



NEW SOUTH WALES LAW
REFORM COMMISSION

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CRIMINAL PROCEDURE

THE JURY IN A
CRIMINAL TRIAL:
EMPIRICAL STUDIES

RESEARCH REPORT

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CRIMINAL TRIAL:
EMPIRICAL STUDIES**

JUNE 1986

**A project made possible by the financial assistance of the
Law Foundation of New South Wales.**

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National Library of Australia
Cataloguing-in-Publication entry

Criminal procedure. The jury in a criminal trial:
empirical studies.

ISBN 0 7305 2447 7.

1. Jury — New South Wales. 2. Trial practice — New South Wales.
3. Trials — New South Wales. 4. Criminal procedure
— New South Wales. I. New South Wales. Law
Reform Commission. II. Title: The jury in a criminal trial:
empirical studies. (Series : Research report
(New South Wales. Law Reform Commission); RR 1).

345.944'075

THE NEW SOUTH WALES LAW REFORM COMMISSION

Criminal Procedure Division

The following members of the Commission have been appointed by the Chairman in accordance with s12A of the Law Reform Commission Act 1967 to act as the Criminal Procedure Division.

Commissioners:

Paul Byrne (Commissioner in charge of reference)
Greg James QC
Keith Mason QC (Chairman of the Commission)
Her Honour Judge Jane Mathews
The Honourable Mr Justice Adrian Roden
Ronald Sackville
(Deirdre O'Connor was a member of the Division until Aug. 1985)

Preface

In the course of our preliminary research on the jury system it became clear that the Commission would benefit from knowing more about the way in which the jury system operated in practice. In order to achieve this it was decided to conduct a series of surveys. The information obtained as a result has been of considerable assistance to the Commission in formulating the recommendations contained in its recently published Report *The Jury in a Criminal Trial*.

The completion of this research project would not have been possible without the help of a number of people. In the first place the Commission wishes to record its thanks to the Law Foundation of New South Wales for the generous grant which it gave to provide the funds essential for carrying out the surveys and processing the information obtained. This financial assistance has also extended to covering the expenses incurred in the preparation and printing of this publication.

The surveys were designed by Concetta Rizzo, the Commission's consultant statistician, who worked in close consultation with members of the Commission, and in particular with its Senior Legal Officer, Meredith Wilkie. They were given valuable assistance by the Sheriff of New South Wales, David Lennon and by the Acting Under-Sheriff, Terry Cashin. After the surveys had been prepared in draft form they were tested and refined with the assistance of the Honourable Mr Justice Wood and Beverley Dalley, Christine Hafey and Catherine Lewin who are the associates to the Honourable Mr Justice Maxwell, His Honour Judge Court and the Honourable Mr Justice Roden respectively. Once the form of the surveys had been finalised they were delivered to the courts for distribution. Before this could be done it was necessary to obtain the permission of the individual judges presiding and in this regard the Commission was greatly assisted by the support it was given by the Chief Justice of New South Wales, Sir Laurence Street, KCMG and the Chief Judge of the District Court, His Honour Judge Staunton, CBE, QC.

When the surveys had been completed, the information contained in them was coded by Muriel Turner. Janice Edmond, David Sachs and Clare Sneddon also assisted in the administration of the project. Additional information needed to clarify some aspects of the project was provided by Brian Roach, the Solicitor for Public Prosecutions and his staff and by Julie Stubbs of the Bureau of Crime Statistics and Research in the Attorney General's Department.

This Report was prepared by Ms Rizzo and Ms Wilkie. John Schwartzkoff read and commented upon a late draft and we are grateful for the valuable suggestions which he made. Additional comments on the contents of the Report came from ourselves and the Commission's Research Director, William J Tearle. We also wish to acknowledge the contribution made by the staff of the Commission who assisted in producing the Report, particularly Lorna Clarke and Nozveen Nisha Khan.

Finally, the Commission would like to record its sincere thanks to the large number of prospective jurors, jurors, Crown Prosecutors, judges and judges' associates who gave up their time to answer the extensive questionnaires involved. They provided the Commission with the raw material to make this research project possible. Their assistance is very much appreciated.

Keith Mason QC
Chairman

Paul Byrne
Commissioner in Charge
Criminal Procedure Reference

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Major Findings

1. The Survey of Jury Roll Compilation revealed that over 30% (average) of names chosen at random from the electoral roll for each new jury roll are deleted before the roll is finalised: para 2.3. Almost 20% of deletions are of people no longer resident in the jury district: para 2.12. About the same proportion of deletions are of aged people and a similar proportion again are of people too ill or infirm to perform jury service: para 2.13 and Table 2.2. People with childcare responsibilities represented 17% of deletions: para 2.15.
2. The Surveys of Jurors and Prospective Jurors revealed that, in spite of the above deletions and the unknown effect of excuses granted by the Sheriff, all segments of the community are represented among jurors and prospective jurors: para 3.33. Men and women are equally represented as jurors and prospective jurors: paras 3.6, 4.16. Some groups are under-represented, however. They include unemployed people, males under 30 and blue-collar workers: paras 3.8, 3.14 and 3.15. White-collar workers are over-represented and self-employed people are proportionately represented: paras 3.13 and 3.15.
3. The Surveys of Jurors and Prospective Jurors also provided information about respondents' attitudes to jury service. Over 80% of prospective jurors had not served on a jury before: para 7.1. Almost 75% favoured the principle that jury service should be compulsory: para 7.3. 93% of serving jurors favoured the continued use of juries in criminal trials and only 4% felt they should be abolished (3% of jurors surveyed did not respond to this question): para 7.21. 80% of prospective jurors and 90% of serving jurors reported that they did not object to serving: paras 7.4, 7.23. 70% of prospective jurors expected to benefit from their jury service and 66% believed the community would benefit: paras 7.6, 7.7.
4. The Surveys also revealed, however, certain difficulties faced by jurors and prospective jurors. Almost 30% of prospective jurors and over 20% of serving jurors reported suffering financial loss as a result of their attendance: paras 7.11, 7.27. 20% of prospective jurors and 17% of jurors reported suffering personal problems or inconvenience other than financial loss as a result of their attendance: paras 7.14, 7.31. 13% of prospective jurors and 15% of jurors felt a need for improved information to be provided before attendance at court: paras 6.2, 6.4. 12% of jurors made suggestions to improve the information provided at the beginning of the trial: para 6.5. Just over 20% of jurors made suggestions to improve the working conditions of juries: para 7.37.
5. The Survey of Jurors also sought information on the trial experiences of respondents. 15% reported having found the trial difficult to follow: para 6.6. Almost 20% of jurors considered that the Crown opening they had heard was not clear enough on the burden and standard of proof and 10% considered it was not clear enough on what the Crown had to prove: para 6.21. 32% of jurors took notes during the trial and 45% were on juries which asked questions of the judge: paras 6.23, 6.44. 67% of jurors who reported that they had not had a copy of the transcript of evidence said they would have found it helpful: para 6.30. In 16% of the trials surveyed by our Survey of Court Procedures, jurors were provided with written materials (other than exhibits) such as a written statement of the charge and a written list of the available verdicts: para 6.27. About one-half of jurors surveyed said they would have been assisted by additional written materials of this kind: para 6.31.

