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May 2015

AIJA News

Justice Without Barriers: Technology for Greater Access to Justice

21–22 May 2015, Brisbane, Queensland

In keeping with the "access through technology" theme of this conference, its keynote speaker, British lawyer and academic Professor Richard Susskind, OBE, will be addressing an audience seated in Brisbane's Hotel Pullman but will be appearing by video link from his office in the UK.

Professor Susskind is the IT adviser to the Lord Chief Justice of England and Wales and a world authority on the future of courts and lawyers. His books include *The End of Lawyers? Rethinking the Nature of Legal Services* and *Tomorrow's Lawyers: an introduction to your future*, in which he argues that the future of legal service will be a world of virtual courts, Internet-based global legal businesses, online document production, legal process outsourcing, and web-based simulated practice. Legal markets will be liberalised for lawyers , with new jobs - and new employers- appearing.

Professor Susskind is also the architect of a proposal for a new online dispute resolution system for civil cases in the UK, to be known as HM Online Court. It will involve both online mediation and judges working online and deciding cases or parts of cases on the basis of papers submitted electronically.

Panels at the Brisbane conference will cover every aspect of technology in court, from e-filing and its applications in case management to online learning for judicial officers, the potential use of Ipads and tablets by juries, the integration of technology within court and tribunal buildings and the move to digital court records – and the need to "future proof" them.

One session will focus on the role of technology during eight months of hearings in the mammoth Great Southern class action, in which investors in the Great Southern timber plantation schemes claimed they invested in the schemes based on the misleading and deceptive conduct of the scheme's promoters. The plaintiffs sought damages as well as orders setting aside the loans which they took out to fund their investment.

The University of New South Wales' Professor Sandra Hale will also speak on "interpreting in the age of technology" and the University of Western Sydney's Professor David Tait will set up a "virtual courtroom" by using videos at different locations and stitching them together into one "virtual court".

All the conference panellists will be present in person, except for US lawyer and expert on self-represented litigants Richard Zorza, who will appear by video link in a session on the benefits and possible risk factors – of electronic information and services for people representing themselves in court.

For more information on the conference, go to http://www.ammp.com.au/aija15/

BREAKING NEWS

The AIJA has been asked by the Commonwealth Attorney General's Department to develop an Online National Family Violence Bench Book. A grant has been obtained from the Attorney General Department for this purpose. The work will be undertaken by Professor Heather Douglas of the University of Queensland and a team at the TC Beirne School of Law.

This is a very significant initiative. From time to time I expect to be drawing upon the resources of members of the Institute in relation to bench book.

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2015 AIJA AWARD FOR EXCELLENCE NOMINATIONS

Nominations close 14 August 2015

The AIJA invites community members to submit nominations for the 2015 Award for Excellence in Judicial Administration.

Check the AIJA Website for on-line nominations: www. aija.org.au

Former AIJA President appointed Governor of Victoria

The Hon Linda Dessau

The Hon Linda Dessau AM, who served as a Family Court judge from 1995 to 2013, has been appointed as Victoria's next Governor and will take over from the current Governor, his Excellency the Hon Alex Chernov AC QC, on July 1. A member AIJA Council from 1999 to 2005 and served on the AIJA Board of Management 2002 to 2005, she also spent nine years as a magistrate, serving on the Pegasus Committee, which worked on strategies to reduce delays in the criminal trial process. A former AFL Commissioner, chair of the Melbourne Festival, trustee of the National Gallery of Victoria and inaugural chair of the Essendon Football Club women's network, Ms Dessau will be Victoria's first female Governor.

Cultural Diversity and the Law conference

13-14 March 2015, Sydney

Organised jointly with the Migration Council of Australia, this conference aired the many issues associated with ensuring that our court system delivers justice to clients from culturally diverse backgrounds. Panellists shared strategies on topics such as working with interpreters, representing culturally diverse clients, best practice for judicial officers in a multicultural courtroom, family violence, and ways to prevent the radicalisation of prison inmates. Speakers included the Hon Robert French AC, Chief Justice of the High Court of Australia, the Hon Wayne Martin, AC, Chief Justice of Western Australia and Chair of the Judicial Council on Cultural Diversity, the Chief Justice of Victoria, the Hon Marilyn Warren AC, the Hon Anthony Whealy QC, who presided over NSW's landmark Pendennis trials, the Australian National University's Dr Clarke Jones, and barrister, refugee advocate and film-maker Jessie Taylor.

