

# JOURNAL OF JUDICIAL ADMINISTRATION

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## ARTICLES

### **Legal Realism and Australian Constitutional Law – *Jeremy Patrick***

Our traditional understanding of judicial decision-making is that judges apply the law to a set of facts and reach a result. This is known as legal formalism. But what if this is backwards? What if the process of judicial reasoning is to decide on the result, and then rhetorically justify it with particular interpretations of legal rules and facts? This article applies the descriptive theory of legal realism in a particular context (Australian constitutional law) alongside a qualitative empirical study to help decide whether legal formalism or legal realism best explains High Court decision-making. ....

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### **Thank You for Being a Friend? Examining Social Media Friendship between Judicial Officers and Lawyers Post *Charisteads v Charisteads* – *Marilyn Bromberg***

The recent case of *Charisteads v Charisteads* concerned a judicial officer of the Family Court of Western Australia who communicated by text, telephone and in person with one of the lawyers appearing before him in an ex parte manner. These communications formed the basis of a successful ground of appeal in the High Court of Australia. While not addressing it explicitly, this case raises important questions regarding communications between judges and lawyers on social media. As such, this article considers whether judicial officers and lawyers can be “friends” on social media and, if they are, what effect that may have on judicial proceedings. While very general guidance exists on this issue, specific guidance for Australian judicial officers is needed to prevent a similar situation to *Charisteads* occurring in a social media context. ....

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### **The Discourse of Deception: Are the Media, the Community or Courts the Arbiters of Truth? – *Pamela DH Schulz OAM and Andrew Cannon AM FAAL***

Truth is an increasingly contested concept in the pragmatic relativism of our liberal democracy. Religious certainties appear to have retreated and a new public square lies within modern media and platforms ... it would appear from this study that the moral compass has been handed to courts for consideration of truth. The media dance with the fascination of celebrity and influencers on social media where narratives and stories are provided by private citizens and celebrities alike and in turn can encourage fakes and frauds. This study explores how the discussion about dishonesty in our community is being conducted in the public square by both mainstream media (including films and streaming services) and social media and the role of courts as the remaining moral compass in our society. ....

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