

CRIMINAL LAW JOURNAL

Volume 47, Number 6

2025

EDITORIAL – *Editor: Mirko Bagaric*

Crime without Punishment and the Scourge of Youth Violence 611

ARTICLES

Mr Big Policing Operations and the Big Public Policy Gap: An Improper Method of Investigation? – *Kyle Fox*

Undercover police officers, posing as gangsters, lure a suspect into joining their “gang”. However, to become an official member of that gang, the suspect is tricked into proving their trust and loyalty to Mr Big, the gang’s ultimate boss, by confessing to a serious crime they have committed. Once the confession is extracted, the suspect is arrested and that confession is used as evidence against them at trial. This article analyses Mr Big operations through the public policy lens of s 138 of the Uniform Evidence Act. This provision confers discretion upon the court to exclude evidence obtained illegally or improperly. As a matter of public policy, as distinct from an individual’s right to be treated fairly, this article argues that Mr Big operations are contrary to the minimum standards of acceptable police conduct. That argument is made in this article on the basis that Mr Big operations improperly subvert the right to silence. 613

“The Future’s Made of Virtual Insanity”: The Urgent Need to Modify Unjust Australian Post and Boast Laws – *Associate Professor Marilyn Bromberg* 635

Serious Criminal Business and Secure Communications – *Robert Shiels*

A “completely secure” means of communicating with others, for legitimate business reasons or otherwise, has been examined in criminal trials, appeals and proceeds of crime cases across several jurisdictions. The alleged technical perfection proved illusory. 653

Challenges of Effectively Cross-examining Child Witnesses – *Natalie Martschuk, Martine Powell, Robyn Blewer and Jane Goodman-Delahunty*

Perceptions of effective cross-examination of children sit on a spectrum as long as the bar tables that dominate adversarial courtrooms. At one end are views that “best-practice” cross-examination is whatever creates reasonable doubt; at the other are views that children can, and should, always be questioned in developmentally appropriate ways with the child’s wellbeing the priority. The present study explored this concept of “best-practice” cross-examination via interviews with judges, prosecutors, defence barristers, and academics. Participants unanimously acknowledged that definitions of best-practice cross-examination are complex, impacted by factors such as the rules of evidence and procedure; practitioner’s skills; duties owed to the court and client; and recently introduced special measures. Nevertheless, participants agreed there was substantial opportunity for skilled practitioners to challenge children’s evidence without exploiting their limited cognitive, emotional, and social abilities. 659

Expert Evidence on Coded Language: Admissibility, Consistency of Cases, Concept of Expertise – Noah Berry

Australian police and prosecutors use surveillance recordings of conversations, events, and telephone calls to investigate, prosecute, and prove serious criminal offences. Some of those recordings contain coded and ambiguous language, which is often used by criminals to disguise or conceal the topic of conversation. Prosecuting authorities often adduce evidence from police officers who claim expertise in identifying and interpreting conversations containing codes and ambiguous language. This article analyses the current approach to that evidence. It argues that courts do not have a complete concept of police-witness expertise and apply Australia's admissibility framework to their testimony inconsistently. In particular, I criticise the courts for failing to distinguish between the different types of evidence police-witnesses give, and for neglecting the conscious and unconscious role of contextual information in police-witness efforts to identify codes and attribute meaning to communications. 677