issue has become one of great importance with the growing computerisation of personal information, including educational information.

In overseas countries, legislation has been passed to ensure that people normally have rights of access to information about themselves. In the case of young people such rights of access are generally exercised on their behalf by their parents. But there comes a time when young people are entitled to privacy, even as against their parents. A major

controversy grew over an earlier recommendation of the Law Reform Commission, which would have assured respect for children's privacy from the age of 14 years. The views of children on this subject were muted. But the views of parents and their organisations were strong and loud in the land.

There are other matters which the Law Reform Commission is examining and which affect the position of children under Australian law. Our project on Aboriginal Customary Laws requires us to look at some aspects of the law as it affects Aboriginal children, particularly laws on adoption and fostering. Our project on the reform of Federal laws of evidence requires us to examine the issue of privilege against giving evidence of a confidential kind. Should such a privilege be extended, in some cases at least, to teachers and school counsellors? I mention all of these matters both to disclose my qualifications and my lack of them.

PRIVATE SCHOOLS : THE REALM OF CONTRACT

I am relieved of the obligation of presenting you with a thesis on school responsibilities for the reasons I have already mentioned. But there is the further reason still. Within the past year or so at least two books have been published in Australia with an up-to-date review of the law as it applies to teachers, students and schools.[1] In these books the point is made that in the case of private schools the relationship of parents to the school is basically established by the law of contract. The contractual arrangement entered into between the school and the parents (on their own behalf and on behalf of the child) will often be a written document, typically policy guidelines, school rules or other statements of practice set out in published instruments or the school prospectus. There has been relatively little litigation in Australia between pupils, their parents and schools -- whether public or private. Such litigation as does occur generally relates to injuries. Most other disputes are resolved, in the case of private schools, by the severance of the contractual relationship and in the case of public schools by departmental complaints procedures.

Disputes are recorded, in the case of private schools, concerning the relative rights of parents and pupils, on the one hand, and teachers and school authorities on the other. For example, disputes can arise over the vexed issue of corporal punishment, religious instruction or compulsory inclusion in school cadets.

So far as corporal punishment is concerned, it was previously rumoured that private schools (particularly Catholic schools) made greater use of corporal punishment than public schools. It was said that this was the basis of more severe discipline, so attractive to some parents. However, a New South Wales report, Self Discipline and Pastoral Care, revealed in 1981 that there was a strong contrary trend, with many private schools beginning to adopt policies forbidding corporal punishment.[2] The authors of a recent text speculate on whether if teachers were to breach a school policy in regard to corporal punishment, a civil action would be permitted on behalf of the student, so long as the common law or criminal provisions allowed corporal punishment by the teacher standing in the place of the parent. However, the authors state that the school itself could possibly act against the teacher, though such action would be based on a breach of an implied or an express term in the contract of employment. Such a term would imply that teachers should conduct themselves in accordance with any guidelines that might be stipulated by the Principal or the Governing Body of the private school[3]:

> Where the school policy permits corporal punishment it can be argued that there was parental consent arising from the contractual relationship with the school if the conditions of enrolment require that the student comply with school rules. However, it can be argued that parents should not be in a position to contract in such a manner to impinge on the 'rights' of their children ... Whatever the merits of such an argument, it is clear that parents are not in a position to agree to have a student subjected to punishment that goes beyond what the courts would accept as reasonble. A teacher exceeding what is reasonable cannot rely on the common law defence and may be both criminally and civilly liable for assault.[4]

Similar rules govern withdrawal from classes, such as classes for religious instruction or school cadets:

> It is common practice, in non-Government schools which have particular religious affiliations, for regular attendance at religious services to be written into the prospectus of the school and thus to become part of the contract with the parent. If this is the case, the school may well be on firm grounds in refusing to admit a student who did not attend religious services as required. Another activity falling into the 'compulsory' category at some non-government schools is participation in a military cadet corps. If a student, or parent on his or her behalf, refused on grounds of conscience to participate in this activity, the school could similarly refuse to continue admission. However, as this kind of

