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KATE WARNER, CAROLINE SPIRANOVIC, ARIE FREIBERG, JULIA DAVIS AND LORANA BARTELS. - AGGRAVATING OR MITIGATING? COMPARING JUDGES' AND JURORS' VIEWS ON FOUR AMBIGUOUS SENTENCING FACTORS –28(1) (2018)

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TIM BUNJEVAC - THE TRANSFORMATION OF COURT GOVERNANCE IN VICTORIA: PART II – TOWARDS A MODEL POLICY FRAMEWORK FOR COURT SERVICES VICTORIA. - 28(3) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 169-203

RHONDDA WATERWORTH. - MEASURING LEGAL ACTOR CONTRIBUTIONS IN COURT: JUDGES' ROLES, THERAPEUTIC ALLIANCE AND THERAPEUTIC CHANGE - 28 (4) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 207-225

SHARYN ROACH ANLEU, JENNIFER ELEK AND KATHY MACK. - JUDICIAL CONDUCT GUIDANCE AND EMOTION - 28 (4) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 226-239

TAYLAH CRAMP AND ANITA MACKAY - PROTECTING VICTIMS AND VULNERABLE WITNESSES PARTICIPATING IN ROYAL COMMISSIONS: LESSONS FROM THE 2016–2017 ROYAL COMMISSION INTO THE PROTECTION AND DETENTION OF CHILDREN IN THE NORTHERN TERRITORY – 29 (1) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 3-21

MEENA HANNA - ROBO-JUDGE: COMMON LAW THEORY AND THE ARTIFICIALLY INTELLIGENT JUDICIARY – 29 (1) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 22-41

MARILYN BROMBERG AND MICHAEL MONTALTO - "SAY MY NAME, SAY MY NAME": CHANGING THE TITLE "MAGISTRATE" TO "JUDGE". IN AUSTRALIA -29 (2) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 45-59

ANTHONY GRAY - THE PUNISHMENT OF JOURNALISTS FOR CONTEMPT FOR REFUSING TO REVEAL THEIR SOURCES IN COURT.-29 (2) (2019) JOURNAL OF JUDICIAL ADMINISTRATION 60-81

IAN FRECKLETON QC. – SINGLE JOINT EXPERT WITNESSES. 29 (3) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 85-100

SARAH MURRAY, IAN MURRAY AND TAMARA TULICH. – COURT DELAY AND JUDICIAL WELLBEING: LESSONS FROM SELF-DETERMINATION THEORY TO ENHANCE COURT TIMELINESS IN AUSTRALIA. 29 (3) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 101-117

FELICITY BELL. – A TALE OF TWO COURTS. 29 (3) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 118-135

ANITA MACKAY AND JACQUELINE GIUFFRIDA. – IMPLICATIONS OF THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD ABUSE FOR THE PROTECTION OF VULNERABLE WITNESSES: ROYAL COMMISSION PROCEDURES AND INTRODUCTION OF INTERMEDIARIES AND GROUND RULES HEARINGS AROUND AUSTRALIA. 29 (3) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 136-154

DONALD SPEAGLE. – INDEPENDENT COURTS GOVERNANCE IN VICTORIA: ORIGINS AND IDEAS FROM THE UNITED STATES. 29 (4) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 157-173

CRAIG WESTERGARD. – HAPLY A MINORITY'S VOICE MAY DO SOME GOOD: DIVERSITY AT THE UNITED STATES SUPREME COURT. 29 (4) (2020) JOURNAL OF JUDICIAL ADMINISTRATION 174-188

A. Phelan. - Dispute Resolution in India: Judicial Performance and the Rise of Alternatives to Courts. 12 (3) (February 2003) Journal of Judicial Administration 121-154

The Indian judicial system, with its common law origins and more recent constitutional basis, reflects doctrines and principles familiar to Australians, especially judicial independence, separation of powers and adversarial processes. However, the system is struggling to remain relevant. Generally, Indian courts have not met community expectations or the needs of litigants In this context, uniquely Indian alternatives to courts (called Lok Adalats) have been developed. Lok Adalats are increasing in importance and relevance, drawing on links to cultural values in Indian society.

G.L. Davies. - The Reality of Civil Justice Reform: Why We Must Abandon the Essential Elements of Our System. 12 (3) (February 2003) Journal of Judicial Administration 155-171

Reforms made so far to our civil justice system have, for the most part, accepted as the basic tenet of that system that the best and fairest way of resolving a dispute is by a contest between competing adversaries. Among those reforms, only ADR has been inconsistent with that tenet; and it has been, by far, the most successful of them in reducing cost and delay. That fact, and an increasing awareness of the inadequacy of our system to produce a truthful and fair result, will cause that tenet to be abandoned and a more radical reassessment of that system. This article seeks to explain why.

Peter. G. Naismith. - The Discovery Of Electronic Evidence. 12 (4) (May 2003) Journal of Judicial Administration 180-201

The widespread use of e-mail and other electronic communication and data management tools by modern businesses has spawned something of an “ediscovery” industry populated by information technology experts and techsavvy lawyers. In this article, the author discusses relevant statutory and judge-made law in this topical area and, having regard to the peculiar characteristics of electronic evidence, suggests some guidelines for the effective discovery of electronic evidence.

M. J. Le Brun. - Professional Development for Judges: Adopting an Holistic Approach. 12 (4) (May 2003) Journal of Judicial Administration 202-215

This article describes how workshops and conferences can be enhanced by the provision of online learning. Although the article focuses specifically on the professional development of judicial officers in Australia, it addresses broader concerns that may be of interest to continuing legal educators and trainers. It summarises some of the shortcomings of limiting professional development programs to face-to-face workshops, indicates how workshops and conferences can be enhanced through the development of flexible learning initiatives, and describes a prototype website that can be created for providing professional development programs for judges online.

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John Goldring. - The Reflective Judge: Aims and Content of Judicial Education. 12 (4) (May 2003) Journal of Judicial Administration 216-224

Judicial education is not a process of teaching judicial officers how to do their job. Rather, it should be a process of assisting them to "reflect" on what they do and how they do it, so that each can better formulate the standards that he or she must establish for himself or herself, and the ways in which he or she can determine whether or not those standards have been met. Formal programs will assist judicial officers to develop these techniques in the course of their judicial work.

Anne Condon and Annie Marinakis. – The Enforcement Review Program. 12 (4) (May 2003) Journal of Judicial Administration 225-234

This article concerns the Enforcement Review Program, a joint initiative of the Melbourne Magistrates' Court and the Sheriff's Office. The ERP was established under Sch 7, cl 10A, of the Magistrates' Court Act 1989 (Vic) to support members of the community who have "special circumstances" and who are incurring a variety of multiple infringements that have been registered at the PERIN (Penalty Enforcement Registration of Infringement Notices Court) and which are progressing to warrant stage. The purpose of the program is to assist people who may not comprehend the consequences of their actions, have no capacity to pay fines and do not have assets that can be seized and sold. Although the concept of "special circumstances" is not legislatively defined, it is generally considered to include people who are at the margins of society, including those who experience homelessness, intellectual disability, psychiatric illness, alcoholism, substance abuse, family fragmentation and severe social dysfunction. This article provides information about the program's background and operation, as well as summaries of the numbers of matters and dollar values of the warrants and court orders which have been dealt with through the Enforcement Review Program.

Janet Hope. – The Federal Court of Australia as a Court of Criminal Appeal for the Australian Capital Territory (I). 13 (1) (August 2003) Journal of Judicial Administration 8-28

From 1977 to 2002 the Federal Court of Australia functioned as a court of appeal for the Australian Capital Territory (ACT) in both civil and criminal matters. This is the first of a pair of articles documenting the history of the Federal Court's role as a court of criminal appeal for the ACT. Together, the two articles comprise three parts. The first part contains background material on criminal appeals, the administration of justice in the ACT to 1977, and constitutional issues relating to Territory judicial power. The second deals with the operation of the Federal Court as a court of criminal appeal in principle and in practice. The third part documents the events leading to the establishment of the Australian Capital Territory Court of Appeal and the end of the Federal Court's special role in the appeal system of the ACT.

M. Rafiqul Islam And S. M. Solaiman. – Public Confidence Crisis in The Judiciary and Judicial Accountability in Bangladesh. 13 (1) (August 2003) Journal of Judicial Administration 29-64

The Constitution of Bangladesh 1972 provided for an independent judiciary – competent to administer justice pursuant to the rule of law and facilitate good governance. Subsequent constitutional amendments have rendered the judiciary subservient to the Executive. The judiciary and its judges are now at the centre of public debates over their lack of transparency, impartiality and accountability, which has eroded the public's confidence in them. This article explains the constitutional feature of judicial accountability and its present status in Bangladesh. It shows that the profound lack of judicial accountability has caused a public confidence crisis and traces the factors responsible for this crisis, suggesting measures toward building up public confidence in the judiciary of Bangladesh.

Janet Hope and Duncan Longstaff. – The Federal Court of Australia as a Court of Criminal Appeal for the Australian Capital Territory (II). 13 (2) (November 2003) Journal of Judicial Administration 67-97

From 1977 to 2002 the Federal Court of Australia functioned as a court of appeal for the Australian Capital Territory in both civil and criminal matters. This is the second of a pair of articles documenting the history of the Federal Court's role as a court of criminal appeal for the Australian Capital Territory. Together, the two articles comprise three parts. The first part contains background material on criminal appeals, the administration of justice in the Australian Capital Territory to 1977, and constitutional issues relating to Territory judicial power. The second deals with the operation of the Federal Court as a court of criminal appeal in principle and in practice. The third part documents the events leading to the establishment of the Australian Capital Territory Court of Appeal and the end of the Federal Court's special role in the appeal system of the Australian Capital Territory.

Andrew Phelan. – Solving human problems or deciding cases? Judicial innovation in New York and its relevance To Australia: Part I. 13 (2) (November 2003) Journal Of Judicial Administration 98-136

Over the past decade, hundreds of experimental courts have sprung up across the United States of America, testing new solutions to problems like addiction, domestic violence, child neglect and quality-of-life crime. These "problem-solving courts" include specialised drug courts, domestic violence courts, community courts, family treatment courts, mental health courts, gun courts and others. While each of these initiatives targets a different problem, they all use the authority of courts in new ways – to improve outcomes for victims, communities and defendants. In the process, they all seek to shift the focus of courts from simply processing cases to achieving tangible results like safer streets and stronger families. Part I of this article describes the environment in which judicial innovation has occurred in New York and examines problem-solving drug courts. Part II, to be published in the February 2004 part of the journal, explores how the problem-solving approach has developed in family, domestic violence, youth and community courts; while Part III, to be published in the May 2004 part of the journal, considers the relevance of these courts to Australia.

Andrew Phelan. – Solving human problems or deciding cases? Judicial innovation in New York and its relevance To Australia: Part II. 13 (3) (February 2004) Journal Of Judicial Administration 137-181

Over the past decade, hundreds of experimental courts have sprung up across the United States, testing new solutions to problems like addiction, domestic violence, child neglect and quality-of-life crime. These "problem-solving courts" include specialised drug courts, domestic violence courts, community courts, family treatment courts, mental health courts, gun courts and others. While each of these initiatives targets a different problem, they all use the authority of courts in new ways – to improve outcomes for victims, communities and defendants. In the process, they all seek to shift the focus of courts from simply processing cases to achieving tangible results like safer streets and stronger families. Part I of this article, published in the November 2003 part of the journal, described the environment in which judicial innovation has occurred in New York and examined problem-solving drug courts. Part II explores how the problem-solving approach has developed in family, domestic violence, youth and community courts; while Part III, to be published in the May 2004 part of the journal, considers the relevance of these courts to Australia.

Andrew Cannon. – Courts using their own experts. 13 (3) (February 2004) Journal of Judicial Administration 182-200

This article reviews precedents for the use by Australian and some other common law courts of their own experts and then briefly explains the approach in Germany, The Netherlands and France where expert evidence is brought before the court by court-appointed experts. The experience of the South Australian Magistrates Court (Civil Division), a common law court which has been using court appointed experts

since 1992, is discussed and issues concerning the selection, training and proper role of experts are explored. The efficiency gains are briefly discussed.

Justice Robert D Nicholson AO. – Publication of judicial decisions and availability of law reports in the Asia/Pacific region. 13 (4) (May 2004) Journal Of Judicial Administration 201-243

The publication of law reports is regarded as an important element in the application of the law. Such publication exposes judicial reasoning and provides the source of precedent. The exposure of reasoning protects judicial independence, educates the public in the law and assists in preventing and eliminating decisions being made other than on a proper application of the law. In the Asia/Pacific region the legal systems are derived from common law, civil law and Islamic law so that there are different approaches to the role of law reporting. This article surveys the issues arising in relation to law reporting generally and seeks to document the present state of reporting of cases of the courts in the region.

Andrew Phelan. – Solving human problems or deciding cases? Judicial innovation in New York and its relevance To Australia: Part III. 13 (4) (May 2004) Journal Of Judicial Administration 244-258

Over the past decade, hundreds of experimental courts have sprung up across the United States of America, testing new solutions to problems like addiction, domestic violence, child neglect and quality-of-life crime. These “problem-solving courts” include specialised drug courts, domestic violence courts, community courts, family treatment courts, mental health courts, gun courts and others. While each of these initiatives targets a different problem, they all use the authority of courts in new ways – to improve outcomes for victims, communities and defendants. In the process, they all seek to shift the focus of courts from simply processing cases to achieving tangible results like safer streets and stronger families. Part I of this article describes the environment in which judicial innovation has occurred in New York and examines problem-solving drug courts. Part II, to be published in the February 2004 part of the journal, explores how the problem-solving approach has developed in family, domestic violence, youth and community courts; while Part III, to be published in the May 2004 part of the journal, considers the relevance of these courts to Australia.

The Hon John Doyle AC. - Investing in the judiciary. 14 (1) (August 2004) Journal of Judicial Administration 5-15

Australia is fortunate to have a sound judicial system. A competent and independent judiciary is an essential requirement of a sound judicial system. Comprehensive and high-standard professional development programs will play an important part in helping Australia’s judiciary maintain its high standards. The need for such programs has been neglected. The National Judicial College of Australia was established to meet unmet needs for professional development. Unless Australia’s governments fund the College adequately, and provide funding to courts to enable them to participate in the College programs, the College will not be able to meet the needs that it was established to meet. One of the tasks of the College is to persuade Australia’s governments that an investment in professional development for the judiciary is in the interests of the community.

Jonathan Clough. - The role of judges in assisting jury comprehension. 14 (1) (August 2004) Journal of Judicial Administration 16-30

This article examines a number of ways in which trial judges may assist jurors to understand the legal and factual issues in a criminal trial. It is based on preliminary research conducted for the Australian Institute of Judicial Administration in relation to its proposed research into communication between judges and juries in Australia and New Zealand. Subject to the overriding responsibility to ensure a fair trial, judges in both countries possess considerable latitude to adopt measures designed to assist jury comprehension. These include the provision of written materials such as summaries and flowcharts, providing copies of

transcript and the use of multimedia. Authority for the use of such measures is found at common law, complemented by statutory provisions in a number of jurisdictions.

Fleur Kingham. - Reforming Queensland's Tribunals: Procedural reform to realise the rhetoric. 14 (1) (August 2004) Journal of Judicial Administration 31-44

The Queensland Attorney-General is currently considering reforms to Queensland's tribunals. The models under consideration include a general administrative tribunal in the style of Victorian Civil and Administrative Tribunal and groupings of tribunals with similar or related jurisdictions. Regardless of which model is adopted, a key potential benefit of tribunal reform is procedural reform. To realise that benefit, tribunal objectives need to be clearly articulated and embedded in procedural design. This article proposes a set of generic objectives for tribunals that respond to the claims often made about the advantages of resolving a matter within a tribunal setting. It also outlines a generic set of procedures designed to meet those objectives. Given the rationale for and rhetoric used in support of tribunals, the procedures are designed on the assumption that all parties are self-represented. The procedures place a stronger and more sustained emphasis on a resolution phase actively supervised by a tribunal member. They offer a range of options for identifying, narrowing and resolving the issues in dispute and for assisting parties to prepare for a hearing should that prove necessary.

Kay Ransome. - the role of consensual dispute resolution in tribunals. 14 (1) (August 2004) Journal of Judicial Administration 45-56

A large number of tribunals at the State and federal levels have ADR processes available to them as a means of dealing with their caseload. The introduction of ADR processes into courts and tribunals has largely been seen as a case-management tool. In tribunals most of these processes are conducted in-house. This article suggests that care must be taken to ensure that the institutionalisation of ADR does not affect the quality of the processes employed. To that end it is suggested that tribunals must adopt standards directed towards maintaining the quality and integrity of ADR processes.

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Clare Thompson. - Vexatious litigants – Old phenomenon, modern methodology: a consideration of the Vexatious Proceedings Restriction Act 2002 (WA). 14 (2) (November 2004) Journal of Judicial Administration 64-88

Self-represented litigants are an increasing phenomenon in civil courts in Australia and throughout the common law world. Whilst limited statistical information is available, a small number of these litigants become vexatious, resulting in substantial drains on court resources and costs to defendants. Legislation has been in place since as early as 1896; however, it was not until the introduction of the Vexatious Proceedings Restrictions Act 2002 (WA) that any jurisdiction gave a party affected by vexatious litigation standing to make application to have a litigant declared vexatious. This article considers the history of legislation proscribing vexatious litigation, compares the tests utilised under the various jurisdictions' legislation and reviews the recently enacted Western Australian legislation.

Kay Ransome. - the role of consensual dispute resolution in tribunals. 14 (1) (August 2004) Journal of Judicial Administration 45-56

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Jamie Wood. - Federal Court-annexed mediation seventeen years on. 14 (2) (November 2004) Journal of Judicial Administration 89-98

The Federal Court of Australia has provided a court-annexed mediation program since 1987. Since that time the option of compulsory mediation has been introduced. A number of changes have occurred to case management procedure and the types of cases referred by judges, notably public interest, native title and discrimination. This article comments on the rationale for annexed mediation, the use of registrars as mediators, types of cases referred and the concept of compulsory mediation. Reference is also made to some recent successful examples of court-annexed mediations conducted by registrars.

Bill Edwards. - Putuna Kulilpai: interpreting for Pitjantjatjara people in courts. 14 (2) (November 2004) Journal of Judicial Administration 99-112

The proportional over-representation of indigenous people as defendants in the Australian legal system and in custody is a matter of concern for all involved in judicial processes. As a significant number of Aboriginal people still use their own languages in daily conversation, they are at a severe disadvantage when facing the language of the legal system. The author provides a brief cultural and historical overview of the Pitjantjatjara people, refers to the earlier use of interpreters in Australia, discusses the development of interpreting services in South Australia and identifies and illustrates some of the problems experienced in this field arising from court environments, and from linguistic and cultural issues. The question of who should interpret is also raised. Some practical suggestions are made which may assist judges, magistrates and lawyers to understand problems faced by interpreters and to avoid forms of expression which are untranslatable into Aboriginal languages.

Justice Ronald Sackville. - Judicial appointments: A discussion paper. 14 (3) (February 2005) Journal of Judicial Administration 117-143

In Australia, changes are occurring in the manner in which judicial appointments are made. Although developments have been uneven, Commonwealth and State Governments more frequently advertise for expressions of interest in judicial positions and conduct formal interviews of candidates. These developments prompted the Judicial Conference of Australia to request the preparation of a discussion paper describing the practices followed in Australia and identifying options for reform.

Susan Campbell. - Proportionality in Australian civil procedures: a preliminary review. 14 (3) (February 2005) Journal of Judicial Administration 144-156

This article summarises the findings of a literature review, commissioned by the Australian Institute of Judicial Administration, on the current status of the principle of "proportionality" in Australian civil litigation systems. The project revealed first, that "proportionality" is a concept so widely used across the Anglo-Australian legal system that it has no specific meaning. Second, while "proportionality" has become a significant factor in the new English Civil Procedure Rules, it has not yet been expressly adopted in Australia.

Nicky Friedman and Margaret Jones. - Children giving evidence of sexual offences in criminal proceedings: Special measures in Australian States and Territories. 14 (3) (February 2005) Journal of Judicial Administration 157-172

The problem of child sexual assault has gained significant public recognition in the past two decades. For children and young people who are complainants in sexual offence proceedings, the experience of giving evidence in criminal proceedings can be difficult and cause further anxiety and stress. In recognition of this the various jurisdictions in Australia have responded with legislative and procedural reforms designed to make it easier for these witnesses to give evidence. These measures include prohibitions and limitations on attendance at committal hearings, admission of videotaped statements of the child as evidence-in-chief, pre-recording of evidence at pre-trial hearings, giving evidence from outside the courtroom by closed-circuit television, and restrictions on crossexamination by unrepresented accused. In some overseas jurisdictions intermediaries are used in court proceedings to translate the lawyers' questions into child-appropriate language. This article gives a brief overview of some of the main legislative and procedural measures that have been introduced in Australian jurisdictions to make it easier for child complainants to give evidence.

Peter A Sallmann. - Mandatory sentencing: A bird's-eye view. 14 (4) (May 2005) Journal of Judicial Administration 177-195

Calls for mandatory minimum sentencing are still common, especially in community discussions about the operation of the criminal justice system. In recent times a couple of Australian jurisdictions have actually experimented with such regimes. This article explores the literature on mandatory sentencing, with a particular emphasis on the Australian context. It looks at what a series of expert commentators have had to say about aspects such as legal principle, judicial independence, constitutionality, international law and criminological impact. Its general conclusion is that the various justifications given for mandatory sentencing are very dubious from all these perspectives.

Arie Freiberg. - Problem-oriented courts: An update. 14 (4) (May 2005) Journal of Judicial Administration 196-219

Over the last 10 years in Australia problem-oriented courts such as drug courts, family violence courts and mental health courts have been developed and become established as part of the judicial landscape. The nature and practices of these courts and the underlying theory of therapeutic jurisprudence are becoming mainstream issues that are transforming court practices. This article provides an overview of recent developments and explores the possibilities for their further development.

Afroza Begum. - Judicial activism versus judicial restraint: Bangladesh's experience with women's rights with reference to the Indian Supreme Court. 14 (4) (May 2005) Journal of Judicial

The tension between judicial activism and judicial restraint has generated important controversies. Proponents of judicial activism claim that adherence to activism is inevitable to cope with society's changing values and aspirations. Opponents argue that such adherence unduly reflects the personal opinions of judges, and undermines one of the core aspects of good governance, the balance of separation of powers. Despite these controversies, existing legal literature supports the view that judicial activism has a commendable significance to advancing women's rights. In the absence of the expansive and dynamic approaches developed by the judiciary, enforcement of ever-growing women's human rights would have been far fewer or, on some occasions, even impossible, and women are now more conscious of, and better equipped with, legal sanctions than in the 1940s, partly because of this judicial trend. Based on this observation, this article suggests that judicial activism is not only desirable but essential to accommodate women's contemporary needs and experiences in Bangladesh.

The Hon Justice Robert Nicholson AO. - Issues in court security. 15 (1) (August 2005) Journal of Judicial Administration 5-12

Attention to security issues is an ongoing requirement, particularly so in the context of heightened global concern about security. When considering security measures, courts must be aware of any legislation or standards that may affect their role as it relates to security. This includes courts' founding statutes, general security legislation, special enactments and government security standards. It is important that courts have a plan outlining the delineation of responsibilities in implementing a security plan. Consideration of a court's security requires attention to the court buildings and facilities themselves, for example, design and perimeter security. External security for judges should also be considered, including measures for travelling. As always, management must play a vital role in the implementation and ongoing monitoring of security measures.

The Hon P de Jersey AC. - Managing relations with the executive. 15 (1) (August 2005) Journal of Judicial Administration 13-16

The judiciary and the executive necessarily interact. The executive appoints judges and provides the financial resources necessary for the maintenance of the courts. Judges sometimes assume roles more administrative than judicial in character. In the interests of effective and workable government, some flexibility regarding the strict separation of the judiciary may sometimes be tolerated, provided it does not imperil the prime imperative, which is that judges act with uncompromised independence in the discharge of their responsibilities.

The Hon Justice Stuart Morris. - Where is technology taking the courts and tribunals?. 15 (1) (August 2005) Journal Of Judicial Administration 17-27

Has the increase in the use of technology made courts and tribunals more accessible, less expensive, more transparent and more efficient? The experience of the Victorian Civil and Administrative Tribunal provides mixed answers to these questions. The use of websites, legislation data bases and AustLII has made tribunals more accessible to the ordinary person and has assisted in demystifying the justice system. In some areas technology has improved the timeliness of decisions: for example, in VCAT's residential tenancies jurisdiction. But even if technology does not assist in promoting the timeliness of decision-making, it is nonetheless an important ingredient in measuring timeliness so that other means can be taken to achieve this objective. In relation to the effect of technology on the cost to government of resolving civil disputes, VCAT is a useful case study. Although the cost to government of VCAT determining civil disputes has declined in real terms over the last six years, there is little evidence that this has been the result of technological change. However, the greater use of technology in courts and tribunals does offer the prospect of reducing the overall cost of justice – in particular, by reducing the costs to the parties.

Michael King and Julie Wager. - Therapeutic jurisprudence and problem-solving judicial case management. 15 (1) (August 2005) Journal of Judicial Administration 28-36

Increasingly courts – particularly magistrates courts – are called upon to use a judicial case management approach that significantly differs from the procedural judicial case management of civil and family law litigation and that requires knowledge and skills not commonly acquired through traditional legal education and practice. It is a problem-solving approach that seeks to address underlying issues that have resulted in the legal problem before the court. This article describes the approach of therapeutic jurisprudence that is the basis of this form of judicial case management and the techniques used by courts in managing participants in problem-solving court programs.

Sharyn Roach Anleu and Kathy Mack. - Judicial appointment and the skills for judicial office. 15 (1) (August 2005) Journal of Judicial Administration 37-53

Although there is widespread commitment to the principle that judicial appointment must be made on merit, the concept of merit in judicial appointment lacks concrete meaning. At the very least, merit must include the actual qualities and skills needed for the institutional role and specific tasks of the judicial office. The authors' research findings identify elements of the everyday work of Australian magistrates and the specific qualities and skills which are essential or important for the work of judicial officers more widely. This information can be used to develop valid criteria for selection for judicial office rather than relying on a vague and subjective notion of merit.

