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ARTICLES

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

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

75

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

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

95

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

A constructive partnership between the Chief Justice and the Chief Executive Officer of a court enables that court to achieve and surpass its objectives. When working positively, that partnership is critical to a court’s effective administration, change performance, and ability to navigate complexity. This article looks to the study of effective partnerships, borrowed from the field of management, to bring new ideas and concepts to bear on the relationship. The article draws on research findings and partnership concepts from other

disciplines and professions. It identifies seven key partnership success factors, including trust and mutual respect, open and honest communication, emotional intelligence, effective change management, and conflict resolution. All are essential if the partnership is to navigate successfully the unique challenges of courts. 108

Who is the judge? A critical analysis of the discourse of disbelief – Dr

Pamela D Schulz, OAM

The care and protection of children in all aspects of their lives takes on a different turn when subjected to a custody battle in the Family Court. Often they are described as “tug of love” children in the press. But, as this analysis shows, it can be a “battle to be heard” by those in the position to make decisions about the welfare of children. This article reports a discourse analysis of an interview by a policeman and a child support officer of a mother who had reported abuse of her two daughters. The analysis demonstrates a clear mindset of disbelief of the mother and leads to concerns that a rush to judgment in an investigation might make difficult the work of courts relying on that information. 118

CASE NOTE

The Bernie Ecclestone case in Germany: Principled pragmatism – Dr Andrew

Cannon AM, FAAL 129