AIJA MEMBERSHIP SURVEY

Thanks are extended to those members who have completed the on-line survey. It is proposed that the responses to that survey be used in an exercise designed to set the strategy for the AIJA for the next five years. Other members are encouraged to complete the on-line survey at:
https://www.research.net/s/SurveyAIJACPD
The completion of the survey will greatly assist in setting the future for educational programmes and research activities

2015 Australian Migration & Settlement Awards

Nominations are now open for the 2015 Australian Migration & Settlement Awards. The event showcases the amazing contributions that individuals and organisations have made in assisting new migrants to settle and feel included in Australian society.

These awards provide an opportunity to encourage people to get involved in recognising and celebrating the work of organisations and individuals who work tirelessly in supporting migrants and newly arrived refugees.

There are a number of award categories, including an award for Diversity and the Law – awarded to an organisation or individual who has worked to raise awareness among new migrants of our social and justice systems and the rights and responsibilities of citizenship.

If you know someone who is achieving great outcomes for our multicultural society, nominate them now at www.migrationcouncil.org.au

Nominations close 5pm AEST, 19 June 2015.

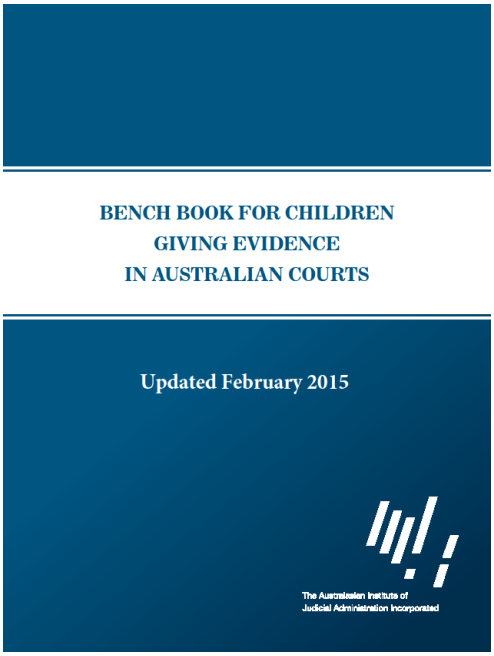
The winners of each category will be announced at a Gala Dinner, held in the Great Hall of Parliament House 18 August 2015.

ASIA PACIFIC JUDICIAL EDUCATORS IN SYDNEY, 23 APRIL 2015

L to R: Ruth Windeler, Judicial Commission of NSW; Liza Rybak, National Judicial College of Australia; Samantha Burchell, Judicial College of Victoria; Janine McIntosh, Institute of Judicial Studies NZ; Greg Reinhardt, AIJA; Ernie Schmatt, Judicial Commission of NSW.

The Asia Pacific Judicial Educators meet on a regular basis to discuss educational initiatives for which their body or jurisdiction is responsible. The Judicial Educators include representatives from Australia, New Zealand, Singapore and Papua New Guinea. The Sydney meeting was joined by representatives of the newly-established Singapore Judicial College by Skype.

The meeting included a presentation by Ms Leisha Lister, Executive Adviser to the Family Courts of Australia on their cultural diversity program. A presentation was also given by the Judicial Commission of New South Wales in relation to recent to technological developments by the Commission.



