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ARTICLES

AGAINST JURY COMPARISONS

Gary Edmond

This article explains why jurors should not be invited, or allowed, to identify persons in crime-related images and sound recordings. It draws directly on scientific research, never seriously considered by Australian courts, which shows that ordinary people are unexpectedly error-prone at face and voice comparisons. The article rejects the longstanding legal commitment to the identification of unfamiliar persons in images and voice recordings being commonplace – that is resembling our everyday social interactions. It also explains how accusatorial trials generate cognitive biases (eg through expectation, suggestion and confirmation) that irreparably contaminate juror perception and cognition. Scientific research indicates that jurors are likely to identify the defendant even when the defendant does not feature in the images or recording. The article also explains why investigators (eg police and translators) should not be allowed to express their biased and inexperienced opinions in criminal proceedings. For, investigators are vulnerable to many of the same risks confronting jurors (and judges and appellate courts). 315

RETHINKING LAWYER IMMUNITY

Nicholas Saady and Professor Tania Sourdin

For many years, the Australian advocate immunity doctrine has prevented barristers and solicitor-advocates from being civilly sued in relation to their acts or omissions which are connected to court litigation or a court's determination of a case. The immunity doctrine has been recently criticised in Australia, and abandoned or modified in other common law jurisdictions. This article examines the nature, scope and application of the immunity doctrine in Australia, particularly in mediation. It then compares the Australian position to that in the United States, the United Kingdom, Canada and New Zealand. It also provides guidance to lawyers about dealing with the application of the immunity in practice, and proposes potential areas of reform to the current Australian law surrounding the immunity. 347

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