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Sentencing and disadvantage: the use of research to inform the court

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This article explores the promotion of justice outcomes in sentencing courts through reliance on evidence-based research derived from major reports and leading academics with a focus on the new online research-focused resource, the *Bugmy Bar Book*.

Introduction

Courts are faced, relentlessly, with the task of sentencing offenders who present with a background of disadvantage and deprivation. Their experiences of disadvantage potentially affect offenders' mental, cognitive and emotional development, and may underpin behaviour contributing to offending. *Bugmy v The Queen*¹ confirmed that an offender's background of deprivation should be taken into account in sentencing, subject of course to being able to "point to material tending to establish that background".² An offender's history of disadvantage is relevant to the assessment of the moral culpability of the offence. It may justify moderating the application of specific and general deterrence.³ While it is for the court to assess an offender's background when applying sentencing principles,⁴ that evaluation is heavily dependent on the quality and depth of the information before the court.

The *Bugmy Bar Book*⁵ does not purport to convert the complex task of sentencing into a simple one. It does not seek to replace expert reports. However, where a

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1 *Bugmy v The Queen* (2013) 249 CLR 571 (*Bugmy*).

2 *ibid* at [41]. The "application of the *Bugmy* principles is not discretionary": *R v Irwin* [2019] NSWCCA 133 at [3] per Simpson AJA.

3 *Bugmy*, above n 1 at [44]–[45] also discusses conflicting purposes of punishment in the context of considering a person's deprived background.

4 *Bugmy*, above n 1 at [46].

5 Hosted on the Public Defenders website at www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book.aspx, accessed 28/5/2020; also available on JIRS through "Publications/Bench Books and References" menu and the Commission's website at www.judcom.nsw.gov.au, accessed 28/5/2020.

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background of disadvantage such as parental incarceration is established in the subjective case, the *Bugmy* Bar Book research informs the court about the meaning and potential impact of the offender's disadvantage.⁶

The resource consists of a series of short chapters of research relating to social disadvantage and deprivation. They include experiences specific to Aboriginal and Torres Strait Islander peoples,⁷ as well as broader topics. The Bar Book was launched on 8 November 2019. It is conceived by the *Bugmy* Bar Book Steering Committee as a practical way to address extra-judicial calls from the bench to present informed high quality material to assist courts in applying sentencing principles appropriate to an offender with a history of disadvantage. In part it draws inspiration from the context described by Fullerton J in *Perkins v R*:⁸

the insidious effects of exposure to family and domestic violence on children in their formative years, and the potential for that exposure to play out in unforeseen ways as a young child develops from adolescence into adulthood, *are well researched and documented.* (Emphasis added.)

The value of research in sentence proceedings⁹

The prevalence and diversity of disadvantage speaks to the need for a deeper understanding of the impact of these experiences on offenders. However, sentencing courts are often left to grapple with making determinations in the absence of adequate material. They must synthesise "competing features" in an attempt "to translate the complexity of the human condition and human behaviour to the mathematics of units of punishment".¹⁰ *DPP v Radulovic*¹¹ illustrates the challenges facing a court when presented with a complex offender history. In *Radulovic*, Henson J examined the context of an offender potentially impacted by the failure of his parents' marriage "and the descent into drug abuse and crime by his mother resulting in her incarceration" as aspects "that in the experience of courts often act to diminish moral and ethical restraint".¹² His Honour remarked that:¹³

the Court would have been greatly assisted by a psychiatric or psychological report. I understand that the extremely restrictive bail conditions imposed on the offender did not assist with enabling this avenue to be pursued. Without such material both the Court and, as a consequence, the offender are at a disadvantage. Unassisted the Court is left to do the best it can in assessing whether the offender's history lends itself to the likelihood that his level of moral culpability is reduced.

The *Bugmy* Bar Book's research chapters on parental incarceration and early exposure to drug and alcohol aim to assist the court to assess the impact of offenders' histories in cases such as this one. The chapters also assist the court by providing material for defence practitioners to better understand and explore their clients' experiences which may improve the quality of the material put before the court in the subjective case. A key feature of the Bar Book is the rigorous research and review process in compiling each chapter.¹⁴ These processes ensure that the research extracted in each chapter is accurate, reliable and contemporary.