6. The Survey of Court Procedures provided detailed information about the conduct of 197 criminal trials. The average length of these trials was three days: para 5.11. Of the 167 accused people who conducted a defence, 96 (57%) made unsworn statements, 62 (37%) gave sworn evidence, another three (2%) did both and three (2%) did neither (the information was not recorded for the remaining three): para 5.17. 33% of the accused people were found guilty on all charges and 37% were acquitted on all charges: para 5.8. 13% of juries were discharged before being required to deliberate upon a verdict: para 5.24.
7. Judges surveyed gave information about their jury trial practices and expressed views on a range of related matters. Of the 42 judges responding, 25 stated that there are some criminal cases which are so complex as to be unsuitable for trial by jury: para 6.8. 30 judges considered that some directions of law are too difficult for jurors to understand: para 6.46. 24 judges believe that the provision of these directions in writing would assist jurors' comprehension: para 6.51. Other information provided by the judges surveyed revealed wide variations in judicial practices relating to pre-trial advice to the jury panel and preliminary instruction of juries: paras 6.9-6.13.
8. Crown Prosecutors surveyed also varied widely in their practices relating to the exercise of the Crown's right to make peremptory challenges, the content of the Crown opening and the use of visual aids, and in their attitudes towards judicial preliminary instructions, provision of transcripts to juries, the introduction of witnesses and written directions of law: paras 6.14-6.15, 6.17-6.18, 6.34, 6.36-6.39 and 6.52.

Chapter 1

Background

I. THE NEED FOR EMPIRICAL RESEARCH ON JURIES

1.1 The following terms of reference on Criminal Procedure were given to the Commission on 17 January 1982:

To inquire into and review the law and practice relating to criminal procedure, the conduct of criminal proceedings and matters incidental thereto; and in particular, without effecting the generality of the foregoing, to consider-

- (a) the means of instituting criminal proceedings;
- (b) the role and conduct of committal proceedings;
- (c) pre-trial procedures in criminal proceedings;
- (d) trial procedures in matters dealt with summarily or on indictment;
- (e) practices and procedures relating to juries in criminal proceedings;
- (f) procedures followed in the sentencing of convicted persons;
- (g) appeals in criminal proceedings;
- (h) the classification of criminal offences;
- (i) the desirability and feasibility of codifying the law relating to criminal procedure.

These terms of reference specifically draw attention to the role of, and practices and procedures relating to, the jury in criminal trials. Although the point was made that the generality of the reference should not be foregone in the examination of specific questions, it is clear that the jury is symbolic of a society's approach to criminal justice and of crucial concern in its administration. Coupled with the extreme interest generated by the Splatt, Chamberlain and Murphy cases, the jury provided a focus for the examination of many of the more general principles inherent in the system of criminal procedure in New South Wales. The Commission was able, by examining the criminal jury, both to respond to public interest in the area and to satisfy one requirement of its terms of reference. The stated aims of both the Discussion Paper (1985) and the Report (1986) in this area were to describe the law and procedure relating to juries and identify problem areas. To do this meaningfully it was necessary to have a clear picture of the current operation of the jury system. Therefore, the surveys which are the subject of this Report were designed to examine:

- * the way in which the jury represents the community;
- * communication with jurors both in the courtroom and prior to their attendance at court;
- * the role of the jury in a criminal trial; and
- * judges' and jurors' own perceptions of the jury's effectiveness.

1.2 The Commission published its Discussion Paper *The Jury in a Criminal Trial* in September 1985. The Discussion Paper was a broad ranging document raising issues about all aspects of the jury system such as whether the jury should be retained and whether juries are sufficiently representative of the community. Significant changes in the operation of the jury system were tentatively proposed. For example, it was proposed that the number of peremptory challenges available to the parties should be reduced; that judges should be required to fully orientate the jury before the case begins; and that jurors should receive a copy of the indictment. In addition, minor changes were proposed to improve administration or fairness to jurors. We proposed that jury fees should be increased and jurors should be covered by workers' compensation, that the Jury Summons should provide more and better information and that jurors should be polled to ensure they agree with the verdict. In the preparation of the Discussion Paper the Commission was hampered in considering many of the issues raised by the lack of a complete picture of the way in which the jury system actually operates. It was considered necessary to complete such a programme of empirical research before formulating final recommendations.

1.3 The Commission considered that factual data sought should include details about the following among other matters:

- * the demographic characteristics of prospective jurors (people summoned to form jury panels) and serving jurors;
- * the making of applications to the Sheriff and to the presiding judge to be excused from jury service;
- * the length of trials;
- * the presentation of cases to juries; and
- * jury verdicts.

