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CONSISTENCY AND SENTENCING

Hon J J Spigelman AC

Sentencing for crime involves weighing incommensurable and often contradictory objectives. One such tension is between the principle of consistency and the principle of individualised justice. Consistency is important for the maintenance of public confidence in the administration of justice. The identification of sentencing patterns depends on the transmission of the collective experience of judges. Sentencing statistics have a role to play, albeit a limited one. Maintaining nationwide consistency in sentencing for Commonwealth offences poses particular challenges. Judicial exchanges between courts may make a contribution in this regard. 450

REFORMING PARLIAMENTARY PRIVILEGE IN QUEENSLAND

Daniel Morgan

Recent legislative amendments, a political crisis and a Crime and Misconduct Commission investigation have revealed apparently inadvertent alterations to structures and mechanisms which historically have protected freedom of speech in Parliament and avoided institutional clashes between the courts and Parliament. The immediate political crisis was avoided, but the underlying legal tensions which might result in a future crisis remain unaddressed, despite proposals for law reform. 461

THE BLINDNESS OF THE EYE-WITNESS

Ian R Coyle, David Field and Glen Miller

A criminal trial is an attempt to recreate the past. It involves the presentation of physical evidence and eyewitness evidence. The scientific model has long been accepted in the presentation of physical evidence but not with eyewitness evidence. Although the courts have long recognised the potential for prejudice that can arise at each stage of the process of eyewitness identification, attempts to remedy this problem have been largely limited to giving judicial warnings and instructing jurors to apply their common sense and human experience. Yet, there are many occasions where common sense fails and there are many occasions where the results of eyewitness identification are counter-intuitive. All too often this has led to grave miscarriages of justice as, whatever warnings are given to a jury, the danger of misidentification remains. The time has come for the superior courts to revisit and carefully examine the very tenuous basis upon which expert evidence is rejected in cases where eyewitness identification is involved. 471

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