> activity is not as fundamental as, for example, the religious purposes for which the school may have been established, it is arguable that a breach of contract in this regard might not be serious enough to warrant refusal of continuation at the school.[5]

Because of the contractual relationship between parents and the school and the mutual interest in the continuance of that relationship, it is normally possible to achieve agreement between them that avoids disharmony and court procedures for breach of contract. Furthermore, the desire of parents to protect their children from embarrasssing, disconcerting, distracting disputes with a private school generally puts a dampener on litigious zeal. I imagine that this explains why there have been so few reported cases involving disputes in the relationship with private schools. Those disputes are most likely to occur in circumstances of injury and expulsion. It is here that claims against schools and teachers are more likely to take place because of the more serious consequences that can occur, affecting pupils.

LIABILITY FOR PHYSICAL INJURIES

Physical injuries suffered by students, teachers and school visitors are the most frequently litigated matters in the school in context. The usual basis for such actions is the law of negligence. In such actions it is usually alleged that the teacher or a Principal or school council did something that caused, or more likely failed to do something that would have prevented, the injury. In the case of private schools, the action is usually brought against the school itself, if incorporated or the school council and Principal, if not. Teachers suffering injuries have claims under workers' compensation legislation and possibly also for negligence. For a student to recover, it must be shown that there was a duty of care owed which was breached, resulting in damage.

The scope of the duty was recently illustrated in a case in the High Court of Australia, The Commonwealth v Introvigne.[6] The case involved a public school in Canberra. Although some of the judges specifically reserved the position of private schools, the principles of the decision in Introvigne deserve close attention by schools in the private sector. Eleven years after he was injured, Rolanda Introvigne secured a favourable decision concerning the liability of the Commonwealth, which owned and ran the school, for serious injuries he suffered when he was injured while skylarking in the school quadrangle. The teachers normally engaged in supervising 900 pupils in the recreation area were almost entirely absent attending a staff meeting as a result of the death of the Principal. In the consequence, the Court held that there was no adequate system to secure the safety of the pupil and that playground supervision was inadequate. The

whole Court determined that there was a reasonable forseeability of an injury arising from the possibility that boys would swing on the halyard attached to the flag pole. Accordingly, there was negligence in failing to provide adequate supervision at the time when the injury occurred and in failing to padlock the halyard to the pole. Three High Court justices held that independently of vicarious liability for the acts and omissions of the teaching staff, the school authority was itself under a direct duty to children attending its school to ensure that reasonable care was taken for their safety. This was a duty, it was held, the performance of which could not be delegated.

There has already been sufficient discussion of this case both in legal and educational journals.[7] Some care must be taken in applying all the principles stated where differing contractual arrangements may sometimes exist between parents and children, on the one hand, and the school authority on the other. But the duty of the educators to school children in their care, for physical accidents, explosions in science laboratories, injuries received on excursions or camps, slippery school corridors and so on, is all well established law. There is nothing terribly novel in the application of the principles of negligence. In our legal system, those principles ask the questions: Is there a legal duty of care to the person injured? Has there been a breach of that duty? Did the breach lead to compensable damage?

LIABILITY OF SCHOOLS FOR ADMINISTRATIVE ERRORS

Much more controversial are the subjects of administrative mistakes and poor quality teaching leading to less readily measurable injury, but injury nonetheless. It was this topic I raised in an address I delivered at Whyalla in 1981.[8] The cries of outrage and shock that occurred in some teaching and teacher union quarters will not restrain me from raising them once again for your consideration. In doing so, I neither wish to raise false hopes of the anti-education brigade nor false fears on the part of anxious teachers. It should be said at the outset that the law in Australia would not appear at present to provide effective remedies for injury to a pupil through poor teaching or administrative misassignment of a pupil. At least in respect of education in public schools, there may be no legally enforceable duty to the child or his parents that can be brought home by legal action against the Minister personally, the Department or its officials, teachers or the Crown. On the other hand, in the case of private schools, there may be a legally enforceable duty to be argued from the contract between the parents and the school. General statutory duties such as the duty 'to afford the best primary education to all children' have been held in our courts not to be judicially reviewable because

the language chosen was too vague.[9] In determining whether a statutory duty is sufficiently specific to give rise to a remedy for its breach, many difficult legal hurdles must be overcome. The position will differ from one education statute to another. It will differ yet again in respect of educational arrangements which are contractual - as with private and Catholic schools, depending on the terms — express or implied — of the contract.