Receiving research in court

It is no longer novel for criminal courts to receive and rely upon research explaining the likely effects of categories of disadvantage.¹⁵ To illustrate, in *Kentwell v R (No 2)*, Rothman J applied the research of Professor Baumeister relating to the effects of social exclusion. Individualised evidence demonstrating social exclusion made the research applicable:¹⁶

The studies by Professor Baumeister, reference to which is contained in the judgment in *Lewis*, make clear that such extreme social exclusion will likely result in anti-social behaviour and most likely result in criminal offending. However, in each case, *there must be evidence to suggest the application of these principles and the effect of the exclusion.* In this case, the evidence in relation to the appellant of that factor is substantial. (Emphasis added.)

Rothman J, having referred to the pre-sentence report which detailed substantial evidence of social exclusion on account of the offender's Aboriginality, said:¹⁷

6 "Incarceration of a Parent or Caregiver", Bar Book project at www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book/parental-incarceration.aspx, accessed 28/5/2020. A legal representative may support Bar Book research with an expert report.

7 Such as "Stolen Generations and Descendants" and "Cultural Dispossession".

8 [2018] NSWCCA 62 at [99]. Recognition of the value of reliable research to support appropriate judicial findings in sentencing is also found in s 25AA(3) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (in relation to trauma occasioned to victims).

9 Guidance for practitioners is available on the *Bugmy* Bar Book web pages, above n 5: S Beckett, "The Bar Book project: presenting evidence of disadvantage", paper to the Public Defenders Criminal Law Conference, 2019; R McMahon, "The Bar Book project: making use of the Bar Book in sentence and section 32 proceedings", paper to the Legal Aid Criminal Law Conference, 2019.

10 *Weininger v The Queen* (2003) 212 CLR 629 at [24].

11 [2019] NSWLC 1.

12 *ibid* at [18].

13 *ibid* at [19].

14 Each chapter comprises of extracts from major reports and leading research in peer reviewed journals. The extracts are compiled under the supervision of a senior legal academic or legal practitioner from the Bar Book Steering Committee. The chapter is then assigned to an expert in the field for comment and guidance on ensuring accuracy, comprehensiveness and reliability of the research, as measured against the general body of research accepted in the field. The chapters are then reviewed by two members of an independent advisory panel. All chapters which relate to Aboriginal and Torres Strait Islander experiences are expertly reviewed (and in many cases researched) by Indigenous researchers/experts and Indigenous members of the advisory panel.

15 *R v Lewis* [2014] NSWSC 1127; *Kentwell v R (No 2)* [2015] NSWCCA 96; *R v Munro* [2018] NSWDC 331.

16 *Kentwell v R (No 2)*, *ibid* at [94]. See also *R v Rowe* [2019] NSWSC 1592.

17 *Kentwell v R (No 2)*, above n 15 at [90]–[92]. See also S Rothman, "Disadvantage and crime: the impact of *Bugmy* & *Munda* on sentencing Aboriginal and other offenders", address to the Public Defenders Criminal Law Conference, 18 March 2018, at 10 at: www.publicdefenders.nsw.gov.au/Documents/Disadvantage%20and%20Crime.pdf, accessed 28/5/2020.

I proceeded in *Lewis* to rely upon studies in the United States of America relating to the effect on behaviour of social exclusion and discrimination ...

Those studies disclose, somewhat counter-intuitively, that social exclusion from the prevailing group has a direct impact and causes high levels of aggression, self-defeating behaviours, and reduced pro-social contributions to society as a whole, poor performance in intellectual spheres and impaired self-regulation. While intuitively, for those who have not themselves suffered such extreme social exclusion, the response to exclusion would be greater efforts to secure acceptance, the above studies make clear that the opposite occurs ...

Thus, a person, such as the appellant, who has suffered extreme social exclusion on account of his race, even from the family who had adopted him, is likely to engage in self-defeating behaviours and suffer the effects to which earlier reference has been made. This is how the appellant has been affected. (Emphasis added.)

Matters of proof — flexibility in sentencing

First principles guide the avenues for receiving high quality research in sentence proceedings and the roles of prosecutors and defence practitioners in assisting to bring such research before the court. Most prominent is the expression by authorities of a clear desire for informality and flexibility regarding matters of proof in sentencing courts. This is illustrated further by the default position of the *Evidence Act* 1995 (NSW) (the Act) that, prima facie, its provisions do not apply to sentence proceedings. Indeed, the Act only applies under s 4(2) of that Act.¹⁸

- 4(2) If such a proceeding relates to sentencing —
- (a) this Act applies only if the court directs that the law of evidence applies in the proceeding, and

- (b) if the court specifies in the direction that the law of evidence applies only in relation to specified matters — the direction has effect accordingly.

As the High Court has observed, there exists “a background of well-known and long-established procedures in sentencing hearings, in which much of the material placed before a sentencing judge is not proved by admissible evidence”.¹⁹ While sentencing judges should be “fully informed”, Giles JA in *R v Bourchas* endorsed the degree of informality applying in such proceedings, observing that:²⁰

[u]nnecessary insistence on the strict rules of evidence is in no one’s interests in sentencing proceedings, and the customary co-operation between the Crown and the offender and making of admissions by the offender should so far as possible be insisted upon.

When might it be desirable or obligatory for the Evidence Act to apply?

A direction must be made pursuant to s 4(2) if ss 4(3) or (4) apply. This requires a direction if the fact to be proved is “significant” or if such a direction is “in the interests of justice”.²¹ Observations from the ALRC sentencing report²² give some further guidance on these criteria. First, a primary consideration is to avoid “inaccurate or unfairly prejudicial material, for example, that, ‘the defendant is an associate of known criminals,’”²³ and otherwise where the significance of the facts to be proved means justice requires strict proof.²⁴ The ALRC added a self-evident, but not insignificant reminder that sentencing determinations differ in important respects from the trial. It elaborated that where the rules of evidence do not apply, the absence of “formal rules of evidence ... will not mean that the sentencing court will exercise its discretion capriciously or arbitrarily. Decisions as to evidence will still have to be made rationally and fairly”.²⁵

18 We have put to one side the application of s 4(2) *Evidence Act* where statute permits a sentencing court to inform itself as it thinks fit, eg *Talukder v Dunbar* (2009) 194 A Crim R 545. In relation to s 32 *Mental Health (Forensic Provisions) Act* 1990 (MHFP Act) applications, s 36 provides “for the purposes of this Part, a Magistrate may inform himself or herself as the Magistrate thinks fit”. Note that in *Weininger v The Queen*, above n 10, Gleeson CJ, McHugh, Gummow and Hayne JJ at [16] considered a statutory obligation on a sentencing court to consider such matters “as are relevant and known to the court” (as opposed to “proved in evidence”: see *Crimes Act* 1914 (Cth), s 16A(2)). The court, applying *R v Storey* [1998] 1 VR 359 at 372, expressed a strong disinclination to require formal proof as a general rule, noting that it was important to avoid “excessive subtlety and refinement”: at [24].

19 *Weininger v The Queen*, above n 10 at [21].

20 (2002) 133 A Crim R 413 at 428. See also *Jones v Booth* [2019] NSWSC 1066 where Johnson J considered s 32 MHFP Act. Section 32(1)(b) MHFP Act provides a broad discretion to the magistrate by allowing the consideration of “relevant evidence” when considering diversion pursuant to s 32: “on an outline of the facts alleged in the proceedings or such other evidence as the Magistrate may consider relevant.” Johnson J at [54] expressly accepted the observations made in *Lam v R* [2015] NSWCCA 143 at [75] that “[i]t is trite to note that the *Evidence Act* 1995 does not apply in sentencing proceedings unless a direction is given to that effect, and that there is a degree of flexibility in sentencing proceedings as to the manner in which evidence may be given”.

21 *Evidence Act*, s 4(3) relates to “a direction in relation to the proof of a fact” that is or will be “significant in determining a sentence to be imposed”. This is not relevant to reliable research, which is adjudicative. Section 4(4) provides “[t]he court must make a direction if the court considers it appropriate to make such a direction in the interests of justice”.

22 ALRC, *Sentencing*, Report 44, 1988, at www.austlii.edu.au/au/other/lawreform/ALRC/1988/44.html, accessed 28/5/2020.

23 *ibid* at [186]. The ALRC concluded that applying the rules of evidence by default had advantages, but they were outweighed by disadvantages.

24 This appears to foreshadow *Evidence Act*, ss 4(3) and 4(4). This guidance was offered in the context of the ALRC sentencing report traversing arguments regarding whether the law of evidence should apply in sentencing. At this time, the equivalent of s 4 in the ALRC draft Evidence Bill, cl 11(2), did not empower courts to direct that rules of evidence apply: see ALRC, *Evidence*, Report 38, 1987, Appendix A at www.austlii.edu.au/au/other/lawreform/ALRC/1987/38.html, accessed 28/5/2020.