1.4 Attitudes and views about jury service should, it was felt, be obtained from judges, prosecutors, prospective jurors and serving jurors. Among other matters, views about the following should be elicited:

- * judges' views about communicating with juries;
- * prosecutors' use of their right to make peremptory challenges;

* prospective jurors' needs for further information about what would be expected of them; and

* jurors' attitudes to their jury service and suggestions for improvement.

1.5 Members and officers of the Commission, together with the Commission's consultant statistician, Ms Concetta Rizzo, designed a series of related surveys which are described below. The Commission made a submission for funds to conduct these surveys to the New South Wales Law Foundation in August 1985. The surveys, with the exception of the Crown Prosecutors Survey (June 1985) and the Survey of Judges (July 1985), were to be conducted in October, November and December 1985. The Law Foundation made a grant to cover the cost of designing and preparing questionnaires, coding completed questionnaires, data entry and computing, and the preparation of this Report documenting the results.

II. METHODOLOGY

1.6 In order to provide answers to the questions posed by the Commission, as set out in Part I, a comprehensive programme of investigation into the operation of the jury system was devised. The aim was to obtain reliable information from the most appropriate sources and, while the range of information sought was broad and extremely diverse, the main method employed was that of self-administered questionnaires. These questionnaires were completed by prospective jurors, jurors, judges' associates, judges and Crown Prosecutors.

A. Data Collection

1. Statistics on Jury Roll Compilation

1.7 The jury roll for each jury district is renewed at least every three years. During 1985 jury rolls were renewed for 49 districts. From those renewed during the second half of the year, the Commission chose to examine the process of compiling the rolls for Penrith, Newcastle and Cessnock, and Dubbo, Bathurst and Lithgow. These districts were chosen as a cross-section of jury districts across the State. The first stage of this collection was designed to ascertain the numbers of people included on the draft roll who notified the Sheriff that they were disqualified, ineligible or exempt from jury service and the particular reasons for this. This information was obtained by counts of the actual notification sheets returned to the Sheriff's Office.

2. Statistics on the Grounds for Being Excused

1.8 The jury roll by itself, however, does not define the pool of people from whom juries will be selected. When summoned to attend for jury service, people may apply to the Sheriff to be excused. Thus there are some classes of people who, although not disqualified, ineligible or exempt, tend to be excused from serving. In order to find out which excuses are accepted by the Sheriff, the Commission determined to inspect each statutory declaration supporting an application for excusal in the jury districts of Penrith, Newcastle and Cessnock, and Dubbo, Bathurst and Lithgow. It was not possible to go ahead with this part of the project, however, as the administrative task of sorting out the statutory declarations relating only to the jury districts of interest turned out to be unmanageable.

3. Survey of Prospective Jurors

1.9 The Sheriff is required to certify that a jury roll is final¹ whereupon it comes into force and may be used to supply jurors for the jury district for up to three years. In response to an order (called a jury precept) from a judge or registrar of a court to summon a specified number of jurors for a trial, the Sheriff arranges for the required number to be selected from the appropriate current jury roll. The certified jury roll is stored on computer and the process of random selection is done by computer. A Jury Summons is posted to each person selected requiring his or her attendance at a specified place, date and time. People so summoned may apply to the Sheriff, personally or in writing, to be excused from jury duty on that particular occasion: para 1.8. Those who do attend in response to a summons are "prospective jurors" who form a jury panel (or panels) from which the jury is chosen by ballot in open court.

1.10 All prospective jurors who attended courts in New South Wales to constitute criminal jury panels in a two week period² in October 1985 were invited to complete a short anonymous questionnaire. It was considered that the two week period chosen was typical of the court year. Jury panels were summoned to 16 District Courts and one Supreme Court during the survey period. Returns were received from all courts with the exception of one country District Court where the survey forms did not arrive in time to be distributed.

1.11 The questionnaire was designed to elicit three main types of information. Firstly, it collected information on certain characteristics of respondents including age, sex and occupation ('demographic information'). Secondly, data on the attitudes of prospective jurors to their jury service was collected. Thirdly, data on financial loss experienced by prospective jurors and their need for information was recorded.

1.12 The questionnaire was a double-sided cardboard form (see Appendix A) which respondents completed by circling the appropriate answers and writing in their comments where relevant. Most of the questions on the opinions and attitudes of prospective jurors required only a yes or no response. A number of open-ended questions allowed respondents to provide more detailed information. Most of the demographic data was collected using questions with a list of pre-defined categories. Others, such as occupation and country of birth, were left open-ended, allowing for more detailed coding and analysis of these characteristics.

1.13 Survey forms were distributed to prospective jurors by a Sheriff's Officer and were completed before the empanelment process began. In one case, the presiding judge decided that only those who were not balloted onto a jury should take part in the survey. This is unlikely to affect the results. In each court, the Sheriff's Officer who was responsible for handing out the survey questionnaire also filled in a summary sheet which provided information on the number of people summoned and the number attending court on the day (see Appendix B). Table 1.1 summarises this information for each court and also shows the response to the survey.

Table 1.1
Jury Summonses, Attendance and Response

Court	Summoned	Attended n	Court %	Survey n	Response %
D'hurst (SC)	150	73*	48.7	73	100.0
D'hurst (DC)	924	426	46.1	426	100.0
Queen's Sq	174	110	63.2	107	97.3
Hospital Rd	48	26	54.2	26	100.0
City	1296	635	49.0	632	99.5
Liverpool	223	142	63.7	136	95.8
Parramatta	300	204	68.0	204	100.0
Penrith	175	114	65.1	106	93.0
Campbelltown	240	133	55.4	133	100.0
Outer Metropolitan	938	593	63.2	579	97.6
Newcastle	120	83	69.2	83	100.0
Wollongong	280	188	67.1	185	98.4
Queanbeyan	60	32	53.3	32	100.0
Broken Hill	60	40	66.7	25**	89.3
Tamworth	120	83	69.2	83	100.0
Singleton	60	47	78.3	41	87.2
Kempsey	120	84	70.0	84	100.0
Condobolin	60	34	56.7	34	100.0
Country	480	320	66.7	299	93.4
Total	3114	1819	58.4	1779***	98.5****

* This figure includes four people who were originally summoned as part of a B panel and who appeared for jury duty even though their panel had been cancelled. They completed the survey questionnaire and, according to the Sheriff's Office, would have been given the option of being included in the composite panel.