Bench Book for Children giving Evidence in Australian Courts

An update of the bench book is available free to view and download at the AIJA website Quick Links www.aija.org.au

9th AIJA Court Librarians' Conference

Friday 21 August 2015, Melbourne

The 9th AIJA Court Librarians' Conference will be held 21 August 2015 at the Family Court of Australia, Melbourne. Topics for discussion include;

- technology in the courts
- collaboration
- training programmes for chambers and court staff
- dealing with unrepresented litigants
- resource management tools
- the future of court libraries

For further information about this conference please contact the AIJA Librarian, Mary Young; mary.young@monash.edu

International Framework for Court Excellence (IFCE)

Ms Liz Richardson continues to develop a number of initiatives in relation to the International Framework for Court Excellence (IFCE). Those interested can go the IFCE website which is to be found at: http://www.courtexcellence.com/ at the website the IFCE newsletters are also available.

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Helping those who help themselves: Evaluating QPILCH's Self Representation Service – *Jeff Giddings*, *Blake McKimmie*, *Cate Banks* and *Tamara Butler*

This article reports on an evaluation of the Self Representation Service (SRS) provided by the Queensland Public Interest Law Clearing House (QPILCH). The evaluation was commenced in 2012 and continued until early 2014. It involved surveys of judges, their associates and registry staff from the Queensland Supreme Court, Court of Appeal, District Court and the Queensland Civil and Administrative Tribunal. The evaluation team also surveyed users of the SRS, paying particular attention to their experiences of the service from a stress and coping perspective. The article explains the nature and purposes of the evaluation project and considers the contexts within which self-represented litigants seek to conduct their own legal work. It then reports on and analyses the data collected as part of the evaluation and details recommendations in relation to the promotion and operation of the SRS as well as for the conduct of future research.

Jurors' consideration of inadmissible evidence: A motivational explanation – *Diane Sivasubramaniam*, *Bianca Klettke*, *Jonathan Clough*, *Regina Schuller* and *Kristie Oleyar*

Procedural justice research suggests that, as decision makers in a trial, jurors may be unwilling to disregard inadmissible evidence if they believe it will lead to a just outcome. In an experimental study, three hypotheses were tested: participants reading trial evidence while assuming the role of a juror (rather than observer) would report stronger motivations to protect the community; motivations to protect the community would be associated with higher conviction rates; and participants would be more likely to follow judicial instructions to disregard inadmissible evidence when they assumed an observer (rather than juror) role. Findings indicated that participants were more likely to convict the defendant when they experienced higher motivations to protect the community, reinforcing the importance of studying juror motivations. However, results revealed a complex pattern of factors affecting juror motivations as well as verdict decisions. Results are discussed in terms of the effectiveness of the curative instruction, and key directions for future research.

Suicide findings and TJ blind peer review – *Belinda Carpenter*, *Gordon Tait*, *Nigel Stobbs* and *Michael Barnes*

In common law countries such as England and Australia, violent and otherwise unnatural deaths are investigated by coroners who make findings as to the "manner of death". This includes determining whether the deceased person intentionally caused their own death. Previous research has suggested that coroners are reluctant to reach such determinations, citing the stigma of suicide and a need for sensitivity to grieving and traumatised families. Based on interviews with both English and Australian coroners, this article explores whether an "ethic of care" evident in English and Australian coronial suicide determinations, can be understood as an application of the "practices and techniques" of therapeutic jurisprudence. Based on the ways in which coroners position the law as a potential therapeutic agent, we investigate how they understand their role and position as legal actors, and the effects of their decision-making in the context of suspected suicides.

NSW costs assessment review – *Steve Shaw*

On 3 March 2013, the Chief Justice of New South Wales' Review of the Costs Assessment Scheme (the Review) released a draft copy of the review findings. The system of assessing legal costs in New South Wales had been thoroughly reformed in 1994, and the Review, initiated in 2011, canvassed the entire operation of the reformed scheme. The Review provided wide ranging recommendations to further reform costs assessment. If the Parliament of New South Wales adopts those recommendations as promulgated, the costs assessment regime will operate as a much more expeditious process. One result of those changes will be the abandonment of the core rationale for the original 1994 Reforms; that winning litigants should recover all the moneys they have reasonably spent on the conduct of their litigation. Additionally, if the Chief Justice had accepted the recommendations in their entirety the New South Wales Costs Assessment Scheme would have moved firmly away from the "user pays" approach it currently adopts, and the economic burden of costs assessment would be increasingly shifted onto the Supreme Court, and thus the taxpayer. In his response to the recommendations published on 21 May 2014, the Chief Justice decided against adopting the proposed changes to the costs structure of the scheme and has recommended keeping the current funding model. Nonetheless, it appears that the Costs Assessment Scheme will be required to do more without being able to charge more. This article puts the Review in context and explores the ramifications of its key recommendations.

