

CONFERENCE

Confidence in the Courts

9–11 FEBRUARY 2007 | CANBERRA



Jurors as the Courts' Ambassadors to the Community

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Juries Commissioner, Victoria

Introduction:

Good afternoon ladies and gentlemen, I have been the Victorian Juries Commissioner for 5 years. The Office of Juries Commissioner is unique in that, unlike the other legal jurisdictions of Australia where the jury system is managed and administered by the Sheriff. In Victoria, the responsibility for managing and administering the jury system in Victoria rests with me. Accordingly, this role has given me the opportunity to experience first hand not only how the jury system works but also how important juries are to our criminal justice system, and to our democratic way of life.

In preparing for today it quickly became evident that I could not discuss the premise that *“jurors could be the courts’ ambassadors to the community”* without considering it within the context of the elements which constitute our democracy. That is, the government, the executive, the judiciary, and the role that an informed citizenry has in maintaining and protecting our democracy. I did however, have to keep reminding myself that I would be speaking to you about jurors as the courts’ ambassadors to the community and should therefore resist the temptation to embark upon an intellectual discussion about democracy.

So today I will focus on what I, and more esteemed individuals than I believe, and that is, that the right to trial by Jury is one of the most important parts of a democratic way of life – it exists to protect the individual’s rights and involve the community in the administration of justice, and it ensures that the application of the law is consistent with community conscience. The jury system and therefore juries, which are made up of ordinary citizens provide a formal mechanism that links the community to the criminal justice system.¹

Section 80 of The Australian Constitution provides a right to trial by jury in relation to federal offences charged on indictment. In Victoria, the right to trial by jury is further supported by several sections within the Victoria Crimes Act 1958, which in summary, states that an accused who pleads “not guilty” after having been arraigned on any indictment or presentment :

“... shall without further form be deemed to have put himself upon the country for trial ...”²

Jury trials in Victoria, and indeed, in Australia and all or, most other common law jurisdictions, constitute a small fraction of all criminal proceedings. In Victoria the figure is about .5 of a 1 per cent. The question of whether to use or not use juries continues to be discussed and debated around the world which has resulted in variations in the level of their usage. For example, juries are now quite rarely used in civil trials in the UK, NZ and the US, and are in decline in Aust. whereas in many other countries around the world jury trials have recently been expanded or, as in the case of Spain, Russia and Japan restored.

¹ Victoria Law Reform Committee, Jury Service in Victoria – Final Report Vol. 1 (1996)

² Victoria Crimes Act 1958, S.391 and 391A

In fact, of the 193 countries in the world approximately 80 of them allow the public, that is their citizens to participate in the administration of Justice through various forms of jury service – ranging from juries in Australia who reach a verdict after hearing evidence, to juries that offer an advisory opinion such as in South Korea or lay persons who sit on judicial panels such as in Germany and, by 2009, in Japan where jurors will also have a role in sentencing.

The late Hon. Richard E McGarvie in his paper titled, **PRESERVING THE DEMOCRATIC CHARACTER OF GOVERNMENT, INCLUDING THE ROLE OF THE COURTS** stated that:

“... democracy belongs to the people, and so does the responsibility for making it work properly and for ensuring that it maintains the strengths and safeguards to cope with the influences threatening its continuance in the changing conditions of today and tomorrow. In a democracy there is no-one standing over you and forcing you to do these things. They will only be done if people themselves understand how the system works, its value and the nature of the threats, and act of their own initiative, alone or together, to preserve its democratic character.”³

When applying this premise within the context of the courts, he suggested that:

“Citizens will not accept the dominant influence of the law and will not have confidence in their democracy which gives it that influence, unless they have confidence in the law. They will only have that confidence if they have confidence in the courts and judges who apply and enforce the law. Confidence in the courts and judges depends on the community seeing that the judges decide their cases fairly and impartially. Laws require judges to act fairly, such as hearing both sides. Because their impartiality would otherwise be open to doubt, judges must work in a setting where they are obviously independent, in the sense of being free of pressures which could influence them to reach a decision in a case”⁴

If the jury system is to be the link between the community and the criminal justice system it would be fair to suggest that jurors should be identified as the courts ambassadors to the community that is, as messengers reporting on its workings.