A further problem in the way of success in Australia, lies in the notions of compensable injuries. The law provides strong protection to persons who have suffered physical injury as a result of the failure of educational authorities to exercise appropriate levels of care and diligence. As it presently stands, the law is ill-equipped to cope with the problems of a person, whether a parent or child, who complains of a bad decision relating to education but cannot point to any consequential compensable injury.[10]

> While a child may not have been physically injured as a consequence of negligence...he may have been emotionally traumatised by his school experiences. Emotional trauma does not itself provide a basis for negligence action. However, if that emotional trauma results in some recognisable and diagnosable physical, mental or emotional illness, an essential element of the negligence action, namely 'actual damage' is established...The child who is traumatised by his school experiences to such an extent that he becomes physically or emotionally ill, as opposed to becoming merely unhappy or upset, may sue the Department, school authority or teachers if their negligence was the cause of this illness.[11]

In a recent book on Mental Retardation and the Law[12], the authors suggest that if positive injury of the kind I have mentioned can be established, attributable to an inappropriate placement of a child in a special school or classes resulting in the development of emotional illness, such a child might be able to sue for consequential damages. Cases of administrative error of this kind are in the border-land of current legal developments in Australia. Should school authorities or educational authorities be liable for the injuries suffered by a child if that child were, through negligence and administrative blunder, wrongly classified, say, as mentally retarded? Should such a child be entitled to recover the cost of 'catch-up' remedial teaching? Should he be entitled to sue for the traumatising effect of such a mistake? Should he be entitled to sue for lost opportunities in life? In New York a boy was given an IQ test by a school-employed psychologist shortly after enrolment and scored near the top of the retarded range. He was put in a special class with the recommendation that his IQ be retested within 2 years. He never was retested. He was educated as retarded until he turned 18. At that age he

was transferred to an occupational training centre. He was given an IQ test and was found to be of average or slightly above average intellegence. He sued for educational negligence. At the trial he won a verdict. However, the New York Court of Appeal reversed the lower Court's decision and dismissed his claim.[13]

If a school, public or private, owes a duty of care recently spelt out so positively and affirmatively by the High Court in the case of public schools, to guard the physical welfare to pupils in school playgrounds, why should it stop there? There is no reason of principle why the negligence action should be confined to physical injuries. So long as the injuries can be clearly established and are consequential upon carelessness and are not merely vague and unmeasurable, why should the loss not be borne by those who have wrongly caused it? It is just not possible, either in legal theory or commonsense, to hold the line at liability for physical injury. If an administrative error causes injury, why should there be no legal remedy to compensate for the forseeable consequences?

Now, I realise that determining that a duty is owed, determining the scope of that duty, determining that the duty was breached, determining that it was the breach (and not laziness or foolishness on the part of the student) which caused the loss: all of these are difficult legal and evidentiary problems. But once you hold that there is liability for physical injury, it is impossible, consistent with logic and principle, to say that other injuries that can be proved are beyond legal redress. There may be practical, financial evidentiary or administrative reasons for excluding compensation in such cases. But there can be no reason of logic or legal principle.

LIABILITY OF SCHOOLS FOR INCOMPETENT TEACHING

There would be many teachers and even some educational authorities who would be prepared to concede compensatory remedies to pupils injured in a case such as the New York one I have mentioned. They would concede damages proved to flow from a frank administrative error. They would concede mistakes of this kind, whether made in a public or private school, should give rise to at least some compensation to the parent and students involved. Perhaps in the case of a private school, where there is a positive contract between the parties, the recovery of damages might be more straightforward than where statutory duties have to be relied upon. Much more controversial is the question of liability, lazy or incompetent teaching. This was also a subject I raised in Whyalla.