Carman Yung. - Litigation funding: Officious Intermeddling or access to justice?. 15 (2) (November 2005) Journal of Judicial Administration 61-81

In recent years, the increasing inaccessibility of legal process has become a matter of concern for legal justice systems both in Australia and overseas. At the same time, Australia has seen the emergence and rise of "professional litigation funders", commercial entities engaged in the business of third-party litigation funding for profit. This article considers whether litigation funding remains contrary to the law of maintenance and examines the extent to which Australian courts may be willing to accept the risks posed by the activities of the private litigation funding industry in the interests of promoting access to justice.

Beth Midgley. - Achieving just outcomes for homeless people through the court process?. 15 (2) (November 2005) Journal of Judicial Administration 61-81

Homeless people are disproportionately represented in the criminal justice system and the rate of recidivism amongst homeless offenders is high. There are a range of particular issues and difficulties that homeless people face when they are required to attend court. Failure to take into consideration a defendant's homelessness can result in an unfair and unjust outcome for the defendant. The article seeks to identify the particular issues that homeless people face in the court process, and canvasses a range of options for addressing those difficulties. It is based on primary research conducted as part of the Homeless Persons' Court Project in 2004. The article is informed by the experiences and insights of 50 people who have been homeless and had interaction with the court system and participated in interviews and focus groups as part of the Project.

Gf Hiskey SM. - Mutual observation, reflection and discussion and professional development for magistrates: Further developments. 15 (2) (November 2005) Journal of Judicial Administration 107-

This article follows an earlier article by the same author entitled "Mutual Observation, Reflection and Discussion and Professional Development for Magistrates" (2002) 12 JJA 39 which examined the outcomes of a study where a number of magistrates, including the author, observed one another in their courts and were, in turn, observed. The principles of reflective learning as expounded by Schon and other were utilised. Magistrates found that the process yielded valuable insights. In 2004 a similar exercise was undertaken involving a group of five magistrates from Victoria and five from South Australia. The current article examines how that came about, the protocols that were developed for the project, the outcomes achieved and the advantages and disadvantages of an interstate program contrasted with an intrastate program. In October 2005 the program is to be replicated but changes have been made to the format. This article discusses the nature of those changes and why they are considered desirable. Whilst there is a developing range of programs of professional development for judicial officers, there is no program of this sort allowing for mutual observation, reflection and discussion by them arising from in-court observations. The program is a useful addition to existing professional development programs for judicial officers.

Michael S King. - Therapeutic jurisprudence in Australia: new directions in courts, legal practice, research and legal education. 15 (3) (February 2006) Journal of Judicial Administration 129-141

Therapeutic jurisprudence asserts that the law and legal processes can be designed to promote the wellbeing of litigants and clients and contribute to the resolution of problems underlying the legal issue. Therapeutic jurisprudence is commonly associated with problem-solving courts such as drug courts and family violence courts. This article asserts that therapeutic jurisprudence has a broad-ranging application to all areas of court and legal practice and to legal education. Its application has the potential to bring about a more comprehensive, satisfying and psychologically optimal way of practising and learning law and of addressing legal problems. The article suggests new directions in court practice, legal practice, legal education and research arising out of the application of therapeutic jurisprudence.

Justice Rs French. - Judicial exchange: Debalkanising the court 15 (3) (February 2006) Journal of Judicial Administration 142-164

This article reviews the historical context, the constitutional framework and the longstanding debates about the shape of the Australian judicial system. It proposes the development of a comprehensive system of horizontal and vertical judicial exchanges throughout Australia. Its objectives include the improvement of judicial and institutional performance, the allocation of national judicial resources to areas of local need, the development of more consistent Australia-wide approaches to the administration of justice and the enhancement of the attractiveness of judicial appointment to State and Territory courts. The article also supports an existing proposal for the development of a de facto intermediate national Court of Appeal by the use of composite Benches on existing State and Territory Appeal Courts in cases of cross-jurisdictional significance. It also refers to examples of existing programs and proposals in the United States, Canada and the European Union.

Chief Justice Peter Underwood AO. – The trial process: Does one size fit all? 15 (3) (February 2006) Journal of Judicial Administration 165-173

This article contends that the modern trial still clings to a process that has it roots in the days when juries, often illiterate, determined all the factual issues and trials were short and very substantially oral. It questions whether it is time to review the current trial process as the ultimate method of resolving civil disputes. Is continuity of the trial process necessary? Is there an over-emphasis on orality? Should there be time limits on oral evidence? Is there an over-emphasis on the adversarial nature of the process? It is also contended that the application of basically the same process to every civil dispute is inappropriate, and that the mode of trial should be shaped to suit the circumstances of the individual case, all the while adhering to the principles of independence, natural justice and publicity.

Jennie Cooke. – Innovation and transformation within Australian courts: A court administrator's perspective 15 (3) (February 2006) Journal of Judicial Administration 174-180

Major changes in the role of courts within the Australian community are considered from the perspective of court administrators. In particular, the impact of the courts adopting a more responsive approach to the needs of their clients and in some cases seeking feedback directly from them is considered. The "therapeutic jurisprudence" movement within courts is given as a particular example of an approach which has significant implications for judicial officers, court clients and court staff. The importance of the "therapeutic jurisprudence" approach is also considered as an example of court-initiated and court-driven innovation. Changes in the role of courts are also looked at within the context of the increased accountability pressures faced by courts and there is discussion of the subsequent importance of rigorous data collection and attention to data quality. In considering overall the particular implications for court administrators of these many changes, emphasis is placed on the importance of project management

skills and there is discussion of a strategy of managing major organisational change through a project management approach.

The Hon Justice Garry Downes AM. – Problems with expert evidence: are single or court-appointed experts the answer? 15 (4) (May 2006) Journal of Judicial Administration 185-189

There has been a good deal of criticism of the adversarial bias of expert witnesses. One solution offered is limiting expert evidence to one witness selected by the parties or appointed by the court. This article suggests that adversarial bias in expert witnesses is not so concerning. It is often no more than the very desirable practice of exposing different perspectives. It is a fallacy to consider that there is only one answer to a question of expertise. Single experts will give more weight to their own perspectives. Just as it is the role of a judge to resolve difficult conflicts of fact, so it should be the role of a judge to resolve conflicts in expert evidence. This is achieved by evaluating the different perspectives presented by the evidence. A better response to problems with conventional expert evidence is the use of concurrent evidence which preserves the advantages of evidence from different perspectives while avoiding some of its problems.

Jelena Popovic. – Meaningless versus meaningful sentences: Sentencing the unsentenceable 15 (4) (May 2006) Journal Of Judicial Administration 190-205

Low-level offenders whose offences do not warrant a term of imprisonment and who are homeless, poor or mentally impaired regularly provide sentencing dilemmas for magistrates. Some offenders are not able to pay a fine or have lives which are too chaotic to enable them to comply with community corrections orders and suspended sentences, or to undertake to be of good behaviour. This article provides examples of offenders who are “unsentenceable”, examines existing sentencing options and their applicability to these offenders and considers alternative sentencing possibilities.

Kristy Richardson. – Defining judicial independence: A judicial and administrative tribunal member perspective 15 (4) (May 2006) Journal Of Judicial Administration 206-217

In order for judges to apply the law impartially, it is essential that they be, and be seen to be, independent. This article outlines the results of a recent survey which explored how members of the judiciary and administrative tribunal members considered judicial independence could be defined.

Daniel Stepniak. – Court TV: Coming to an internet browser near you (update, developments and current issues) 15 (4) (May 2006) Journal of Judicial Administration 218-236

This article argues that the acceptability and success of audiovisual coverage of court proceedings is determined by the presence of a culture of rights, the availability of suitable technology, and courts’ acceptance of such coverage as being in the interest of the administration of justice. Rather than focusing on the effects of such coverage – which cannot be conclusively established – the issue needs to become one of courts facilitating public access to recordings. Noting recent developments in Australia and comparable overseas jurisdictions, the article identifies the internet as a viable and proven means for such court involvement. Courts’ streaming of their own recordings removes the need for courts to rely entirely on the media, provides the public with convenient and unprecedented levels of access, eradicates concerns relating to disruptive, selective, sensationalist or misleading coverage, and importantly, enables court to retain control of recordings.

G.L. Davies. - Civil Justice Reform: Some common problems, some possible solutions. 16 (1) (August 2006) Journal of Judicial Administration 5-17

Litigants are becoming increasingly aware of the benefits of settlement, especially early settlement, over trial. So also are litigation lawyers. That is why civil trial rates throughout the common law world are

declining. Notwithstanding that, our civil justice systems continue to assume a trial and judgment, making little or no provision for early, fair resolution of disputes by agreement. Given that attempts to reduce the cost of resolution of disputes by trial and judgment have largely failed, our systems should focus more on resolution by agreement and the provision of means by which that can be achieved more fairly and more cheaply. This article explores some ways of doing that. It also reflects on some problems arising from low trial rates and the need to resolve them. It suggests some possible solutions to these.

Mary Anne Noone. - Improving Access to Justice: Communication skills in the tribunal setting. 16 (1) (August 2006) Journal of Judicial Administration 18-29

The barriers of poverty, language, culture, race, age and gender limit many people's access to justice and diminish the concept of equality before the law. An aspect of improving access to justice within the tribunal system is that tribunal members need to ensure communication at a tribunal hearing is optimal. It is recognised that a requisite criterion for tribunal members is good communication skills but precisely what this means is not clear. This article examines why communication skills are important to tribunal members, highlights specific communication issues that warrant tribunal members' attention and examines the particular communication skills that are desirable for tribunal members to exercise in order to improve access to justice.

Robyn Holder. - The Emperor’s New Clothes: Court and justice initiatives to address family violence. 16 (1) (August 2006) Journal of Judicial Administration 30-47

This article explores the current debate about and development of court- and justice-based initiatives to address family violence through the experience of the Australian Capital Territory Family Violence Intervention Program (FVIP). Some critical issues about problem-solving courts and therapeutic jurisprudence, as they apply to family violence offences, are considered. The FVIP as a "specialist jurisdiction" is presented as a third way between the rigid and output-focused processes of traditional criminal justice, and the opaque or therapeutic language and open-ended processes of problem-solving courts. The article concludes that comprehensive victim advocacy is essential in a family violence specialist jurisdiction.

Melissa Conley Tyler and Jackie Bornstein. - Court Referral to ADR: Lessons from an intervention order mediation pilot. 16 (1) (August 2006) Journal of Judicial Administration 48-66

Over the past two decades, courts and tribunals around Australia have introduced a range of alternative dispute resolution (ADR) techniques such as mediation as a standard part of their case management procedures. However, there is still significant variation in how ADR processes are administered in different courts and tribunals. This article reports on an independent evaluation of a Dispute Settlement Centre of Victoria and Magistrates' Court pilot mediation project. This project focused on diversion to mediation of non-family intervention order cases. The Project was a successful model mediation diversion program, achieving well on indicators such as awareness, clarity of eligibility criteria, proportion of eligible cases referred, client satisfaction with mediation and the number of agreements reached. Given the relatively few studies of such programs to date, the results of this evaluation offer useful insights on a number of issues of judicial administration, including promotion of mediation diversion programs, referral and intake processes, supply of mediation services and liaison between the court and mediation providers

The Hon J.J. Spigelman. - Measuring Court Performance. 16 (2) (November 2006) Journal of Judicial Administration 69-80

The article considers the applicability to the courts of managerialism and performance measurement. The most important aspects of the judicial function are capable only of qualitative assessment. Values that are at the heart of the administration of justice, such as fairness, accessibility, impartiality and rationality, are simply not capable of measurement, not even by proxy-indicators. Quantitative performance measurement tends to reduce citizens to consumers. Furthermore, such measurement frequently has perverse effects. Surveys of so-called "client satisfaction" are not a quality indicator of any utility for courts.

Christine Eastwood, Sally Kift and Rachel Grace. - Attrition in Child Sexual Assault cases: Why Lord Chief Justice Hale got it wrong. 16 (2) (November 2006) Journal of Judicial Administration 81- 91

Successful criminal prosecutions for sexual offences against children are more difficult to secure than for any other offence. Sexual assault defendants are less likely than other defendants to plead guilty, less likely to proceed to trial, and more likely to be acquitted. Nevertheless, four centuries after Lord Hale expressed the view that accusations of rape are easily made and hard to refute, the adage is still repeated as though it were established truth in contemporary court decisions and by 21st century lawyers. While there is widespread agreement in the research literature about the entrenched difficulties in child sexual assault cases, the underlying reasons for the low conviction rate are less well understood. It is argued that socio-legal, systemic and child-related factors may contribute to the high attrition rate in child sexual assault cases. The need for further research is discussed.

Michael S. King. - The Therapeutic Dimension of Judging: The example of sentencing. 16 (2) (November 2006) Journal of Judicial Administration 92-105

In deciding the facts of a case, determining the law and applying the law to the facts to reach a judgment, judicial officers exercise primarily analytical skills. However other aspects of the judicial role – such as promoting respect for the legal system and compliance with the law – also call for the exercise of interpersonal skills including the ability to listen and communicate effectively with an ethic of care and the ability to motivate others to consider positive change. Such skills are particularly called upon in problem-solving courts such as drug courts and family violence courts. But they should be skills exercised by every judicial officer. Drawing on the principles of therapeutic jurisprudence, this article illustrates how a judicial officer's attention to process and the proper exercise of interpersonal skills in sentencing can promote justice system goals. Interpersonal skills and therapeutic court processes should be subjects included in judicial training.

Marinella Marmo. - Cross-fertilisation Between Civil Law Countries and Common Law Countries: The importance of judicial dialogue in criminal proceedings. 16 (2) (November 2006) Journal of Judicial Administration 106-119

The article addresses the need for judicial dialogue among common law and civil law jurisdictions in different criminal justice systems as part of the cross-fertilisation process in the field of human rights and criminal proceedings. The analysis is based on a case study of the introduction of the adversarially oriented Criminal Code of Proceedings in Italy and on the result of interviews with judges in Europe. The article argues that, in criminal matters, there is an inadequate horizontal judicial dialogue across civil law jurisdictions and common law jurisdictions. This lack of dialogue reduces understanding of other legal systems, so that the judiciary is ineffective and slow in responding to a demanding new role in a wider, globalised legal regime.

Justice Ronald Sackville. - The Judicial Appointments Process in Australia: Towards independence and accountability. 16 (3) (February 2007) Journal of Judicial Administration 125-138

The debate about reform of the judicial appointments process in Australia has been enlivened recently by controversy about appointments to both State and Federal Courts. The debate has been characterised by a combination of cynicism and naivety. Cynics doubt the practicability or utility of limiting the unfettered power of the executive branch of government to make appointments to judicial office. Some proponents of reform rather optimistically see a judicial appointments commission as a panacea for the perceived ebbing of public confidence in the judiciary. As usual, the true position is more nuanced. Even so, the time has come for Australian jurisdictions to introduce a judicial appointments process that is more accountable. The most compelling argument is one of principle: the process should be transparent; should involve a body independent of the executive; and should apply standard criteria to a wider pool of candidates for judicial office. Virtually all reform proposals, drawing from overseas experience, centre on a judicial appointments commission. The real difficulty lies in determining its functions, membership and procedures.

Peter A. Sallmann. - Courts' Governance: A thorn in the crown of judicial independence? 16 (3) (February 2007) Journal of Judicial Administration 139-150

The original version of this article was prepared for a Judicial Conference of Australia (JCA) discussion of courts' governance issues at its 2006 Colloquium held in Canberra. The purpose was to provide an overview of developments in Australia, with reference to some international aspects, but more particularly to support the case for further reforms in those jurisdictions which have not adopted judicially autonomous models. It is argued that judicially autonomous approaches better enhance judicial independence as well as providing more effective and efficient court administration.

The Hon James Wood. - Jury Directions. 16 (3) (February 2007) Journal of Judicial Administration 151-164

In recent years there has been an increasing interest in the work of juries in Australia, New Zealand and elsewhere. In particular, there has been interest in the extent to which jurors understand their task. This article examines directions given by judges to juries and, in particular, warnings given to jurors and questions the assumption upon which such warnings are given. The author asserts that there is a sufficient basis to warrant a serious review of current practice in relation to jury instructions.

Duncan Webb. - The Right Not to Have a Lawyer. 16 (3) (February 2007) Journal of Judicial Administration 165-178

The rules and underlying culture of the civil justice system are tilted drastically against the interests of self-represented litigants and in favour of legal professionals, judges and bureaucrats. This systemic bias is wrong. Self-represented litigants do not know the language of the law, the etiquette of procedure or the rules of court. For a self-represented litigant the system is an intimidating labyrinth of rules which the registrar, judge and the opposing lawyers are reluctant or unable to assist in clarifying. The law is complex, impossible to find, and sometimes entirely unclear on important points. While self-represented litigants do not fit into the system perfectly, this may be due to the poor design of the system rather than the lack of ability, understanding or good faith of the litigants. This article argues that the sky will not fall if the rules and culture of the courts are changed to accommodate self-represented litigants.

Jacqueline Horan and David Tait. - Do Juries Adequately Represent the Community? A case study of civil juries in Victoria 16 (3) (February 2007) Journal of Judicial Administration 179- 199

It is sometimes argued that juries do not represent an adequate cross-section of the community. They are selected from those who can serve rather than those who should serve. Numerous exemptions, exclusions and challenges available under the jury system are thought to interfere so much with the random selection process that the chosen jury becomes unrepresentative of the community. A recent survey of Victorian civil jurors has enabled the authors to test this criticism empirically. The study showed that juries are a fair cross-section of the community in terms of gender and age. Jurors from non English-speaking backgrounds are marginally under-represented while university educated citizens are over-represented on civil juries. Possible explanations and interpretations for these findings are offered.

Arie Freiberg. - Non-adversarial Approaches to Criminal Justice. 16 (4) (May 2007) Journal of Judicial Administration 205-222

The purpose of this article is to attempt to identify the contours of various forms of justice collected under the broad term "non-adversarial". It aims first, to determine the common themes, values and principles which may bring disparate practices together; and second, to recognise the reality of change in order to make sense of these social and legal experiments. It argues that not only does the criminal justice system overall not function adversarially for the vast majority of cases, but that changes in a number of areas have affected the adversarial paradigm in ways that require a fundamental re-examination of the operation of the courts, of the role of judicial officers and lawyers and, finally, of the way in which lawyers of the future are educated.

Tamara Walsh. - The Queensland Special Circumstances Court. 16 (4) (May 2007) Journal of Judicial Administration 223-34

Following the model established in Melbourne, a "special circumstances list" commenced operation in the Brisbane Magistrates' Court in May 2006. The list aims to provide an alternative to mainstream court processes and sentencing outcomes for defendants charged with minor offences who are homeless and suffering from mental illness or intellectual disability. This article reports on the results of an empirical study aimed at examining the early operations of the list in Brisbane. It demonstrates that the list has, thus far, enjoyed considerable success in providing a less intimidating court experience and more appropriate sentencing outcomes for the vulnerable people coming before it.

James R.P. Ogloff, Jonathan Clough and Jane Goodman-Delahunty. - Enhancing Communication with Australian and New Zealand Juries: A survey of judges. 16 (4) (May 2007) Journal of Judicial Administration 235-255

Although juries have existed in Australia for more than 150 years, very little empirical evidence is available concerning their operation. This article reports the first in a series of studies aimed at investigating and enhancing judges' communications with juries. Judges who preside over criminal jury trials (49 from New Zealand and 136 from Australia) completed questionnaires to gather information about their jury communication practices. Results reveal that practices are highly variable, particularly between Australia and New Zealand, but also across and even within States. Significant differences occurred concerning the average duration of the charge, whether judges provide (or allow) jurors to receive written or diagrammatic aids, whether jurors have access to the transcript, how jurors can ask questions, the scope of preliminary instructions on the law, and whether judges provide information about resolving disputations among jurors. Policy implications and the need for ongoing research are discussed.

Andrew Cannon. - Therapeutic Jurisprudence in Courts: Some issues of practice and principle. 16 (4) (May 2007) Journal of Judicial Administration 256-261

The developing field of therapeutic jurisprudence gives rise to many difficult issues of practice and principle. In this article practical issues of the balance between rigour and enthusiasm, the role of the magistrate, education and evaluation and resources are discussed. This leads to some suggestions for a more holistic approach for specialist courts, the need to pay better regard to family violence and victims' issues and their relationship to corrections departments and to provide specialist court programs in indigenous courts.

Kristy Richardson. - Judicial Independence: Is there a difference between administrative independence and adjudicative independence? 17 (1) (July 2007) Journal of Judicial Administration 5-17

Australian courts and administrative tribunals are dependent upon government for funding. Additionally, in most circumstances, courts and administrative tribunals are dependent upon government for administrative assistance. The rule of law requires the three branches of government, the executive, the legislative and the judicial be separate. Given the dependence on funding and administrative support, can Australia's courts and administrative tribunals be "independent"? This article examines whether there is difference between administrative independence and adjudicative independence and then presents the views of participants gained from two separate surveys on the issue of whether there is a difference between administrative and adjudicative independence.

Andrew Cannon. - Improving Debt Collecting in Courts. 17 (1) (July 2007) Journal of Judicial Administration 18-29

Most plaintiffs come to court to collect uncontested debt. This is the core work of the courts. This article discusses methods to verify and collect debt in Australia and some European countries. Research shows that the present system is not effective with chronic debtors. It is suggested that collection against these debtors should be co-ordinated by the court and rationalised with collection of fines. Issues of priority between creditors and civil creditors and fines, and the importance of credit rating are discussed.

Michael King and Robert Guthrie. - Using Alternative Therapeutic Intervention Strategies to Reduce the Costs and Anti-therapeutic Effects of Work Stress and Litigation. 17 (1) (July 2007) Journal of Judicial Administration 30-45

Legal proceedings are often a stressor for litigants and others involved in complex legal processes. Stress-related illnesses can be a by product of the litigation process as well as the subject of the litigation itself. Work-related stress claims are high cost and lead to long absences from work. Early intervention programs to address stress-related conditions have shown some success – but have been confined to conventional modalities. One alternative approach to the problem is to design less anti-therapeutic processes such as alternative dispute resolution. Another approach uses stress-reduction techniques to minimise anti-therapeutic effects of the legal processes while also alleviating the effects of stressful life events outside of work. Stress-reduction techniques can be included in early intervention programs. The self-development and stress-reduction technique Transcendental Meditation® has been used to reduce stress levels in the judiciary, legal profession and justice system clientele. Research has found it is highly effective in alleviating stress-related disorders. This article asserts that the justice system should use both approaches.

Terry Carney, David Tait, Duncan Chappell and Fleur Beaupert. - Mental Health Tribunals: "TJ" implications of weighing fairness, freedom, protection and treatment. 17 (1) (July 2007) Journal of Judicial Administration 46-59

People with a serious mental illness warranting possible compulsory care and treatment are vulnerable and disempowered. Mental health tribunal hearings must balance the rights to freedom, public protection and need for treatment when making decisions about mental health care and treatment. Therapeutic jurisprudence principles, and other precepts, suggest that participants should be treated with dignity and fairness, be fully engaged, and be helped to recover. Overseas research has found that these aspirations are often not realised. This article reports findings from an ongoing Australian Research Council funded collaborative study (2005-2008) of the practice of tribunals in Victoria, New South Wales and the Australian Capital Territory. In particular, it highlights the challenge of giving concrete meaning to concepts such as "fairness" or "the most therapeutic outcome" when assessing the variety of practices found in different jurisdictions. The article argues that information and data about the socio-legal context in which mental health tribunals operate are vital to answering these questions.

Lynne Roberts and David Indemaur. - Key Challenges in Evaluating Therapeutic Jurisprudence Initiatives. 17 (1) (July 2007) Journal of Judicial Administration 60-70

The progress of therapeutic jurisprudence initiatives depends on evidence regarding its effectiveness. This evidence comes from evaluations. Evaluation is thus vital in ensuring the uptake of therapeutic jurisprudence initiatives. Based on the literature and the authors' own experience, the authors suggest some basic guidelines for conducting evaluations of therapeutic jurisprudence initiatives. Key challenges in this field include locating appropriate comparison groups when control groups are not feasible or have not been used; measuring recidivism; and determining the particular components of a therapeutic jurisprudence initiative that are active in producing any observed results. While the focus of each evaluation is on whether a particular therapeutic jurisprudence initiative works, the accumulation of results from rigorous evaluations of therapeutic jurisprudence initiatives will move the focus beyond this to addressing the question of which types of therapeutic jurisprudence initiatives work with which types of offenders in which circumstances.

Robyn Carroll. - Appointing Decision-makers for Incapable Persons – What scope for mediation? 17 (2) (October 2007) Journal of Judicial Administration 75-92

Significant achievements have resulted from the creation of "quasi-judicial" boards and tribunals that determine whether a person with a mental disability is in need of an administrator or guardian. Informal hearings and a departure from strict rules of evidence makes processes for judicial decision or review of administrative decisions more accessible to the public. To the extent that the public is able to participate in an appropriate manner in these processes, the processes themselves, and the laws that establish them, have therapeutic qualities. As the many benefits of mediation have become better known and the process more commonly used in courts, tribunals and the community, there is a tendency to propose mediation for all nature of matters. At the same time, depending on the nature of the matter to be decided, mediation may be an inappropriate and even anti-therapeutic process. This article examines the appropriateness of mediation as a process for the determination of applications for the appointment of a decision maker for an incapable person and, using a series of case studies, examines the factors that indicate when mediation is or is not appropriate in this context.