³ The McGarvie Model: a Republic Equivalent to Our Present System of Democracy (Papers 17) The 1998 Ronald Wilson Lecture, presented for the Constitutional Centre of Western Australia and The Francis Burt Law Education Centre, Perth, 26 August 1998

⁴ Ibid.

Perceptions of Justice and the Courts':- The Research

Given the recognised importance of the link between the community and the courts, various studies have been conducted to measure the public's level of trust and confidence in the courts and the criminal justice system. The concern over the level of trust and confidence in the United States, has led to 38 public opinion surveys being sponsored and conducted by various state judicial branches since 1977.⁵ To a lesser degree studies have also been undertaken in the United Kingdom, and Australia.

American studies and research which canvassed a broad respondent base made up of litigants, legal practitioners and jurors suggest that contact with the courts makes little difference to the amount of trust and confidence people have in the courts and that the key factor underlying how much trust and confidence people have in the courts and the criminal justice system is their assessment of the fairness of procedures which had been followed in what they observed.⁶

Similarly, research undertaken in the United Kingdom⁷ which looked at the views and attitudes of a sample of jurors who had recently completed jury service in six English courts found that participants were also concerned with the procedures adopted, however, a number of jurors made explicit statements indicating the ways in which jury service had increased their confidence in the court process.

The key findings of that study were:

- The majority of respondents had a more positive view of the jury trial system after completing their service than they did before. Furthermore, virtually all jurors interviewed considered jury trials to be an important part of the criminal justice system.
- Similar to the US findings, confidence in the jury system was closely associated with the perceived fairness and, adherence to due process, respect for the rights of defendants and above all the diversity (that is to say the representativeness) of the jury and its ability to consider evidence from different perspectives.
- Jurors were very impressed with the professionalism and helpfulness of the court personnel. In particular, they praised the performance, commitment, and competence of judges.
- Over half said that they would be happy to do jury service again, while 19% said that they would not mind' doing it again. The most positive aspects of engaging in jury service were reported to be having a greater understanding of the criminal court trial, a feeling of having performed an important civic duty and finding the experience personally fulfilling.
- The main impediment to understanding proceedings was the use of legal terminology, although jurors also felt that evidence could sometimes be presented more clearly.

⁵ Public Trust and Confidence in the courts overview. www.ncsconline.org

⁶ Trust and Confidence in the California Courts, September 2005

⁷ Roger Matthews, Lynn Hancock and Daniel Briggs, Jurors' perceptions, understanding, confidence and satisfaction in the jury system: a study in six court's, www.homeoffice.gov.uk

In Australia, surveys have been conducted by The Victorian Department of Justice (Perceptions of Justice Survey from April 2003 to December 2005) and, the Courts Administration Authority of South Australia (2000 and 2006)⁸. In both instances respondents were randomly selected from the community and in the case of the Victorian study asked about people's feelings of personal safety, fear of crime and other justice system related issues including the level of confidence in the legal and courts system. Where-as the SA surveys were more directly concerned with determining the level of confidence in the courts and as a consequence the questions posed were tailored accordingly.

It would be fair to say that in both instances the results were generally favourable with the respondents indicating a confidence in the ability of the system to give the right sentence to people found guilty of a criminal offence, meet the needs of victims of crime and deal with criminal and civil cases promptly.

Although I have not carried out an exhaustive analysis of all of the available research and readings within this area, it would be reasonable to suggest that at worst there is a seemingly static level of confidence in the courts' and the justice system and at best that the level of confidence is on the rise albeit very slowly.

It would also be fair to say that the Australian, American and UK public are generally informed about the workings of the courts and the administration of justice⁹ by television, newspapers and radio.

So, ladies and gentlemen, why even consider the notion of jurors as the courts ambassadors to the community. Surely, we should, as The Honourable Justice Doyle¹⁰ suggested in his paper on, The Courts and the Media, be focusing on working with the media as means by which the public is educated and informed of the workings of the courts'.

His Honour, has suggested that:

“... the courts [should] try to reach those who choose not to exercise the right of access in person and to inform them of what the courts are doing and why they do it. He, like the Hon. Richard McGarvie also suggests that the courts must do this because Australians have a democratic right to be told what the courts are doing.” He also states that “public confidence in the courts rests upon public understanding, it is our duty as officers of justice to maintain public confidence in the courts, and therefore to do what we can ... to give Australians information about what the courts are doing.”¹¹

⁸ Courts Consulting with the Community Survey, www.courts.sa.gov.au/community/conference_2006

⁹ The Hon. Justice John Doyle (1999) UTSLR 6 The Courts and the Media: What reforms are needed and why. See also studies and research used throughout the paper.

