

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 21, Number 2

November 2011

ARTICLES

Statistics, damn statistics and sentencing – *Arie Freiberg and Sarah Krasnostein*

This article examines the conflict between the principles of individualisation and consistency in sentencing. While most sentencers adopt a pragmatic position between these two extremes, an “individualist” approach, exemplified by an “instinctive synthesis” methodology is the dominant sentencing paradigm. It underlies the ambivalence or antipathy of courts to a wider use of statistics. This article argues that this approach has encouraged an unpredictable sentencing system which produces unnecessary appeals and is lengthy and expensive. According more weight to the principle of consistency by recognising appropriate uses of statistical data may promote sentencing outcomes which reinforce the rule of law while reducing unjustified complexity in the sentencing task. This approach would not sacrifice discretion to individualise sentences but would bring information relating to current sentencing practices to bear on the process of sentencing in individual cases. In turn, appeals relating to the most common ground – manifest excess/leniency – may be reduced and, where they arose, be more transparent. 73

Defendants’ and criminal justice professionals’ views on the Brisbane Special Circumstances Court – *Tamara Walsh*

Problem-solving courts are said to bring about positive outcomes for defendants, and the community in the form of reduced recidivism. However, in order for these programs to be replicated effectively, the successful elements of the programs must be identified. This article reports on the results of a study at the Brisbane Special Circumstances Court, which was aimed at identifying which features of the court were intrinsic to its success. The availability of services, and the team approach of the court players, were considered critical to the court’s success by defendants and court staff. It was also found that, for defendants, caring relationships and a sense of belonging within the court are very important if they are to engage with the court. 93

Social policy information: Recent decisions of the High Court of Australia – *Andrew J Serpell*

Social policy information refers to information used by a judge to assist in determining the social, economic or other consequences of law developed through judicial decisions. Social policy information is sometimes referred to as a type of “legislative fact” or as a “social fact”. The Australian law regarding the judicial notice of social policy information is unclear. The High Court has not expressly acknowledged that it is permissible for judges to consider contentious social policy information in developing the law, although it seems clear the High Court does so in practice. In any event, natural justice requirements mean that the parties to proceedings should be given an opportunity to comment on any social policy information which the court proposes to use, at least where a reasonable argument might exist that the information is disputable or contentious. Three recent High

Court cases demonstrate several problems with the way social policy information is received and used in practice. Reference is made to various options for the reform of the current system for the reception and use of social policy information.	109
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