In the United States, the liability of teachers for physical injury or administrative injury is now being pressed forward to a suggested new liability in respect of incompetent academic instruction. A number of suits have been brought alleging that a student's intellectual deficiencies are produced by so-called 'educational negligence' in the school system. Two cases have been brought recently claiming educational negligence on this ground. In each case, the cause of action was rejected. However, sufficient was said by the judges to suggest that this may be a potential growth area. Legal commentary in the text books in the United States suggests that successful cases of this kind will be mounted.[14] The two cases can be briefly outlined. Both related to public schools but the principles would seem to apply to a private school and indeed perhaps more so:

* In one case, an 18 year-old high school graduate claimed that his school was negligent in that it failed to provide 'adequate instruction, guidance, counselling and so-called supervision in basic academic skills such as reading and writing'. He particularly alleged that the school failed to diagnose reading disability, assigned him to classes in which he could not read the textual material, promoted him with the knowledge that he had not acquired the skills necessary to comprehend subsequent course work and allowed him to graduate with only a 5th Grade reading ability. The State's education code required an 8th Grade level before graduation. The California Court of Appeal affirmed the trial court's decision to dismiss the claim for failure to state a cause of action known to the law.[16]

* In the second case, a high school graduate received failing grades in several subjects. A New York education statute requires a Board of Education to examine pupils not already in special classes who continuously fail. The school authorities did not attempt to examine this pupil. Nor did they diagnose his educational problem. After graduation, he claimed that he lacked basic reading and writing skills because of these failures. He found it necessary to seek private tuition. He claimed the cost of this extra tuition. The Court dismissed the claim.[17]

Both of these cases have features of administrative mistake and error. Yet each of them also complained about the level of teaching to meet established difficulties and compliance with duties imposed on educational authorities. Whilst teacher commentary on these cases in Australia have been sceptical about the value of the law intervening to provide remedies in such cases, American writers are increasingly pointing to the inadequate state of the present law. They point to the irony that teachers and schools are held to owe an acknowledged duty for <u>physical</u> care. Yet they are not held to owe a

legally enforceable duty for the intellectual advancement of the child, despite the fact that this intellectual advancement is the primary professional duty assumed by teachers and educationalists. Unless teachers are prepared to accept a self-image as mere 'child minders', responsible only for the physical wellbeing of children placed in their care, their professional claims to a responsibility for the mind and intellectual advancement of the child may have consequences for their legal liability where it can be proved that teachers and education administrators have not reached appropriate levels of skill and care in discharging their intellectual functions.

Though critics, in the United States and Australia have urged that it is better to find administrative solutions to educational failing, that the costs of litigation would be a drain on already hard-pressed funds and that lay judges may prove inflexible and old-fashioned in their views about educational standards, supporters contend that an occasional educational negligence suit (particularly if brought by the procedural device of a class action) might have a potent and beneficial effect in stimulating lethargic educational administrators. Furthermore, courtroom litigation could open questions of educational standards to critical lay scrutiny and promote public debate about educational issues in a forum that may be more open and rational than many presently available.

I do not predict that educational negligence cases will proliferate rapidly in Australia. But if American experience is any guide, it seems likely to me that we will see such actions brought in our courts. The decision of the High Court in Introvigne is a final, beneficial and authoritative statement of the liability of public schools for physical injury to their pupils. Whether there is a liability for damaging administrative error or harmful intellectual injury are questions that remain to be answered by the Australian legal system. The differences, if any, that exist in the case of private schools, remain to be spelt out.

