

CRIMINAL LAW JOURNAL

Volume 32, Number 4

August 2008

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ARTICLES

The urgent need for forensic excellence – Hon Justice Michael Kirby AC CMG

Forensic science has the potential to play a critical role in acquitting the innocent and convicting the guilty. It has played a spectacular defining role in a number of criminal cases. Yet, the role of forensic science at present remains patchy and its use in the criminal domain is erratic. To fulfil its promise, there are number of challenges that agents using forensic science need to address. This article sets out some of the challenges that need to be addressed by the newly established Bond Centre for Forensic Excellence in order for it to assume a leadership role in improving criminal justice outcomes in Australia. 205

The establishment of an environmental crime sentencing database in New South Wales – Justice Brian J Preston and Hugh Donnelly

Sentencing statistics for criminal matters dealt with by the Land and Environment Court in New South Wales are now accessible in graphical form on the Judicial Information Research System (JIRS). This database is the first of its kind, meshing the traditional JIRS sentencing database approach with an approach specifically tailored to environmental offences in New South Wales. Among other things, it reveals the key objective and subjective considerations of the sentencing court in determining the sentence imposed; the different components of the total penalty imposed including fines, other orders and costs orders; and covers the elements devoted to such matters as remediation, removal of economic gains and cost saving, restitution to communities and moral blame. It will have an influential effect on environmental sentencing in Australian jurisdictions as well as in other countries. 214

Application of addiction neuroscience to moral and legal responsibility: Explanations not exculpations – Sonja Brown

Neuroscience is a powerful tool in explaining human behaviour, including the behaviours of addiction. However, neuroscience may be too powerful in convincing society that addiction is a “brain disease” and encouraging the misinformed view that the illegal actions of addicts in seeking and using drugs are mechanisms of disease wholly beyond the control of the addict. A review of the neuroscientific evidence reveals that, although addicts may be presented with a difficult choice in refraining from illegal activities, they do retain the capacity to choose. Thus, there is no basis for the view that addiction ought to be treated as an exculpatory condition or a mitigating factor per se. The appropriate approach is to regard neuroscience as providing an increasingly valuable explanation for the potential presence of the relevant mitigating factor, the offender’s reduced capacity for rationality at the time of the crime. 239

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ISSN 0314-1160

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW