

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 28, Number 1

2018

EDITOR'S NOTE – *General Editor: Professor Gregory Reinhardt* 3

ARTICLES

Communicating the Right to Silence to Aboriginal Suspects: Lessons from Western Australia v Gibson – *Diana Eades*

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. 4

Police Interviews and Coerced False Confessions: Gibson v Western Australia (2017) 51 WAR 199 – *Joseph Briggs and Russ Scott*

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. 22

Invisible Women: Where Are All the Female Lawyers? – *Errol Chua*

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. 44

Aggravating or Mitigating? Comparing Judges’ and Jurors’ Views on Four Ambiguous Sentencing Factors – *Kate Warner, Caroline Spiranovic, Arie Freiberg, Julia Davis and Lorana Bartels*

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. 51