submissions to the legislature for principled and responsible changes to these and other pieces of scheme legislation.

Advocacy at the Bar

One of the Bar's principal claims to provide a specialised service to its clients is through the quality of its persuasive advocacy. This specialty comes in various forms, appellate advocacy, the preparation of written submissions and the art of cross-examination. Over many years our Bar's CPD programs have included presentations on these aspects of court craft. Next year I will ask for a special emphasis on the practical development these skills.

This emphasis could perhaps include a few useful guides derived from classical times that underlie the art of forensic persuasion. Aristotle's *Art of Rhetoric* says that rhetoric may be defined as 'the faculty of discerning the possible means of persuasion in each particular case'. This definition remains a beacon of hope to the advocate who has not yet found a winning argument. There is always a means of persuasion. The skill of the advocate is to keep looking for it and then to find and use it.

Women at the Bar

One of our common objectives is the pursuit of excellence as advocates serving the administration of justice. Promoting the finest legal intellects into careers in advocacy is consistent with this objective.

Over the past 15 years women have comprised more than half the graduates and even higher proportions of the honours graduates from most New South Wales Law Schools. These impressive levels of women's achievement at graduation have not been well matched by progress in professional advocacy careers. Over the same period, the total number of women at the Bar has moved from approximately 10 per cent to just over 14 per cent of all barristers in practice. To varying degrees the pattern demonstrated in these figures is replicated in other Australian states.

The independent Bar is an essential community service. It is better able to serve the community if the best and brightest law graduates choose to practise as advocates. The Bar is disabled from doing this if many of our law schools finest graduates are not choosing to come to the Bar and embark on a career in advocacy.

This logic suggests that this issue is not to be viewed narrowly or to be solved in the interests of only part of the Bar. Rather it is an issue for the whole Bar. Unless the Bar attracts and retains significant numbers of women law graduates we will not have the best possible Bar.

The Bar now has an opportunity to enrich our courts with some of the excellent female and male legal intellects graduating from our law schools and commencing practice. I hope to assist the Bar to grasp that opportunity.

1 'Negligence: The last outpost to the welfare state', Judicial Conference of Australia, Launceston, 27 April 2002

2 'The new liability structure in Australia', Address to the Swiss Re Liability Conference, Sydney, 14 September 2004.

3 'Negligence: Is recovery for personal injury too generous', Address to the 14th Commonwealth law Conference, London, 14 September 2005

Letter to the editor

Dear Sir,

In the winter 2005 edition of *Bar News*, Dina Yehia asserts that I demonstrated a misconception about the evidentiary value of DNA evidence when I delivered the Sir Ninian Stephens Lecture for 2005.

The fallibility of DNA evidence, Ms Yehia posited, was demonstrated in *JR v Bropho* [2004] WADC 182 in which the defence called evidence that the calculation of statistics could produce misleading evidence in cases involving Aboriginal people. She notes that:

> the objection to the DNA evidence was successful…And to think that without the challenge to the DNA evidence by some 'tricky' defence lawyer...we may have continued to rely on statistical interpretation of DNA evidence which is not necessarily reliable…

The case was the trial of a person for sexual assaults upon a 13-14 year old girl resulting in the birth of a child, with the child's paternity at issue.

The postscript to that case is that the National Institute of Forensic Science Standing Committee on Sub-Population Data, convened (as it indicates in the foreword to its report) as a direct result of the *Bropho* ruling, delivered its findings on 7 December 2004. The committee was constituted by three scientists including R John Mitchell, whose evidence that the prosecution DNA evidence may not be reliable was accepted by the trial judge, who then acquitted Bropho.

The report has been independently reviewed and statistically validated outside Australia. Its findings were that the statistical factor used in the *Bropho* calculations is a sufficiently conservative figure to be applied even in relation to Aboriginal sub-populations. The prosecution evidence on DNA in *Bropho* was therefore proved to be correct.

It should now be clear to your readers where the 'fallacy' lies.

Margaret Cunneen