¹⁰ Ibid.

¹¹ Ibid.

Well ladies and gentlemen, I agree wholeheartedly with His Honour, and it is for this reason that I would choose to cautiously ignore the findings of the research which found that personal contact with the courts does not have any significant influence on the level of confidence that the community has in the courts'.

I, like His Honour and, perhaps like most of you here today, share in the belief that the community ought to be informed and educated on the workings of the courts, in order to better understand how our laws, their laws, are administered. Ladies and gentlemen, in my opinion, persons who are called upon to do jury service are an ideal group of citizens to convey "the message" to the community. They are additional to the media, and perhaps more influential and believable simply because they are who they are, that is, members of the community!

The role of the Jury Administrator

If I may once again, borrow from His Honour, I too, strongly believe that it is our duty as officers of justice to maintain public confidence in the courts and the justice system, and therefore, to do what we can to give Australians information about what the courts are doing and how they work.

I recall my interview for the position of Juries Commissioner and a question by the then Victorian Chief Justice, the Hon. John Phillips. After providing me with a summary of the way that the Victorian jury system had been managed to date, he asked for my thoughts on the jury system and how I would manage it if I were to be appointed as the first Victorian Juries Commissioner.

My response to his question went something like this:

Well, Your Honour, although I have not worked within the courts I do have an interest in the criminal justice system and as a consequence of having done some study in this area, I hold a fairly strong view of the role jurors should play within our system of justice.

However, having only just recently completed a Notification of Jury Selection Questionnaire for my mother, and, having discussed it with some friends I realised just how little is known of the system that is, how it really works. In fact your Honour, most of what I and my friends know of the system comes from previous academic studies, the media, legal dramas and literature.

I therefore believe that we should be proactive in publicising the system, the reforms that have been introduced with the enactment of new *Juries Act*, the importance of the role that jurors play and the fact that they are the informal link between the law and the community. I would do this by:

- setting a mission for the Office of the Juries Commissioner;
- establish operating principles that would enable the realization of the mission;
- make myself available to address and communicate with employer groups, community groups, academics and students regarding jury reforms but more importantly about the importance of jury service to our criminal justice system and therefore to our democracy;
- utilise technology to make information about jury service accessible and easy to obtain.
- Utilise the legislative reforms to make it less honourous to do jury service

Well, ladies and gentlemen I think that His Honour and the other panel members thought that I had something to offer because here I am.

