

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 22, Number 4

April 2013

ARTICLES

Misconceptions or expert evidence in child sexual assault trials: Enhancing justice and jurors' "common sense" – *Annie Cossins and Jane Goodman-Delahunty*

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. 171

Mind the gap: Making evidence-based decisions about self-represented litigants – *Elizabeth Richardson and Tania Sourdin*

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". 191

Solution-focused court programs for mentally impaired offenders: What works? – *Michelle Edgely*

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. 207

The constitutionality of minimum mandatory sentencing regimes: A rejoinder – Andrew Hemming

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. 224

VOLUME 22 – 2012-2013

Table of Authors	237
Index	239