EXPULSTION, ADMINISTRATIVE LAW AND TEACHERS

In my closing remarks, I want to say something about administrative law remedies in the educational sphere. This too is well developed territory in the United States. Due process for students became a matter for scholarly concern with the publication in 1957 of an article in the Harvard Law Review. Professor Warren Seavey chastised the courts for failing to give suspended students what he called minimal procedural protection 'given to a pickpocket'.[18] In the way these things happen, a series of actions were then brought in the United States courts on behalf of students who had been disciplined or suspended. Most of them are not of specific relevance to us in Australia because they depend very much on the United States constitutional guarantee of

'due process'. There is no such specific constitutional guarantee in Australia, at least at this stage. By 1975, the matter had reached the Supreme Court of the United States in the case of Goss v. Lopez.[19] At issue was the temporary suspension by a public school principal of several Ohio students for alleged misconduct. A closely divided Supreme Court (5-4) ruled in favour of the students. The majority held that a deprivation of a legal entitlement was involved, namely entitlement to free public education. In requiring some form of 'due process' for students, the Court made a strong statement about the role of the law in public schools in the United States. The Court did not require a formal hearing, the rights of cross-examination or the rights of counsel. But it did require some form of notice, explanation of the evidence and an opportunity to the students be heard. Critics alleged that this was a significant step towards legalisation of authority relationships in public schools.[20] I am not aware of any cases involving private schools. In Australia, references to disciplinary measures are generally found in the documents forming the contract entered into by the parents on the student's behalf and the school. Parents are typically required to sign a form agreeing to disciplinary procedures that operate in the school, including expulsion. The authors of the recent Australian text offer this view:

> A parent, in signing the application form, agrees to be bound and to accept the regulations made from time to time for the conduct of the school, the contents of the prospectus and the business notices attached to the prospectus. This the parent does on his or her own behalf and, presumably, also on behalf of the prospective student.[21]

Although the same general rules of law governing due process and natural justice do not apply in private organisations as in public and statutory bodies, the growing acceptance of public funds by private schools in Australia is likely not only to increase the calls for accountability but also for just procedures and the observance of common perceptions of fairness and natural justice.

We in Australia should not dismiss the United States developments of administrative law as being entirely irrelevant to our legal system. Already in the Federal sphere, we have seen important general statutes for judicial review used in the educational contexts:

* In 1981 Mr. Allan Evans applied to the Federal Court of Australia for an order of review of a decision by the Board of Examiners of Tax Attorneys, informing him that he had failed 2 out of 3 subjects which he had presented as a candidate for admission as a tax attorney. The Board of Examiners filed a notice of objection to the competency of the court to entertain the matter. In issue was whether action of the Board was a 'decision' of an

'administrative character' made 'under an enactment' within the meaning of the Administrative Decisions (Judicial Review) Act 1977. Mr. Justice Fox overruled the challenge to competency. He held that the decision was made under the Patent Attorney Regulations and was of an administrative character. He therefore held that the beneficial Judicial Review Act, designed to make public officials more accountable to the community, did apply and that the court should therefore examine the case. This decision swept aside years of judicial determination that courts would not use the prerogative writs, injunctions or declarations to consider matters concerning examinations, even where conducted by public bodies established by statute.[22] The clear language of the new Federal Act required Mr. Justice Fox to hear the case. The fact that other courts in the past under different laws have not done so was beside the point.[23]

* In 1982, a professor of the Australian National University brought an action under the same Act seeking reasons for the termination of his appointment. Mr. Justice Ellicott in the Federal Court ordered the University to provide the reasons holding that the decision was of an administrative character and made, ultimately, under the Australian National University Act 1946.[24] On appeal, the Full Court of the Federal Court reversed this decision, holding a determination was made under the contract of service not 'under an enactment'.[25]

These cases are admittedly under a new and special Federal statute confined to discretionary decisions of Commonwealth officers under Federal Law. But the Federal Judicial Review Act is probably the forerunner of other developments, statutory and common law, throughout Australia which will encourage a greater willingness in our courts to scrutinise administrative decisions. As more and more decisions concerning education (public and private) are made by public officials, it seems likely that this too will be a growth area for the law and legal regulation. We should be warned by the more extreme developments in the United States, particularly in the administrative law area. Above all, lawyers should constantly remind themselves of the words of Grant Gillmore:

