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ARTICLES

Non-adversarial approaches to criminal justice – Arie Freiberg

The purpose of this article is to attempt to identify the contours of various forms of justice collected under the broad term “non-adversarial”. It aims first, to determine the common themes, values and principles which may bring disparate practices together; and second, to recognise the reality of change in order to make sense of these social and legal experiments. It argues that not only does the criminal justice system overall not function adversarially for the vast majority of cases, but that changes in a number of areas have affected the adversarial paradigm in ways that require a fundamental re-examination of the operation of the courts, of the role of judicial officers and lawyers and, finally, of the way in which lawyers of the future are educated. 205

The Queensland Special Circumstances Court – Tamara Walsh

Following the model established in Melbourne, a “special circumstances list” commenced operation in the Brisbane Magistrates’ Court in May 2006. The list aims to provide an alternative to mainstream court processes and sentencing outcomes for defendants charged with minor offences who are homeless and suffering from mental illness or intellectual disability. This article reports on the results of an empirical study aimed at examining the early operations of the list in Brisbane. It demonstrates that the list has, thus far, enjoyed considerable success in providing a less intimidating court experience and more appropriate sentencing outcomes for the vulnerable people coming before it. 223

Enhancing communication with Australian and New Zealand juries: A survey of judges – James RP Ogloff, Jonathan Clough and Jane Goodman-Delahunty

Although juries have existed in Australia for more than 150 years, very little empirical evidence is available concerning their operation. This article reports the first in a series of studies aimed at investigating and enhancing judges’ communications with juries. Judges who preside over criminal jury trials (49 from New Zealand and 136 from Australia) completed questionnaires to gather information about their jury communication practices. Results reveal that practices are highly variable, particularly between Australia and New Zealand, but also across and even within States. Significant differences occurred concerning the average duration of the charge, whether judges provide (or allow) jurors to receive written or diagrammatic aids, whether jurors have access to the transcript, how jurors can ask questions, the scope of preliminary instructions on the law, and whether judges provide information about resolving disputations among jurors. Policy implications and the need for ongoing research are discussed. 235

Therapeutic jurisprudence in courts: Some issues of practice and principle – Andrew Cannon

The developing field of therapeutic jurisprudence gives rise to many difficult issues of practice and principle. In this article practical issues of the balance between rigour and

enthusiasm, the role of the magistrate, education and evaluation and resources are discussed. This leads to some suggestions for a more holistic approach for specialist courts, the need to pay better regard to family violence and victims' issues and their relationship to corrections departments and to provide specialist court programs in indigenous courts.	256
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