** The presiding judge at Broken Hill decided that only those people who were not empanelled should take part in the survey. This is the only case in which this action was taken. The response rate has been calculated using 28 as the base figure rather than 40.

*** There were 1779 responses to the survey, which includes one response for which the court was not recorded.

**** The response rate has been calculated using 1807 as the base figure, rather than 1819 (see note **).

1.14 Table 1.1 also provides information across the State on the proportion of people summoned who actually attended court.³ Attendance at court in compliance with a Jury Summons varied across the 16 courts, from a low of 46% at the Darlinghurst sittings of the District Court to a high of 78% at Singleton. Attendance was generally lowest in the city courts: fewer than half those summoned appeared at the Darlinghurst sittings of the District Court (46%) and at Darlinghurst Supreme Court sittings (49%). The attendance at Hospital Road and Queen's Square was higher (54% and 63% respectively). Attendance in outer metropolitan courts was generally higher than at city courts. Between 55% and 68% of those summoned appeared at the four courts included in the outer metropolitan category: Liverpool, Parramatta, Penrith and Campbelltown. At both Newcastle and Wollongong almost 70% attended. The attendance at country courts, with the exception of Singleton, showed a similar pattern to that at outer metropolitan courts with attendance at the other five courts ranging from 53% to 70%.

1.15 We are not able to say whether the demographic characteristics of people who did not attend were the same as those of people who did attend. It would have been possible to do this from our proposed analysis of applications to be excused made to the Sheriff but, as explained, this analysis was not possible: para 1.8. In our Survey of Prospective Jurors we did compare the characteristics of those who did attend and found that they were generally representative of the population.

1.16 Of the 1807 people who were asked to participate in this survey, 1779 responded. This represents a very high response rate of 99%. In 10 of the 16 courts the response rate was 100%. There was some failure to respond in each of the areas: city, outer metropolitan, Newcastle/Wollongong and the country. With such a high response rate spread across the State, the small number who did not respond is not significant.

4. Survey of Jurors

1.17 The Survey of Jurors complemented the Survey of Prospective Jurors. While the latter survey collected data from people who had just presented themselves for jury duty, the Survey of Jurors collected information from people who had been selected as jurors and had actually served on a jury. This survey was conducted at the end of the trial when the jurors had completed their jury duty.

1.18 With the consent of the presiding judge, jurors who had served in criminal trials in New South Wales commencing between 30 September and 13 December 1985 were invited, immediately upon completion of their service, to answer an anonymous six-page questionnaire (see Appendix C). The survey period was considered to be typical of the court year, apart from the fact that the limited period of the survey precluded the possibility of covering any trials lasting three months or longer. The questionnaire asked demographic questions identical to those asked in the Survey of Prospective Jurors. Jurors were also asked about some of the practices adopted during the trial on which they had served, whether they understood the proceedings, whether they were inconvenienced, their attitudes to criminal juries generally and their suggestions for improvements. Respondents completed the questionnaire by circling the relevant answers and writing in comments. Many questions required yes or no answers only. Much of the demographic information was collected using pre-coded answers. Space was left for jurors to provide more detailed answers where it was considered appropriate in both the demographic section and the section on their attitudes and opinions. Questionnaires could be completed at court and returned by the Sheriff's Officer to the Commission or jurors could choose to complete them at home and post them back themselves (envelopes addressed to the Commission were provided).

1.19 A total of 1834 jurors from 181 juries took part in this survey. Some individual jurors did take up their option of not completing the questionnaire: in 24 juries there were five or fewer jurors who responded. However, in 60% of juries questionnaires were completed by all 12 jury members. If we assume that each jury had, at the end of the trial, its full complement of 12 jurors⁴ the maximum response to be expected from the 181 juries would have been 2172 people. Of the possible 2172 jurors, 1834 responded: an estimated response rate of 84%.

1.20 The Survey of Jurors took place in the same period as the Survey of Court Procedures: paras 1.21-1.22. The total number of trials included in either the Survey of Court Procedures or the Survey of Jurors was 206. In the majority of trials (170) responses were received to both surveys. However, in 27 trials, the Survey of Court Procedures was returned but there were no returns for the Survey of Jurors. Either the judge decided against distributing the Survey of Jurors or all members of those juries decided not to take part in the survey. In nine trials the jurors responded to the Survey of Jurors but the associate did not complete the Survey of Court Procedures.

5. Survey of Court Procedures

1.21 Judges' associates were asked to complete detailed information sheets 17 pages long (see Appendix D) on each criminal jury trial commenced in New South Wales between 30 September and 13 December 1985. The information sought can usefully be considered in four categories.

- * Details of the trial, including the location of the court, the length of the trial, the jury selection process, the provision of documents and other materials to the jury, the questions asked by the jury.
- * The accused, giving details with respect to each accused in each trial, namely sex, charge(s), use of peremptory challenges, and verdict(s).
- * Personal applications by prospective jurors to the judge to be excused from jury service: the sex of each applicant, the reason put forward and whether the application was successful.

- * The time taken, both as a total and as a proportion of the total length of each trial, on various stages including the Crown opening, any unsworn statement, jury absences and the jury's deliberations.

