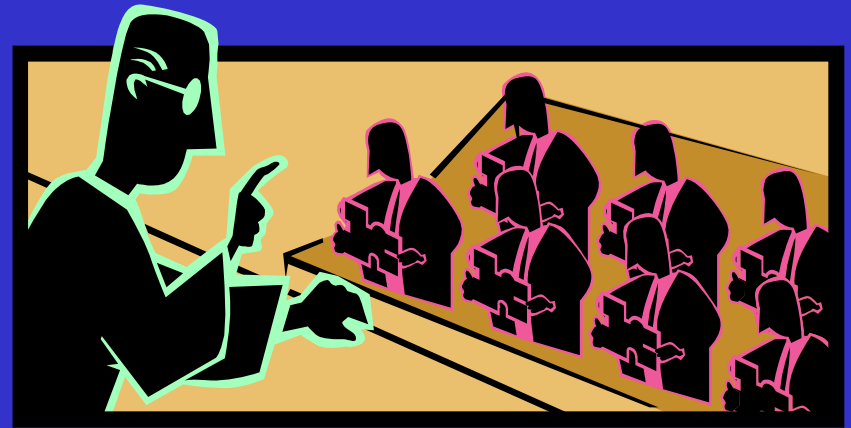


The Expert & the Juror of the 21st Century



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In this paper I will:

- 1 Explain the concerns in relation to juries and expert evidence
- 2 Summarise what is known about how juror's cope with expert evidence
 - *US, New Zealand & Australian research*
- 2 Highlight how available research can assist lawyers & experts understand what jurors want

The expert/jury issue

Ever since the jurors have been forbidden from having prior knowledge of the dispute, they have been criticized for being:

- 1 intellectually incapable of understanding technical evidence
- 2 confused by a battle of experts that can often occur in our adversarial system
- 3 overawed by witnesses with impressive CVs & rely on this rather than the substance of what the witness says

‘White coat syndrome’

When evidence is complex, do jurors defer to the expertise of the expert rather than what the expert says?

No



Jurors are skeptical and demanding in their assessments of expert evidence.

Vidmar (1995) medical negligence jury study

US research



Good experts were described as good teachers with sound credentials & acceptable motives for offering their evidence.

Ivkovich and Hans (1994)

Good teachers – good communicators, factual familiarity

Sound credentials – not the best but sound (professionalism)

Motive – lacking bias (appearance of impartiality)

Jurors evaluate expert evidence by:

- 1 Assessing the completeness & consistency of the evidence (internal logic)
- 2 Evaluating it against their knowledge or related factors (external logic)

Kovera (1999) Jurors & expert evidence on sexual harassment in the workplace

- 3 In complex matters they rely on members of the jury who possess greater familiarity with the subject matter

New Zealand research

1998 New Zealand Law Commission study of 19 criminal jury trials where expert evidence was used

2/3rds of the trials- Jurors said that they had no difficulties in understanding the experts BUT complained of too much jargon & undue technical detail & poor explanations.

1/3rd of the trials - some of the jurors were unable to absorb & comprehend the expert evidence but this was usually rectified during deliberations

- Most of the jurors paid attention to the content of the evidence and used it when they deemed it helpful
- Some expert evidence was rejected for lacking credibility

US experimental* research studies

Mock jurors do not respond well to abstract evidence bearing on guilt or liability. They did not exhibit very good reasoning skills in translating probabilities into verdicts.

Wells (1992) & Diamond and Casper (1992)

However, a sample of judges performed no better

Wells (1992)

* Note that experimental studies lack the context of a trial including cross examination and deliberations

US experimental research studies

WRITTEN SUMMARIES assisted jurors in recalling & evaluating complex expert evidence

Juror understanding was enhanced if the written summaries were received BEFORE the expert evidence was given

ForsterLee (2000)



The Civil Jury System – An Empirical Study

- As part of my PhD thesis, I surveyed all civil jurors, judges, associates and tipstaff of the County and Supreme Courts of Victoria during a 12 month period in 2001
- 49 question survey was distributed to all civil jurors in Melbourne and 412 responses were collected. A 99.3% response rate to the juror questionnaire was achieved

My Study Explored 3 Themes

1. Perceptions of the jurors, judges and court staff, regarding their experiences of participating in civil jury trials.
2. Perceptions of the jurors and judges of the 'complexity' of the subject matter and legal issues of civil jury trials.
3. Whether the demographic make-up of the Victorian community is adequately represented in the civil jury.

LIMITATIONS IN OBTAINING THE DATA

- Due to the need to secure the co-operation of the courts, the content of the questionnaires was necessarily limited.
- Due to jury room secrecy, the content of the questionnaires was necessarily limited to ensure that no juror or jury trial could be identified.

LIMITATIONS IN INTERPRETING THE DATA

- Jurors will be reluctant to admit to any personal failings especially in the context of the jurors just having based a verdict on their assumed understanding of the issues at hand.
- Jurors may be ignorant as to their failings.

Perceptions of the civil jury system

- 87% of respondent jurors had a positive opinion of the civil jury system
- 93% said that their jury experience had been worthwhile to them
- 76% were willing to serve again in due course
- In general two thirds of jurors would prefer a jury to determine their hypothetical case with less than a quarter of jurors preferring a judge

THEME 2

The complexity issue

Is expert evidence too complex for jurors?