25 ALRC, *Sentencing*, Report 44, above n 22, at [186].

Relevance

Relevance is the core consideration irrespective of whether or not a court makes a s 4 direction. The requirement of relevance is not demanding. “Evidence that is of only some, even slight, probative value will be prima facie admissible, just as it is at common law”.²⁶ In the *Bugmy Bar Book* context, relevance requires subjective evidence to be before the court of disadvantage relevant to the research relied upon which then allows the court to have regard to the research when applying sentencing principles, including the *Bugmy* principles.²⁷

Should the Act apply, s 79 will not apply to the portion of the chapters that relate to the reporting of data. To the extent that any opinions arise within the research, the processes which ensure leading reports and research are extracted and expertly reviewed should meet the requirements of s 79. It would be undesirable to require leading researchers to attend court to give evidence in the context of the clear intention of superior courts to allow flexibility in receiving sentence material. Additionally, the time, expense and delay incurred would likely be seen to be inconsistent with the interests of justice (s 4(4)). Any issues raised in relation to reliability are not relevant to admissibility but rather the weight that may be placed on the opinion.²⁸

Judicial notice — s 144 of the Evidence Act

If a court makes a s 4 direction with respect to proof of a fact, s 144 is the recommended pathway for receiving reliable and credible research. Section 144(1) creates the threshold requirement of “common knowledge”, namely that “proof is not required about knowledge that is *not reasonably open to question* and is ... *capable of verification by reference to a document the authority of which cannot reasonably be questioned*”. (Emphasis added.) Section 144(2) permits “[t]he judge [to] acquire knowledge of that kind in any way the judge thinks fit” and 144(3) provides that “[t]he court ... is to take knowledge of that kind into account”.

Heydon J in *Aytugrul v The Queen*²⁹ observed that “the teachings of the expert material”, without calling expert witnesses, is limited to “matters of common knowledge” within s 4(1).³⁰ This permits in the appropriate circumstances for s 144 processes to fill the gap created by the absence of an expert witness. As Heydon J indicated, this includes expert literature that may assist to guide the application of sentencing rules and principles, such as the role of expert writings in sentencing child sexual assault offenders.³¹ As long as parties adhere to procedural fairness processes,³² the potential for expert writings like those compiled in the *Bugmy Bar Book* to be admitted in this way is clear.³³ Heydon J observed that:³⁴

sometimes general references are made by courts to the causes of psychiatric injury and the diagnosis of psychiatric illness. Sometimes more specific reasoning is propounded after the court has had recourse to expert literature. Medical works have been taken into account in assessing the causation and foreseeability of psychiatric injury. Works on psychology have been considered in formulating rules about identification evidence, both directly and indirectly. (Citations omitted.)

Prosecution and defence considerations

The roles of defence representatives and prosecutors regarding placing Bar Book chapters, or portions of them, before a sentencing court is significant. For example, a sentencing court is entitled to accept evidence where parties do not contest reliance on it.³⁵ Further, prosecutors “must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court”.³⁶ Fairness and justice require that prosecutors apply judgment, or informed discretion, to the evidence to be led, where that evidence is to come from, and the submissions to be made. Of course, prosecutors are duty-bound to act fairly and with the intention of achieving a just outcome in criminal proceedings.³⁷ Defence practitioners are tasked with preparing and adducing evidence of the offender’s experience of deprivation. Defence practitioners

26 *IMM v The Queen* (2016) 257 CLR 300 at [40].

27 For example, evidence of social exclusion from the pre-sentence report in *Kentwell v R (No 2)*, above n 15 at [90]–[92], [94] and the application of research of the impacts of family violence, see *R v Munro*, above n 15.

28 *IMM v The Queen*, above n 26 at [51]–[52], [54], [58]; *Tuite v R* (2015) 49 VR 196.

29 (2012) 247 CLR 170.

30 *ibid* at [69].

31 See for example, *Ryan v The Queen* (2001) 206 CLR 267 at [42], [44], [51] where reliance was placed on B Glaser, “Paedophilia: the public health problem of the decade”, in Australian Institute of Criminology (AIC) (1997) *Paedophilia: Policy and Prevention* 4; J Nicholson, “Defence of alleged paedophiles: why do we need to bother?” in AIC (1997) *Paedophilia: Policy and Prevention* 44; K Miller, “Detection and reporting of child sexual abuse (specifically paedophilia): a law enforcement perspective” in AIC (1997) *Paedophilia: Policy and Prevention* 32.

32 Procedural fairness would dictate disclosing to the prosecution a party’s intention to rely on publications, and also providing copies of the publications in advance.