1.22 It must be noted that although there was co-operation at all levels on the administration of the survey, it was not possible before the survey commenced to get accurate information on the number of trials set down for the survey period. This lack of information made the conduct of the survey more difficult than expected. Throughout the survey period the Commission made contact with individual associates (and sometimes judges themselves) in an effort to ensure that adequate supplies of survey forms were available and being completed. According to information from the Office of the Solicitor for Public Prosecutions and Clerk of the Peace, a total of 248 criminal trials commenced during the survey period in the District Court throughout New South Wales. A further 12 criminal trials commenced in the Supreme Court during the same period. On this basis, the 197 trials surveyed represent 76% of trials commenced during the period. This is probably an underestimate of the actual response to the survey because of the way the Office collects statistics on trials commenced. While the trials in the survey adequately represent the majority of trials which take place in this State, they do not include any very long trials. Nor do they represent trials of the more serious offences. For only one of the 12 Supreme Court trials which took place during the survey period were the survey forms completed and returned.

6. Survey of Judges

1.23 The Commission also sought direct information from judges about their practices in criminal jury trials and their attitudes to a range of proposals for reform. Judges' attitudes to the abilities of juries in complex cases were also sought. This information was gathered by means of an anonymous questionnaire (see Appendix E) distributed to the 19 Supreme Court judges who, from time to time, sit on criminal trials or in the Court of Criminal Appeal and all District Court judges in July 1985. A total of 42 judges (70%) completed the questionnaire, 30 District Court judges and 12 Supreme Court judges. A further six judges wrote to the Commission explaining their reasons for not responding. The reason most often given was their lack of judicial experience due to their recent appointment. Table 1.2 shows that a majority of judges who responded to the survey do mostly criminal work.

Table 1.2
Judges' Jurisdictions

	n	%
Mostly criminal	26	61.9
Mostly non-criminal	8	19.0
Roughly 50-50	6	14.3
Not stated	2	4.8
Total	42	100.0

7. Survey of Crown Prosecutors

1.24 All Crown Prosecutors were surveyed in June 1985. Each prosecutor was invited to complete an anonymous questionnaire (see Appendix F) which asked, among other things, how they used the Crown's right to make peremptory challenges, the content of their opening address to the jury, their use of visual aids and their opinions on improving juror orientation and comprehension. Of the 40 Crown Prosecutors, 22 responded to this survey.

B. Data Analysis

1.25 The information gathered in the Surveys of Prospective Jurors, Jurors, Court Procedures and Judges was analysed by transferring the data onto computer and using the Statistical Package for the Social Sciences (SPSS). In the case of the Surveys of Prospective Jurors, Jurors and Judges, data was entered onto computer direct from the questionnaires. In the Survey of Prospective Jurors and the Survey of Jurors, there were questions whose answers had not been pre-coded. Coding frames were drawn up wherever necessary and the answers coded onto the questionnaires.

1.26 As the Survey of Judges involved a fairly small number of respondents, the open-ended responses were not coded onto the questionnaire for entry onto the computer. They were collated and analysed by hand. Answers to all other questions in the Survey of Judges were put onto a computer file. Data from the Survey of Crown Prosecutors was analysed entirely by hand as the numbers were small.

1.27 The Survey of Court Procedures was more complicated from a data analysis point of view because it contained a large amount of information on a wide variety of aspects of court procedure and the role of juries. The information collected was analysed in a number of categories. There were five computer files based on:

- * trials;
- * accused people;
- * personal applications for excusal from jury service;
- * segments of time; and
- * jury absences from court.

For each of the five databases, data was coded onto computer coding sheets. This involved transferring numerical answers direct from the questionnaire, calculating certain quantities, primarily times, entering these and categorising open-ended comments.

III. RESULTS

1.28 The succeeding chapters of this Report record and discuss the results of the surveys. A broadly chronological approach has been taken so that the chapters follow the same order of progress as does the administration of the jury system. Thus, Chapter 2 discusses the compilation of jury rolls. Chapter 3 reports on the demographic make-up of the sample groups of prospective jurors and serving jurors, comparing them on several indices with the general population in New South Wales. Chapter 4 describes the jury selection process whereby a jury of 12 is chosen from the somewhat larger jury panel in open court. In Chapter 5 we describe the trials surveyed in the Survey of Court Procedures giving, among other things, details of their location and length, and of the offences charged and verdicts delivered. Chapter 6 uses information from all surveys to describe how cases are presented to juries and what assistance they are given to perform their task. Finally, the attitudes expressed by prospective jurors and serving jurors to their task and the system generally are reported in Chapter 7.

1.29 It is important to recall the fact that the surveys of prospective jurors, jurors and trials were conducted on samples rather than the total number (population) of prospective jurors, jurors and trials. The samples were chosen in specific time periods (as detailed above) which were considered not atypical of the court year and which would, therefore, provide samples representative of the relevant populations. We have found, however, that our sample of trials does differ from the population of trials in higher criminal courts in New South Wales in that while they adequately represent the majority of trials, there is an under-representation of Supreme Court trials and of long trials. In generalising the results from any sample, it is to be noted that an estimate obtained from a sample is subject to sampling variability (that is, may differ from sample to sample and also from the figure that would be obtained if the entire population were surveyed). On the other hand, this is not a consideration when interpreting results obtained from the Surveys of Judges and of Crown Prosecutors. In both cases, the population (that is, all judges and all Crown Prosecutors) was included in the survey. The generalisability of these results depends only on the response rate and the extent to which respondents may differ from non-respondents on the opinions and practices reported.

Footnotes

1. Jury Act 1977 s16.
2. Panels were summoned for 21,23,28 and 30 October.
3. In its report *Review of the Allocation, Utilisation and Funding of Juries* of August 1985, the Management Services Division of the Attorney General's Department recommended that the Sheriff set up a statistical collection to monitor this response, among other matters: rec 2(b),(c) pp6-7.
4. In fact a handful of juries completed the trial with only 11 members.

