

## Juries: What they think of us

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On 19 July, 2001 a Supreme Court Order was made permitting psychologist and PhD student **Chris Richardson** to undertake some unique research. As part of her thesis through the School of Criminology and Criminal Justice at Griffith University, Brisbane, the author interviewed, over a 12 month period from July 2001 to July 2002, nineteen jurors about their experiences in the Brisbane District Court. One of the interesting things to emerge was what jurors made of us...

IT COULD be argued that a just outcome in any trial in which jurors experience any difficulties focusing on the evidence may be compromised. With that in mind, the particular emphasis of the interviews was to identify what, if anything, took jurors' attention away from the evidence being presented.

Three themes were identified during the interviews. Two of the themes related to difficulties jurors had with focusing on the evidence being presented during a trial and one related to juror perceptions of the Queensland legal system.

Firstly, jurors reported they were, at times, distracted from the evidence by the behaviour of barristers during the trial. Secondly, some jurors had difficulty with the evidence being presented and reported they had many questions they felt were left unanswered. Additionally, jurors felt they were expected to fill the gaps in the evidence that they had identified. Finally, some jurors also found that, as a result of their experience and their perceptions of barristers, they had become disenchanted with the Queensland legal system.

Nonetheless, although many would not be willing to volunteer, most jurors agreed that jury service was an important social role. Most also reported they would agree to engage in jury service again should they be called upon to do so.

### Barrister behaviour:

Jurors reported they perceived some barristers to be acting out a role in a somewhat pompous manner with some being offhanded in their presentation of the evidence and representation of their client. One juror indicated that *"the antics of the barristers distracted (her) from the evidence"* and she found the barrister's behaviour *"a bit of light relief some of the time"*. When asked what the barrister did to make her comment as such, she reported *"well you know they sort of overplay everything and make it like into a big acting scene and they get all exasperated and puff and blow and take their wigs off and throw them down and all that sort of stuff"*.

The juror she *"felt a bit sorry for the guy who was being tried and (she) was glad it wasn't (her)"*. She reported that one of the barristers involved in the trial on which she was empanelled was *"nicknamed 'razor blade' (by the jury) because of the way he looked and behaved"*.

Another juror commended on the *"pompous behaviour of barristers who ponced around"* and questioned *"the terminology they use which was supposed to show respect for the other party, but you could read right through it and you knew that when it was over they would go and probably have a beer together and laugh about it all"*.

Barristers were also seen to be *"good buddies outside and it seems to be a bit game to them"*. Other comments jurors made about barristers were that they found them to be *"incredibly friendly"*. To each

other, “*abrupt*”, “*rather easy going*”, and “*tardy and like he’s been here before and this is boring, lets get it over and done with*”.

Additionally, one juror commented “*barristers like to think they are a formidable lot and to a certain extent they are, but they were a bit like a doctor doing his job but not interested in his patient and you wonder whether they really are interested in the justice system or justice and when you see them during a break talking about the beer they were going to guy on the weekend, you know, its just out of place*”.

Sundry jurors reported similar comments to the following statement from one juror who was disappointed that barristers were “*only there because they were paid to be there and yeah, this is just another case and he was just going through the motions*”. The jurors “*didn’t feel that the barrister was focused on what he was doing and would rather be somewhere else*”. The juror reported he felt the barrister thought “*it really doesn’t matter whether (his client) gets a gaol term or gets off, but it’s good if he gets off because (the barrister) will get a pat on the back and another mark on the wall*”. The juror was disappointed to perceive such an attitude by the barrister.

The time honoured claim by lay people with respect to “*how a barrister can represent someone thy know is a criminal and twist and turn around the evidence so that they get them off*” was mentioned by some jurors.

### *Difficulties with the presentation of evidence:*

One juror reported that the “*barristers did a great job making sure that they deal with the facts only*”. However the juror commented that on the other hand the barristers “*go over and over and over and over the issues*”. Many jurors found the evidence to be difficult to understand, boring and found significant gaps in the

evidence. They reported that repetitiveness of the evidence caused boredom, yet they were unable to get many questions they had answered.

Some reported they and others on the jury made assumptions about evidence that was ‘missing’ and some filled the gaps in the evidence with their own experience. Many reported that although they tried to rely only on the evidence provided during the trial, they had significant difficulties making sense of the events and were left with no option but to fill the gaps in evidence with their assumptions. Many were distressed that they were forced to make such assumptions and were mindful of the requirement that they consider only the evidence presented, but would have liked the opportunity to ask questions themselves so that gaps in the evidence were filled for them.

