

SEVENTH ANNUAL JURY RESEARCH AND PRACTICE CONFERENCE

**Parliament House, Sydney
20 November 2009**

**The Hon Justice Peter McClellan
Chief Judge at Common Law
Supreme Court of New South Wales**

Anyone who has practiced in the courts before jurors will have odd or amusing stories to tell. We all know of the late Jim Killen's account whether true or not of the jury who returned a verdict in a cattle rustling case saying that the accused was not guilty provided he gave back the cattle. I can tell you of a true story when I appeared for a plaintiff who alleged he had been hurt at work. The jury, as I had expected, found for the defendant. They added a rider there should be a verdict for the defendant provided the company paid his medical expenses.

This is the seventh annual jury research and practice conference. As with previous conferences the organisers have been able to bring together a varied group of people with an interest in and experience of juries in criminal and civil trials. Today's conference has an international flavour. We look forward particularly to presentations from New Zealand and Japan.

This year's conference has been organised by the Justice Research Group of the University of Western Sydney and is sponsored jointly by the National Judicial College and the Court of the Future network.

In recent years there has been an increased interest by courts, administrators and academics in gathering information about the effective functioning of juries. Studies in Australia and New Zealand have not always come to the same conclusions. Unlike the research which can be done in the United States of America the secrecy obligations of jurors in Australia limit the capacity for research. There are difficulties in establishing whether juries have worked effectively. It is inherently unlikely that a juror will report difficulties in either understanding or applying directions given to them by the trial judge. There will also be cases where a juror believes they have understood what they have been told by the judge but the reality is otherwise.

Juries have been accepted as the appropriate method to resolve factual issues in trials conducted under the common law system for many years. The increasing scrutiny of their work reflects the need for the community to be assured that the decisions which are being made are appropriate. A jury does not conform to modern expectations for accountability of decision makers. A jury does not provide reasons and its deliberations remain entirely secret. Judges do their work in public. When judges make decisions they must give reasons. This is not true of juries and other methods of ensuring their effectiveness must be found. Conferences such as today's forum are an important part of that process.

We are privileged today to be able to welcome Associate Professor Syugo Hotta from Japan to speak to us. Japan has recently adopted a form of jury in criminal trials. Chief Justice Spigelman and I visited Japan three years ago to

discuss with the Chief Justice and some Superior Judges the operation of a jury system. I look forward to hearing of the recent progress in the implementation of jury trials.

New Zealand has engaged in significant research into the effectiveness of juries. Professor Warren Young was the leader of the research team that identified the need for reforms and has been responsible for implementing many of them. Australian jurisdictions are keen to learn of the New Zealand experience and we gratefully appreciate the fact that Professor Young will give us the benefit of his experience in the keynote address which he will deliver in a few minutes.

The role of a jury has evolved significantly since they were first utilised in courtrooms. In their original manifestation it was accepted that jurors would be likely to know the accused and bring that knowledge to bear when determining his or her guilt or innocence. Knowledge of local customs and attitudes were considered by many people to be an important contribution to the community decision which a jury was asked to make. Those days have long gone. Today we require jurors to be free of any knowledge of an accused or other persons who might give contested evidence in the case which they are engaged to try. Prejudice can arise in many ways. It may be conscious or unconscious. It may be apparent in the structure of the trial process. And care must also be taken in the design of the courtroom in which the trial is to occur.

I look forward to hearing today from Diane Jones who is responsible for the restoration of the King Street court building in Sydney. She will give us the perspective of the architect in designing a courtroom which will help to minimise the opportunity for prejudice.

In many trials the evidence of a witness or witnesses must be translated from another language. This can cause difficulty. The personality of the witness, which of course includes the accused may be subsumed in the interpreter. Sandra Hale will speak to us about the role interpreters can play in increasing or reducing the possibility of juror prejudice.

Blake McKimmie, a psychologist from Queensland will provide us with some insight into the psychological literature which discusses the issue of prejudice. Dina Yehia, recently appointed senior counsel, will speak of her recent experience in the terrorist trial before Justice Whealy and a jury.

As many of you know the Federal Court has been given a role in the trial of persons accused of criminal cartel offences. These cases may be tried in a Federal Court and physical arrangements are being made to provide courtrooms which allow this to occur. You will be provided with the opportunity to inspect the facilities which are being provided in the modified Federal Court facilities here in Sydney to accommodate these trials.

Contemporary criminal trials are likely to involve significant and complex scientific evidence. Apart from the increasing complexity of medicine and the

forensic sciences DNA evidence is of critical importance in many trials. Although the courts have now identified appropriate directions to be given to a jury where DNA evidence is to be considered there may be questions about whether in the concentrated forum of a criminal trial the jurors will sufficiently understand the evidence to be able to properly analyse its significance in the resolution of the case. Professor Jane Goodman-Delahunty of Charles Stuart University has studied these issues and I look forward to her contribution to today's discussions.

It is now well known that many people resent having to serve on a jury. There are talk back radio sessions and internet discussions devoted to the topic of avoiding jury duty. The system impacts on a significant number of people every year in NSW. In recent years of the order of 150,000 have been summoned for jury duty. It is important if the system is to continue to enjoy public support that individual jurors have a worthwhile experience. Rudy Monteleone has joined us today to talk about the work the Victorian Juries Commission is doing to prepare Victorians for jury duty.

Every person who has joined this conference today has a significant interest in the effective working of the jury system. Some of us are practitioners in one form or another and others are involved in teaching. On behalf of the organisers I welcome you all to today's gathering.