Chief Justice Diana Bryant and Deputy Chief Justice John Faulks. - The "Helping Court" Comes Full Circle: The application and use of therapeutic jurisprudence in the Family Court of Australia. 17 (2) (October 2007) Journal of Judicial Administration 93-126

Therapeutic jurisprudence promotes the belief that the law and legal processes can be formulated and administered in ways which can impact positively on the psychological well-being of participants. This article examines the way in which the Family Court of Australia has recently re-engaged with the principles of therapeutic jurisprudence, within constitutional, resourcing and other limitations, coming "full circle" to its origins as a "helping court". This analysis occurs through the lens of Allan's Five Strategies: the approach taken to dispute resolution, the opportunity to testify, the admission of evidence and privilege, the role of social scientists, and legal decision-making as a linear process. It considers the ways in which the court has sought to engage therapeutically with litigants, including the development of the Children's Cases Program (Less-Adversarial Trial Model), the Magellan and Self-Representing Litigants Projects, mechanisms to ensure that the court hears children's voices in parenting disputes, the development of culturally and physically appropriate settings for hearing matters, and the use of social science expert evidence. The article also analyses the changes to the family law landscape introduced by the Family Law Amendment (Shared Parental Responsibility) Act 2006 and whether such changes embody an approach consistent with therapeutic jurisprudence.

Hon David K. Malcolm AC QC. - The Application of Therapeutic Jurisprudence to the Work of Western Australian Courts. 17 (2) (October 2007) Journal of Judicial Administration 127-133

This article contends that the adoption of a therapeutic approach clearly has a place in the sentencing regime. This involves the adoption of a multi-disciplinary approach which addresses not only the issue upon which an accused appears before the court, but also tackles the harder underlying issues at the root of the problem. Therapeutic jurisprudence regards the law as a social force, the goal of which is to produce therapeutic consequences for the victim and the offender, in particular, as well as society at large. Attention is drawn to the lack of appropriate facilities for dealing with offenders with drug and alcohol dependence issues which is contrary to the interests of the community. The establishment of the Drug Court in 2000 was a major advance, but therapeutic jurisprudence should involve all facets of the court system, particularly in regional areas of Western Australia, which are worthy of support not only by the government, but also the community at large.

Hon Justice James Spigelman AC. - Judicial Appointments and Judicial Independence. 17 (3) (February 2008) Journal of Judicial Administration 139-143

The judicial virtues of independence, integrity and impartiality are requirements of the rule of law. The pressures capable of being exerted by centres of power and wealth in the community, particularly the executive branch of government, require careful attention to the institutional design for the administration of justice. Personal fortitude and resilience are not enough. Institutional protections are required and have long since been adopted. One important institutional issue involves the process of judicial appointment. There is no single universally applicable model. This article discusses some of the stresses on our own system.

Hon Robert Nicholson AO. - Updating Asian-Pacific Judicial Conduct Provisions. 17 (3) (February 2008) Journal of Judicial Administration 144-154

The 8th, 9th and 10th Conferences of Chief Justices of Asia and the Pacific held in 1999, 2001 and 2003 examined aspects of judicial ethics in some of the countries in the Asia-Pacific region. In 2007, the Conference of Chief Justices considered the following update on developments concerning provisions affecting judicial conduct in a number of countries. The information is a precursor to adequate information being assembled in relation to provisions affecting judicial ethics across the region to enable an assessment to be made of common themes and distinctive differences in approaches to questions of judicial conduct.

Michael S. King. - Problem-solving Court Judging, Therapeutic Jurisprudence and Transformational Leadership. 17 (3) (February 2008) Journal of Judicial Administration 155-177

The use of court processes to promote participant accountability and rehabilitation is an important component of problem-solving courts such as drug courts, community courts and domestic violence courts. Therapeutic jurisprudence suggests findings from the behavioural sciences concerning matters such as health, motivation and behavioural change can be used to design suitable court processes to promote these goals. Transformational leadership theory also draws on such findings to design an approach that promotes follower motivation, satisfaction and performance. Empirical research provides strong support for its widely used approach. There are striking similarities between the theory and practice of therapeutic judging and transformational leadership. This article examines therapeutic judging in problem-solving court programs in the light of transformational leadership theory and suggests techniques judicial officers can use to enhance the rehabilitation process. Transformational leadership theory can enrich problem-solving court judging and contribute to the development of therapeutic jurisprudence.

Andrew Cannon. - Alternatives to Activity Based Costing. 17 (3) (February 2008) Journal of Judicial Administration 178-197

Litigation is too slow and expensive. This article, edited from papers presented at the AIJA 24th Annual Conference, discusses the way cost shifting can affect the conduct of litigation. The German cost scale and the New Zealand cost scale are described as alternatives to the activity-based scales usually used in Australia, and there is a defence of activity-based costing. The article argues that predictable cost calculation that restrains party costs will be a necessary part of reform to provide access to justice in courts.

Hon Justice R.S. French. - Speaking in Tongues: Courts and cultures. 17 (4) (April 2008) Journal of Judicial Administration 203-216

Awareness of cultural differences in society and how they can lead to inequality before the law is essential to the proper functioning of courts. Understanding of diversity of institutional and occupational cultures within Australian society is also necessary so that those who administer the courts can better interact with the wider society of which they are part. This paper offers personal perspectives on these themes and reviews recent debate about the way in which culture and courts interact.

Andrew Cannon. - Smoke and Mirrors or Meaningful Change: The way forward for therapeutic jurisprudence. 17 (4) (April 2008) Journal of Judicial Administration 217-222

This paper comprises three parts. The first discusses courts using theatre and manipulation to change people and whether this debases the judicial role. The second examines some research that shows that therapeutic jurisprudence works and that if there is a risk to the status and reputation of courts it lies in the traditional role of courts. The third contains some suggestions on the way forward for therapeutic jurisprudence.

Pamela D. Schulz. - Rougher than Usual Media Treatment: A discourse analysis of media reporting and justice on trial. 17 (4) (April 2008) Journal of Judicial Administration 223-236

This article summarises a research study which applies preliminary discourse analysis to a selection of Australian and South Australian newspaper headlines from 2002 to 2006 to identify a consistent pattern of reporting which inexorably demands that the justice system be modified. Such demands challenge, and may threaten the independence of the judiciary and courts in Australia. Newspaper headlines are shown to establish discourses of disapproval and disrespect which develop into discourses of debate and diminution, and then move into forceful discourses of direction as critique is intensified. Interviews conducted as part of this research, with politicians and judicial officers, reflect corresponding discourses of disapproval and, in the case of the judiciary, reflect what Habermas[1] calls colonised or "marginalised" groups. This study calls on the judiciary to take an alternative view and to avoid reliance on the media as a major conduit for communication with the public or to facilitate community understanding. Identification and analysis of discourse patterns can provide significant advance notice of negative public and community attitudes to instrumentalities which provide services that are not easily measured, eg justice or health. Recognising early indications of the discourses of disapproval and disrespect can allay moves into the discourses of direction. Forming appropriate communication responses, not necessarily within mass media, can contribute to active reputation management programs within institutions that have difficulty measuring and communicating their "worth" in a modern world of managerialism.

Michael Gething. - A Pathway to Excellence for a Court – Part I: Defining the pathway. 17 (4) (April 2008) Journal of Judicial Administration 237-252

There is an ongoing and unresolved debate as to how best to measure the performance of a court. There is a risk with a debate focusing on performance measures that we lose sight of the reason why performance measures exist in the first place. Performance measures exist to provide information to internal executives and external stakeholders as to whether an organisation is achieving excellence. This article considers how an organisation, in particular a court, goes about achieving excellence. The model presented is that an excellent organisation is one that is continually looking, learning, changing and

improving towards the concept of excellence which it has defined for itself. The model becomes a pathway along which the organisation travels. It also provides the framework for developing performance measures as well as wider assessment tools. In this Part the pathway to excellence is defined. A key part of the pathway is for the court to define the concept of excellence it sets for itself. In Part II a worked example will be presented of what a concept of excellence could look like for a court.

Matthew Ellis. - The Cost of Compromising: Offers of compromise and Calderbank offers. 17 (4) (April 2008) Journal of Judicial Administration 253-269

This article traces the history of offers of compromise and Calderbank offers in Australia and closely analyses the circumstances where such an offer may be relied upon when the issue of costs is being determined. Through a review of the policy considerations underpinning the offer of compromise rules and the common law's application of those principles in respect of Calderbank offers, the author seeks to provide strategic guidance to litigants eager to obtain costs protection in an increasingly expensive litigation environment. By understanding the rationale behind the exercise of the court's discretion on costs, litigants can give proper consideration to the risks of rejecting a reasonable settlement offer, and be informed of the true cost of compromising.

Kathy Mack and Sharyn Roach Anleu. - The National Survey of Australian Judges: An overview of findings. 18 (1) (July 2008) Journal of Judicial Administration 5-21

The Magistrates Research Project and the Judicial Research Project of Flinders University have conducted extensive empirical research into the background, careers, attitudes and everyday work of the Australian judiciary. This article describes the development of the National Survey of Australian Judges 2007 and provides an overview of findings on several topics: personal and social characteristics of judges, such as age, gender, family and the professional background which judges bring to their work; factors which affected the decision to become a judge; the skills needed for their work; and attitudes towards work, including areas of satisfaction and dissatisfaction and stress. The findings from this survey have significant value to the judiciary, to the community and for government in developing appropriate policies in areas such as recruitment, selection, appointment, training, education and court management, including issues of work allocation, hours, out of court work, working conditions and expectations.

Michael Gething. - A pathway to excellence for a court – Part II: Defining excellence. 18 (1) (July 2008) Journal of Judicial Administration 22-38

There is an ongoing and unresolved debate as to how best to measure the performance of a court. There is a risk with a debate focusing on performance measures that we lose sight of the reason why performance measures exist in the first place. Performance measures exist to provide information to internal executives and external stakeholders as to whether an organisation is achieving excellence. In Part I of this article a model was presented as to how an organisation, in particular a court, could go about attaining excellence. The model suggests that an excellent organisation is one that is continually looking, learning, changing and improving towards the concept of excellence that it has defined for itself. The model becomes the pathway on which the organisation travels. Having defined the pathway in Part I, Part II now looks at how a court could go about defining a concept of "excellence" for itself. The analysis used is to develop a concept of excellence for the fictional District Court of Carpentaria. Having developed a concept of excellence, a suite of performance assessment measures is suggested.

Mia Louise Livingstone. - Have we fired the "hired gun"? A critique of expert evidence reform in Australia and the United Kingdom 18 1 (July 2008) Journal of Judicial Administration 39-59

This article analyses the effectiveness of recent reforms to the reception and usefulness of expert evidence in civil court proceedings in Australia and the United Kingdom. As a basis for assessment, it considers the impetus for recent expert evidence reforms and their intended objectives. Three new expert evidence procedures in key relevant jurisdictions are analysed by exploring the main issues confronting their effective implementation. The first is joint experts appointed by the parties; the second is the concurrent evidence or "hot-tubbing" procedure; and the third encompasses joint conferences and other expert evidence management procedures. The new procedures have certainly made inroads into reforming the “hired gun” expert in at least some cases, some more significant than others. The courts have effectively balanced the often conflicting objectives of reform by adopting the procedures flexibly to address the specific issues associated with expert evidence in each case.

Elizabeth Najdovski-Terziovski, Jonathan Clough and James R.P. Ogloff. - In Your Own Words: A survey of judicial attitudes to jury communication. 18 (2) (October 2008) Journal of Judicial Administration 65-84

Judges participated in a semi-structured interview regarding their jury communication practices. Judges demonstrated their concern for effective communication with jurors, and a desire for that task to be performed as well as possible; however, their practices varied widely. It was widely believed that judicial communication with jurors can be improved, and that some jurors have difficulty understanding complex principles of law. The results suggest that continuity between juror orientation and the judges' preliminary comments is desirable, and that judges should be encouraged to provide preliminary instructions in appropriate cases. Also desirable is a process of formal induction for new judges and ongoing judicial education regarding communication with juries. Practical impediments were identified as an important factor inhibiting the use of alternative methods of communication. Ongoing research will assist in the development of a model process for juror communication, with a view to increasing juror comprehension of judicial instructions.

Andrew J. Cannon. - Sorting out Conflict and Repairing Harm: Using victim offender conferences in court processes to deal with adult crime. 18 (2) (October 2008) Journal of Judicial Administration 85-100

This paper considers the role that restorative justice conferences can play in making court processes more accessible to victims and offenders. It uses examples of actual conferences to demonstrate how the process can work in practice. The conclusion is that victim offender mediation offers therapeutic opportunities for both victims and offenders and, subject to ensuring proper quality of the process, should be incorporated into the court system.

Peta Spender. - After Fostif: Lingering uncertainties and controversies about litigation funding. 18 (2) (October 2008) Journal of Judicial Administration 101-115

This article will examine uncertainties and controversies that remain unresolved after the High Court recognised litigation funding in Campbells Cash and Carry v Fostif Pty Ltd (2006) 229 CLR 386. The uncertainties are doctrinal, eg whether the assignment of a right to litigate is valid, and systemic, eg whether the existing suite of approaches is sufficiently robust to manage the challenges presented by litigation funding. Controversies persist as to whether litigation funders promote trafficking and

meddling in litigation. Recent case law demonstrates that the policy underpinning the doctrines of maintenance and champerty still has salience. However, it will be argued that effective regulation of this area requires a coordinated approach and must move across different instruments and contexts. The article will sketch out some elements of effective regulation and make suggestions for reform of the current regime.

Adrian Ryan. - Discovery: The law's need to adapt to changing times. 18 (2) (October 2008) Journal of Judicial Administration 116-135

This article examines the discovery process and how, due to various changes over time, discovery is no longer meeting its original purpose. The author examines and critiques recently introduced reforms and proposals for reform with respect to discovery in jurisdictions within Australia and internationally, with a view to ensuring that discovery meets its intended purpose and operates more efficiently to reduce costs and delay in the resolution of civil proceedings. Particular attention is given to the Victorian Law Reform Commission's (VLRC) Civil Justice Review and the civil justice reform proposals espoused by the VLRC. The article primarily focuses on large, complex litigation in the Australian jurisdiction, with particular emphasis on Victorian civil proceedings in superior courts.

Anthony Papamatheos. - Judgments calling for law reform. 18 (3) (February 2009) Journal of Judicial Administration 141-143

This note highlights some of the key issues which arise when judicial officers call for law reform in their reasons for decisions.

Dr Pamela D Schulz. - Views from Chambers: A discourse analysis of judicial speeches in Australia 1995–2006. 18 (3) (February 2009) Journal of Judicial Administration 144-168

A review and critical discourse analysis of selected judicial speeches made by judges over a period of more than 10 years suggests that judges are captured and colonised by the discourses of disapproval found in political and media rhetoric espousing law and order. Despite the obvious realisation that the media are attempting to set agendas and to direct the course of justice administration in order to further the attraction of readers and viewers to the drama of justice stories, judges are still attempting to work with the media, the very problem outlined in their speeches, rather than attempting to address the community directly through other means.

Dr Philip Jamieson. - Sentence indication in the Supreme Court: A Victorian initiative. 18 (3) (February 2009) Journal of Judicial Administration 169-177

Sentence indication is an increasingly common feature of Australian courts. However, until 2008 none of the existing sentence indication schemes had involved its use in any Australian Supreme Court. The Criminal Procedure Legislation Amendment Act 2008 (Vic) made provision for sentence indication in the Supreme Court of Victoria. This was contrary to the recommendations of the Sentencing Advisory Council, which were substantially implemented by the Act. However, the reasons advanced by the Victorian government for extending sentence indication to the Supreme Court and the protections embodied in the legislation (in particular, a two-year sunset clause) assuage in large measure concerns arising from this initiative.

Michael Hill. - Hobart Magistrates Court's Mental Health Diversion List. 18 (3) (February 2009) Journal of Judicial Administration 178-185

The Mental Health Diversion List commenced in the Hobart Magistrates Court in May 2007 as a pilot program for 12 months. This period has now been extended. This list is the first "problem-solving" court to operate in Tasmania. This article outlines the development and progress of the List and discusses the potential benefits of the model in other areas where problem-solving approaches are often used, namely family violence and drug-related offending. The effects on the parties and some responses to the court process are outlined and some challenges identified.

B.C. Cairns and S.C. Williams. - Minor debt claims in Queensland. 18 (3) (February 2009) Journal of Judicial Administration 186-199

In Queensland the Uniform Civil Procedure Rules establish simplified procedures for determining debt claims of not more than $7,500, referred to as minor debts. There are abbreviated pre-trial and trial procedures to make self-representation practicable. An empirical study described in this article was designed to test whether the aims in the Rules were being achieved in practice. A random sample of minor debt cases decided in the court during the years 2000 to 2006 was selected for study. Court files were examined to collect data concerning disposal time, type of claim, capacity of the parties, their representation and method of terminating the proceeding. Court determination of minor debt claims is expeditious and not over-burdened with formality. In that respect the aims of the Rules are being achieved. However, out of court determination, such as mediation, plays a less prominent role than court determination. The majority of minor debt claims proceed to a hearing before the court. In so far as claims proceed to court there is a significant hidden cost because of pre-court preparation by the parties. Mediation played only a minor role in the sample of cases in the study.

Hon James Jacob Spigelman AC. - Implications of the current economic crisis for the administration of justice. 18 (4) (April 2009) Journal of Judicial Administration 205-210

This article is based on a paper delivered at the Law Society of New South Wales' Opening of Law Term Dinner 2009. Chief Justice Spigelman looks at the challenges for the courts and the administration of justice resulting from the current economic crisis. He looks particularly at the need to contain legal costs and the responsibility which judges have to control costs especially where this results from delay and the length of trial.

Hon Ronald Sackville AO. - The future of case management in litigation. 18 (4) (April 2009) Journal of Judicial Administration 211-218

Enthusiasm for active case management as the principal means of tackling the endemic problems of cost and delay in the judicial system shows no sign of diminishing. The result has been a reorienting of priorities within the civil justice system and a fundamental shift in the role of judges. The courts have introduced a diverse range of practices, reflecting the reality that Australia has a multitude of courts, each with a different history, culture, jurisdiction and caseload. This diversity should not obscure the need for systematic evaluation of case management arrangements through well-constructed and properly funded empirical research. The importance of such research has been emphasised by a new phenomenon – legislative endorsement of case management principles. The legislation is significant for two reasons. First, case management principles have received an imprimatur that only elected representatives can bestow. Second, the legal framework within which the courts, including appellate

courts, must now operate has changed. The concept of forensic fairness has been redefined in recognition that justice is a scarce resource.

Hon Bernard Teague AO. - Towards better judicial mentoring. 18 (4) (April 2009) Journal of Judicial Administration 219-229

The following report was written by the Honourable Bernard Teague AO as a 2008 Churchill Fellow under the Churchill Trust. A Churchill Fellowship is designed to enable Australian citizens from all walks of life to travel overseas to undertake an analysis, study or investigation of a project or an issue that cannot be readily undertaken in Australia. Mr. Teague's report is a valuable resource for Australian Courts.

Dr Andrew Cannon. - Pretrial conferences and sentence indications in Magistrates courts 18 (4) (April 2009) Journal of Judicial Administration 230-236

This article discusses the evolving views of what is acceptable in pretrial conferences and plea bargaining by considering the practice in the Magistrates Court and drawing some comparisons with the German civil code system. This leads to the conclusion that pretrial sentence indications will be an accepted part of our system and some suggestions to militate against dangers in that process.

Professor M. Rafiqul Islam. - Judicial independence amid a powerful Executive in Bangladesh: A constitutional paradox? 18 (4) (April 2009) Journal of Judicial Administration 237-252

After 36 years of subservience to the Executive, the judiciary of Bangladesh has recently been separated to dispense justice independently. This separation happened in 2007 during the term of an interim caretaker government in power with limited constitutional mandates. The caretaker government enjoyed full army support and operated within its proclaimed state of emergency, which resulted in its extraordinary empowerment far beyond the Constitution. Its all-powerful orientation had an encroaching effect on constitutional guarantees and a marginalising effect on judicial independence. Apex court decisions in the post-separation period accorded priority to the emergency power over the Constitution. Insulated by the emergency powers, the law enforcement apparatus abused human rights with impunity. The emergency powers predefined the legal consequences of these abuses to ensure that legal challenges to any emergency measures were unsuccessful. Pending high-profile cases, particularly against former prime ministers, are set to serve as further testing grounds for judicial independence. A preference for judicial restraint over activism during a state of emergency, in view of the vulnerability of judicial independence, may not be gainsaid in some cases. But a general abdication of judicial impartiality in favour of a pliant role in Bangladesh, where the judiciary is the only forum for enforcing citizens' rights, is paradoxical to the judiciary's guardianship of the Constitution.

Hon R.S. French. - Executive Toys: Judges and non-judicial functions. 19 (1) (July 2009) Journal of Judicial Administration 5-21

Judges today are asked to perform a variety of non-judicial, administrative functions, such as issuing search warrants or preventative detention orders. But are these the kinds of things that judges should do? Responses to this question are often "knee-jerk"; they are not part of the judicial function and the judge can become an agent of the Executive. In this article, Chief Justice French refers to the doctrine of the separation of powers in the Australian context to show that such knee-jerk responses are not

helpful; it is important to develop a sense of the history and traditions of the judicial role and its proper limits and a sense of those things which are incompatible with it.

Dr Peter Spiller. - Reflections on best judicial practice. 19 (1) (July 2009) Journal of Judicial Administration 22-25

The New Zealand Disputes Tribunals, the equivalent of small claims courts in other countries, are run by judicial officers called referees. As a group, they have a remarkably low rate of successful appeals against them. Recently, 13 of the best-performing referees were asked to reflect on why they thought they had had such an admirable record. They noted the need for pre-hearing preparation. They commented on the need to: engage with the humanity of the parties in hearings; run a clear and transparent process; keep focused on the relevant issues and law; be honest with the parties; observe the principle audi alteram partem; and foreshadow the essential elements of the decision that was likely to emerge. They also reflected on the need to express their decision appropriately, with the loser in mind, and (where applicable) respond appropriately to appeals. While the referees rightly conduct their hearings in line with the rules of natural justice and legal principles, they also preserve and nurture the essential humanity of a forum for lay litigants.

Dr Michael Cooke. - Anglo/Aboriginal communication in the criminal justice process: A collective responsibility. 19 (1) (July 2009) Journal of Judicial Administration 26-35

The main players involved in the administration of criminal justice in respect of Indigenous people of a non-English speaking background effectively combine to prop up a dysfunctional system where unrecognised miscommunication is pervasive and insidious, resulting in many Aboriginal defendants being unfairly disadvantaged in police interviews, in instructing counsel, in giving evidence and in understanding trial proceedings. Many do not acknowledge barriers to communication or do not seek to adequately address them. Some seek to exploit miscommunication for tactical reasons. The use of interpreters does not solve the problem when they are inadequately trained or skilled for legal interpreting. Police, lawyers, courts, interpreter providers and interpreter trainers contribute to and tolerate dysfunctional communication – often with good intentions. While strategies are suggested to improve communication, resolution ultimately requires courts insisting that miscommunication issues are redressed before proceeding with trials.

Nik Andersen. - Client legal privilege and in-house counsel: Current law, recent developments and overseas comparisons. 19 (1) (July 2009) Journal of Judicial Administration 36-57

This article explores the rationale for the client legal privilege doctrine, the Australian case law history of the application of that doctrine to communications involving in-house counsel and recent developments and recommendations in Australia regarding the application of client legal privilege to such communications. The author argues against the imposition of an independence test to the application of client legal privilege in respect of communications involving in-house counsel, on the basis that such a test is ill-founded and impractical, and derogates from the fundamental rationales for the existence of the client legal privilege doctrine. This argument is explored by reference to a comparison of the position under the common law systems of New Zealand, England and Canada. The article also analyses the recent abuse of the client legal privilege doctrine in Australia, and provides recommendations to counteract such abuse.

Li Wenwei. - Theft: A study of the use of fines by Courts in Australia and China 19 (1) (July 2009) Journal of Judicial Administration 58-70

In Western countries the modern use of a monetary fine as punishment for crime has developed as an alternative to a short prison term and reflects a general trend towards mitigating punishment. However, in China, the criminal law mainly uses fines against greedy crimes. Through analysing the relevant legislation and practices of fines against theft in New South Wales and South Australia, this article finds that, when fines are used against theft, fines and prison terms are alternate choices and that judges take into account the wealth and income status of criminals while considering the penalty of a fine. On the basis of a detailed comparison with Chinese legislation and judicial practices, the article concludes that, in China, fines are nearly always used along with imprisonment. While there are good reasons for this, in the Chinese context, more attention should be given to the functions of fines in mitigating punishment and acting as an alternative to short prison terms.

Hon Justice R.S. French. - Boundary Conditions: The funding of courts within a constitutional framework. 19 (2) (October 2009) Journal of Judicial Administration 75-87

In this article Chief Justice French considers the question – How are courts to be funded? – and examines how the range of solutions to this question is limited by boundary conditions defined by the constitutional character of the courts, the nature of their functions and their relationship to the legislative and executive branches of government. The article discusses four key issues relevant to public policy about the allocation of resources to the courts: the constitutional position of the courts; the functions of the courts; efficiency, productivity and performance in relation to the judicial function; and the source and accountability of funding for the judiciary.

Michael Black. - The Role of the Judge in Attacking Endemic Delays: Some lessons from Fast Track. 19 (2) (October 2009) Journal of Judicial Administration 88-99

In this article Chief Justice Black argues that judges can, and should, play a central role in reducing delay and its associated costs and backlogs. His Honour examines the causes of endemic delay in litigation and the ways in which the Federal Court has tackled them in its pilot program Fast Track. Drawing anecdotally on the Federal Court's experience with Fast Track, his Honour shows how judges are in a unique position to attack the causes of endemic delay. His Honour argues that by adopting rigorous new procedures with active judicial case management – such as that for which the Fast Track Directions

provide – and with cooperation between the parties (which has been the experience of Fast Track) delay and cost can be significantly reduced.