33 See above the discussion of the compilation and review process in the Bar Book.

34 [2012] HCA 15 at [71]. His Honour also noted at [71] that the court has relied on criminological research (*Pollitt v The Queen* (1992) 174 CLR 558 at 615) and child behaviour (*Jones v The Queen* (1997) 191 CLR 439 at 463) and “expert material bearing on the psychological fact must have potential significance” in grounding the court’s recognition of the “inherent frailties of identification evidence”.

35 See ALRC, *Same crime, same time: sentencing of federal offenders* [2006] ALRC 103 at [13.72] at www.alrc.gov.au/publication/same-crime-same-time-sentencing-of-federal-offenders-alrc-report-103/, accessed 28/5/2020. There is also authority under the *Evidence Act* that otherwise inadmissible evidence is admissible if it was not objected to at trial: *Aytugrul v The Queen*, above n 29 at [39], citing *Dhanhoa v The Queen* (2003) 217 CLR 1 at [18]–[22].

36 *Legal Profession Uniform Conduct (Barristers) Rules* 2015, r 83. See also *HT v The Queen* [2019] HCA 40 at [59].

37 *Whitehorn v The Queen* (1983) 152 CLR 657 at 675. Prosecutors are required to assist the court to avoid appealable error, especially in sentence proceedings: *Legal Profession Uniform Conduct (Barristers) Rules* 2015, r 95.

also have a duty to ensure procedural fairness by disclosing to the prosecution a party's intention to rely on publications.³⁸ Although (it must be said) there is no specific obligation directly placed upon a prosecutor to seek and present evidence of social disadvantage and deprivation relevant to a convicted person on the question of sentence, the general and strongly mandated duties of fairness, impartiality, justice and service in the public interest ought to cause prosecutors to allow evidence of this nature to be presented on behalf of the accused where relevant. Those features of prosecutorial practice necessarily require that prosecutors be kept informed of matters relevant to enabling them to meet those standards, including from specialised research into topics of relevance to their practices and to those with whom they are dealing.

Defence representatives have a responsibility to present a full picture of their client's background. The quality and depth of the evidence tendered on behalf of the offender will have a direct bearing upon the type of sentence option imposed and/or the length and structure of the sentence. The nature of the evidence will also determine the relevance of research relating to the likely impacts of the offender's history of deprivation.

Conclusion

The *Bugmy* Bar Book contains well-credentialed, expertly-reviewed research, compiled with guidance from independent experts and a multi-disciplinary team of psychologists,

academics and senior legal practitioners. It has the capacity to equip judges and both sides of the Bar table with a sophisticated, accurate understanding of how experience of deprivation may impact upon an individual and thus to assist the courts to give "full weight" to an offender's background when applying the principles required by *Bugmy*.³⁹ This in turn may assist when tailoring sentencing outcomes for vulnerable offenders to support rehabilitation and contribute to safer communities.

It is clear that other crucial changes to law, policy and funding decisions are needed to meaningfully address the unacceptable overrepresentation of Aboriginal and Torres Strait Islander people in the justice system. This includes the implementation of the many important recommendations of the ALRC's 2018 *Pathways to Justice* report⁴⁰ which, amongst other things, support the establishment of Aboriginal Sentencing Courts such as the much needed Walama Court in the NSW District Court, facilitating the preparation of Indigenous Experience reports, committing to justice reinvestment, improving access and expanding the geographic reach of culturally appropriate community-based options. Credible and reliable research has an important role in assisting the court and it will continue to be enhanced as commitments are made to implement other important reforms which foster equality before the law.

38 For ease of service, the Bar Book chapters are available online with hyperlinks to the source publications, where available.

39 *Bugmy v The Queen*, above n 2, or applications pursuant to s 32 MHFP Act.

40 ALRC, *Pathways to Justice — Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133, 2018, at www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/, accessed 28/5/2020.

Judicial note about the *Bugmy* Bar Book project

Her Honour Judge Sophia Beckett*

The *Bugmy* Bar Book provides a valuable resource that can assist practitioners and judicial officers to be better informed and better equipped when sentencing Indigenous and other offenders who have suffered deprivation and/or disadvantage in their lives.

Publications available from the *Bugmy* Bar Book (Bar Book) online resource are now regularly finding their way before courts in sentencing proceedings in NSW and other Australian jurisdictions. The material provided by the Bar Book can be relevant to determining how an individual's experience of deprivation and/or disadvantage may be taken into account on sentence in circumstances where a party has tendered evidence relevant to establishing that background.