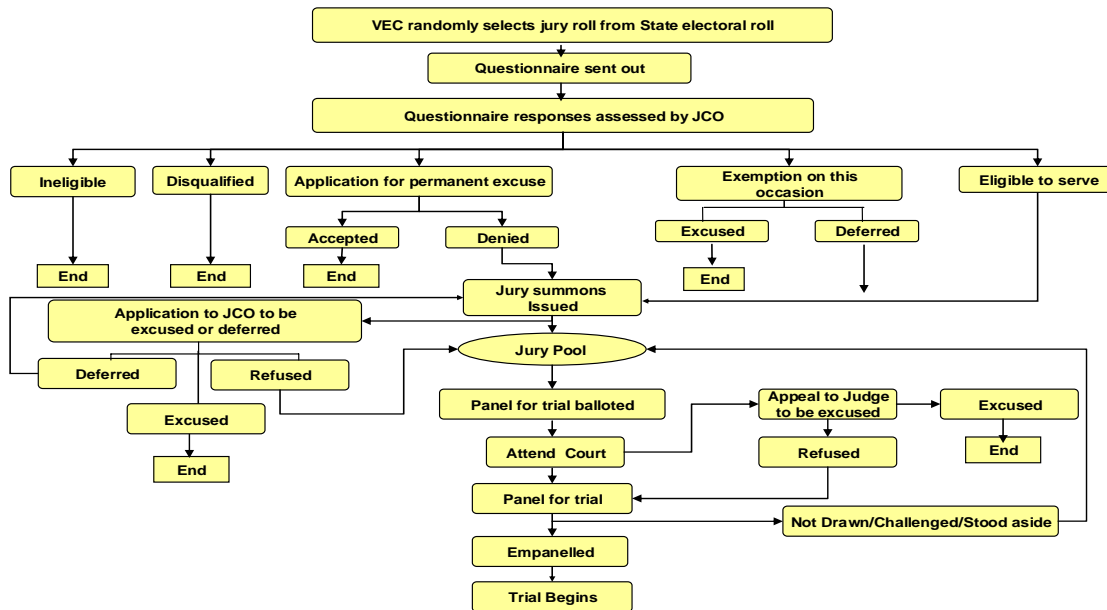
Theory into Practice: Victoria

Upon taking up my post I proceeded to develop a mission statement that would give my staff an appreciation for what we were striving for, that is, to be a unit that would add value, not only to the court system, but to the criminal justice system as a whole. We were no longer going to simply be a unit concerned with undertaking processing tasks. I explained that the mission would give us a sense of purpose and direction. We would now treat everyone that we would come into contact with, as our Ambassadors to the community.

The Juries Act 2000 – A Mechanism for Reform

The Juries Act 2000 which was enacted on the 1st of August 2001, created the operational context and ability to put into effect the changes necessary to realise our mission. The Act provided us with an increased level of flexibility in excusing and deferring people from the obligation of performing jury service and as you can see by this chart there are several points within the process where prospective jurors may be deferred or excused.

The Victorian Jury Selection Process



In my opinion, establishing a positive partnership with prospective jurors, employers and others who come into contact with our office is critical to ensuring that we meet our mission's objective. To assist us, I have actively promoted the principles outlined in this slide as the best way to further nurture the partnership between the community the Courts and my office, I see these principles and the way that we administer the system in Victoria as fundamental to transforming the people that we come into contact with into our and the courts' ambassadors.

- Minimise the inconvenience caused to prospective jurors by deferring jury service to a time that is mutually convenient;
- Wherever possible not call jury panels prematurely or unnecessarily;
- Excuse, or discharge prospective jurors as efficiently and as courteously as possible;
- Ensure that every effort is made to make the jury experience as rewarding as possible;
- Provide support services for jurors such as counselling and debriefing;
- Proactively promote the importance of jury service.

As a consequence of putting these principles into practice, we have developed and introduced a number of administrative improvements and initiatives which include:

- The development and implementation of a purpose built Jury Information Management System – assists us to manage and streamline the jury management process;
- The development and implementation of a State-wide web-based jury messaging service – that assists prospective jurors to learn of their need to attend;
- The introduction of a one day one trial system – in order to make jury service less honourous
- Development of a web based “Jury Questionnaire” return system.
- Introduction and utilisation of statistical data to inform practice, procedure and policy development.
- the development of a Comprehensive Juror Orientation Program which includes a Juror Handbook, Jury DVD, - which provides persons attending our for service with a comprehensive overview of their role.
- Established a school visitation program;
- In partnership with the Victoria Law Foundation developed civics (jury service) study materials to be accessed and utilised by teachers and students from year levels 9 through to 12.

The following excerpts from correspondence received from ex-jurors suggest that we are on the right track.

“...I wanted to take this opportunity to commend you and your staff on running a very comprehensive, informative and non-intimidating jury pool room. I had an experience with Jury duty in ... approximately 5 years ago which was a very different experience to the one I had yesterday.... That experience [had] been intimidating ... I found the experience yesterday the complete opposite. The jury supervisor was welcoming and friendly and provided us with information that explained what would happen ... the juror handbook and video were invaluable in communicating this to the jury pool. ... In fact every-one that I came into contact with yesterday (including the Judge) was non-intimidating and made me feel comfortable. I also thought your attendance at the end of the day was a good way to finish”

“... The situation was clearly explained and I now fully appreciate that the system is being well managed to minimise the inconvenience to the community. ... the new information booklet and video were also much appreciated. At least I walked out the door at the end of the day having learned something. I would not be hesitant to attend the next time I am called.”

Jurors as the courts ambassadors to the community

Ladies and gentlemen, my office comes into contact with over 160,000 members of the community per year with over 20,000 people attending for jury service and over 7,000 people being empanelled as jurors on Supreme and County court trials across the state of Victoria. It is my aim to make their initial contact and experience with the court system a positive and informative one, one that will serve to promote our system of justice, one that will better inform the community of the very important role that they as citizens play in the democracy that they live in. One that will transform jurors into the courts ambassadors to the community.

Thank you.