Lesley Storey. - Indigenous Justice Taskforce: Delivering justice in the Kimberley region of Western Australia 19 (2) (October 2009) Journal of Judicial Administration 100-107

Leadership, collaboration, reprioritisation of services and staff commitment were the key factors in the success of the Indigenous Justice Taskforce. The taskforce was formed by the Chief Justice of Western Australia, to expedite the unprecedented number of charges of sexual abuse against children in Western Australia's vast Kimberley region. The unique and complex circumstances of the issue and its impact on an already disadvantaged group of people, as well as the nature of the Kimberley environment itself, warranted extraordinary attention from the judiciary and relevant justice agencies. By bringing people together to challenge how justice processes and services were delivered, agency and judicial resources were reprioritised to fast-track the cases. Some 152 cases were expedited and the majority were finalised well under the average time normally taken. Had the taskforce not intervened, these cases would have created a significant backlog in the courts and taken double or treble the average time to finalise – further escalating the disturbance to remote communities and the suffering of those involved.

Rosemary Monaghan and Robin Arthur. - Deciding disputes by investigation rather than adversarial methods: The experience of the New Zealand Employment Relations Authority 19 (2) (October 2009) Journal of Judicial Administration 108-118

Created under the Employment Relations Act 2000 (NZ), the New Zealand Employment Relations Authority takes an investigative rather than an adversarial approach to adjudicating employment disputes. This article examines the investigative practice of the Authority, including: statutory requirements; what is to be investigated; how facts are established and evidence gathered; and the role of representatives. The article also considers how the Authority has been received and what may change in the future.

Catherine Aird. - Compulsory conferences, expert conclaves and hot tubs. 19 (2) (October 2009) Journal of Judicial Administration 119-126

"Toxic costs" and apparently endless litigation are far too common in building and construction disputes. As we consider ways to minimise those costs it is important to consider alternatives to traditional adversarial hearing practices. Compulsory conferences, "chaired" conclaves of experts, and hearing of concurrent expert evidence, have led to a significant reduction in hearing times in the Domestic Building List of the Victorian Civil and Administrative Tribunal.

Dr Philip Jamieson. - The psychology of procedural fairness. 19 (2) (October 2009) Journal of Judicial Administration 127-128

The principles of procedural fairness recognise that it is equally important that justice is done, and that it is seen to be done. This note highlights the importance of public perceptions of procedural fairness.

Dr Michael S King. - Judging, Judicial Values and Judicial Conduct in Problem-solving Courts, Indigenous Sentencing Courts and Mainstream Courts. 19 (3) (February 2010) Journal of Judicial Administration 133-159

Principles guiding judicial conduct generally, such as those in the Guide to Judicial Conduct, are influenced by the concept of an adversarial trial. Here the judicial officer is a neutral, largely uninvolved umpire seeking to ensure the fairness of a process mainly conducted by the parties. However, judging in problem-solving courts and in Indigenous sentencing courts generally requires an involved judicial officer, some collaborative processes, and increased interaction between the judicial officer, participants, court team members and community members. Judging in these contexts is often informed by therapeutic jurisprudence principles. This article argues that, properly done, judging in these courts and applying therapeutic jurisprudence in judging in mainstream lists does not violate the judicial function or judicial values of independence, impartiality and integrity. It also argues that an ethic of care should not only underlie these newer forms of judging but also all other forms of judging. It suggests that problematic situations concerning proper judicial conduct in and out of court may be addressed through the application of these judicial values.

James Plunkett. - The Role of the Attorney-General in Defending the Judiciary. 19 (3) (February 2010) Journal of Judicial Administration 160-175

The judiciary is increasingly finding itself the subject of public criticism. Where this criticism is capable of undermining the public's confidence in the administration of justice, the criticism must be publicly addressed. Although defending the judiciary from criticism is often seen as the responsibility of the Attorney-General, is this a realistic expectation, particularly where such a defence has the potential to conflict with government policy or be politically unpopular? This article examines the circumstances in which a response to criticism is likely to be required and whether, in such circumstances, the Attorney-General is the most appropriate person for the job.

Toby Blyth. - Path Dependency and the Institutional Litigator. 19 (3) (February 2010) Journal of Judicial Administration 176-186

The concept of path dependence is not new in the areas of economics, biology and sociology. Neither is it new in the academic discussions of law. Path dependency provides an exceptionally useful and flexible tool for describing the development of the law, at all levels. Not only will it have an effect on the development of precedent, a classic area of applicability, but it will also have an impact on the development of legislation and express law. This article considers the impact of path dependency at a more practical level – how it affects the actors in litigation.

Judith Bellis. - Public Access to Court Records in Australia: An international comparative perspective and some proposals for reform. 19 (4) (April 2010) Journal of Judicial Administration 197-231

This article provides an overview and comparative analysis of current legal principles, policies and practices governing public access to court records, including electronic records, in Australia, New Zealand, England, the United States and Canada. It canvasses a wide range of reform proposals that have been made in a number of these jurisdictions in the last decade to ensure the appropriate balance between the public interests in open courts and individual rights to privacy. It offers a recommended framework for reform that could be considered at all levels of Commonwealth and State courts in Australia.

Diana Karamicov. - Judicial Complaints and the Complaints Procedure: Is it time for an independent judicial commission in Victoria? 19 (4) (April 2010) Journal of Judicial Administration 232-245

Judicial misconduct – what it is, how it should be dealt with, and the importance of the independence of the judiciary – are perennial topics for legal commentators. Recent legal and political developments have seen greater scrutiny of judges both on and off the bench. How to scrutinise and discipline errant judges without compromising their independence or bringing the judiciary into disrepute is the subject of this article. The appropriateness and efficacy of an independent judicial body, tasked with the responsibility of judging the judges is analysed in the context of the delicate balance between independence and accountability.

Sharyn Roach and Kathy Mack. - The Work of the Australian Judiciary: Public and judicial attitudes. 20 (1) (July 2010) Journal of Judicial Administration 3-17

Australians place a high value on the importance of courts, though public confidence in the courts and legal system is generally low. Very few Australians have any first-hand experience of their courts, suggesting that most of their information about courts and judges derives from print and electronic news and entertainment or what they are told about the experiences of other people. A disjuncture between the public's high value of courts and low confidence in the justice system can present a profound challenge to Australia's social fabric and its legal integrity. Closer analysis of public attitudes on a range of facets of judicial work generates a more nuanced and complex understanding of public opinion about the justice system.

Anthony Gray and Eola Barnett. - Sustainable Juries: Thinking outside peer jury criminal trials. 20 (1) (July 2010) Journal of Judicial Administration 18-38

This article acknowledges the traditional arguments in favour of a jury system but notes some practical difficulties with their use, in particular relating to jurors' understanding of what can be complex evidence, the decision processes used by some jurors to reach conclusions, and the extent to which jurors understand and apply the concept of reasonable doubt. If they ever were truly representative of the population, they are not today given the ease with which some are able to exempt themselves from service, and the system by which potential jurors can be challenged. The authors argue for greater education of jurors in key concepts associated with the criminal trial, and the use of special juries in some complex cases where the circumstances of the trial make it unlikely that a typical jury would understand the case or the evidence, compromising their ability to discharge their important function.

Michael Legg and Dorne Boniface. - Pre-action Protocols in Australia. 20 (1) (July 2010) Journal of Judicial Administration 39-59

Pre-action protocols serve as a gateway to the civil justice system. They seek to facilitate the exchange of information and, where possible, remove the need for litigation by encouraging the use of alternative dispute resolution techniques to resolve disputes. Pre-action protocols were adopted in England and Wales as a result of Lord Woolf's Access to Justice Report with a view to reducing the demand for court resources and facilitating dispute resolution. In Australia there has been very limited use of pre-action protocols, but that is about to change. Pre-action protocols have recently attracted attention in Australia through recommendations from the Victorian Law Reform Commission, the Federal Attorney-General's Access to Justice Taskforce, the New South Wales Attorney General's ADR Blueprint and the introduction of Bills into the Commonwealth and Victorian Parliaments. This article reviews the use of

pre-action protocols in the United Kingdom and the recent recommendations for more wide-spread adoption of protocols in Australia. Adoption of pre-trial protocols has important implications for the courts, legal practitioners and the community. This article discusses the strengths of the proposed pre-action protocols, such as resolving disputes more expeditiously and at lower cost, and examines some concerns such as "satellite" litigation and the front-loading of costs. The article suggests the conditions for the successful adoption of pre-action protocols in Australia, which may be summarised as a "bespoke" or "tailored" approach that matches the requirements of the protocol with specific types of case.

Helen Rhoades. - The Family Court of Australia: Examining Australia's First Therapeutic Jurisdiction. 20 (2) (October 2010) Journal of Judicial Administration 67-80

Established in 1976, the Family Court of Australia was created as a specialist jurisdiction for resolving family disputes. Incorporated into its design was an in-house counselling (alternative dispute resolution) service and informal hearing processes, where the usual ceremonial trappings, such as wigs and gowns, were absent. Underpinning these innovations was a desire to offer disputants a less adversarial and more supportive environment in which to negotiate the end of their relationship. Despite this hope, the Family Court quickly garnered significant public criticism, and its judges soon became the targets of death threats and bomb attacks. This article draws on interviews conducted with the court's original personnel to investigate this history and the implications of the court's non-traditional design elements for the success of its therapeutic justice goals, and asks what lessons can be learned from the experiences of its early judges for today's problem-solving courts.

Effie Zafirakis. – Curbing the "Revolving Door" Phenomenon with Mentally Impaired Offenders: Applying a Therapeutic Jurisprudence Lens. 20 (2) (October 2010) Journal of Judicial Administration 81-91

This article considers the application of therapeutic jurisprudence principles in the context of the recent innovation of mental health courts, which are designed to enhance the "wellbeing" of mentally impaired offenders. It is argued that mental health courts have the potential to address the criminalisation of mentally impaired offenders by facilitating positive therapeutic outcomes and diverting mentally impaired offenders into treatment. In particular, mental health courts can facilitate successful treatment outcomes by minimising the use of coercion and ensuring that mentally impaired offenders are accorded a "voice" and treated with dignity and respect. Accordingly, the mental health court seeks to advance more integrative and holistic approaches to treatment which ideally should be informed by evidence-based practice. Ultimately, however, the success of any therapeutic intervention is contingent on mental health courts "brokering" relationships with community service providers in order to facilitate accessibility to treatment. The recent introduction of the Victorian Assessment and Referral Court (ARC) List, which aims to consolidate the management of mentally impaired offenders into a single court, is also briefly examined as a timely and promising initiative in curbing the "revolving door" phenomenon.

Deen Potter. - Indigenous Youth and Restorative Justice in Western Australia. 20 (2) (October 2010) Journal of Judicial Administration 92-105

Restorative justice has the ear of the community, legislators and courts. Direct and indirect mediation between offenders and their victims of crime is a powerful tool and attractively conflates notions of punishment and rehabilitation through the conduit of shame, empathy and just retribution. However, when the offender is dislocated from and disinterested in the broader norms and assumptions implicit

in the restorative process then how valuable an exercise is it? For many Indigenous youth in Western Australia restorative justice can have only a limited impact and application because their life circumstances and realities are often far removed from a process which seeks to restore participants to the position that they occupied pre-offence. What is required is a new way of looking at engaging the restorative justice process so that it has true meaning and practical application to the lives of these children and their families. To genuinely engage the process at this level will require, first, a shift in the way these young offenders are viewed and, second, a significant allocation of time, energy and resources so that transformation can begin.

Kathy Douglas and Becky Batagol. - ADR and Non-adversarial Justice as Sites for Understanding Emotion in Dispute Resolution: Reporting on Research into Teaching Practices in Selected Australian Law Schools. 20 (2) (October 2010) Journal of Judicial Administration 106-118

The importance of understanding emotion in dispute resolution is increasingly being recognised in the literature reflecting upon current legal practices and legal education. Recently, the Australian academic Michael King pointed to the rise of "emotionally intelligent justice" and the implications for legal practice and legal education. The contiguous fields of alternative or appropriate dispute resolution (ADR) and non-adversarial justice may provide fruitful avenues for bringing emotion into the legal curriculum. In this article, the authors bring together research exploring the teaching of ADR in selected Australian law schools with a consideration of their own teaching practices in the field of ADR and non-adversarial justice. The authors report upon the research findings and explore the questions of how the discipline areas of ADR and non-adversarial justice are presently and could increasingly be used by Australian law schools to teach about emotion in dispute resolution.

Alejandra Hayes and Sandra Hale. - Appeals on Incompetent Interpreting. 20 (2) (October 2010) Journal of Judicial Administration 119-130

Empirical research has found that inadequate interpreting can have a significant impact on the outcomes of legal cases. While most interpreting inaccuracies go unnoticed in bilingual cases, with unknown consequences, some (possibly the most salient ones) have led to appeals. This article analyses the outcomes of 50 court and tribunal appeals on the grounds of incompetent interpreting from New South Wales, the Northern Territory, Queensland, Victoria and Western Australia between 2006 and 2008. The findings reveal that even when the performance of interpreters during a trial or hearing is questioned on appeal, the higher courts are not convinced by the linguistic arguments regarding the impact of poor interpretation on the witness's or applicant's credibility or the outcome of the case, unless the interpreting errors are directly related to an issue of specific significance to the case and constitute jurisdictional error. As a result, this ground of appeal rarely succeeds.

Steven Rares. - What is a Quality Judiciary? 20(3) (February 2011) Journal of Judicial Administration 133-145

A quality judiciary is an essential institution in every society. The role of a judiciary is to adjudicate the lawful outcome of disputes. The judiciary has a fundamental role in safeguarding the crucial human right of every member of a society to be protected by the rule of law. The author discusses the need for a quality judiciary to adhere to the core values of independence, impartiality, integrity, fairness, transparency and diligence. The author also argues that the real work or quality of courts cannot be measured by arbitrary business tools such as key performance indicators. Rather, he maintains that courts should aim to do justice according to law and maintain public confidence in the judicial system.

To do so a quality judiciary should adapt its practices and procedures to meet the demands of the times. The author goes further to suggest possible solutions to problems arising from the growth of litigation and its increasing complexity.

Richard Stewart. - The Self-represented Litigant: A Challenge to Justice. 20(3) (February 2011) Journal of Judicial Administration 146-166

This article looks at the self-represented litigant as a class of litigant, and the challenges that this particular class of litigant presents for the court. The role of the court in society is discussed at some length, together with the rule of law. It is suggested that the rule of law directly impacts on the court and the way in which it discharges its primary societal function. It is advanced that the rule of law requires the court to abide by the principles of independence, impartiality and fairness. The article explores the ways in which the court's capacity to discharge its societal function is impaired when it engages with the self-represented litigant, thus preventing strict compliance with the rule of law. Ultimately, it is suggested that the self-represented litigant can properly be viewed as a challenge to justice.

Susan Armstrong. - Accommodating Culture in Family Dispute Resolution: What, Why and How? 20(3) (February 2011) Journal of Judicial Administration 167-177

This article contributes to the recent revival of interest in the role of culture in family law processes, and family dispute resolution (FDR) in particular. After discussing the meanings that are attached to accommodating culture, the author considers some of the reasons why it is important to consider culture in the context of FDR. These are: to address some of the challenges of neutrality in the FDR process; to maximise party control over the process; and to support children's best interests, particularly their right to enjoy their culture. The article then draws upon recent empirical research to illustrate the existing good practice of FDR processes and practitioners to respectfully explore and accommodate clients' cultural contexts in FDR where this is possible and consistent with the above objectives, and with legal, ethical and human rights obligations.

Alison Christou. - Issues of Mandate and Practice for Non-adversarial Adjudication. 20(3) (February 2011) Journal of Judicial Administration 178-184

This article examines the continuing rise in importance of non-court public adjudication both within Australia and abroad. This reality has led to two core challenges related to the position and legitimacy of those required to undertake this form of dispute resolution. First, an ambiguous mandate can lead to inconsistency of outcomes and therefore uneven justice for those who utilise these services. The second related problem is the largely inadequate training made available to public adjudicators across the course of their careers, which both hampers sector development and contributes to the noted problem of outcome quality. This article proposes some avenues for approaching these challenges. Underpinning these is the argument that clearer delineation and recognition of the bounds of non-court public adjudication will assist in the unification, development and ongoing improvement of this key growth sector within dispute resolution.

Roger Dive. - Judging in the Land of the Chaotic. 20(3) (February 2011) Journal of Judicial Administration 185-195

Judicial supervision has been identified as a key component in the success of drug court programs. There are two aspects to that role – the judge's role as the leader of a diverse team, and the judge's role in the

courtroom and with the participants. In this article the author sets out the structural arrangements at the Drug Court of New South Wales which support this innovative program, and the techniques used with participants to assist them in their recovery from long-term addictions.

Tin Bunjevac. – Court Governance: The Challenge of Change. 20 (4) (April 2011) Journal of Judicial Administration 201-224

This article argues that overworked and overburdened individual judges are not in an effective position to initiate meaningful and systematic improvements in the quality of the administration of justice without a supporting judicial institution that would assist the courts in achieving a greater degree of organisational quality, efficiency, responsiveness and integration. The article provides a comparative overview of the Australian, Irish, Canadian, English and Dutch models of court governance. It is argued that the proposed Judicial Council of Victoria should be modelled on the Dutch Judicial Council, because it is the only institution that has a broad and unambiguous mandate to improve the quality of the administration of justice, while at the same time expanding the independence, self-responsibility and accountability of the courts in the areas of judicial administration, management, human resources and finances. The author argues strongly against any models of governance that would maintain internal administrative separation between judges and court administrators in the courts. Ultimately, it is argued that fully integrated and autonomous court management – supported by a judicial council – would lead to greater institutional responsiveness of the courts and improvements in judicial management, innovation, case management and quality of justice.

Tony Woodyatt. - Allira Thompson and Elizabeth Pendlebury. – Queensland's Self-representation Services: A model for other Courts and Tribunals. 20 (4) (April 2011) Journal of Judicial Administration 225-239

The Senate Legal and Constitutional Affairs References Committee report, Access to Justice, has recently recommended that further research be undertaken into self-represented litigants. The self-representation service established by Queensland Public Interest Law Clearing House Incorporated (QPILCH) has now been operating for three years. It provides a useful model for meeting the needs of such litigants and has begun to accumulate data that will assist in understanding them in a systematic way. The QPILCH Self Representation Service provides discrete task assistance throughout the conduct of a litigant's court proceedings rather than one-off assistance at the court door. The outcome of such an approach is that self-represented litigants are entering the courtroom better organised and prepared and with a clearer idea of court procedures, possible outcomes and compliance. This article describes the model developed by QPILCH and suggests a way forward in relation to work already undertaken.

Les Arthur. - Does Case Management Undermine the Rule of Law in the Pursuit of Access to Justice? 20 (4) (April 2011) Journal of Judicial Administration 240-247

Improving access to justice is the common goal of modern reforms to the civil justice system. Case Management is the method initiated by the judiciary and law reform bodies to control the conduct of civil proceedings to ensure that the overriding objective of enhancing access to justice is achieved. The question posed by this article is, do the principal features of case management undermine the rule of law? The procedural philosophy underlying case management requires judges to ration the procedural devices which traditionally have been available to parties. Such rationing will sometimes impede the ability of a party to acquire facts to support a case or prevent a party from presenting an arguable case. This article argues that the principled rationing of procedural processes is essential to achieve effective

access to justice without derogating from the procedural fairness which is fundamental to the rule of law, and that settlement is complementary to adjudication and the rule of law.

Marilyn Warren. - Enhancing our Self-perception: 360-degree feedback for judicial officers. 21 (1) (August 2011) Journal of Judicial Administration 3-7

Relative isolation is one of the characteristics and challenges of judicial practice. In this article, Chief Justice Warren identifies the systemic factors that contribute to a lack of feedback received by judicial officers about how they perform their role. To address this need in judicial professional development, her Honour, as chair of the Judicial College of Victoria, outlines a Court Craft program developed by the College that incorporates the use of a "360-degree feedback" model. Her Honour draws on her own experience of the program to elaborate on its success as a valuable learning experience and as one of developing judicial best practice.

Pamela D Schulz and Andrew J Cannon. - Public Opinion, Media, Judges and the Discourse of Time. 21 (1) (August 2011) Journal of Judicial Administration 8-18

News stories and their headlines, collated and analysed by Schulz, have clearly identified a significant continuing discourse of time which is being used to critique the work of courts and judges and influence policy decisions. This article suggests that time discourse is a very powerful influencer in public perception transmission and suggests ways in which authorities can identify and modify responses direct to the community. A corpus of sentencing remarks randomly sourced in Australia from various criminal courts' websites since 2008 indicates judicial officers appear unaware of the need to reframe discursive presentations for the community. Sentences appear offender-focused rather than driven by the need for community reassurance. The authors provide a multidisciplinary approach using communication and legal perspectives. This unique collaboration, looking into time and its challenges for authorities which are reliant on public confidence (and funding) provides evidence that the discourse of time and its construction is used as a major evaluative measure of those authorities. Sentencing presentations thus may be considered in light of these findings.

Michael S King. - Therapeutic Jurisprudence Initiatives in Australia and New Zealand and the Overseas Experience. 21 (1) (August 2011) Journal of Judicial Administration 19-33

Problem-solving courts, Indigenous sentencing courts and court diversion programs have become an established part of the legal landscape in Australia. Australian court programs have been influenced by similar programs in the United States, Canada and the United Kingdom. A key underlying premise of these programs is that courts have a role in facilitating offenders addressing underlying issues. The concepts and practices of therapeutic jurisprudence and restorative justice have significantly influenced the development of court and legal practice associated with these programs. Research has found that these programs produce positive outcomes including, in the case of some programs, reduced recidivism. Ultimately the most significant effect of these programs may be their serving as a conduit for therapeutic jurisprudence and restorative justice principles to be applied more generally within the legal system.

Kathy Mack, Sharyn Roach Anleu and Anne Wallace. - Everyday Work in the Magistrates Courts: Time and tasks. 21 (1) (August 2011) Journal of Judicial Administration 34-53

Using interviews, surveys and observation studies, this article analyses the types of cases, location of work, important judicial and non-judicial functions and sources of satisfaction and dissatisfaction with

magistrates' work. It includes a very detailed analysis of magistrates' typical work days, describing the actual amounts of time magistrates report spending on a range of tasks and activities which are part of their everyday work. While magistrates' work is dominated by high volumes of in-court work on criminal cases, there is also considerable unpredictability about the exact nature of work demands on any given day, though there are consistent patterns over time. The impact of court location and size on the nature of the work and its organisation is especially important in several respects.

Michael Legg and Nicholas Turner. - When Discovery and Technology Meet: The pre-discovery conference. 21 (1) (August 2011) Journal of Judicial Administration 54-70

The increasing volume and complexity of discovery of electronically stored information (ESI) has given rise to attempts to manage the discovery process to minimise cost and delay while still allowing parties access to evidence needed for their case. An important tool for managing electronic discovery is the pre-discovery conference. This article draws on United States experience with the pre-discovery conference to inform Australian practice. The article examines the topics that should be discussed and resolved at a pre-discovery conference, including: preservation of ESI, scope of discovery, format of ESI, search strategies and privilege review. However, the pre-discovery conference requires more than just checking off topics on a list. To be effective the conference requires a fundamental reorientation of the adversarial system through adopting cooperation and transparency in the discovery planning process.

Arie Freiberg and Sarah Krasnostein. – Statistics, Damn Statistics and Sentencing. 21 (2) (November 2011) Journal of Judicial Administration 73-92

This article examines the conflict between the principles of individualisation and consistency in sentencing. While most sentencers adopt a pragmatic position between these two extremes, an "individualist" approach, exemplified by an "instinctive synthesis" methodology is the dominant sentencing paradigm. It underlies the ambivalence or antipathy of courts to a wider use of statistics. This article argues that this approach has encouraged an unpredictable sentencing system which produces unnecessary appeals and is lengthy and expensive. According more weight to the principle of consistency by recognising appropriate uses of statistical data may promote sentencing outcomes which reinforce the rule of law while reducing unjustified complexity in the sentencing task. This approach would not sacrifice discretion to individualise sentences but would bring information relating to current sentencing practices to bear on the process of sentencing in individual cases. In turn, appeals relating to the most common ground – manifest excess/leniency – may be reduced and, where they arose, be more transparent.

Tamara Walsh. Defendants' and Criminal Justice Professionals' Views on the Brisbane Special Circumstances Court. 21 (2) (November 2011) Journal of Judicial Administration 93-108

Problem-solving courts are said to bring about positive outcomes for defendants, and the community in the form of reduced recidivism. However, in order for these programs to be replicated effectively, the successful elements of the programs must be identified. This article reports on the results of a study at the Brisbane Special Circumstances Court, which was aimed at identifying which features of the court were intrinsic to its success. The availability of services, and the team approach of the court players, were considered critical to the court's success by defendants and court staff. It was also found that, for defendants, caring relationships and a sense of belonging within the court are very important if they are to engage with the court.

ANDREW J SERPELL. Social Policy Information: Recent decisions of the High Court of Australia. 21 (2) (November 2011) Journal of Judicial Administration 109-125

Social policy information refers to information used by a judge to assist in determining the social, economic or other consequences of law developed through judicial decisions. Social policy information is sometimes referred to as a type of "legislative fact" or as a "social fact". The Australian law regarding the judicial notice of social policy information is unclear. The High Court has not expressly acknowledged that it is permissible for judges to consider contentious social policy information in developing the law, although it seems clear the High Court does so in practice. In any event, natural justice requirements mean that the parties to proceedings should be given an opportunity to comment on any social policy information which the court proposes to use, at least where a reasonable argument might exist that the information is disputable or contentious. Three recent High Court cases demonstrate several problems with the way social policy information is received and used in practice. Reference is made to various options for the reform of the current system for the reception and use of social policy information.