In accordance with principles enunciated by the High Court of Australia in *Bugmy v The Queen*,¹ such material may assist in the application of sentencing principles including in the assessment of an offender's moral culpability, the weight to be given to general and specific deterrence and

in arriving at the appropriate penalty, including structuring a term of imprisonment or shaping appropriate conditions or orders.

For some time, members of the judiciary have sought assistance from the parties in sentence proceedings in respect of the preparation and the tender of evidence that established an offender's background. The Bar Book has initiated training among the profession to encourage the presentation of an offender's narrative, or "voice", into the court room, particularly as concerns Indigenous offenders in the absence of legislation providing for the preparation and presentation of *Gladue*² background reports, such as are in use in Canada.

* Judge of the District Court of NSW.

1 (2013) 249 CLR 571.

2 *R v Gladue* [1999] 1 SCR 688.

Having established background, the Bar Book takes the next step of providing a comprehensive body of recognised research which assists in the understanding of the impact of that background on the individual. Some of the heads of disadvantage covered to date include: fetal alcohol spectrum disorders; exposure to domestic and family violence; incarceration of parents and caregivers; hearing impairment; homelessness; out-of-home care; childhood sexual abuse; early exposure to alcohol and other drug use; and stolen generations and descendants. Chapters on refugee background, child abuse and neglect, social exclusion and grief and loss are still in production.

The Bar Book provides ready access to a wealth of up-to-date and nationally and/or internationally recognised research and reports. The material appears to be uniformly structured across the chapters addressing: the prevalence of the form of disadvantage; the impact of that disadvantage on cognitive and other development of the individual; established links between that form of disadvantage and involvement with the criminal justice system; as well as any recognised treatment in respect of exposure to that disadvantage. The chapters are rigorously reviewed by leading researchers and experts in the particular field of disadvantage to ensure accuracy, comprehensiveness and reliability of the research cited.

The article by Nicholas Cowdery AO QC, Professor Jill Hunter and Rebecca McMahon in this bulletin outlines the procedural landscape concerning issues relating to the admission of this material before sentencing courts.

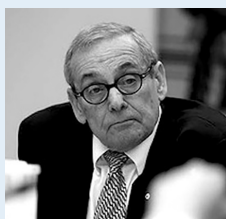
The Bar Book itself is readily accessible to all members of the legal profession and the judiciary directly on the Public Defenders website³ or via the Judicial Information Research System (JIRS) and the Judicial Commission of NSW website.⁴ The Bar Book provides chapters concerning the head of disadvantage with hyperlinks to the base studies and research publications, and also provides a useful summary of case law where particular heads of disadvantage have been recognised and taken into account on sentence, as well as one-page summaries of the particular type of disadvantage designed for economic access to the nub of the content and its relevance to sentencing principles. The resource is a useful addition to the *Equality before the Law Bench Book*, an online publication on the Judicial Information Research System and on the Judicial Commission's website.

The Bar Book is a welcome resource to the profession and judiciary alike, assisting us to keep informed of the most up-to-date and recognised studies concerning the impact of particular kinds of disadvantage on the individual. It is not a resource solely for the defence and it should not be assumed that the information contained in the various chapters will necessarily result in some form of leniency for an offender. Whether such material has relevance to a sentence will be dependent upon a party seeking to establish by evidence that individual's background and experience.

3 At www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book.aspx, accessed 28/5/2020.

4 To access the book on JIRS, click on "Publications" then "Bench Books and References" or the book is available on the Commission's website at www.judcom.nsw.gov.au/the-bar-book-project, accessed 28/5/2020.

Obituary



Vale the Honourable David Levine AO RFD QC

It is with regret the Commission notes the recent death of the Honourable David Levine AO RFD QC, judge of the District Court 1987–1992 and the Supreme Court 1992–2005; Chair of the Serious Offenders Review Council and Inspector of the Police Integrity Commission and ICAC; and a member of the NSW Navy Legal Panel.

Online COVID-19 resources on our website and JIRS

To assist judicial officers and legal practitioners, we have created a COVID-19 page on our website to make a number of Judicial Information Research System (JIRS) updates publicly available at www.judcom.nsw.gov.au/covid-19-resources/. This month, this page has been updated with relevant decisions, legislation and Lawcodes/penalties for breaches of relevant offences

For JIRS subscribers, recent updates on the JIRS homepage include information for judicial officers and legal practitioners regarding the COVID-19 pandemic with links to resources including recent law items dealing with relevant legislative instruments and court decisions.