One juror reported that there appears to be “*an assumption by barristers that the jurors can follow the evidence and make sense of it because they have the background knowledge of the case which jurors do not have*”. Another juror reported that “*a lot of other stuff was just repeated over and over again which was boring and confusing and you feel a bit powerless in the situation when you would like to ask some questions yourself to find out what’s really going on but you’re stuck with what comes out in court*”.

### *Disenchantment with the Queensland legal system:*

Many jurors reported they were unhappy with the way the trial and the jury system were run. Most jurors interviewed were employed at the time of jury service and all had been employed at some time prior to jury service. They reported significant difficulties with what they considered to be inappropriate time management and resented their time being wasted by what they consider to be a significant

flaw in the management of the judicial system.

Jurors were annoyed at what they perceived was a lot of *time wasting* both whilst they were waiting to be empanelled on a jury and during the trial. They thought “*it could have been done with a lot less mucking around*”. Man reported that “*being taken out of the courtroom all the time so that barristers could argue a point of law was disruptive and terribly boring*”. Additionally, some resented that tax payer money was, in their view, wasted on “*trumped up charges*” and that some trials were a “*waste of time*”.

Jurors consistently recognised significant flaws in the system, but were unable to “*think of a better one that would work more effectively*”. As a result of their experience, some have “*lost faith in the jury system*” and reported they would not like to have a jury trial if they were charged with criminal offences.

Nonetheless, although all jurors were able to identify flaws in the system, they reported that they considered jury duty to be a social responsibility and although none would volunteer to be on a jury again, predominantly if called upon to do so, they would honour their responsibility and participate in jury service again.

### Conclusions:

This is a relatively small sample of jurors and therefore may not be representative of the view of the majority of jurors.

Nonetheless, it is apparent from the comments made by jurors interviewed, that they experienced significant difficulties during their jury experience. The difficulties experienced impacted on their ability to consider the evidence appropriately and some adjustment to barrister behaviour in court may be warranted.

When considering barrister behaviour, it may be appropriate for some barristers to be cognisant of how their behaviour and demeanour is perceived by jurors, on whose good will and/or judgement they rely. Perhaps during breaks in the proceedings during which jurors are present, barristers might be more mindful of their conduct and consider that they remain “on show” and are representative of the judicial system throughout the time jurors are present. In this respect personal matters might best be discussed in a more private setting.

Additionally, barristers might consider that their behaviour and demeanour during the course of a trial is being observed intently by jurors who are making judgements about them. Such perceptions and judgments by jurors are, in all likelihood, being extrapolated to the person or persons they are representing, no matter whether the barrister is acting for the defence or the Crown.

It is conceivable that the perceptions and judgments made by jurors about barrister behaviour may impact on the outcome of any matter being tried.

The issue of gaps in the evidence is a difficult one to address, but one that is of paramount importance. If jurors are making assumptions and filling the gaps in evidence because their queries are not being answered by the evidence presented in a trial, then the contention that jurors are making decisions only on the evidence being presented is, in all likelihood, flawed.

In this respect, perhaps barristers might be more mindful of their considerable knowledge of the details of the matter being tried and consider that jurors do not have such knowledge of the facts. A difficult task indeed, given the parameters of defending or prosecuting a matter, but one that must be given

consideration so that jurors are not forced, in their view, to make assumptions.

Finally, the issue of time management needs to be addressed by the courts. Issues of time management cause some distress to jurors, particularly those who are employed.

Additionally, jurors are bored and can become distracted from the flow of evidence during the times they are taken out of the courtroom when lawyers are arguing points of law. Many jurors consider their experience a waste of their time as well as court time. Certainly, some resentment is apparent in the report of jurors and this, along with boredom and distraction perceived by jurors, is consistently reported as a negative aspect of their experience. Some adjustment to court protocol in this respect may be warranted.

Although jurors expressed the above criticisms, they consistently reinforced that they tried to do their best during their experience and were mindful of the responsibilities they felt were associated with jury duty. Without exception, the jurors interviewed considered their attempt to make sense of the evidence in the context of their experience in an environment of which they have little knowledge was done with the utmost diligence.

Unfortunately, barristers, who are consistently on show during a trial, were perceived by those interviewed in a relatively negative light. However, armed with the above information, barristers may consider some simple adjustments to their behaviour in the courtroom and how they present their evidence.

Perhaps in time, after such adjustments have been implemented, juror perception of barristers and understanding of the evidence will be

enhanced, distress experienced by jurors diminished and just outcomes in any trial in which jurors experience the above difficulties made more probable.

*Chris Richardson B.Psych (Hons) is currently finalising her PhD thesis at Griffith University, which examines the impact symbolism in the courtroom has on juror ability to focus on the evidence being presented in a District Court trial. She is also in private practice, which is forensic in nature, with a particular emphasis on writing psychological reports for Courts in all areas of law.*