Iain Ross. – Promoting Tribunal Excellence.21 (3) (February 2012) Journal of Judicial Administration 135-145

Excellent tribunals resolve disputes and decide cases in a fair, accessible and efficient manner. They interpret the law consistently, impartially and independently. The Victorian Civil and Administrative Tribunal (VCAT), Australia's largest tribunal, is on a journey to tribunal excellence. The formulation and successful implementation of a three-year strategic plan known as Transforming VCAT was part of that journey. The first task for a tribunal aspiring to be excellent is to define the concept of excellence to which it aspires. For tribunals, the Tribunal Excellence Framework performs this function. The Tribunal Excellence Framework draws on the work of the International Consortium that developed the International Framework for Court Excellence. The Council of Australasian Tribunals has substantially modified the Court Excellence Framework to better meet the needs of tribunals. In February 2012, VCAT will complete an assessment using the Tribunal Excellence Framework. This will involve an equal weighting of internal and external assessors, including VCAT's key stakeholders. The full results will be released on the VCAT website – in itself an important statement about the Tribunal's commitment to transparency and accountability. More broadly it will provide a roadmap for the next stage of VCAT's journey to tribunal excellence.

Natalia Antolak-Saper. The Role of Directed Verdicts in the Criminal Trial. 21 (3) (February 2012) Journal of Judicial Administration 146-167

In Australia, the right to a trial by jury is central to preserving the liberty of an accused against oppression and injustice. A right that is typically retained for serious criminal offences, it is accorded protection at a federal level through the Australian Constitution. Where the right to a trial by jury is exercised, the jury acts as the trier of fact, and the judge acts as the trier of law. However, in limited circumstances, a trial judge is permitted to direct the jury to return a particular verdict. Although such a direction undermines the clear demarcation of judge and jury, it is currently permissible under Australian law. This article discusses the purpose, regularity and practice of judicially directed verdicts in Australia. It primarily draws upon recent developments in the United Kingdom and Canada for the purpose of considering relevant policy arguments and reform options. It is suggested that judicially

directed convictions should be abolished in Australia, whereas judicially directed acquittals should be appropriately reformed, in order to establish an appropriate framework for directed verdicts

ME Rackemann. The Management of Experts. 21 (3) (February 2012) Journal of Judicial Administration 168-177

The increasing significance of expert opinion evidence has led to efforts, across jurisdictions, to find ways to maximise the quality of that evidence and to achieve efficiencies in the way that it is obtained and utilised in the litigation process. Those efforts have tended to focus on the beginning of the process, when the expert is retained, or the end, when opinion evidence is adduced at trial. This has spawned the single court-appointed expert model, to break the retainer relationship between an expert and one side of an adversarial dispute, and the concurrent evidence method of adducing evidence at trial, which promotes a discourse among differing experts. Queensland's Planning and Environment Court has instead focused on the management of experts in the period after their retainer but before trial reports are prepared. Experts formulate their opinions in a process of mutual peer review conducted at an early stage while quarantined from the parties and their representatives. The results of that process then inform the dispute resolution process. The success of this management approach challenges the assumptions which underlie the single court-appointed expert model while providing for a more satisfactory, useful and timely professional discourse than is achieved by reliance on concurrent evidence at trial.

Heather Douglas, Janet Hammill, Elizabeth Anne Russell and Wayne Hall. Judicial Views of Foetal Alcohol Spectrum Disorder in Queensland's Criminal Justice System. 21 (3) (February 2012) Journal of Judicial Administration 178-188

Foetal alcohol spectrum disorder, or FASD, refers to a range of effects that can result from pre-natal exposure to maternal drinking. Under the umbrella of FASD there are several types of diagnoses which are associated with various cognitive and physical impairments. Research suggests that around 2% of the population have FASD and around 60% of those with FASD come into contact with the criminal justice system. However, unlike Canada and the United States, there is almost no mention of FASD in Australian criminal case law. This article reports the results of a survey of members of the Queensland judiciary about their understanding of FASD and how they deal with FASD in their judicial role.

David Caruso - Proposed reforms for the cross-examination of child witnesses and the reception and treatment of their evidence 21 (4) (May 2012) Journal of Judicial Administration 191-236

Leading questions should not be permitted in cross-examining child complainants of sexual offending. Experts should be available to assist the presiding judge to monitor and respond to the effect of examination on child complainants throughout the course of their testimony. Child complainants should be directed by the presiding judge to interrupt their questioning and alert the court to any difficulties they experience while giving evidence.

This article argues for reform which adopts these proposals. Part 1 begins that task by showing why there is a need for reform, or more accurately, further reform. The need arises because recent legislative reform in Australia designed to address the difficulties attending the reception and treatment

of child evidence does not address the reasons for the difficulties, nor introduce improvements to existing practice for the child witness, counsel or court. Part 2 argues that the three reforms proposed above would be effective on these fronts, where present reform is not, and would consequently bring about effective reform for the taking and treatment of child evidence. Implementation of each reform is further supported by analysis based on the fundamental purposes and aims of witness examination and the trial process, empirical psychological studies, effective use of expert evidence, practicality and cost effectiveness.

Kathy Douglas - Mediator stories of tribunal practice: Flexible and fluid to meet parties' needs 21 (4) (May 2012) Journal of Judicial Administration 237-245

Mediation is largely framed around models for both training and accreditation. However, in the literature there is speculation that mediators often deviate from models, improvising around model structures. In recent research into mediation practice it was found that mediators did not necessarily adhere to set models. The research was undertaken in late 2009 with 16 mediators at the Victorian Civil and Administrative Tribunal. Views were sought about a range of mediation practice issues. This article discusses the views of mediators about models of practice and the degree to which mediators improvise around a model. The findings show that all the mediators in this study improvised in their practice in order to be flexible and fluid to meet parties' needs.

Andrea de Smidt and Kate Dodgson - Unbundling our way to outcomes: QPILCH's Self Representation Service at QCAT, two years on 21 (4) (May 2012) Journal of Judicial Administration 246-258

Provision of legal representation has been determined to be a right in certain criminal matters; and in civil matters, representation can be a determining factor in reaching a successful outcome. The reality is, however, that not everyone can be represented by a lawyer on their day in court. Our legal resources are not limitless. Funding of community legal centres and Legal Aid is not adequate, and the generosity of private practitioners working on a pro bono basis cannot fill the whole gap. Following on from an earlier article published in this journal, "Queensland's Self-representation Services: A Model for Other Courts and Tribunals" (2011) 20 JJA 225, this article considers "unbundling" or "discrete task assistance", and how this approach to legal practice is continuing to be utilised by the Queensland Public Interest Law Clearing House, now in the Queensland Civil and Administrative Tribunal, to achieve the best outcomes for clients with the minimum of resources.

Binh Tran-Nam and Michael Walpole – Access to tax justice: How costs influence dispute resolution. 22 (1) (August 2012) Journal of Judicial Administration 3-28

This article examines how costs to taxpayers influence tax dispute resolution routes in the Australian context. It focuses on the resolution of individual taxpayers' applications to the Administrative Appeals Tribunal (AAT) for the review of Australian Taxation Office decisions. After a brief review of the literature on the link between tax compliance, tax morale and procedural justice, and previous Australian studies, the article considers the current process of tax dispute resolution in Australia. Summary statistics of recent tax cases lodged at the AAT are presented. A simple model is then formulated to explain which route the taxpayer wishes to take for resolving a tax dispute: ATO internal review, AAT review without professional assistance or AAT review with professional assistance. Hypothetical costs, based on well-informed sources, are constructed for two scenarios: with and

without professional assistance. It is concluded that personal costs represent a considerable barrier to accessing tax justice. Available empirical data is found to support such a conclusion. Finally, several policy recommendations are proposed with the view of improving access to tax procedural justice.

Pamela D. Schulz – Trial by tweet? Social media innovation or degradation? The future and challenge of change for courts 22 (1) (August 2012) Journal of Judicial Administration 29-36

The growth, exponential influence and scope of participation in social media, challenging modern media outlets, is rivalling that of nation states. The power of this media spectrum is forming a new style of "public square" and the demise of the "spiral of silence". Social media participation appears to be democratic input that can affect public policy and perhaps affect court administration and outcomes. This article argues that while courts must become more media savvy and modernise their methods of information outputs, it is also incumbent upon them to consider the theoretical impact and practices at work and how to ensure the delivery and dissemination of relevant responsive information and maintain the integrity and independence of courts and the judiciary.

Anthony Gray and Gerard Elmore. – The Constitutionality of minimum mandatory sentencing regimes. 22 (1) (August 2012) Journal of Judicial Administration 37-46

This article reflects upon the increasing use by the legislature of minimum mandatory sentencing regimes, requiring courts to impose at least the minimum sentence provided for, regardless of the circumstances of the case. While judicial power may be the subject of some legislative restrictions, it is argued that minimum mandatory sentencing provisions undermine judicial independence and breach the principle of separation of powers, undermining public confidence in the independence of the judiciary. The High Court has shown an increased willingness in recent years to defend the independence of the courts contemplated by Ch III of the Constitution. Support for the authors' argument appears in some of the relevant international jurisprudence.

Hon Justice Peter Vickery - Managing the paper: Taming the Leviathan. 22 (2) (October 2012) Journal of Judicial Administration 51-75

Computers have revolutionised the way that way we store information and communicate. The internet phenomenon, which has led to the ability to network globally and instantaneously, has resulted in the proliferation of electronic communication and the capacity to generate, store and retrieve information on an unprecedented scale. There is, however, a downside. “Mega-litigation”, such as that arising out of large-scale construction and engineering projects, has a bad name for generating gargantuan volumes of documents at great cost to the parties. Computers are a major culprit in the excessive cost of civil litigation. This article analyses approaches to the management of documents, particularly in large cases. It commences with the question – why have discovery at all in common law jurisdictions, contrasted with the civil law approach? Techniques are considered which can be utilised to achieve a reasonable “cost-benefit” outcome. In an attempt to tame the “Leviathan”, the article also considers electronic means to efficiently manage documents in the course of litigation with a view to making the computer work to the advantage of the court, practitioners and litigants.

Michael S King - Reflections on ADR, judging and non-adversarial justice: Parallels and future Developments. 22 (2) (October 2012) Journal of Judicial Administration 76-84

This article examines a range of separate but related developments in the legal system of Australia – including alternative dispute resolution, non-adversarial justice, restorative justice, therapeutic

jurisprudence and problem-solving or solution-focused courts. Parallel to similar changes in other common law legal systems such as those of the United States, Canada, New Zealand, Ireland and the United Kingdom, these developments reflect the emergence of viewpoints and processes oriented towards more complete, inclusive, therapeutic and humane methods of resolving disputes and constitute a profound change in approach to legal problems and disputes. The author examines the history of these different developments, charts their interrelationships, summarises the available research on the effectiveness of different problem-solving courts and gives examples of overlap in method as well as philosophy.

Pauline Spencer - To dream the impossible dream? Therapeutic jurisprudence in mainstream Courts. 22 (2) (October 2012) Journal of Judicial Administration 85-98

Mainstream courts are often characterised by large caseloads, limited time, backlogs, scarce resources and generalist staff and judiciary. In this article the author proposes that therapeutic jurisprudence approaches, which have been proven to be effective in specialist courts, should also be applied in mainstream courts where the vast majority of cases are heard. The challenge is to institutionalise therapeutic approaches, referred to as non-adversarial, problem-solving or solution-focused approaches, so that they are available evenly throughout mainstream courts and to ensure that innovations are sustainable over time. This article explores what systemic changes are needed to support a broader and deeper application of therapeutic jurisprudence in mainstream courts.

Andrew Cannon, Rebekah Doley, Claire Ferguson and Nathan Brooks - Antisocial personality disorder and therapeutic justice court programs. 22 (2) (October 2012) Journal of Judicial Administration 99-115

It has become commonplace for courts to supervise an offender as part of the sentencing process. Many of them have antisocial personality disorder (ASPD). The focus of this article is how the work of specialist and/or problem-solving courts can be informed by the insights of the psychology profession into the best practice in the treatment and management of people with ASPD. It is a legitimate purpose of legal work to consider and improve the wellbeing of the participants in the legal process. Programs designed specifically to deal with those with ASPD could be incorporated into existing drug courts, or implemented separately by courts to aid with reforming offenders with ASPD and in managing the re-entry of offenders into the community as part of their sentence. For the success of this initiative on the part of the court, ASPD will need to be specifically diagnosed and treated. Close cooperation between courts and psychologists is required to improve the effectiveness of court programs to treat people with ASPD and to evaluate their success.

David Tait and Terry Carney. - Transforming Governance and Technology in Civil and Administrative Justice 22(3) (February 2013) Journal of Judicial Administration 119-129

How can technology provide better access to civil and administrative justice? This article argues that reforming the organisational design of justice is an essential first step, by developing a graduated set of procedures that filter disputes and complaints, managing them in a consistent and, where appropriate, systemic way. Such a system requires online (or telephone) filing of matters, tracking software to follow individual cases and reporting systems to detect patterns. Australian jurisdictions have proceeded a long way down this path, offering a sharp contrast to litigation-prone justice processes in some other common law systems, although perhaps less systematic and orderly than some civil law systems. The ombudsman model provides a mechanism for handling complaints against large agencies, whether in

the public or private sector; tribunals provide an accessible forum for most disputes; and accident and disability claims are increasingly decided through administrative processes based on professional assessments of need. While new technologies can allow greater centralisation of justice procedures, the authors argue that such technologies can also promote more localised and dispersed justice procedures, taking as an example the "tribunal in a box" model developed by the Victorian tribunal system.

Tony Foley. - Are Retributive Aims Achievable in a Restorative Justice setting? 22(3) (February 2013) Journal of Judicial Administration 130-137

One of the challenges in doing justice in response to serious criminal wrongdoing committed by young people is to meet the need for retribution. The risk is that in meeting this need the primary needs of restoration and rehabilitation are lost or diminished. Much has been written about the capacity of diversionary programs to restore affected parties and to address consequential outcomes such as deterrence, rehabilitation and protection. But little regard has been given to their capacity to also do much of the "work" of retribution. Acknowledging that retribution is much wider than simply punishment, and includes bringing offenders to account, denouncing their behaviour, providing public vindication for victims and setting reparation and sanctions, means that diversionary programs have much to offer. This article argues that much of the work can be done through diversionary programs such as circle sentencing, family group conferencing and restorative panels which involve contact between those affected by wrongdoing. The article examines the "retributive scope" of diversion by reporting the views of facilitators, conference convenors, judges and others involved in programs in a range of jurisdictions. The article suggests that many of the requirements of retribution are better met through such non-punitive approaches.

Samantha Parkinson and Sara McLean. -Foetal Alcohol Spectrum Disorder in Children: Implications for judicial administration. 22(3) (February 2013) Journal of Judicial Administration 138-145

Children can display a range of neurocognitive and psychosocial deficits resulting from being exposed to alcohol prenatally – frequently attracting a diagnosis of Foetal Alcohol Spectrum Disorder (FASD). This article discusses the cognitive and social impairments exhibited by children with FASD, the challenges these present for the criminal justice system, and offers suggestions for addressing these challenges. Difficulty in understanding and producing oral language, in particular, may infringe on the child's basic rights to a fair trial by limiting their understanding of proceedings and decision-making. Custodial sentences may lead to a range of negative outcomes including victimisation and exploitation by peers. Cognitive deficits need to be taken into account throughout the criminal justice process to obtain the optimal outcome for all parties.

Hilary Hannam. - Child protection law and practice in the Northern Territory and implications for the court. 22(3) (February 2013) Journal of Judicial Administration 146-153

The Board of Inquiry into the child protection system in the Northern Territory was appointed in December 2009. The Board's report describes the Northern Territory child protection system as one which is in crisis. To some extent this is an experience shared with child protection systems throughout Australia, and perhaps throughout the developed world. However, the magnitude and complexity of the problems in the Northern Territory, combined with the particular peculiarities of the law and practice, have implications for the court which are unique. In this article the author examines some of those factors and indicates how the Northern Territory Magistrates Court has responded to them. The author

also comments on that response and the approach that the author has taken and proposes to take as head of jurisdiction.

Bobette Wolski. - QCAT's hybrid hearing: The best of both worlds or compromised mediation? 22(3) (February 2013) Journal of Judicial Administration 154-167

Mediation has been an essential component of the Queensland Civil and Administrative Tribunal's dispute resolution system since the tribunal was established in 2009. It usually takes place before a matter is listed for hearing. In September 2012, QCAT introduced a "hybrid hearing" which incorporates mediation after the hearing but before a decision is handed down. In so doing, QCAT created a second ADR pathway. This article compares the hybrid hearing pathway with the ADR-hearing pathway. The article also compares the hybrid hearing to a number of other processes which combine elements of mediation and adjudication. The rationale for the creation of these processes is explored. In QCAT's case, the rationale is shaky. Although hybrid dispute resolution processes may have the capacity to provide "the best of both worlds", in the author's opinion, QCAT has unduly compromised the mediation experience of parties who are directed to a hybrid hearing. The article also raises a number of issues which have yet to be addressed by QCAT.

Annie Cossins and Jane Goodman-Delahunty. - Misconceptions or expert evidence in child sexual assault trials: Enhancing justice and jurors' "common sense". 22(4) (April 2013) Journal of Judicial Administration 171-190

Although sexual assault is the most frequently charged offence in the New South Wales higher courts, it is characterised by high attrition rates before trial and low conviction rates at trial. The feedback effect of low conviction rates influences the type of sexual assault cases that prosecutors will take to trial. While insufficiency of evidence might account for low conviction rates, there is evidence that a pervasive scepticism, based on myths and misconceptions which favour the defence case, influences jurors' decisions. Expert evidence to counteract these misconceptions is one solution to educate jurors about the counterintuitive behaviours of child complainants. However, provisions under the Uniform Evidence Acts which would admit such evidence are rarely, if ever, utilised. In light of a number of empirical studies and the fair trial principle, this article examines the types and reliability of expert evidence that would be admissible in child sexual assault trials under the Uniform Evidence Acts in order to guide prosecutors about when they can tender this type of evidence more frequently.

Elizabeth Richardson and Tania Sourdin. - Mind the gap: Making evidence-based decisions about self-represented litigants –22(4) (April 2013) Journal of Judicial Administration 191-206

Self-represented litigants have been the focus of numerous reviews and studies in Australia over the past 15 years. The need for detailed data about self-represented litigants in order to understand their extent in and impact on Australian civil justice systems has been highlighted on a number of occasions. This article reports on a study conducted for the Commonwealth Attorney-General's Department in 2012 that sought to map the data-collection practices with regards to self-represented litigants within courts, tribunals and other justice agencies in the federal civil justice system. The survey conducted as part of the study revealed that limited data is collected by federal courts, tribunals and justice agencies that specifically relates to self-represented litigants, and noted that there is greater capacity to link existing data to self-representative status. Further, data-collection practices may not be consistent or comparable as a result of a lack of a consistent definition of self-represented litigants and other difficulties in data-collection. However, the study suggested that straightforward changes could be made

to data-collection practices that would enable better data on self-represented litigants to be collected. This includes, as a first step, federal justice agencies, courts, tribunals and other bodies seeking to reach agreement on a multifaceted definition of "self-represented litigant".

Michelle Edgely. - Solution-focused court programs for mentally impaired offenders: What works? 22(4) (April 2013) Journal of Judicial Administration 207-223

Solution-focused courts for mentally impaired offenders have proliferated in the United States and Australia. A growing body of research shows that these courts can indeed succeed in reducing recidivism among mentally impaired offenders, at least in the short term. But the evaluative research does not reveal which elements of solution-focused courts are responsible for achieving that effect. This article discusses the research into "what works" with mentally impaired offenders in the solution-focused context. It is argued that, with growing pressure on resources and the move to mainstream solution-focused approaches in courts, it is important to understand which features are efficacious, so that evidence-based practices can be implemented. Various aspects of solution-focused programs are examined, including the efficacy of competing rehabilitative models, voluntary participation by offenders (as leveraged by the prospect of a reduced sentence), the role of the judicial officer, rewards and sanctions, multidisciplinary collaboration, and the provision of services. Finally, this article considers which mentally impaired offenders are most likely to benefit from a solution-focused approach.

Andrew Hemming. - The constitutionality of minimum mandatory sentencing regimes: A rejoinder. 22(4) (April 2013) Journal of Judicial Administration 224-234

This rejoinder is a reply to an article published in the Journal of Judicial Administration by Anthony Gray and Gerard Elmore, which argued that minimum mandatory sentencing provisions undermine judicial independence and breach the principle of separation of powers, resulting in a loss of public confidence in the independence of the judiciary. This rejoinder challenges such an argument on five grounds. First, historically, the Crown and later the Parliament decreed the sentence for a particular offence, such as death for murder, which judges were bound to enforce. Second, there is nothing in the Commonwealth of Australia Constitution Act, and Ch III in particular, to indicate that parliamentary control of sentencing impacts in any way on the "autochthonous expedient". Third, s 51 of the Australian Constitution, which lists the legislative powers of the federal Parliament, does not include criminal laws which are the province of the States. Fourth, no support can be found in overseas jurisdictions such as the United States, the United Kingdom or Canada. Fifth, public confidence in the judiciary has been undermined by inadequate and inconsistent sentencing by the judiciary, which has led some State Parliaments to introduce legislation setting down mandatory sentences and/or sentencing guidelines.

Chief Justice Robert French AC. – Essential and Defining Characteristics of Courts in an Age of Institutional Change. 23 (1) (August 2013) Journal of Judicial Administration 3-13

In this article Chief Justice French reflects on the task of defining courts and distinguishing them from other decision-making bodies. The Chief Justice outlines the reasons why it is important to identify the defining attributes of courts and discusses the key elements of the judicial role. He examines particularly the significance of judicial independence and the matters which underlie it, with emphasis on the importance of decisional independence, which is fundamental to the role of a judicial officer. These matters are examined against the background of recent decisions, including decisions of the High Court.

Marilyn Krawitz. – Can Australian Judges Keep their "Friends" Close and their Ethical Obligations Closer? An analysis of the issues regarding Australian judges' use of social media. 23 (1) (August 2013) Journal of Judicial Administration 14-34

Social media has changed the way millions of people communicate. It is possible that Australian judges may be using social media. Consequently, there are important ethical questions to consider. These questions include: should Australian judges be prevented from using social media, should they be permitted to add counsel who appear before them as friends on social media and, if so, is ex parte communication permissible. The article discusses the answers to these questions, while applying current judicial ethical resources in Australia and research published in this area in Canada, the United States and the United Kingdom. Given how little research in Australia there is about this topic to date, this article provides an important step toward encouraging meaningful debate.

Lorana Bartels and Jessica Lee. - Jurors Using Social Media in our Courts: Challenges and Responses. 23 (1) (August 2013) Journal of Judicial Administration 35-57

This article considers the use of social media by jurors during the trial and deliberation processes. The article presents examples of such conduct from Australia, the United States and the United Kingdom. The article considers research on why jurors use social media, and discusses the likely prevalence of the issue. The article then discusses the risks this conduct presents to the defendant's right to a fair trial and the administration of justice generally. Possible solutions are examined, including banning telecommunication devices, requiring jurors to take an oath and developing specific jury instructions. Research on the effectiveness of jury instructions is reviewed, and future directions for research, policy and practice noted.

Anthony Gray and Gerard Elmore. - The Constitutionality of Minimum Mandatory Sentencing Regimes – Part II. 23 (1) (August 2013) Journal of Judicial Administration 58-69

In a 2012 issue of the Journal of Judicial Administration, the authors argued that there were real constitutional questions surrounding the increased use of minimum mandatory sentencing regimes. In 2013, Andrew Hemming wrote a rejoinder challenging aspects of the authors' reasoning in the earlier article. In the interests of public debate on such an important contemporary and contentious public issue, the authors now respond to Mr Hemming's rejoinder.

Dr Anthony E Cassimatis and Dr Peter Billings. - Statutory judicial review in Australia: A comparative analysis of the Australian Capital Territory, Queensland and Tasmanian schemes. 23 (2) (October 2013) Journal of Judicial Administration 73-129

This article addresses whether statutory judicial review mechanisms enacted in the Australian Capital Territory, Queensland and Tasmania have realised their overall aims of promoting access to justice and accountability of public administration. The authors systematically analyse these legislative attempts to modernise judicial review in Australia, with simplified procedures for applying for judicial review, codified grounds of review, and the right to reasons, subject to careful scrutiny in light of relevant case law. The authors conclude that codification of the grounds of review has enhanced transparency about core principles and, to a degree, promoted legal certainty. However, undue technicality continues to bedevil judicial review due to the jurisdictional requirements that control the operation of these Acts. Moreover, some of the innovative reforms in the Queensland statute have not had the positive impact that might have been expected.

Justice Emilios Kyrou. Attributes of a good judge – 23 (2) (October 2013) Journal of Judicial Administration 130-134

In this personal account, Justice Emilios Kyrou reflects upon some of the key personal attributes of a good judge: independence, impartiality, communication skills, patience, cultural awareness and tolerance, courtesy, compassion, humility, people skills, community engagement, a sense of perspective and a sense of humour.

Fiona Hanlon. - Trying serious offences by judge alone: Towards an understanding of its impact on judicial administration in Australia. 23 (3) (February 2014) Journal of Judicial Administration 137-157

Criminal trial before a judge sitting alone without a jury for serious offences is not novel in most Australian jurisdictions. Despite this, it has not been the subject of sustained study in terms of its impact on judicial administration. This article identifies some issues and calls for further research in order to better understand the current and potential impact of judge-alone trials on judicial administration in Australia.

Bridget Harris, Lucinda Jordan and Lydia Phillips. - Courting justice beyond the cityscape: Access to justice and the rural, regional and remote magistrates' courts. 23 (3) (February 2014) Journal of Judicial Administration 158-170

The lower courts in Australia are important spaces. These "people's courts" handle the majority of civil and criminal matters and can profoundly shape perceptions, not only of the courts but of the criminal justice system at large. Lower courts play a key role in educating and guiding court workers and are places where innovative practices are pioneered and social change is pursued. Despite their significance there has been little review of the lower courts, even less of courts beyond the cityscape. In this article the authors explore the history, role and operations of lower courts in rural, regional and remote Australia to assess how the courts respond to the needs and diversity of different community groups and regions; they identify barriers to justice and signal emerging areas of research.