Chapter 2

Survey of the Compilation of Jury Rolls

I. INTRODUCTION

2.1 Subject to being disqualified or ineligible, everyone who is enrolled to vote is qualified and liable for jury service in the jury district in which he or she resides.¹ Schedule 1 to the Jury Act lists people who are disqualified from serving. People who have been convicted of offences and given sentences of imprisonment, recognizance to be of good behaviour, probation or driver's licence disqualification are disqualified either for life, or for 10 or five years. Schedule 2 lists 24 categories of people who are ineligible to be jurors. They include primarily people involved in the administration of justice (and their spouses in some cases) and in the chief emergency services and people who because of illness or poor English are incompetent to serve on a jury. Schedule 3 lists 17 categories of people who, although qualified to serve if they wish to, may claim an exemption as of right. Some professionals, the elderly and people having the care, custody and control of children are among those who may claim an exemption.

2.2 For each of the 72 jury districts in New South Wales a jury roll is prepared at least once every three years. The requisite number of names is selected at random using a computer to form a draft jury roll. The basis of this selection is the current electoral roll for each electoral subdivision within the jury district. The numbers selected vary greatly between jury districts depending both upon their size and upon the frequency with which jury trials are conducted within them.

2.3 All people selected for a draft jury roll are sent a "Notification of Inclusion on a Draft Jury Roll". This Notification requires the recipient to advise the Sheriff if he or she is disqualified or ineligible for jury service, or wishes to claim an exemption as of right.² The categories of people who are disqualified, ineligible and entitled to claim an exemption are set out on the back of the Notification. People in these categories who so notify the Sheriff are deleted from the final jury roll.³ Deletions of people who are deceased, no longer resident in the jury district or whose Notifications are returned unclaimed are also effected at this stage. An average of 32% of people included on draft jury rolls in the State are deleted from the final roll before it is certified by the Sheriff⁴ and comes into force.

2.4 An average of 21% of those on the draft jury roll are deleted from the roll after it is certified. These later deletions, made strictly out of time, become necessary because:

- * people become disqualified, ineligible or entitled to claim an exemption as of right during the life of a roll;
- * people move away from the jury district during the life of the roll; and
- * people who are disqualified, ineligible or exempt as of right fail to notify the Sheriff until after the roll is proclaimed - usually in response to a Jury Summons.

Table 2.1 shows the history of a sample of jury rolls to March 1985. The sample chosen represents city, outer metropolitan and country jury districts.

Table 2.1
Compilation of Jury Rolls

	Sydney	Penrith	New- castle	Dubbo	Bathurst	Cess- nock	Lith- gow
Size of draft roll	202,541	21,477	18,931	2,953	1,994	801	507
Notifications returned unclaimed	8,864	632	521	125	92	11	31
Applications for exemption refused	3,652	497	305	57	37	10	8
Date roll certified	Mar 84	Jun 82	Aug 82	Oct 82	Oct 82	Aug 82	Oct 82
Size of final roll	113,262	14,232	11,894	2,141	1,292	492	342
% deleted before roll certified	44.1	33.7	37.2	27.5	35.2	38.6	32.5
Size of roll at March '85	87,959	9,968	8,214	1,282	808	397	253
Total % excluded by March '85	56.6	53.6	56.6	56.6	59.5	50.4	50.1

2.5 Since over half those selected at random from the electoral roll for a draft jury roll are deleted, it was decided to investigate the reasons for these deletions. We examined every application for deletion returned when the draft jury rolls for Penrith, Newcastle-Cessnock and Dubbo-Bathurst-Lithgow were being finalised. These districts were chosen from the total of those for which new rolls were being compiled in the second half of 1985 because they represented three distinct types of jury district: outer metropolitan, regional city and country districts.

II. PENRITH

2.6 The new Penrith jury roll was prepared during May 1985. Table 2.2 sets out the reasons for the deletions made from the final jury roll. It can be seen that almost 13% of deletions were of people whose notifications were returned unclaimed because the person was no longer at the address. A further 6% did complete their Notifications with the information that they were no longer living in the jury district and 1% were deceased. 75 people (1%) were deleted although the grounds upon which this was done were not authorised by the Jury Act. The remaining 79% of deletions were made for reasons listed in the three schedules to the Jury Act 1977. Disqualification accounted for 4% of deletions, ineligibility for 31% and exemption as of right for 45%. Significant reasons for deletions for Penrith were:

- * people having the care, custody and control of children under the age of 18 years — a ground of exemption as of right: 1629 women and 27 men: 24% of deletions;
- * people "unable because of illness or infirmity to discharge the duties of a juror" — a ground of ineligibility: 1042 people: 15% of deletions; and
- * people of or above the age of 65 years — a ground of exemption as of right: 1031 people: 15% of deletions.

III. NEWCASTLE — CESSNOCK

2.7 New jury rolls for Newcastle and Cessnock were prepared during June 1985. Again Table 2.2 shows the deletions made before certification of the final rolls. The total number of deletions made from the Cessnock roll was 203, a figure too small to indicate trends. Therefore, the Newcastle and Cessnock data have been combined. 14% of Notifications were returned unclaimed while another 5% were deleted because they had moved away from the districts. 2% were deceased. 83 people (1%) were deleted for reasons not set out in the schedules to the Jury Act and, therefore, not authorised. 35 of those people had simply returned their Notifications without completing them or marking them in any way. The remaining deletions (79%) were made for reasons listed in the three schedules. Disqualification accounted for 3% of deletions, ineligibility for 32% and exemptions for 44%. Significant reasons for deletions in Newcastle-Cessnock were:

- * people aged 65 and over — a ground of exemption as of right: 2143 people: 28% of deletions;
- * people "unable because of illness or infirmity to discharge the duties of a juror" — a ground of ineligibility: 1900 people: 25% of deletions; and
- * people having the care, custody and control of children under the age of 18 years — a ground of exemption as of right: 909 people: 12%.

