

Getting it right

Juries in criminal trials

By Margaret Cunneen

In the generation or so that I have worked under the scrutiny of jurors in criminal trials, tattoos, body piercing and grunge dressing have become mainstream. What's that in the hand of the guy with vermillion, Araldited hair, fishing tackle through his face and a rodent on his shoulder? Oh, of course—it's *The Financial Review*.

Twenty years ago you could be certain you would not be chosen on a jury if you dressed in jeans. Now the only item of clothing guaranteed to induce the word 'challenge!' from the lips of a barrister in a criminal trial is a T-shirt emblazoned: 'BRING BACK CAPITAL PUNISHMENT'.

This change is largely societal. Dress codes in all areas have relaxed and respect for individuality has eclipsed them. The rise of scientific and technologically based evidence, as opposed to evidence which depends upon the credibility of a witness, also means that it is much less important that the jury members be obviously sympathetic, or obviously antagonistic, as the case may be, to the police whose investigation has led to the criminal trial in which they will deliberate.

Regardless of dress—or, for that matter, race, socio-economic background or educational attainment—juries are, overwhelmingly, getting it right. The huge strength of the jury system is in the random selection of members of the general public who together represent the views, attitudes and beliefs held more widely in the general community. A jury's function is to determine what facts have been established. Its qualifications and capacity for achieving this must, generally speaking, be much greater than it is for a single judge. A legal education is not required in a factual analysis of the

evidence in a criminal trial. A joint decision of 12 ordinary people sees through the rhetoric and softens the sharp edges. It gives to the community a confidence in the ultimate decision, guilty or not, which would be less likely to be forthcoming from the decision of a single judicial officer.

Juries are becoming more cohesive. This is partly explicable by a growing tolerance for other human beings that we are enjoying as a civilised society. The generation gap, for example, has largely faded into history. Whether it is because of the shift in the nature of evidence in criminal trials or because of the egalitarianism within our modern communities, it is no longer common to see juries split into two groups.

Generally it is easy to work out what is going on in jury rooms. Similar questions are asked by juries in trial after trial. The diligence of juries and their earnest desire to conform to the directions that are given to them is enormously gratifying. On the first afternoon of a trial some years ago, the judge told the jury not to go home via a particular hotel. At the end of the week, one juror asked whether she was permitted to drink alcohol at her sister's wedding the following day. The judge assured her that that would not be inappropriate and added: 'I only suggested that you by-pass the pub opposite because I thought you'd see the Crown Prosecutor there'.

Sometimes it is impossible to divine the reason for a particular request. About seven years ago I was doing a murder trial in King Street Court 3 in Sydney. The trial had been set down for four weeks and the jury had been told, at the start, that this would be its likely duration. The trial proceeded more quickly than expected with the evidence concluding in two weeks.



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The case was, to my mind, enormously compelling and jury deliberations were expected to be relatively brief.

After the jurors had been out for two days, a most unusual request was received from them. They did not wish to be supplied with any more food or refreshments. At first the judge and counsel thought that this request presaged an imminent verdict. It was not the case. Each day the jury was invited to resume the usual rations but each day declined.

We lawyers were baffled. Although we know that the fare supplied by the state for the consumption of jurors is fairly pedestrian, 2pm is still the most common time to receive a verdict because they invariably want to stay for lunch.

Finally, on the last day of the four week period originally allotted for this trial, but in the morning, a note was received indicating that the jury had agreed upon its verdict. The note went further. It explained that one juror, who happened to be unemployed, had declared at the start of deliberations that she did not wish to rush because she had already determined how she would be spending her four weeks' allowance for jury service. She had also enthusiastically endorsed the quality of the cuisine lovingly provided by the government contractors. This was her mistake. Her fellow jurors thought that if they eschewed the delicacies offered and brought in lunches from home, she might be more amenable to adding her vote to the verdict agreed upon by the other 11 on the first day. It didn't work.

Although it may not seem to follow from that experience, it is undoubtedly desirable that consideration be given to paying jurors fees that are more commensurate with reasonable wages. Serving on a jury always causes disruption to one's life and requires a substantial commitment intellectually, emotionally and in terms of human relations. Trials, unfortunately, are considerably longer than they were a generation ago. While I cannot commend highly enough the quality of the jurors I have worked alongside in the pursuit of justice, the largest possible pool of potential jurors must be encouraged. This is not so much to try to attract people in higher paid work but to share the burden around so that the same people are not returning time after time.

Studies of jury patterns and the experience of individual jurors show that jurors interpret what they see and hear in a trial through the prism of their own knowledge, experiences, attitudes, expectations and, indeed, biases. So, I would suggest, do judges. We are so privileged to have a system that draws from the community a large number of disparate citizens to determine the facts in criminal trials. The natural biases of each individual are diluted and balanced one with the other. The common sense, wisdom and life experience of 12 people independent of the parties or their representatives consolidates in a tribunal upon the judgment of which society can depend.

It is fundamental to the survival of the jury system that appellate courts maintain a healthy respect for the overwhelming sense of responsibility and the meticulous observation of judicial directions of the vast majority of jurors. It is very clear from working closely with juries that they are resolutely determined to apply the law as given to them and to conduct themselves appropriately. It is essential that our legal institutions support and guard against any erosion of the jury system so that our community can continue to participate in—and therefore have confidence in—the administration of the criminal law.