Dr Andrew J Cannon AM. - Affordable costs in civil litigation. 23 (3) (February 2014) Journal of Judicial Administration 171-181

Cost shifting policies have a profound effect on the way that litigation is conducted. To maintain a Rule of Law it is essential that courts are affordable. For court systems to provide affordable and efficient litigation processes they must have appropriate cost incentives to encourage that approach in the litigants and their advisors. This article describes a cost rule and scale that does so by providing fixed rate proportionate costs for each of the stages of the litigation to encourage efficient and proportionate use of court processes. A system of offers to encourage plaintiffs to accept a discount and defendants to actually pay any judgment sum are included. Importantly, litigants who exaggerate their claims, defences and counterclaims are penalised under the cost formula.

Marilyn Krawitz. - Summoned by social media: Why Australian courts should have social media accounts. 23 (3) (February 2014) Journal of Judicial Administration 182-198

Millions of people and organisations benefit from using social media. Court staff can also benefit from using it. In particular, they can inform the public about recent judgments and about how courts function. At this point, few courts in Australia, Canada and the United Kingdom use social media. This

article examines why. Ultimately, it argues that Australian court staff should consider using social media to increase confidence in the judiciary.

Isaac Frawley Buckley. - In defence of "take-down" orders: Analysing the alleged futility of the court-ordered removal of archived online prejudicial publicity 23 (4) (April 2014) Journal of Judicial Administration 203-219

This article considers orders, known as "take-down" orders, that are made by courts directing media organisations to remove online news articles which, as a result of intervening circumstances between the time of their initial publication and a criminal trial, pose a real and substantial risk to the administration of justice in that trial. Critics of these orders have argued against the making of the orders on the basis that, as it is impossible for courts to "hold back the tide of publications" completely, it is futile to make any attempt at all to diminish the risk of juror contamination. This article seeks to dispel this criticism and endorses the view taken by trial judges that they ought to "do all they can" to ensure a fair trial in criminal proceedings.

Cady Simpson. - Hearing-med in Australian super-tribunals: Which cases and what process? 23 (4) (April 2014) Journal of Judicial Administration 220-232

Australian super-tribunals use alternative dispute resolution (ADR) processes to contribute to the achievement of their aims, including: fairness, justice, economy, informality and speed. In 2012, the Queensland Civil and Administrative Tribunal (QCAT) introduced a novel ADR process called the "hybrid hearing", which is essentially a hearing (the proposed decision is kept secret), followed by a mediation ("hearing-med"). This article contributes to discussion as to what cases are suitable for hearing-med and offers suggestions as to possible improvements to the hearing-med process. Hearing-med is contrasted with established tribunal ADR processes and general considerations for the use of hearing-med are examined. The suitability of hearing-med for one-issue cases, animal management cases, and cases involving parties remote from the tribunal, is considered; and it is suggested that hearing-med may be useful in building dispute cases, guardianship matters, residential parks cases and unit titles applications. It is concluded, on balance, that private sessions may not be appropriate in hearing-med and that tribunals may wish to consider excluding legal representatives from the mediation component of hearing-med.

Brian Opeskin and Nick Parr. - Population, crime and courts: Demographic projections of the future workload of the New South Wales Magistracy 23 (4) (April 2014) Journal of Judicial Administration 233-252

The New South Wales Local Court is the largest court in Australia. This study seeks to facilitate future planning for the court by making demographic projections of the criminal workload of the court over the next 25 years (criminal matters account for 95% of its new lodgments). The study applies criminal conviction rates by age, sex and locality to population projections for the State to produce projections of the number of criminal convictions for the State and its geospatial subdivisions. These statistics are used to derive the demand for magistrates and a comparison is then made of the supply of magistrates under different scenarios. The principal finding is that, due to demographic change alone, the number of criminal convictions is projected to increase by 16% by 2036, with nearly all the increase occurring in Sydney, especially in the city's west and south-west. On the assumption of constant criminal conviction rates and constant judicial productivity, the demand for magistrates is also projected to rise by 16%, to 158 magistrates by 2036. If recruitment of magistrates were to take place only to maintain current

staffing levels, there would be a shortfall of 22 magistrates over the projection period. Thus, if the Local Court is to have sufficient judicial resources to meet the projected demand for its services, government will need to be attentive to the potential for a growing gap between demand and supply in the years ahead.

Jay Jordens and Elizabeth Richardson. - Collaborative problem solving in a community court setting 23 (4) (April 2014) Journal of Judicial Administration 253-268

The Neighbourhood Justice Centre in Collingwood, Victoria, housing Australia's first community court, has used its legislative mandate to develop a number of innovative programs. This article describes one such innovation, the Problem Solving Process, that has conceptual underpinnings in therapeutic jurisprudence, restorative justice and procedural justice, but also draws on group-work processes and social support theory. It specifically assists accused persons in criminal cases who have complex presentations and offers them the opportunity to participate in a facilitated meeting that occurs outside the courtroom. Participation is voluntary and the outcomes are taken into consideration by the magistrate upon return of the matter to court. Outcomes are also used to inform deferred sentences and judicial monitoring reviews under community correction orders. It is an adaptable process that has many benefits to the offender, the court and the community.

Stephen H Scarlett RFD. - Litigants in person: Guidelines for the Federal Circuit Court. 24 (1) (August 2014) Journal of Judicial Administration 4-12

The Federal Circuit Court has a duty to see that all parties, including those who do not have legal representation, receive procedural fairness. This article examines the guidelines given by the two appellate courts with which the court deals in its family law and child support jurisdiction on the one hand and its general federal law jurisdiction on the other. The article considers the decision of the Full Court of the Family Court in Re F: Litigants in Person Guidelines (2001) 161 FLR 189; 27 Fam LR 517; [2001] FamCA 348 and the decision of the Full Court of the Federal Court, on appeal from the Federal Circuit Court, in SZRUR v Minister for Immigration and Border Protection (2013) 216 FCR 445; [2013] FCAFC 146. The two decisions, referring to different authorities, arrive at essentially the same conclusions as to the way the court should approach the question of providing procedural fairness to litigants in person. Consideration is also given to the earlier High Court decision of Neil v Nott (1994) 121 ALR 148; 68 ALJR 509; [1994] HCA 23, which considered the case of a litigant in person whose lack of success in the lower courts had been largely due to his own failings as an advocate on his own behalf. The article asks whether the High Court has set out a counsel of perfection for busy trial courts in trying to ascertain what self-represented litigants really want and whether the concept of the "level playing field" is a myth.

The Hon Justice Margaret McMurdo AC. - The self-represented litigant in the Court of Appeal, Supreme Court of Queensland. 24 (1) (August 2014) Journal of Judicial Administration 13-17

The Queensland Court of Appeal is for most purposes the final appellate court in Queensland. It has a broad criminal and civil jurisdiction. A significant proportion of its litigants in both criminal and civil matters are self-represented. In this article the author provides statistics as to the number of self-represented litigants and their success rates, and explains how self-represented litigants can place pressure on limited registry and court resources. Initiatives adopted to better assist self-represented litigants, including the QPILCH Self Representation Service (Court of Appeal), the Queensland Court of Appeal Criminal Law Pro Bono Scheme, and the Criminal Matters Legal Clinic are discussed. The Court of

Appeal is revising its website, information sheets and guidelines and preparing an information pack to assist self-represented litigants. The author considers it is a desirable goal for courts to strive to ensure that self-represented litigants, even unsuccessful ones, are satisfied with their court experience.

Iain McCowie. - Self-represented parties and court rules in the Queensland courts. 24 (1) (August 2014) Journal of Judicial Administration 18-29

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) has operated a Self Representation Service at the Queensland courts since late 2007. The service's file work provides anecdotal evidence about the difficulties that self-represented litigants can have in complying with the requirements of court rules. The grievances of self-represented litigants reflect some of the concerns about the costs and delays in the conduct of litigation generally. The successful use of case management regimes to administer an increasing civil case load suggests that appropriately adapted case management might also assist the courts to respond to the challenges of, and faced by, self-represented litigants. In an innovative development (and with some input from QPILCH) the Supreme Court of Queensland, in Practice Direction 10 of 2014, has adopted a Supervised Case List for cases involving a self-represented party in the Brisbane Registry of the Supreme Court.

Bertus de Villiers. - Self-represented litigants and strata title disputes in the State Administrative Tribunal: An experiment in accessible justice. 24 (1) (August 2014) Journal of Judicial Administration 30-45

Self-representation in legal proceedings is becoming more prevalent at all levels of courts and tribunals. In many instances courts and tribunals are challenged by: the volume of self-represented litigants; the pressure to assist them in the conduct of proceedings; and the need to simplify processes to a level where ordinary persons can conduct their own litigation. The State Administrative Tribunal (SAT) of Western Australia recently undertook quantitative research in respect of litigants who had been involved in strata title proceedings to assess the reasons for self-representation, to obtain insight into the experiences of those persons in all phases of proceedings (lodgment, directions hearing, mediation and hearing), and to identify areas where processes could be modified or improved. This article provides an overview of the dynamic jurisdiction of a super-tribunal such as the SAT and then discusses the findings of the research. Comments are also made about areas where the SAT can improve in its service delivery.

Narelle Bedford and Monica Taylor. - Model no more: Querulent behaviour, vexatious litigants and the Vexatious Proceedings Act 2005 (Qld). 24 (1) (August 2014) Journal of Judicial Administration 46-60

This article examines the history and development of vexatious proceedings legislation in Queensland. It undertakes a case study of declared vexatious litigants and analyses the effectiveness of a legislative response. In light of recent national and international reforms, this article argues that the current legislative approach to dealing with vexatious proceedings in Queensland is no longer model and requires reformulation. It asserts that a system of graduated litigation limitation orders would provide for a more nuanced response to the issue of vexatious and querulous behaviour. The article concludes by emphasising the value of a multidimensional approach which includes practical, early intervention strategies in addition to legislation.

Tania Sourdin and Nerida Wallace. - The dilemmas posed by self-represented litigants: The dark side. 24 (1) (August 2014) Journal of Judicial Administration 61-70

People represent themselves in every court and tribunal in Australia, sometimes by choice or because they simply cannot afford legal representation or recoup the full costs. Some take advantage of arrangements that courts and tribunals make for self-representation. In some jurisdictions some self-represented litigants can exhibit difficult, obsessive and unsafe behaviour. This article considers the nature of self-representation and the issues raised for judges and others working in courts and tribunals by those who display more difficult and irrational behaviours. It also explores the techniques available to ensure court and tribunal justice objectives are met.

Ryan Essex and Jane Goodman-Delahunty. - Judicial directions and the criminal standard of proof: improving juror comprehension 24 (2) (December 2014) Journal of Judicial Administration 75-94

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.

Nicole Stevens and Dr Sarah Wendt. - The "good" child sex offender: Constructions of defendants in child sexual abuse sentencing 24 (2) (December 2014) Journal of Judicial Administration 95-107

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.

Richard Foster PSM. - Making the marriage work: The components of a successful relationship between the Chief Justice and the CEO 24 (2) (December 2014) Journal of Judicial Administration 108-117

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.

Dr Pamela D Schulz OAM. - Who is the judge? A critical analysis of the discourse of disbelief 24 (2) (December 2014) Journal of Judicial Administration 118-128

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.

Jeff Giddings, Blake McKimmie, Cate Banks and Tamara Butler. - Helping those who help themselves: Evaluating QPILCH's Self Representation Service 24 (3) (April 2015) Journal of Judicial Administration 135-153

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.

Diane Sivasubramaniam, Bianca Klettke, Jonathan Clough, Regina Schuller and Kristie Oleyar. Jurors' consideration of inadmissible evidence: A motivational explanation 24 (3) (April 2015) Journal of Judicial Administration 154-172

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.

Belinda Carpenter, Gordon Tait, Nigel Stobbs and Michael Barnes. Suicide findings and TJ blind peer review. 24 (3) (April 2015) Journal of Judicial Administration 173-184

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 (2015) 24 JJA 133 133 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.

Steve Shaw. NSW costs assessment review. 24 (3) (April 2015) Journal of Judicial Administration 185-196

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.

The Hon Chief Justice Robert French AC. Equal Justice and Cultural Diversity: The general meets the particular. 24 (4) (June 2015) Journal of Judicial Administration 199-206

This article concerns the ideas of equality before the law and equal justice and their intersection with cultural diversity including the difficulties of accommodating cultural diversity in the substantive law and the importance of responding to it in the administration of the justice system.

The Hon Justice Melissa Perry and Kristen Zornada. Working with Interpreters: Judicial perspectives. 24 (4) (June 2015) Journal of Judicial Administration 207-213

This article considers the fundamental role played by interpreters in the judicial system and administrative decision-making arena. Against the background of the current system for interpreters in Australia, consideration is given to how a court assesses whether a person needs an interpreter, and in the context of administrative decisions, the standard of interpretation required at law, and the legal and broader implications of failing to meet that standard.

The Hon Chief Justice Wayne Martin AC. Judicial Council on Cultural Diversity. 24 (4) (June 2015) Journal of Judicial Administration 214-222

This article addresses the ways in which we might improve access to justice for all members of a society, which the author, the inaugural Chair of the Judicial Council of Cultural Diversity, believes has become much better at recognising and celebrating cultural diversity.

The Hon Justice Emilios Kyrou. Judging in a Multicultural Society. 24 (4) (June 2015) Journal of Judicial Administration 223-226

In a liberal democracy, the rule of law involves fundamental tenets such as equal access to the courts and a fair trial whose outcome depends on an assessment of the evidence that is impartial and free of prejudgment. Fulfilment of these tenets is challenging in a multicultural society where parts of the population do not speak English and do not adhere to uniform cultural beliefs and practices. Australia faces these challenges because it is both a liberal democracy and a multicultural society. To meet these challenges, Australian judges need to be adequately equipped to recognise and manage the cultural diversity of the people who appear in their courts.

The Hon Chief Justice Marilyn Warren AC. Embracing Technology: The way forward for the courts 24 (4) (June 2015) Journal of Judicial Administration 227-235

Imagine a court hearing that is entirely virtual: a judge presiding via Skype from the comfort of his or her chambers; barristers presenting arguments from theirs; witnesses giving evidence from their offices, anywhere in the world; and jurors watching it all play out from another venue. Imagine the judge and jurors being taken by the prosecution on a virtual tour of a crime scene, as if they were actually there, standing in the accused's shoes. Imagine a court system where nobody need attend court at all. Where all documents are filed, served and viewed online at anytime, from anywhere – a paperless, people-less court. Imagine an app that could predict your chances of success in litigation, or perhaps even adjudicate your dispute. Ten or 20 years ago it would have perhaps seemed ridiculous. The reality is that much of the technology necessary to achieve it already exists. The question for the judiciary is: how can we best embrace it? And importantly, how can we embrace it in a way that aligns with our democratic role in modern society, which ensures efficient and affordable access and observes the principles of natural and open justice? This article focuses on what we might look forward to in the future. It engages

in a little speculation and postulates some ideas about the future of technology and social media in our courtrooms and how it might be embraced.

Anthony Gray. Constitutional Right of Access to Courts in Australia: The case of prisoners. 24 (4) (June 2015) Journal of Judicial Administration 236-264

This article considers a little-known provision of Australian statute law which conditions the right of particular individuals to access courts on the permission of a public official. This provision raises fundamental questions, including the extent to which the Australian Constitution protects the right of an individual to access Australian courts to obtain redress for claimed wrongs. Several arguments are made. First, rule of law concerns with limits to the ability of individuals to practically access courts are considered. A related, but separate, argument might be made from the High Court's past acceptance of notions of "equal justice". It considers the development of an implied right to access courts, sourced in Ch III of the Constitution. It considers whether a right to access courts might be considered part of the existing implied freedom of political communication, since many claims affected by this approval requirement would concern aspects of performance of public functions. Finally, it considers whether conditioning the hearing of a legal action on the permission of a public official might offend the "institutional integrity" of a Ch III court.

The Hon Chief Justice Marilyn Warren AC. Connecting with Victoria's culturally diverse communities: Enhancing public trust and confidence in courts and tribunals. 25 (1) (October 2015) Journal of Judicial Administration 3-10

Victorian courts and tribunals serve an extraordinarily diverse community; connecting with all members of this community is vital to enhancing public trust and confidence in the judiciary. To ensure equal access to justice for all, courts and judges must be sensitive to the needs of, and challenges faced by, different cultural groups. This article provides an overview of some of the recent initiatives adopted by Victorian courts and tribunals and related bodies to better engage Indigenous and ethnically diverse Victorians. It concludes by canvassing some future challenges for the courts and highlighting the importance of ongoing judicial leadership and education in this area.

Bertus de Villiers. From advocacy to collegiality: The view of experts of "concurrent evidence" and "expert conferral" in the State Administrative Tribunal. 25 (1) (October 2015) Journal of Judicial Administration 11-27

Australia plays a leading role in the way in which expert evidence is dealt with by the courts and tribunals. Key motivators for change are to find ways to properly access expert evidence, to utilise expert evidence to facilitate settlement of disputes or at least to reduce issues in dispute, and to create a less litigious atmosphere when dealing with expert evidence. Two important techniques that have been developed are "conferral of experts" prior to hearings and "concurrent expert evidence" during hearings. This article is based on the views of experts who have appeared in the State Administrative Tribunal of Western Australia about their experiences and perceptions of these two techniques. It appears that although there is room for improvement, the interviewees show strong support for these techniques and feel that their ability to give evidence as well as to engage with other experts are strengthened by same.

Harlis Kirimof and Erik Dober. Known unknowns: The overarching obligations of self-represented parties. 25 (1) (October 2015) Journal of Judicial Administration 28-43

In 2010, Victoria introduced the *Civil Procedure Act 2010* (Vic) in an effort to stem the rising cost of litigation. The Act imposes on parties and their legal representatives a "paramount duty" and a number of "overarching obligations" that are designed to improve the efficiency of court process. Although the Act applies to self-represented parties, it does not differentiate between them and parties who are represented. It has no bespoke provisions that deal with self-represented parties. This article considers the application of the Act's obligation to self-represented parties and the manner in which hearings involving self-represented parties may be modified to improve their efficiency and fairness.

Marilyn Krawitz and Justine Howard. Should Australian courts give more witnesses the right to Skype? 25 (1) (October 2015) Journal of Judicial Administration 44-63

Millions of people use Skype, a common form of social media that permits people to talk to each other over the internet. Courts in Australia have permitted witnesses in at least a few instances to testify by Skype to date. This article examines whether Australian courts should permit witnesses to testify by Skype more often. The article considers using videoconferencing, as opposed to Skype, and security issues associated with Skype. It also considers the impact that Skype may have upon considering witness credibility. Ultimately, it argues that Australian judicial officers may want to consider permitting witnesses to testify by Skype if testifying by videoconference is not possible, on a case by case basis. The authors believe that this is the first scholarly article in Australia to focus on the issue of witnesses testifying by Skype.

Judith Bellis, Catherine McKinnon and David Murchie. Assessing the adequacy of judicial complements 25 (2) (December 2015) Journal of Judicial Administration 67-75

Governments face manifold challenges determining the optimal sizes of judicial complements. Statistical information as well as demographic and structural factors vary so much across Canadian jurisdictions that no general formula can be relied on, especially in the absence of quantified performance targets. In assessing requests from provincial superior courts to increase complements and advising the federal Minister of Justice accordingly, application of some consistent principles is attempted, with often unsatisfactory results. The exception is Canada's Federal Court with which a computerised process simulation model has been developed. The model's key features are described and a simple illustration of its use is provided. Building a court simulation model requires close collaboration with the judiciary and access to detailed case-tracking and workload data. It is hoped this article will assist other jurisdictions to address court resource issues.

Ludmila Stern, Uldis Ozolins and Sandra Hale. Inefficiencies of court administration despite participants' goodwill 25 (2) (December 2015) Journal of Judicial Administration 76-95

Although Australia has been at the forefront of community and court interpreting, inconsistencies and some clear inefficiencies in the way interpreters are accommodated in court processes can still be observed. Despite a desire for further improvement of interpreting practices and steps continuously undertaken by the court system, the management of court interpreter services falls short in comparison to international practices. These aspects can negatively affect the work of interpreters and in some cases affect the overall conduct of cases. This article assesses the extent to which current inconsistent practices affect the interpreters' professional performance in contributing to a communicatively effective and efficient court system. Some of the inconsistencies identified include interpreter employment practices, interpreter facilities in courts, interpreters' physical working conditions, practices and court protocols (or lack of protocols), recognising the professional needs of interpreters,

and intra-court communication with interpreters. The article shows that some courts seem unaware of the damaging impact current inconsistent practices have on interpreters as professionals, and the quality of interpreting they provide. Despite limited funding and an equally limited pool of competent interpreters, solutions can be found within the existing system.

Tania Sourdin. Justice and technological innovation. 25 (2) (December 2015) Journal of Judicial Administration 96-109

Technology is reshaping the way that people, communicate, work and live. It is therefore no surprise that technology is also reshaping institutional and working arrangements in a range of sectors that include the justice sector. Over the past two decades, many technological advances have been directed at supporting the way in which work is carried out in the legal system. Some more recent innovations have also focussed on technologies that can replace a range of activities previously undertaken by humans. While these technologies are reshaping the justice system, it is suggested that the impact will be both more profound and pronounced in the near future, as so called "disruptive" technologies are introduced which will change not only how lawyers do business, and how judges "judge", but will also affect the way that people in dispute engage with the justice system.

Dr Ian Freckelton QC. The award of wasted costs arising from defective expert evidence. 25 (3) (April 2016) Journal of Judicial Administration 113-133

A variety of forms of accountability exist for the written reports and the oral evidence of forensic experts. An emerging form of such accountability is the potential for costs orders to be made by courts when serious problems have been encountered with the reliability of expert evidence. A series of decisions in the United Kingdom, Australia and Canada has engaged with the question of when costs could or should be awarded against experts, solicitors or counsel in respect of expert evidence. This article focuses on leading decisions in England, Australia and British Ontario, in particular the landmark analysis by Dixon J in Hudspeth v Scholastic Cleaning and Consultancy Services Pty Ltd (Ruling No 8) [2014] VSC 567. It draws from the cases the principal considerations applied in awarding or declining to order costs in respect of expert evidence and argues that the award of costs in exceptional cases has the potential to play a constructive role in enhancing the accountability of experts and commissioning lawyers alike in respect of expert opinion evidence. However, it urges the need for caution and stresses the importance of procedural fairness in wasted costs hearings.

Isabel Roper and Vivien Holmes. Therapeutic jurisprudence in the coronial jurisdiction.25 (3) (April 2016) Journal of Judicial Administration 134-147

This article explores the extent to which Australian coroners view therapeutic jurisprudence as relevant to their judicial role. Interviews with nine coroners across four jurisdictions reveal considerable discrepancies in the ways coroners view therapeutic jurisprudence and enact it through specific practices, such as meeting families or allowing photos of the deceased in court. The authors discuss the intersection of judging and emotion and make recommendations to improve the therapeutic aspect of Coroner's Courts, including ongoing professional training and the strengthening of powers in coronial statutes. This article takes a qualitative approach to an issue of increasing importance and interest to both Australian coronial and judicial bodies.

E Richardson, Magistrate P Spencer and Prof D Wexler. The International Framework for Court Excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing. 25 (3) (April 2016) Journal of Judicial Administration 148-166

There is a growing emphasis on the role of justice systems to improve the wellbeing of individuals and the communities that justice systems serve. This has been the argument of therapeutic jurisprudence scholars for decades and has recently been recognised by the Productivity Commission in Australia in 2014 in its report on Access to Justice Arrangements. This article discusses two important, but previously unrelated, tools that enable courts and tribunals to achieve this objective by improving the quality of justice and enhancing the wellbeing of individuals and communities in which those courts and tribunals operate: the International Framework for Court Excellence (IFCE or the Framework) and therapeutic jurisprudence (TJ). The IFCE, a quality management system for courts and tribunals, and TJ, an interdisciplinary discourse on the therapeutic and anti-therapeutic impact of the law and legal processes, are both aimed at improving the quality of justice. This article provides an outline of the Framework and TJ: the principles and methodologies that each entails and the various types of innovation and reform that have arisen through their application. The ways in which the two should work together is considered and it is suggested that there are benefits to be gained for courts and tribunals by incorporating principles of TJ into the Framework and by using the Framework to assess TJ reforms.

Grant T Riethmuller. Improving the use of court decisions in the Federal Circuit Court. 25 (3) (April 2016) Journal of Judicial Administration 167-174

The free access to law movement has had a significant impact upon access to law in Australia. The remarkable success of AustLII has resulted in Australia having the benefit of an enormous single data repository of case law and statutes available for free access by citizens. The effect of this phenomenon is far reaching for the courts and law reporting. In this article it is noted that this change supports the fundamental legal principle that citizens should have access to the law, as ignorance of it is no excuse. The disruptive nature of the new technology on existing law reporting is identified. It is argued that the courts should play a role in making the law more accessible, and that to do so they must look beyond the existing models of law reporting, identifying changes made by the Federal Circuit Court of Australia as a key example.

Andrew Henderson. The High Court and the cocktail party from hell: Can social media improve community engagement with the courts? 25 (3) (April 2016) Journal of Judicial Administration 175-192

Courts in Australia and overseas have been actively encouraged to use social media to connect with the community. Social media management is time consuming, especially if the courts' message is to be heard above the "hyper din" of other simultaneous exchanges. The user-generated content also means that it can be unpredictable and active engagement by courts with litigants raises significant issues. Despite these risks, there has been little empirical research done about the extent to which courts' engagement with social media will deliver any benefit. As a case study, this article examines the volume and content of Twitter commentary about two significant High Court matters in September and October 2014 to assess the depth and breadth of community engagement. It compares Twitter discussion of the High Court proceedings with contemporaneous Twitter events. It reveals that as a platform for

community engagement with the courts, Twitter is neither well used nor persuasive. Further research with consumers of social media is required before opening more Australian courts to this medium.