IV. DUBBO — BATHURST — LITHGOW

2.8 The new Dubbo, Bathurst and Lithgow jury rolls were prepared together during August 1985. Table 2.2 shows the deletions made before certification of the final rolls. Again, because the numbers in Bathurst and Lithgow are small, the data has been combined. 13% of Notifications were returned unclaimed and another 9% had moved from the districts. 1% were deceased. There were only 11 (1%) unauthorised deletions, most of them for expressions of general bias. 77% of deletions were made for reasons set out in the schedules to the Jury Act. Disqualification accounted for 3% of deletions, ineligibility for 24% and exemptions for 50%. Significant reasons for deletions in Dubbo-Bathurst-Lithgow were:

- * people aged 65 and over — a ground of exemption as of right: 474 people: 26% of deletions;
- * people "unable because of illness or infirmity to discharge the duties of a juror" — a ground of ineligibility: 312 people: 17% of deletions; and
- * people having the care, custody and control of children under the age of 18 years — a ground of exemption as of right: 272 people: 15% of deletions.

Table 2.2
Deletions from the Jury Roll

	Penrith		Newcastle- Cessnock		Dubbo- Bathurst Lithgow		Total	
	n	%	n	%	n	%	n	%
Total Notifications	23605		20241		6608		50454	
Returned unclaimed	900	12.8	1050	13.6	234	12.6	2184	13.1
No longer resident in district	428	6.1	362	4.7	163	8.8	953	5.7
Deceased	56	0.8	139	1.8	24	1.3	219	1.3
SUB-TOTAL NO LONGER QUALIFIED	1384	19.6	1551	20.1	421	22.6	3356	20.2

DISQUALIFIED -- Schedule 1

For life	14		21		4		39	
For 10 yrs	42		14		3		59	
For 5 yrs	220		172		41		433	
Unspecified					3		3	
SUB-TOTAL DISQUALIFIED	276	3.9	207	2.7	51	2.7	534	3.2

INELIGIBLE -- Schedule 2

Members and officers of NSW Parliament or spouse	3	0.0*	3	0.0	1	0.1	7	0.0
Barrister or solicitor	16	0.2	16	0.2	6	0.3	38	0.2
Employee of Corrective Services Dept	31	0.4	10	0.1	17	0.9	58	0.3
Member of Police Force or spouse	168	2.4	62	0.8	21	1.1	251	1.5

Table 2.2 Cont.
Deletions from the Jury Roll

Employee of Attorney General's Dept	27	0.4	12	0.2	—		39	0.2
Employee of Police Dept	14	0.2	2	0.0	2	0.1	18	0.1
No English	516	7.3	273	3.5	38	2.0	827	5.0
Illness or infirmity	1042	14.8	1900	24.6	312	16.8	3254	19.6
Employee of Fire Commissioners	33	0.5	25	0.3	4	0.2	62	0.4
Employee of State Emergency Services	3	0.0	1	0.0	—		4	0.0
Employee in ambulance services	18	0.3	12	0.2	7	0.4	37	0.2
C'th public servants	227	3.2	102	1.3	37	2.0	366	2.2
Crown Prosecutor or spouse	4	0.1	—		—		4	0.0
Private inquiry agent	41	0.6	26	0.3	—		67	0.4
Spouse of prison officer	15	0.2	4	0.1	2	0.1	21	0.1
State Rail Authority security service	4	0.1	2	0.0	—		6	0.0
Employee of Corporate Affairs Commission	2	0.0	—		—		2	0.0
SUB-TOTAL INELIGIBLE	2164	30.7	2450	31.7	447	24.0	5061	30.4

Table 2.2 Cont.
Deletions from the Jury Roll

EXEMPT — Schedule 3

Clergy	35	0.5	27	0.3	15	0.8	77	0.5
Dentist in practice	6	0.1	4	0.1	—		10	0.1
Medical practitioner	19	0.3	42	0.5	13	0.7	74	0.4
Aged 65+	1031	14.6	2143	27.7	474	25.5	3648	21.9
Pregnant	124	1.8	65	0.8	23	1.2	212	1.3
Care, custody and control of children	1658	23.5	909	11.8	272	14.6	2839	17.1
Care of ill or aged	95	1.3	138	1.8	22	1.2	255	1.5
On existing roll	93	1.3	34	0.4	17	0.9	144	0.9
Previous lengthy service	36	0.5	12	0.2	1	0.1	49	0.3
Lives 56km+ from court	11	0.2	13	0.2	78	4.2	102	0.6
Member or officer of statutory corporation	4	0.1	1	0.0	1	0.1	6	0.0
Pharmacist in practice	12	0.2	14	0.2	3	0.2	29	0.2
Mine manager	2	0.0	8	0.1	1	0.1	11	0.1
Mine rescue corps	—		—		1	0.1	1	0.0
Former police	19	0.3	22	0.3	7	0.4	48	0.3
State Rail Authority mechanical manager	—		—		1	0.1	1	0.0

Table 2.2 Cont.
Deletions from the Jury Roll

Mine rescue station superintendent	—		—		1	0.1	1	0.0
SUB-TOTAL EXEMPT	3145	44.6	3432	44.4	930	50.0	7507	45.1
SUB-TOTAL SCHEDULE DELETIONS	5585	79.3	6089	78.8	1428	76.8	13102	78.8
UNAUTHORISED DELETIONS								
Jehovah's Witnesses	10		6		1		17	
Other conscientious objectors	13		—		—		13	
Past offenders	20		13		3		36	
General bias	7		3		7		17	
Self-employed	—		4		—		4	
Uncompleted form	—		35		—		35	
Other	25		22				47	
SUB-TOTAL UNAUTHORISED DELETIONS	75	1.1	83	1.1	11	0.6	169	1.0
TOTAL DELETIONS	7044		7723		1860		16627	
DELETIONS AS A % OF TOTAL NOTIFICATIONS	29.8		38.2		28.1		33.0	

* A percentage reported as 0.0 signifies that the percentage is less than 0.5.

2.9 The number of exemptions claimed under Schedule 3 to the Jury Act by people who were practising as medical practitioners, dentists, pharmacists and clergymen are of the order to be expected from their representation in the general community. The number of people affected by this right of exemption is relatively small. The number who claim it is even smaller.