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Judicial directions and the criminal standard of proof: improving juror comprehension — *Ryan Essex and Jane Goodman-Delahunty*

Misunderstandings by jurors of the standard of proof "beyond reasonable doubt" can result in miscarriages of justice. Judicial directions on the standard of proof and structured decision aids in the form of a question trail have been proposed to enhance juror understanding and application of the criminal standard of proof. Limited empirical testing exists for both. An experimental study tested the effectiveness of definitions of beyond reasonable doubt (New South Wales Criminal Courts Bench Book vs "sure of guilt") and a question trail in reducing variability in the threshold to convict and jurors' cognitive load. A total of 215 jurors recruited from the Downing Centre Court in Sydney, New South Wales watched a video trial of a child sexual assault case and rendered a verdict. Exposure to instructions on the meaning of "beyond reasonable doubt" improved jurors' understanding of the degree of certainty required to convict. Absent this guidance, many jurors erroneously interpreted the standard to require proof beyond all doubt. Significant reductions in cognitive load were reported pre to post-verdict in all experimental conditions, including those without a question trail. In this single charge case, the question trail did not significantly improve jurors' comprehension. Substantive guidance on the meaning of beyond reasonable doubt appeared promising as a strategy to enhance juror understanding and application of the criminal standard of proof.

The "good" child sex offender: Constructions of defendants in child sexual abuse sentencing — *Nicole Stevens and Dr Sarah Wendt*

This article examines how "good character" is used by the defence to construct the defendant at the sentencing stage of the criminal justice system in child sexual abuse matters. Using two methods of discourse analysis to examine eight sentencing submission transcripts from the District Court of South Australia, this research found that "good character" was a position constructed throughout the defence's sentencing submissions by drawing on dominant societal discourses of family, community, and employment, and one powerful legal discourse of rehabilitation. Throughout this article, it is argued that the use of good character within the sentencing context constructs a merciful and lenient approach to the defendant and thus avoids, minimises and silences child sexual abuse, and potentially represents another negative experience victims of child sexual abuse could encounter when proceeding through the criminal justice system.

Making the marriage work: The components of a successful relationship between the Chief Justice and the CEO — Richard Foster PSM

A constructive partnership between the Chief Justice and the Chief Executive Officer of a court enables that court to achieve and surpass its objectives. When working positively, that partnership is critical to a court's effective administration, change performance, and ability to navigate complexity. This article looks to the study of effective partnerships, borrowed from the field of management, to bring new ideas and concepts to bear on the relationship. The article draws on research findings and partnership concepts from other disciplines and professions. It identifies seven key partnership success factors, including trust and mutual respect, open and honest communication, emotional intelligence, effective change management, and conflict resolution. All are essential if the partnership is to navigate successfully the unique challenges of courts.

Who is the judge? A critical analysis of the discourse of disbelief — Dr Pamela D Schulz OAM

The care and protection of children in all aspects of their lives takes on a different turn when subjected to a custody battle in the Family Court. Often they are described as "tug of love" children in the press. But, as this analysis shows, it can be a "battle to be heard" by those in the position to make decisions about the welfare of children. This article reports a discourse analysis of an interview by a policeman and a child support officer of a mother who had reported abuse of her two daughters. The analysis demonstrates a clear mindset of disbelief of the mother and leads to concerns that a rush to judgment in an investigation might make difficult the work of courts relying on that information.

Case Note. The Bernie Ecclestone case in Germany: Principled pragmatism — Dr Andrew Cannon AM, FAAL

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