Tin Bunjevac. The corporate transformation of the courts: Towards a judicial board of executive directors 25 (4) (June 2016) Journal of Judicial Administration 197-211

This article seeks to advance the policy debate about court governance by reference to recent developments in Australia and other countries. It is argued that a corporate-style management board should be responsible for the judicial and administrative operations of the courts, with administrative judges and the CEO acting on the board as executive directors. It is contended that such an arrangement would be capable of achieving greater structural separation between "ownership" and "management" in the courts, which is regarded as an essential postulate of modern corporate law, because it promotes more expert and efficient management of large organisations. This article also seeks to resolve the inherent conceptual difficulties involved in applying the corporate law theory to the courts, by arguing that the so-called "stewardship" theory of corporate governance is capable of reconciling the key principles of modern corporate board design with the unique institutional character of the judicial organisation.

Dr Rachael Field, Dr Samantha Jeffries, Zoe Rathus AM and Angela Lynch. Family reports and family violence in Australian family law proceedings: What do we know? 25 (4) (June 2016) Journal of Judicial Administration 212-236

Family reports are critical documents in family parenting cases. They are often the only social science information available to the judge, the lawyers and the parties. They are influential in judicial decision-making and out-of-court negotiations. Despite their importance there has been little direct research about the quality and impact of family reports in Australia. It is also known that family violence is a common occurrence in parenting cases that progress to litigation, and therefore the kinds of cases in which family reports are ordered, but again this is an under-researched issue. This article presents foundational information about the existing research to identify what is known about family reports and family violence. It examines the legislative framework for family report writing and analyses the official guidelines and documents and informal information that provide context to this work. It considers what family report writers need to know and understand about family violence to write reports that deal appropriately with family violence and make safe recommendations. Australian and international research on family violence, its impact on parenting, its role in family law proceedings and its influence in family report writing is reviewed. The article concludes that Australian research in this area is required to contribute to improved practices in family reports.

Margaret Castles. Barriers to unbundled legal services in Australia: Canvassing reforms to better manage self-represented litigants in courts and in practice. 25 (4) (June 2016) Journal of Judicial Administration 237-256

Self-represented parties are a common phenomenon in modern litigation. They bring with them multiple challenges that impact on the quality of justice that they, as well as other parties, obtain. They have substantial impact on court management, and potentially on judicial impartiality. The provision of unbundled legal services, where the lawyer provides limited legal support for parts of the case, is one

proposed solution to these impacts. The US, UK, and Canada have all introduced detailed procedures that enable lawyers to provide flexible legal services for self-represented litigants (SRLs). Recognising the considerable risks arising out of limited services, these procedures focus on client care, quality of service, and risk management. This article examines the challenge of SRLs, and the policy initiatives that have been addressed in other international jurisdictions. It then considers the developing case law on professional liability in Australia. It concludes that neither case law nor professional standards regimes stand in the way of formalising the provision of unbundled services in Australia, leading to long overdue reform.

Naomi Burstyner, Tania Sourdin, Chinthaka Liyange and Bahadorreza Ofoghi. - Why do some Civil Cases end up in a Full Hearing? Formulating Litigation and Process Referral Indicia through Text Analysis 25 (4) (June 2016) Journal of Judicial Administration 257-295

Textual analysis and eDiscovery processes are increasingly being used in the legal domain to consider large databases of information and to extract material that can be used to support hypotheses in individual disputes. In this article, an exploratory study reporting on how these types of processes can be used with big data justice sets (publicly reported cases in New South Wales and Victoria) suggests that the processes may have utility in the context of discovering more about why some disputes are more likely to be determined by a judge. Additional data sets and more conventional research approaches could assist to formulate referral indicia and although raw findings suggest some correlation between some factors that are present in litigated cases and suggests that textual analysis has considerable promise as one supportive research methodology.

Claire Stimpson. - Keeping the Peace? Justices of the Peace as Judicial Decision-Makers in Regional Western Australia. 25 (4) (June 2016) Journal of Judicial Administration 296-300

Justices of the Peace with limited training and minimal supervision continue to act as judicial officers in Western Australia. While this runs contrary to assumptions of professionalism and judicial independence (as well as recommendations to abolish the practice), many of these JPs have a broad discretion to deal with questions of bail and sentencing. Their use is particularly concerning in light of the extraordinarily high rates of Aboriginal incarceration in Western Australia. Local magistrates, who are severely under-resourced, understandably rely on JPs. The State government enables this regime to persist through the under-funding of the local courts, particularly in regional and remote Western Australia. Appropriate resourcing of the Magistrates Courts is required to ensure it has judicial officers who are acting as judicial decision-makers.

Sam Bookman. - Judges and Community Engagement: An institutional obligation. 26 (1) (October 2016) Journal of Judicial Administration 3-18

This article sets out a principled framework to inform the development of community engagement programs by judiciaries. Community engagement is an ethical obligation incumbent upon the judiciary as an institution. While there are risks associated with community engagement, these may be appropriately managed. This article settles on seven guiding principles that underpin effective community engagement.

Jessica Findling and Georgina Heydon. - Questioning the Evidence: A case for best-practice models of interviewing in the Refugee Review Tribunal. 26 (1) (October 2016) Journal of Judicial Administration 19-30

This article addresses the problem of eliciting accurate and reliable evidence when reviewing applications for refugee status. While cases reviewed in the AAT (Migration and Refugee Division) often lack hard evidence, Members are simultaneously disadvantaged by a lack of evidence-based interviewing protocols to guide their questioning practices. This research examines the practices and regulatory environment of such decision-making in light of international standards of ethical questioning of detainees and witnesses. It finds firstly that Members do not presently use the opening phase of the interview to maximise the applicant's recall and improve the quality of their responses and, secondly, that Members are not consistent in their use of questions to elicit information from applicants. This article concludes that the introduction of questioning protocols for the Migration and Refugee Division Members would improve efficiency in hearings and help to ensure that Members are not exposed to appeals based on random interviewing approaches.

Anthony Gray. - Is the Representative Nature of Juries Justiciable? 26 (1) (October 2016) Journal of Judicial Administration 31-48

It is trite to say that one of the key features of a jury, if it is to properly perform its important task in the judicial system, is that it be representative of the society it purports to serve. The High Court of Australia has recognised this as an essential feature of juries. On the other hand, jury legislation continues to provide a range of exemptions from jury service, and the rate at which individuals are excused from jury service is high. These features of jury legislation could potentially raise the concern that a particular jury pool, or particular jury, is not in fact "representative" as is the ideal. This article considers whether the issue of jury representativeness is justiciable. It draws upon American precedents on juries. These are relevant because the Australian constitutional provisions dealing with juries were drawn from the American Constitution. These precedents indicate that the question of jury representativeness is justiciable, and in some cases juries have been found to be unrepresentative, affecting the standing of that system's judicial decisions. This raises at least some interesting questions in cases where Australian juries are not seen as "representative", even if no-one argues that an exact replica of the population is necessary or, indeed, possible. There are also arguments to be considered that this characteristic of jury representativeness can be drawn down to state courts.

Chris Charles. - Four Recent Decisions on Sentencing Aboriginal people. 26 (1) (October 2016) Journal of Judicial Administration 49-55

The recent case of Bugmy, decided by the High Court in 2013 has been followed South Australia in a number of cases decided by the Court of Criminal appeal in the Supreme Court on sentencing for Magistrates Court appeals. In the case of Grose, the Court of Criminal Appeal considered whether Aboriginal Sentencing conferences, mandated by the South Australian Sentencing Act infringed the Racial Discrimination Act 1975. In concluding that it did not do so the court relied upon the recent High Court decision in Maloney, and reflected upon the application for Bugmy principles to consideration of Aboriginal disadvantage, as is revealed by Sentencing conferences. In Pennington Court considered the significance of particular forms of disadvantage for defendants from remote communities subject to serious intergenerational alcohol abuse and dispossession. This was weighed against the need to protect

Aboriginal victims and the provision of individualised justice. In Peters, consideration was given to the use of public intoxication legislation to divert a seriously intellectually disabled petrol sniffer from the criminal justice system.

Anthony Gray. - The Inclusion of Ex-prisoners on Juries. 26(2) (March 2017) Journal of Judicial Administration 59-75

This article considers legislation in each Australian State and Territory which bans or restricts ex-prisoners from serving on juries. While there are some arguments in favour of such restrictions, the counter-argument is that such restrictions undermine the notion that juries are “representative” of society, and contradict our notions of rehabilitation and that a person who has been released from prison has “served their debt to society”. The High Court has found that a restriction on prisoners from voting may in some cases be unconstitutional, because it interferes with the constitutionally required system of representative government. This article asks whether, by way of analogy, restrictions on ex-prisoners from participating on juries may be unconstitutional, because they interfere with the constitutionally required system of representative juries. There are real analogies between the act of voting and the act of jury service in a democratic system of government, making that comparison apposite.

Sharon Rodrick. - Opportunities and Challenges for Open Justice in Light of the Changing Nature of Judicial Proceedings. 26(2) (March 2017) Journal of Judicial Administration 76-97

This article identifies several ongoing, recent or anticipated changes to the way in which judicial proceedings are conducted and evaluates them in terms of their likely capacity to either enhance the principle of open justice or present challenges for the principle into the future. They include the increased emphasis on the written word, the use of virtual spaces and emergent use of big data to assist in judicial decision-making. This article affirms the responsibility of courts to ensure that they remain open and transparent and offers some suggestions as to how they might do so in the light of these changes.

Justice Susan Glazebrook. - Intermediate and Final Courts of Appeal: Chalk and cheese? 26(2) (March 2017) Journal of Judicial Administration 98-117

This article examines whether there are substantive differences between judgment writing in intermediate and final courts of appeal. It concludes that any differences are structural, rather than related to function. Final courts have fewer cases and thus more time for consideration. And final courts are just that – final. As to function, most cases reaching a final court will have passed through an intermediate court of appeal. This means that both levels of court share responsibility for safeguarding the rule of law and for developing the law where this is appropriate. And all levels of court in the system share the primary function of doing justice between the parties according to law.

Thalia Anthony, Elena Marchetti, Larissa Behrendt and Craig Longman. - Individualised Justice through Indigenous Community Reports in Sentencing 26(3) (2017) Journal of Judicial Administration 121-140

There is a growing pool of research on court outcomes in sentencing Indigenous people but relatively little research on the information available to sentencing courts to consider Indigenous background. Although Australian courts mostly have discretion to consider Indigenous circumstances, such consideration depends on submissions and reports tendered in court. The High Court in *Bugmy v The Queen* (2013) stated "it is necessary to point to material tending to establish [the defendant's deprived]

background" if it is to be relevant in sentencing.[1] The main repository of court information on defendant background is counsel submissions and, where the defendant is facing imprisonment, Community Corrections' Presentence Reports. Based on 18 interviews with judicial officers, lawyers and court staff in New South Wales and Victoria, this article identifies the need for more information on relevant Indigenous background factors in sentencing. The introduction of discrete Indigenous community reports that present Indigenous perspectives on the person's background and rehabilitation was regarded as important for addressing the Bugmy requirement. This article makes reference to the wide-scale experience in Canada of First Nations presentence reports, known as "Gladue Reports", and the more small-scale Australian experiences of Indigenous cultural reports, to indicate how this material can enhance individualised justice in sentencing Indigenous peoples.

Marilyn Bromberg and Andrew Ekert. - Haters Gonna Hate: When the public uses social media to comment critically or maliciously about judicial officers 26(3) (2017) Journal of Judicial Administration 141-156

It is important that the public has confidence in the judiciary so that it will abide by its decisions. However, there are many ways to undermine the public confidence in the judiciary. A relatively new method of undermining the public confidence in the judiciary can occur when the public writes highly critical or malicious comments about the judiciary on social media. Such comments can spread on social media instantaneously to a huge number of people – this makes it unique in comparison to some of the other methods of undermining confidence in the judiciary. This article examines how the government and business deal with critical or malicious comments on social media and applies this to the judiciary. It argues that it is important that the judiciary take preventive action in this area so that they are in the best position to deal with critical or malicious comments on social media when they are posted.

Russ Scott. – Trial by Judge without Jury – Some Contemporary Reflections 26 (3) (2017) Journal of Judicial Administration 157-183

In all Australian jurisdictions, many serious offences can be tried summarily, and in most jurisdictions, an indictable offence can be tried by a judge without a jury. In *Alqudsi v The Queen*, the High Court majority held that trial by judge for an offence against Commonwealth counterterrorist legislation would be inconsistent with s 80 of the Constitution. This article examines the reasoning of the decision and compares the different State provisions which currently enable serious offences including murder and sexual offences to be tried by a judge only. Given the pervasive effect of news streaming, the internet and social media, it is argued that there are compelling public policy issues which commend an accused being able to elect to waive his or her right to trial by jury and instead be tried by a judge who is more likely to be immune to the effects of pre-trial publicity and whose reasoning can be subject to critical analysis.

Bobette Wolski. – Ethical Duties Owed by Lawyer Mediators: Suggestions for Improving the NMAS Practice Standards 26(3) (2017) Journal of Judicial Administration 184-218

Lawyer mediators who are accredited under Australia's National Mediator Accreditation System (NMAS) are obliged to comply with the rules of conduct of the legal profession and other components of the "law of lawyering", as well as with the Practice Standards issued in connection with the NMAS. This article amalgamates the two regulatory systems to which lawyer mediators are subject to identify and analyse the ethical duties owed by lawyer mediators. In addition, it aims to suggest ways in which to improve the NMAS Practice Standards, which have become, arguably, the single most important regulatory instrument for mediators in Australia.

Warren Brookbanks. - Non-Adversarial Justice: An Evolving Paradigm 26(4) (2017) Journal of Judicial Administration 222-231

The article surveys recent developments in non-adversarial justice (NAJ). It commences with a discussion of the relationship between adversarial and non-adversarial models of justice, as exemplified in the anecdote involving Justice John Holt, suggesting their complementarity. It then examines the broad parameters of the non-adversarial approach, as reflected in the concepts of therapeutic jurisprudence, restorative justice, collaborative law and procedural justice. A range of contemporary practices are considered, including sex offence trials, the role of Mental Health Review Tribunals and the coronial jurisdiction. A brief account of the vexed question of mental wellbeing in the legal profession prefaces a claim that the recent developments in NAJ reflect the emergence of a new subjectivity in approaches to legal problem-solving and a greater movement towards participatory inquiry and the exploration of social relationships in problem-solving generally.

Susan Douglas. - Constructions of Impartiality in Mediation 26(4) (2017) Journal of Judicial Administration 232-247

Impartiality is a core principle of decision-making within Australia's common law system of justice. This article reports on an empirical study of the meaning of impartiality in mediation. The study is set against changes to the National Mediator Accreditation System in 2015, which saw removal of neutrality as an ethical requirement of practice. Prior to the 2015 amendments, mediators were required to demonstrate an understanding of "neutrality and impartiality". The requirement to demonstrate understanding of impartiality was retained in the 2015 revisions. The past requirement that mediators understand both neutrality and impartiality suggests that these two concepts are separate and distinct. Yet while some scholars distinguish between them, others treat them as synonymous. The study reported here sought to further understanding of impartiality by gathering data from practising mediators about what meaning they ascribe to impartiality and how they translate it into their practice. The results challenge existing constructions of impartiality that are framed from a purely legal perspective and suggest multidisciplinary influences consistent with non-adversarial justice approaches.

Nigel Stobbs. - Therapeutic Jurisprudence and Due Process – Consistent in Principle and in Practice 26(4) (2017) Journal of Judicial Administration 248-264

In light of recent criticisms in the US and Australia, this article considers the risks involved in the ongoing perception of tension or conflict between therapeutic jurisprudence and due process, especially in the context of the problem-solving courts. It analyses the nature of these criticisms and unpacks some invalid assumptions implicit in them. It argues that a criminal proceeding in which there are breaches of constitutional, statutory or common law principles of due process is inconsistent with either a therapeutic design of law or a therapeutic application of law, or with both. As with their mainstream counterparts, individual therapeutic-focused courts and programs can, and sometimes do, breach due process by failing to adhere to rules and standards by which they are regulated and on which they are modelled. But these breaches are not a manifestation of any fundamental incompatibility between therapeutic jurisprudence and the role of a team-oriented judge or lawyer on the one hand, and due process principles and the constitutional or ethical obligations of that same judge or lawyer on the other. The conceptual basis of the therapeutic jurisprudence method, articulated in a form describe here as the "TJ imperative", together with the procedural protections it demands, preclude any such incompatibility.

Felicity Gerry and Penny Cooper. - Effective Participation of Vulnerable Accused Persons: Case Management, Court Adaptation and Rethinking Criminal Responsibility 26(4) (2017) Journal of Judicial Administration 265-274

This article explores recent international developments in judicial case management for vulnerable accused persons in adversarial trials. The authors discuss the definition of "vulnerable" and include examples of adaptations to the traditional adversarial process and appellate decisions. The authors emphasise the importance of specialist legal representation. They conclude that not only is it necessary for there to be bespoke, procedural adjustments in appropriate cases but also for there to be a fundamental review of laws which may be inappropriately criminalising certain vulnerable accused persons.

Rachael Field and Hon Eugene M Hyman. - Non-Adversarial Approaches to Domestic Violence: Putting Therapeutic Jurisprudence Theory into Practice 26(4) (2017) Journal of Judicial Administration 275-292

This article analyses therapeutic jurisprudence (TJ) informed approaches to domestic violence (DV). Part I of the article considers ways in which the adoption of such approaches in DV contexts can be positive for the parties involved, while Part II explores some of the caveats. This analysis leads to four key recommendations for the safe management of TJ informed approaches to DV. First, comprehensive screening protocols are necessary to ensure that only appropriate offenders who have the capacity to participate effectively are screened in to TJ informed programs. Secondly, given the complex nature of DV and the need for multi-disciplinary and multi-agency responses, information across these disciplines and agencies must be shared. Thirdly, extensive training is needed for first responders such as police and community groups, as well as for judges and program facilitators. Finally, it is important to adopt practices that allow processes and protocols to be perceived as procedurally fair to all parties.

Anthony Gray. - Contempt and the Australian Constitution – Part I 27(1) (2017) Journal of Judicial Administration 3-20

This two-part article considers possible reforms to the law of contempt in light of a recent controversy regarding the courts' power in this regard. It considers the interrelation between a court's power to punish for contempt, reform, and the Australian *Constitution*. Part I of the article places the discussion in the context of the recent controversy, and outlines the existing Australian law dealing with contempt. It specifically considers the compatibility of two forms of contempt, known as scandalising the court and sub judice contempt, with the implied freedom of political communication, and the kind of proportionality analysis applied to that freedom. It finds there are real constitutional concerns over courts' current power to punish for scandalising the court, on the basis that it substantially interferes with freedom of communication about "political matters", and may not be necessary, suitable or adequate in its balance. It is most unlikely that the reputation of courts relies or is dependent on such a power, and public confidence in the judiciary is considered to be generally very strong. Attempts to censor "scandalous" communication about courts are likely to be counterproductive and unnecessary

Kathy Mack, Sharyn Roach Anleu, Jordan Tutton. - Pleading Guilty: Issues and Practices – A Socio-Legal Research Case Study 27(1) (2017) Journal of Judicial Administration 21-44

Research has a biography, a trajectory and ideally a useful life in which it can stimulate other thinking. In the 1990s, the Australian Institute of Judicial Administration (as it then was) initiated a study into guilty pleas in Australia. This article describes how the information and ideas generated from the Pleading Guilty project were communicated to diverse audiences by the researchers themselves. It investigates

when, where, how and by whom the Pleading Guilty research findings were used by others, by searching, electronically and physically, for as many citations or references as possible to any of the published outputs of the Pleading Guilty research. As the findings show, one piece of Australasian Institute of Judicial Administration-supported research has been consistently important to varied audiences over many years, up to the present. This study reveals a more complex story than is reflected in discussions of (or proposals for) measures of research quality, impact or engagement in the current policy context for research in Australia

Dr Andrew J Cannon AM. - Sustainable Justice: A Guiding Principle for Courts 27(1) (2017) Journal of Judicial Administration 45-51

This article considers court systems' access to power to describe their primary purpose which is to manage conflict so that the power arrangement in their society is not disturbed. It then argues that the adversary system is not fit for that purpose, often inflaming conflict rather than reducing it. Courts are developing better ways to manage conflict and it is suggested that they can draw on sustainability as a guiding principle to achieve their proper purpose. A Sustainable Justice system will always seek to manage disputes in ways that hold people accountable for their departures from the law while at the same time it understands the underlying causes of the conflict. Court processes should be designed to repair the harm that has been done and better equip the parties to manage conflict in the future to the end that social harmony is improved

Anthony Gray. - Contempt and the Constitution – Part II. 27(2) (2018) Journal of Judicial Administration 55-73

Part I of this article considered the existing common law of contempt in light of the implied freedom of political communication, concluding there were real doubts about current contempt law given this constitutional freedom. In Part II another constitutional aspect of contempt law is considered – the question of reform to contempt law, and constitutional limits on such proposals, particularly Chapter III of the Constitution.

John Anderson and Nicola Ross. – A Restorative City for New South Wales- Could Newcastle be a Model? 27(2) (2018) Journal of Judicial Administration 74-91

There is growing evidence that the experiences of restorative cities around the world, such as Hull UK, Oakland US and Whanganui New Zealand, have been positive for their citizenry. In implementing interdisciplinary restorative practices and restorative justice measures across a range of systems including education, justice, child welfare and health, restorative cities have achieved transformational change in the culture and social fabric of their communities. The focus has been on viewing children and youth (being amongst the most vulnerable in these communities) as potential future community leaders. This article examines the evidence for restorative practice through vignettes of the existing models and experiences of international restorative cities before considering the suitability of Newcastle, New South Wales as a candidate for a restorative city. Lessons learned from these cities may advance the current process of urban renewal in Newcastle through developing strategies for social, cultural and economic change to address enduring forms of harm and pockets of disadvantage. A blueprint is devised for Newcastle to move towards being a restorative city.

Helen Fraser. - Thirty Years Is Long Enough: It Is Time to Create a Process That Ensures Covert Recordings Used as Evidence in Court Are Interpreted Reliably 27(3) (2018) Journal of Judicial Administration 95-104

This article outlines a number of serious problems arising from the handling within the legal process of covert recordings used as evidence in criminal trials. These problems relate specifically to four key areas, namely: translation of material in languages other than English, transcription of indistinct English, attribution of utterances to speakers and "enhancing" of poor quality audio. The paper traces the problems back to the landmark High Court judgment of *Butera v DPP (Vic)* (1987) 164 CLR 180, and attributes them to insufficient understanding within the judiciary of well-established but counterintuitive findings of linguistic science regarding factors that affect the reliable interpretation of recorded speech. Several possible solutions to the problems are canvassed, and it is recommended that the most promising way forward is via enhanced communication and collaboration between law, law enforcement and linguistic science.

Pamela D Schulz OAM and Andrew J Cannon AM. - On Public Opinion Discourse: Justice Applications. 27(3) (2018) Journal of Judicial Administration 105-122

The justice system and the work of the judiciary continue to evolve as the media landscape changes. Public opinion is now in the new the public square in cyberspace as part of the network society and courts need to respond to that. This article focusing on media and communication theories provides an explanatory basis on which the justice system, the judiciary, and legal practitioners can identify what and how the media landscape and its concomitant effects shape public thinking. From the relational fear discourses and the attraction of repulsion to the spiral of silence and major discourse analysis elements this major article explores media and communications theory and practice from a justice perspective. It leads to ways in which the guardians of meaning, the justice system led by the judiciary and legal scholars can identify and be responsive and relevant to current issues of concern and how best to communicate them. The challenge for the justice system is to maintain and attract confidence in its work. This is so that ongoing support will ensure modern democracies will fund and sustain one of the major ways in which communities can be assured that their best interests are at the forefront of thinking within justice and the rule of law.

Marilyn Bromberg. - Right Here Waiting for You: The New Social Media Chapter in the Australian Guide to Judicial Conduct 27(3) (2018) Journal of Judicial Administration 123-133

The courts have existed for hundreds of years. Social media has existed for less than two decades. When the two collide there is potential for negative repercussions upon the public's confidence in the judiciary. This article considers the chapter on social media that was included in the third edition of the Australian Guide to Judicial Conduct, which was recently published. It argues that the chapter is necessary and may help to improve the public's confidence in the judiciary. This is likely the first scholarly article to consider the third edition of the Australian Guide to Judicial Conduct, and in particular the new social media chapter.

Jonathan Crowe, Rachael Field, Lisa Toohey, Helen Partridge and Lynn McAllister. - Understanding the Legal Information Experience of Non-lawyers: Lessons from the Family Law Context 27(4) (2018) Journal of Judicial Administration 137-147

Parties to legal disputes, now more than ever before, are able to access information about the law. This article reports on an empirical study of experiences in relation to accessing legal information in a family law context. A thematic analysis of qualitative interviews with people who rang the Australian Federal Government's Family Relationships Advice Line indicated five key issues: first, parties struggle with the complexity of the information experience; secondly, parties have difficulty in assessing the credibility

and reliability of sources of information and the information provided; thirdly, parties indicate clear source preferences; fourthly, parties have difficulty applying the information retrieved from various sources to their individual situation; and, finally, parties tend to use language that is no longer reflected in family law legislation or practice. These findings are discussed and analysed with reference to the specific voice of the study participants. The findings should assist government agencies, family dispute resolution providers and others to improve the ways legal information and advice on post-separation issues is provided. The findings are also applicable to other contexts of legal information provision.

Tina Popa. - "No One Gets Closure in the End": Non-adversarial Justice and Practitioner Insights into the Role of Emotion in Medical Negligence Mediation 27(4) (2018) Journal of Judicial Administration 148-160

Non-adversarial approaches to justice that are grounded in therapeutic jurisprudence and restorative justice are based on the notion that expression of emotion is valuable for court users and involves recognition that legal decisions affect the emotional and psychological wellbeing of those court users. In medical negligence, expression of emotion and apologies may be particularly valuable to injured disputants. This article explores emotion and apologies in medical negligence mediation by drawing on interviews with 24 senior tort lawyers. The analysis of the data shows that emotion is an important part of medical negligence mediation, yet the lack of attendance and participation by doctors hinders the ability of parties to address non-legal needs. The participants valued the use of apologies in medical negligence mediation but did not explore the opportunity that mediation may offer parties to obtain emotional closure. The article recommends the introduction of mandatory attendance by doctors at mediation and the use of restorative conferencing as key reforms to address the emotional needs of parties and benefit health care more broadly.