[C]ontemporary circumstances have raised new questions about, and placed additional strains upon, the institution of the criminal trial by jury.

There is, for example, obvious force in the argument that a jury of ordinary men and women selected at random from the community lacks the knowledge and experience necessary to sit in responsible judgment upon the type of scientific dispute between specialists that may arise in the course of a criminal trial or upon the detailed technical questions which may be involved in the trial of white collar and computer crime.'

Deane J in *R v. Kingswell* (1985) 159 CLR 264, 302-3.

Question 25

In your opinion, did the other members of your jury understand the case?

		Number of respondents	Percent
Valid	all of them	187	62.3
	most of them	92	30.7
	few of them	13	4.3
	Total	292	97.3
Missing		8	2.7
Total		300	100.0

Question 19

Did you find the evidence as a whole was adequately presented?

		Number of respondents	Percent
Valid	no	53	17.7
	yes	236	78.7
	Total	289	96.3
Missing		11	3.7
Total		300	100.0

Question 16

Was the plaintiff's expert evidence adequately presented?

		Number of respondents	Percent
Valid	no	17	7.0
	yes	167	68.4
	partly	47	19.3
	not applicable	1	.4
	Total	232	95.1
Missing		12	4.9
Total		244	100.0

Question 18

Was the defendant's expert evidence adequately presented?

		Number of respondents	Percent
Valid	no	12	6.6
	yes	120	65.6
	partly	46	25.1
	Total	178	97.3
Missing		5	2.7
Total		183	100.0

Question 20

Juror suggestions as to how the evidence could have been better presented:

4 major complaints were made by the respondent jurors:

- 1) Lack of use of visual aids
- 2) Inability to ask questions of the parties or witnesses
- 3) A lack of evidence presented to them particularly failure to call witnesses perceived to be important
- 4) Lack of access to documentary evidence and the transcript

The impact of generation-X on the civil jury

Over half of the respondent jurors were from gen-X (those born between 1961-81)

The results of my survey show;

- Jurors do not want to be passive listeners
- Jurors want to be able to ask questions
- Jurors want access to documentary evidence as & when it is being referred to
- Jurors want more and better use of visual aids

The majority of jurors that requested more & better use of visual aids were from gen-X.

Do jurors understand?

- Over 85% of jurors said that legal terminology was adequately explained to them. Only 3% of jurors said that the lawyers used too much legal jargon.
- However, many jurors did not understand basic legal terminology that was used in the juror questionnaire and is used throughout civil jury trials (ie. 'facts of the case', 'questions of law').

Judges' opinions as to the competency of civil juries:

- Judge 18 'The jury system is sound and necessary. Skilled counsel, well prepared and able judges previously skilled in the conduct of cases are necessary components of a fair judicial system.'
- Judge 21 Any difficulties that impact upon the juries' ability to understand civil trials 'are dependent upon competent presentation of the case by counsel who are familiar with the issues and the technology. In that case, the jury is usually well positioned to make a decision on the facts.'
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THEME 3

Are Juries Adequately Representative of the Community?

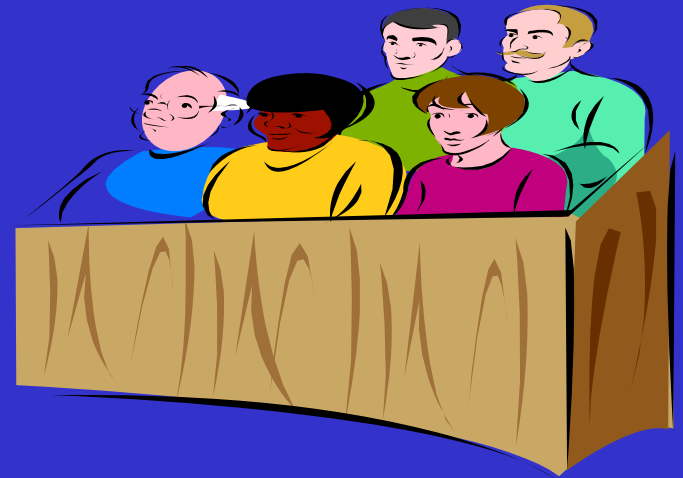
'Juries do not represent the community. They are selected from those who can serve rather than those who should serve.'

Howard Nathan (1997)

Do the numerous exemptions, exclusions and challenges available during the jury selection process, undermine the ability of the jury to represent the community?

The civil jury adequately represents the Victorian community in terms of:

- education achievement
- age
- gender
- cultural background



What do the empirical studies tell us about what jurors want

Who is your audience and what do they want?

- The composition of the jury
- Generation-X and beyond
Jurors want more evidence from experts
 - access to expert reports
 - visual aids



Are laypeople influenced by TV medical/forensic dramas?

If yes, be aware of this whilst giving evidence and if necessary dispel the myths

What practical lessons can be learnt from empirical studies:

- Write your court report on the assumption that it will be given to a jury
- Consider the demographic profile of the jurors & give the jurors what they want
- Present your evidence in plain English
- Use visual aids where possible & use them effectively