> The better the society is, the less law there will be. In Heaven, there will be no law and the lion will lie down with the lamb...The worse the society, the more law there will be. In Hell, there will be nothing but law, and due process will be meticulously observed.[26]

CONCLUSION

On the basis of this prediction, Australia is no Heaven. No doubt some teachers regard it as Paradise Lost. Every year our Parliaments, Federal and State, turn out more than a thousand statutes. In addition, there are regulations, by-laws, ordinances and a myriad of subordinate legislation governing us all.

In Australia, law flourishes. In a federation of many States, it could scarcely be otherwise. We are a lawyered society. This fact explains why it is unlikely that teachers and education authorities, public and private, will escape the discipline of the law. Our society is becoming more right asserting. Parents, teachers and students themselves are becoming more vocal in the assertion of perceived rights. This is not necessarily a bad thing. It is preferable to a supine society which lamely accepts unfairness. Because of the fact that relations in private schools are generally governed by contract, it is likely that the tide of the law will reach them after it has met the public schools. But reach them it will. And the time for private schools and their organisations to consider its implications, is now.

FOOTNOTES

1. A E Knott, K E Tranc, K L Middleton, Australian Schools and the Law, Uni Qld Press (2nd ed); B Boer and V Gleeson, 'The Law and Education', Butterworths 1982.

2. Boer & Gleeson, 156 (para 708). The reference in the report is para 60-6.

3. Boer & Gleeson, 157 (para 708).

4. ibid.

5. id, 416.

6. (1982) 56 Australian Law Journal Reports 749.

7. See eg Education News, Vol 18 No 2, December 1982, 47.

8. M D Kirby, 'Law Education and Technology', unpublioshed address to the Commercial Teachers' Association of South Australia, Legal Studies Curriculum Committee, Adelaide, 16 April 1982, 12 (C.31/82).

9. R v Minister for Education; ex parte Conford (1962) 62 SR (NSW) 20.

10. ibid.

11. S C Hayes and R Hayes, Mental Retardation : Law, Policy and Administration, Law Book Company, 1982.

12. ibid.

13. ibid.

14. Hoffman v Board of Education, 49 NY 2d 121 (1979). In a 4-3 decision, the Court of Appeals held that the judiciary should not interfere in educational policy determinations except where 'extreme violations of public policy' occur.

15. See eg 'Educational Malpractice', 124 Uni Pennsylvania Law Rev 755 (1976); D S Tracy, 'Educational Negligence', 58 North Carolina L Rev 561 (1980).

16. Peter W Doe v San Francisco Unified School District, 131 Cal Rptr 863 (1976).

17. Donohue v Copiague Union Free School District, 408 NYS 2d 584, 585 (1977). Affd 47 NY 2d 440 (1979).

18. W Seavey, 'Dismissal of Students : "Due Process"', 70 Harvard L Rev 1406 (1957).

19. 419 US 565 (1975).

20. M G Yudof, 'Legalisation of Dispute Resolution, Distrust of Authority, and Organisational Theory : Implementing Due Process for Students in the Public Schols', 5 Wisconson L Rev 891 (1981).

21. Boer & Gleeson, 162 (para 716).

22. See eg Ex parte Forster : re University of Sydney (1963) 63 SR (NSW) 723; Thorne v University of London [1966] 2 QB 237; (1966) 2 All ER 338 and de Smith, Judicial Review of Administrative Action, 4th ed, 30, 504(n).

23. Fox, ACJ in Evans v Friemann (1981) 35 Australian Law Reports 438.

24. Burns v Australian National University (1982) 40 Australian Law Reports 707, Ellicott J.

25. The Australian National University v Burns (1982) 43 Australian Law Reports 25.

26. G Gilmour, The Ages of American Law, 111 (1977), cited Yudof, 923.