Tamara Walsh. - Video Links in Youth Justice Proceedings: When Rights and Convenience Collide 27(4) (2018) Journal of Judicial Administration 161-181

The use of audio-visual links in courtrooms is a cost-effective alternative to face-to-face court appearances. Appearance by video link is becoming increasingly common around the world, yet there have been few evaluations of the use of audio-visual links in courtrooms. Particular issues arise with respect to the use of audio-visual links where the accused person is a child – indeed it is often concluded that "virtual courts" are not appropriate for vulnerable defendants, including children and young people. Despite this, in many Australian States and Territories audio-visual links are used extensively in youth justice proceedings. This article considers the findings of a 2016 scoping study in which a focus group was conducted with eight lawyers in Brisbane who represent children and young people who have received criminal charges. Consistent with the existing literature, participants expressed serious misgivings regarding the use of audio-visual links in youth justice proceedings. They doubted that their young clients could follow the proceedings when they appeared by video link, and felt that their capacity to provide adequate support to their clients, both legal and emotional, was compromised. The trend towards "peopleless" courts appears to be inevitable. This article considers what best practice in this area might look like, and how the use of technology in the courtroom can be regulated to protect children's access to justice rights.

Diana Eades. - Communicating the Right to Silence to Aboriginal Suspects: Lessons from Western Australia v Gibson 28(1) (2018) Journal of Judicial Administration 4-21

The communication of the right to silence to Aboriginal suspects in police interviews has been problematic for many decades, despite widespread recognition of Forster J's 1976 *R v Anunga* (NTSC) guidelines for interrogating Aboriginal people. *Western Australia v Gibson* exposes serious consequences when police fail to, or do not understand how to, follow *R v Anunga* guidelines. Setting Hall J's decision in *Western Australia v Gibson* in its linguistic, legal and cultural contexts, the article argues that it has important implications not only for Aboriginal suspects, but for any suspect whose English proficiency does not enable them to fully understand their rights, as well as how they can invoke the rights, and the consequences of waiving them, or not waiving them.

Joseph Briggs and Russ Scott. - Police Interviews and Coerced False Confessions: Gibson v Western Australia (2017) 51 WAR 199 28(1) (2018) Journal of Judicial Administration 22-43

Police interviews of suspects "guilt-presumptive" and are designed to extract a confession. In 2012, in a remote community in outback Australia, police interviewed a 21-year-old illiterate indigenous man whose first language was not English. After he appeared to make an incriminating statement, Gene Gibson was charged with a murder alleged to have been committed two years earlier. During a pre-trial hearing, Mr Gibson successfully challenged the voluntariness of two interviews with police.
Notwithstanding the rejection of the interviews with police, following the advice of his solicitor, Mr Gibson pleaded guilty to manslaughter. In August 2014, an agreed statement of facts described how Mr Gibson had been "very drunk" when he was driving a stolen car and passed Joshua Warneke walking alongside the road. Mr Gibson agreed that he stopped the vehicle and approached Mr Warneke from behind and struck him on the head with a metal implement. In October 2014, Mr Gibson was sentenced to seven years and six months' imprisonment. In April 2017, the Western Australian Supreme Court of Appeal concluded that a miscarriage of justice had occurred and set aside the conviction. This article examines the detailed reasoning of the decisions of the pre-trial application and the Court of Appeal and considers police interviewing techniques and the typology of false confessions.

Errol Chua. - Invisible Women: Where Are All the Female Lawyers? 28(1) (2018) Journal of Judicial Administration 44-50

Statistically, more than 60% of law graduates entering the Australian workforce are female. So where are all the female lawyers? It is beyond surmise that women face serious impediments when attempting to enter and remain in legal practice, specifically in the criminal and commercial law sectors. Deep seated bias, prejudice and male chauvinism have contributed significantly to the perennial dearth of female lawyers. Until the legal fraternity addresses and tackles this untenable taboo, this long and unjustified vacuum will continue interminably to the detriment of the legal profession. Consequently, the importance of the role and contribution of female lawyers will continue to remain invisible, that is, ignored, trivialised and unrewarded.

Kate Warner, Caroline Spiranovic, Arie Freiberg, Julia Davis and Lorana Bartels. - Aggravating or Mitigating? Comparing Judges' and Jurors' Views on Four Ambiguous Sentencing Factors 28(1) (2018) Journal of Judicial Administration 51-66

Mental disorder, intellectual disability, intoxication and drug addiction are factors that are often raised in sentencing hearings, but the effect that these four conditions can have on an offender's sentence is rarely studied. This article fills two gaps in our understanding of the relevance of these ambiguous sentencing factors: first, by analysing how judges in the County Court of Victoria responded to these factors in 122 sentencing cases relating to 140 sentenced offenders; and second, by comparing the views of the judges with those of 426 jurors who had tried those cases and who participated in the Victorian Jury Sentencing Study. It concludes that lay opinion on the relevance of these factors does not always align with judicial practice and discusses the implications of these findings.

Tin Bunjevac. - The Transformation of Court Governance in Victoria: Part 1 – Key concepts and models 28(2) (2018) Journal of Judicial Administration 69-97

The study analyses the emergence of independent judicial councils and their role in facilitating judicial control of court administration in Australia, Canada, Ireland, the Netherlands, the UK, the US and other countries. While much research has been conducted into the relative merits of judicial control of court administration, the study extends the court governance literature by developing an analytical policy framework for a model Judicial Council of Victoria with broad statutory responsibility for improving the quality of justice in the court system. Part I conducts a review of the models of court governance and literature, and contends that greater internal transparency and administrative "corporatisation" of the judiciary is essential in order to improve court performance, enhance the social legitimacy of the courts and reinforce judicial independence. Part II outlines the essential terms of reference for a model Judicial Council of Victoria and proceeds to assess the institutional framework of Court Services Victoria, a judicial council that was established in 2014 to transfer the responsibility for court administration from the executive government to the judiciary. The study concludes that the Victorian court system reform broadly meets the model policy benchmarks, but that the legislation is insufficiently clear in important aspects and requires a set of specific amendments.

Corey Byrne. – A Death by a Thousand Cuts: The future of advocates' immunity in Australia 28(2) (2018) Journal of Judicial Administration 98-121

This article analyses the doctrine of advocates' immunity following the High Court's decisions in Attwells v Jackson Lalic Lawyers and Kendirjian v Lepore. It is argued that the majority judgments in these cases wound back the broad approach of the plurality in the controversial High Court decision of D'Orta-Ekenaike v Victoria Legal Aid, which construed the immunity in a manner so expansive that it arguably could shield lawyers for any type of misconduct in their running of litigious matters. It is argued that despite laudably narrowing the scope of the doctrine, due to the somewhat strained reasoning in the majority decisions, there are likely to continue to be problems for the lower courts in applying it. It is also underlined that the narrow approach adopted in the majority decisions is consistent with recent legislative reforms which are increasing the accountability of lawyers for their misconduct in litigation.

Antonella Rodriguez. - Literature Review: Cultural considerations in alternative dispute resolution 28(2) (2018) Journal of Judicial Administration 122-138

This literature review was commissioned by the Migration Council of Australia in co-operation with the Judicial Council of Cultural Diversity. It was intended to inform the development of a guidance note for judicial officers with a specific focus on cultural considerations that might arise as part of the family dispute resolution process. A broad overview is provided considering the work undertaken by Family Dispute Resolution Practitioners and the intersection of Western style facilitated dispute resolution practices with culturally and linguistically diverse communities.

Carly Schrever, Carol Hulbert, and Tania Sourdin. - The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing 28(3) (2019) Journal of Judicial Administration 141-168

This article presents the methodology and primary quantitative analysis of Australia's first empirical research measuring judicial stress and wellbeing. The findings arise from the survey of 152 judges and magistrates from five Australian courts. Using standardised and validated psychometric instruments for a broad range of stress constructs, the survey robustly explored the varying ways in which stress in judicial office can manifest, allowing comparisons with the Australian legal profession and general population. The results suggest that, like lawyers, judges and magistrates report elevated psychological distress and problematic alcohol use, and that symptoms of burnout and secondary trauma are prominent features of the judicial stress experience. However, unlike the broader legal profession, judicial officers' rates of depressive and anxious symptoms are relatively low. Together, the findings reveal a judicial system not yet in mental health crisis, but under considerable stress. The implications of the findings and areas for future research are discussed.

Tim Bunjevac. - The Transformation of Court Governance in Victoria: Part II – Towards a model policy framework for Court Services Victoria. 28(3) (2019) Journal of Judicial Administration 169-203

The study analyses the emergence of independent judicial councils and their role in facilitating judicial control of court administration in Australia, Canada, Ireland, the Netherlands, the UK, the US and other countries. While much research has been conducted into the relative merits of judicial control of court administration, the study extends the court governance literature by developing an analytical policy framework for a model Judicial Council of Victoria with broad statutory responsibility for improving the quality of justice in the court system. Part I conducts a review of the models of court governance and literature and contends that greater internal transparency and administrative "corporatisation" of the judiciary is essential in order to improve court performance, enhance the social legitimacy of the courts and reinforce judicial independence. Part II outlines the essential terms of reference for a model Judicial Council of Victoria and proceeds to assess the institutional framework of Court Services Victoria, a judicial council that was established in 2014 to transfer the responsibility for court administration from the executive government to the judiciary. The study concludes that the Victorian court system reform broadly meets the model policy benchmarks, but that the legislation is insufficiently clear in important aspects and requires a set of specific amendments.

Rhondda Waterworth. - Measuring Legal Actor Contributions in Court: Judges' Roles, Therapeutic Alliance and Therapeutic Change 28 (4) (2019) Journal of Judicial Administration 207-225

The court can be conceptualised as a point of intervention in the lives of offenders as well as their families, social networks and communities. It therefore seems reasonable to investigate what a judge (or other legal actors) can contribute to this interaction and to find ways it can be effectively measured. This article articulates a behaviourally anchored description of a judge's contribution in a courtroom interaction between a judge and a defendant that would have the best chance of facilitating therapeutic change for a court participant. The description is based on a review of the therapeutic jurisprudence literature, procedural justice and legitimacy of justice literature, a brief review of types of therapy that could be effective in a courtroom setting, and research into the common effective denominators in therapy outcomes, most notably the literature on therapeutic alliance and therapeutic change. The article concludes with a brief rating scale designed

Sharyn Roach Anleu, Jennifer Elek and Kathy Mack. - Judicial Conduct Guidance and Emotion 28 (4) (2019) Journal of Judicial Administration 226-239

Expectations of judicial conduct are changing. Judicial officers must pay more attention to emotions, exercise different judicial emotional capacities and engage in more emotion work, including management of the judicial officer's own emotions or those of others. Judicial conduct guides emphasise interactional qualities such as patience, courtesy, temperament or detachment, and so implicitly acknowledge the presence of emotion and anticipate emotion work on the part of the judicial officer. However, the place of emotion in judicial work is rarely directly addressed, nor is the language of emotion or feeling used. In contrast, judicial officers themselves express considerable awareness of emotion and describe intentional strategies to manage emotion. Available conduct guidance, in Australia and the United States of America (US), does not adequately address the actual emotional experiences faced by judicial officers in their everyday work. The Elements of Judicial Excellence, an innovative project from the National Center for State Courts (US), integrates research findings from judges themselves to generate concrete strategies for individual judicial officers and for wider cultural change within the courts and judiciary.

Taylah Cramp and Anita Mackay - Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016–2017 Royal Commission into the Protection and Detention of Children in the Northern Territory – 29 (1) (2019) Journal of Judicial Administration 3-21

The truth-finding function of Royal Commissions often leads them to seek the participation of victims and vulnerable witnesses (V&VWs) to learn about their experiences of the wrongdoing being investigated. There are numerous recent examples of Royal Commissions that have done this, including the 2017 federal Royal Commission into Institutional Responses to Child Abuse and the 2016 Victorian Royal Commission into Family Violence. This article examines the processes employed by the joint federal and Northern Territory Royal Commission into the Protection and Detention of Children in the Northern Territory. It seeks to draw out the lessons that may be learnt for future Royal Commissions involving V&VWs. The Northern Territory Royal Commission is informative because the Commissioners prioritised the needs of V&VWs in some unique ways, arguably achieving restorative justice for the V&VWs who participated.

Meena Hanna - Robo-Judge: Common law theory and the artificially intelligent judiciary – 29 (1) (2019) Journal of Judicial Administration 22-41

The intersection between technology and the legal industry is exponentially growing. Historically, such technological advancements were largely confined to legal information retrieval and legal infrastructure. However, the fourth industrial revolution, and the seamless transition towards the fifth industrial revolution, usher significant advancements in computational law. These advancements in the automation of legal analysis through artificial intelligence are so disruptive and pervasive that they now purportedly threaten to invade the space of judicial reasoning. This raises the critical question of whether artificially intelligent judicial reasoning can be reconciled with the common law framework and common law theory more generally. To answer this question, this article canvasses the intersection of technology and the law, the application of artificial intelligence to judicial reasoning including developments to date, and the trajectory of research in this field. Against this context, this article then considers the theories of pre-eminent common law philosophers, and ultimately concludes that artificially intelligent judicial reasoning cannot be reconciled with the common law.

Marilyn Bromberg and Michael Montalto - "Say My Name, Say My Name": Changing the Title "Magistrate" to "Judge" in Australia –29 (2) (2019) Journal of Judicial Administration 45-59

Is the title "magistrate" appropriate for Australian magistrates, or would another title be more appropriate? This article argues that the title "magistrate" should be changed to "judge" in Australia in the jurisdictions where such a change has not already taken place. The most convincing reason why the authors argue for this change concerns their findings from the online survey distributed in 2018 to all Australian magistrates: 60% of all Australian magistrates responded to this first of its kind survey; 95.25% of the magistrate respondents wanted a change to their title; and 86.44% of the magistrate respondents did not think that the title "magistrate" accurately reflected their position. This article also provides other relevant arguments for changing the title "magistrate", including that such a change has already taken place in some Australian and overseas jurisdictions, as well as that magistrates undertake the same work as judges.

Anthony Gray - The Punishment of Journalists for Contempt for Refusing to Reveal their Sources in Court.-29 (2) (2019) Journal of Judicial Administration 60-81

Recently, the Australian Federal Police conducted raids at the home and office of two journalists. The validity of such action is currently before the courts. It is argued here that it is possible that the High Court might find that action that effectively forces a journalist to reveal their sources breaches the implied freedom of political communication. Journalists play a pivotal role in permitting the public to hold governments accountable in our democratic system of government. Laws that effectively force them to betray their confidential sources may well limit the supply of information to journalists, in turn curbing the flow of information to voters. Courts in other jurisdictions have found that raids on journalists' homes and offices infringe freedom of expression in a way that cannot be justified in a democracy.

Ian Freckleton QC. – Single Joint Expert Witnesses. 29 (3) (2020) Journal of Judicial Administration 85-100

After the 1995 Lord Woolf report into access to justice, there was increased international recognition of the risk that expert opinion evidence was too often coming before courts in ways that did not assist accurate fact-finding and that it was unacceptably expensive and prone to abuse. A number of initiatives were trialled, including single joint expert (SJE) witnesses. This article scrutinises the SJE procedure, which

of its nature removes from parties the entitlement to choose and call their own expert witnesses. It highlights controversies in relation to the procedure and examines variations from jurisdiction to jurisdiction in how it is formulated and implemented. It suggests that, given other developments in relation to expert evidence procedure and admissibility, the era of SJE witnesses may have passed save in particular cases where it is necessary for courts to intervene to prevent abuse arising from the calling of a proliferation of experts by parties or where there is an absence of diversity of approach in the area of expertise.

Sarah Murray, Ian Murray And Tamara Tulich. – Court Delay and Judicial Wellbeing: Lessons from Self-Determination Theory to Enhance Court Timeliness in Australia. 29 (3) (2020) Journal of Judicial Administration 101-117

Drawing on the experience in Australia of media criticism of judicial timeliness, this article uses the lessons of psychology and self-determination theory to suggest how judicial performance mechanisms should be designed to align intrinsic and extrinsic judicial motivation. Most crucially, measures of judicial performance need to be crafted with an acceptance of the fact that extrinsic motivation can lead to a reduction in the intrinsic motivation of judges. This means that court structures and processes should look to service judges' psychological needs of competence, relatedness and autonomy. These can, for example, influence more collaborative ways of assigning cases, self-regulated performance goals, and mechanisms to promote judicial collegiality and mentoring. Approaches that solely concentrate on externally derived key performance indicators are likely to be deleterious to judicial productivity and wellbeing over the long term and will negatively impact on the timeliness of courts.

Felicity Bell. – A Tale of Two Courts. 29 (3) (2020) Journal of Judicial Administration 118-135

For 20 years, two Australian Courts have been tasked with hearing family law matters: the Family Court and the Federal Circuit Court. In a jurisdiction dealing largely with relationship breakdown, relations between these Courts, and between they and the Federal Government, have not always been easy. But amid the politics of family law reform these spats raise larger questions about both the nature of family law and the nature of being a judicial officer. Specifically, the need for and importance attached to family law specialisation; and the relationships between trial and appellate courts, are considered.

Anita Mackay And Jacqueline Giuffrida. – Implications of The Royal Commission into Institutional Responses to Child Abuse for the Protection of Vulnerable Witnesses: Royal Commission Procedures and Introduction of Intermediaries and Ground Rules Hearings around Australia. 29 (3) (2020) Journal of Judicial Administration 136-154

The Royal Commission into Institutional Responses to Child Abuse (CSARC) concluded in December 2017 after engaging with thousands of vulnerable witnesses over a four-year period. The first implication of the CSARC for the protection of vulnerable witnesses is innovative Royal Commission procedures that may be adopted by future Royal Commissions. The second implication is changes to criminal procedure in the States and Territories. The CSARC made a number of recommendations aimed at protecting vulnerable witnesses during criminal trials. This article focuses on two that relate to intermediaries and ground rules hearings, and the significant variation between jurisdictions in their approach to implementation of the recommendations. This article therefore recommends best practice for the use of intermediaries and ground rules hearings that could logically be incorporated into the Uniform Evidence scheme.

Donald Speagle. – Independent Courts Governance in Victoria: Origins and Ideas from the United States. 29 (4) (2020) Journal Of Judicial Administration 157-173

Following the Commonwealth and South Australia, in 2014 Victoria became the third Australian jurisdiction to adopt a model of independent courts governance. Analysis of the intellectual history of that idea in Australia, and in Victoria in particular, demonstrates that the dominant influence was the model of self-governance of the federal courts in the United States. The objectives of self-governance in the United States federal court system were managerial – that is, to make court administration more effective and efficient – as much as, if not more than, constitutional – to enhance the independence of the judiciary. In addition, the reforms of court governance there were designed to ensure an integrated approach to the administration of the judicial branch as a whole. Despite the influence of the United States' approach in the earlier movement for independent courts governance in Victoria, the current Victorian legislation does not reflect these ideas.

Craig Westergard. – Haply a Minority's Voice May Do Some Good: Diversity at the United States Supreme Court. 29 (4) (2020) Journal Of Judicial Administration 174-188

Diversity improves decision-making and substantive outcomes. This finding has been demonstrated by numerous studies and its logical appeal is intuitive, since additional voices serve to increase the availability of information. Despite the clear benefits of diversity, the legal profession remains one of the nation's least diverse. Far from leading the way on this front, the United States Supreme Court is emblematic of the law's problems, and it generally lags behind. This article analyses the Supreme Court's decision-making before and after the appointments of Justice Louis Brandeis (the first Jewish member of the Court), Justice Thurgood Marshall (the first African American) and Justice Sandra Day O'Connor (the first female). It shows that the presence of a single, previously unrepresented group necessarily improves decision-making because it increases consideration of minority viewpoints. As such, the Supreme Court, Congress, government agencies, law firms, businesses and law schools in the United States and elsewhere should make increased efforts to promote diversity, and this article outlines several concrete steps the legal community might take to do so.

Ilana Bolingford, Mirko Bagaric, Melissa Bull, Dan Hunter And Nigel Stobbs. – Is Australia Ready for AI on the Bench?. 30 (1) (2020) Journal of Judicial Administration 3-18

The rapidly accelerating integration of artificial intelligence (AI) into our lives will soon affect courtrooms and other legal environments in Australia. However, critical threshold issues for a smooth integration of AI into court environments remain unexamined, including the psychological and attitudinal-readiness of the judiciary to work with algorithmic tools. This distinct gap in the literature means that we do not yet know: whether Australian judges understand AI; whether they trust it; whether they appreciate its potentials and risks or what might influence their attitudes; whether they are aware of the differences between automated and augmented decision-making; and what accountability and oversight mechanisms will be required. This article considers the likely barriers and risks to a successful integration of AI into the work of judges in Australia, based on research and experience in other jurisdictions – particularly the United States, where algorithms already play a significant role in facilitating judicial decision-making.

Amanda Clarke. – The Rehabilitative Ideal and the Realism of Drug Court Success. 30 (1) (2020) Journal of Judicial Administration 19-36

Drug courts were developed in the United States in the late-1980s as a response to the perceived ineffectiveness of traditional criminal justice responses to drug-related problems. Over the past 20 years drug courts have begun to emerge across the world. In Australia, the model was first adopted in New South Wales in 1999 and continues to gain popularity in most States. Drug court program evaluations routinely focus on recidivism rates as a key indicator of performance; however, this measure does not consider any other components that can result in a successful drug court outcome. This article presents

the methodology and analysis of research that sought to determine what other elements of the drug court process are linked to the successful completion of a drug court program. A documentary analysis was conducted of the operation and outcomes of Australian drug courts and thematic analysis of naturalistic observation data from drug court proceedings. The research conclusively identified one overarching theme – "the rehabilitative ideal" – and how it is linked to drug court success. In this vein, the article discusses a number of recommendations on how drug courts can be informed by evidence of best practice to enhance outcomes.

Dave McDonald, Jenae Carpenter And Natalia Hanley. – Allowing for Participants in Royal Commissions: A Scoping Review. 30 (1) (2020) Journal of Judicial Administration 37-48

This article examines Royal Commissions on the basis of participant experiences. Comprising individuals or groups whose experiences and insights are central to the work of a Royal Commission, they may appear due to their status as victims of crime, and/or in a professional or witness capacity. As a growing number of Royal Commissions have sought to emphasise participant experiences of harm, it is important to understand how individuals engage with and experience them. Barriers impacting participants in traditional criminal justice processes have been well documented, and participation in Royal Commissions has been a matter of emerging interest academically. However, these domains have not yet overlapped. This article seeks to address this oversight by drawing out in more explicit detail what is and is not known about barriers to participation in Royal Commissions. Examination of participant experiences can provide useful lessons for future inquiries; it may foster greater confidence among affected communities and thereby augment an inquiry's public legitimacy.

Jeremy Patrick. – Path Dependency, the High Court, and the Constitution. 30 (1) (2020) Journal of Judicial Administration 51-63

Path dependence is a concept that originally arose in the field of economics before gaining currency with political scientists and historians. The essence of path dependency is that temporality matters: once a decision is made, it often becomes "locked-in" and persists despite the existence of more efficient or otherwise better alternatives that could become apparent later. The tentative hypothesis advanced here is that the concept of path dependency is useful for understanding why some doctrines of Australian constitutional law have changed dramatically since first developed while others remain largely the same. An example of one arguably path-dependent line of doctrine and one arguably non-path-dependent line of doctrine are discussed and analysed to demonstrate the possibilities and limitations of the theory.

Julia Quilter, Luke Mcnamara, Tamara Walsh And Thalia Anthony. – Homelessness and Contact with the Criminal Justice System: Insights from Magistrates in Australia. 30 (1) (2020) Journal Of Judicial Administration 64-80

On a regular basis Australian Magistrates sitting in high caseload criminal courts are required to make important high-stakes decisions about a defendant who is homeless. As part of a national study of the relationship between criminalisation and homelessness this article reports the findings of qualitative interviews with 27 Australian Magistrates. Participants identified multiple challenges for judicial decision-making – about matters like bail and sentencing –where the defendant's homelessness, and associated complex needs and disadvantage, cannot be separated from their "offending" behaviour. Magistrates drew attention to a range of problems including: time pressures that prevented them from gaining a detailed understanding of the defendant's circumstances; and the conundrum of seeing a fine as the only suitable punishment for a person already experiencing severe socio-economic disadvantage. In addition to recognising the need for wider action to reduce the extent of homelessness, participants identified a range of possible reforms within the criminal justice system which could reduce the compounding effect

that people experience when homelessness brings them into contact with the criminal courts, including the adoption of therapeutic jurisprudence approaches.

Natalia Antolak-Saper. – Covid-19: An Exceptional or Surrounding Circumstance for the Purposes of Bail And Sentencing?. 30 (1) (2020) Journal of Judicial Administration 81-100

COVID-19 has had a significant effect, globally and domestically, on both individuals and institutions. One of these is the operation of the criminal justice system. Measures aimed at "flattening the curve" such as social distancing and lockdowns, have resulted in significant disruption to bail, criminal jury trials and prisons. Although courts have acknowledged that the pandemic will be an issue of concern, they have been understandably reluctant to express general statements of principle detailing how it should be considered by courts.

This article considers the impact of COVID-19 in the context of bail and sentencing, using the State of Victoria as an example. Through an analysis of Victorian Supreme Court bail and sentencing decisions between the period of February and August 2020, this article demonstrates that an overwhelming number of decisions categorise the pandemic as either exceptional or compelling circumstances for the purpose of bail, and as a mitigating factor for the purpose of sentencing. These decisions are of precedential value for lower courts and may also be relevant to other Australian and cognate jurisdictions. This analysis may also inform policymakers in developing criminal justice measures to appropriately deal with this and future pandemics.