Table 2.3
Deletion of Exempted Occupations

	Notifications per 1000	NSW Population Aged 18+ at 1981 Census per 1000
Medical practitioner	1.5	2.9
Dentist	0.2	0.6
Pharmacist	0.6	1.0
Clergyman	1.5	1.0

2.10 In all three areas under study the proportion of people who claimed exemption because they were aged 65 or over was lower than their representation in each of the jury districts. Numbers of people in this age group do claim the exemption at a later stage by making applications to be excused either to the Sheriff or to the judge on the day of the trial. A number of people in this age group do in fact serve as jurors.

Table 2.4
Deletion of People Aged 65 and Over

Jury Districts	Notifications %	NSW Population Aged 18+ at 1981 Census %
Penrith	4.4	6.7
Newcastle-Cessnock	10.6	15.3
Dubbo-Bathurst-Lithgow	7.2	13.7

V. SUMMARY

2.11 In some significant ways the three sets of figures are very similar. In every case, schedule deletions accounted for just over three-quarters of total deletions while the basic disqualifying factors of being no longer resident in the jury district or deceased accounted for around one-fifth. The main grounds for deletion were being of or above the age of 65 years, having the care, custody and control of children under the age of 18 years and being ill or infirm. Whilst bearing significant similarities, the results for the different areas reflect the different natures of their populations. For example, in Penrith, where there is a large proportion of young families, the largest category of deletions was people having the care of children: 24%. In Newcastle-Cessnock, an area with a large population of retired people, age and infirmity were the main categories of deletion: 28% and 25% respectively.

2.12 Of perhaps greatest concern is the result that about 20% of Notifications were either returned unclaimed or returned with advice that the recipient had moved from the jury district. Each jury roll is drawn directly from the relevant electoral roll. The Jury Act⁵ requires the Electoral Commissioner to provide the "latest available copies" of relevant rolls at the Sheriff's request. The computer tapes on which the electoral rolls are recorded are brought up to date in two ways. New applications for inclusion on a roll are entered each week. A more thorough revision, however, is undertaken only once every two years. It involves a survey of households in each electorate. In most cases, therefore, the electoral roll which the Sheriff receives will rely mainly on public compliance with the electoral laws for its accuracy and completeness. New South Wales electoral law requires people entitled to be on the roll for any subdivision to ensure they make a claim for enrolment within 7 weeks of moving into the subdivision.⁶ The effect of such a claim would be not only to ensure the voter's name is placed on the roll for his or her current place of residence, but also removed from the roll for the former residence. Our results suggest that compliance with this rule is erratic and, therefore, the electoral rolls cannot be relied on as a complete list of eligible adults.

2.13 In its Report *The Jury in a Criminal Trial* completed in March 1986, ('the Report') the Commission recommended:

The age at which a person is entitled to claim exemption as of right from jury service on the ground of advanced age should be raised from 65 to 70 years.⁷

The survey results did distinguish people aged 65 to 69 from those aged 70 or over. While total deletions on the ground of advanced age represented 22% of total deletions, those aged 65 to 69 (who would become liable to serve under the Commission's recommendation) were only 6% of total deletions. That is to say, most deletions for reasons of advanced age are of those aged 70 or over in any event. The actual numbers brought back into jury service will also be reduced by those aged 65 to 69 who are still unable to perform jury service by virtue of being ill or infirm. In the three areas surveyed 1254 people (8%) cited both illness and advanced age as reasons for deletion.⁸

2.14 In our Discussion Paper *The Jury in a Criminal Trial* published in September 1985, the Commission raised the issue whether spouses of people in ineligible occupations, or some of them, should be liable to perform jury service.⁹ Currently the spouses of Judges, Masters, Members and officers of the New South Wales Parliament, Magistrates, police officers, Crown Prosecutors, Public Defenders and prison officers are ineligible. These spouses accounted for 1% of total deletions in our survey. In the Report of March 1986, the Commission recommended that spouses should continue to be ineligible. It was also recommended that *de facto* spouses should become ineligible.¹⁰

2.15 In the Discussion Paper the Commission also raised the issue whether measures should be taken to encourage people with the responsibility for caring for young children to make themselves available for jury service.¹¹ People having the care, custody and control of children under the age of 18 years represented 17% of total deletions in our survey and almost one-quarter of deletions in Penrith. In the Discussion Paper the Commission canvassed the possibility that child care facilities could be provided on or near court premises to assist those responsible for young children.¹² In the Report of March 1986, however, the Commission rejected this proposal on two grounds. Firstly, it was recognised that the provision of adequate facilities for child care is a general community issue which is much wider than that of the liability of the parents for jury service. Secondly, it was felt that the proper care and supervision of young children is a more important responsibility than jury service.¹³

2.16 In a Report under the Community Law Reform Program *Conscientious Objection to Jury Service*¹⁴ published in December 1984 and in the Report *The Jury in a Criminal Trial*¹⁵, the Commission recommended that people who have a conscientious objection to serving on a jury should be entitled to claim an exemption as of right. Conscientious objection, whether on religious grounds or otherwise, is not now a valid ground for deletion from the jury roll. Nevertheless, 30 people (0.2%) were deleted for this reason in the districts included in the survey.

Footnotes

1. Jury Act 1977 s5.
2. *Id.* s13.
3. *Id.* s14(1).
4. *Id.* s16(1).
5. *Id.* s11.
6. Parliamentary Electorates and Elections Act 1912 ss33,34.
7. LRC 48, para 4.35.
8. In Table 2.2 all of these people are counted once as ill or infirm.
9. DP 12, para 3.20.
10. LRC 48, para 4.24.
11. DP 12, para 3.26.
12. *Ibid.*
13. LRC 48, para 4.38.
14. LRC 42.
15. LRC 48, para 4.36.

Chapter 3

Demographic Characteristics of Prospective Jurors and Jurors

I. INTRODUCTION

A. Sources

3.1 The deletions revealed by the Survey of Jury Roll Compilation suggest significant groups may be under-represented on jury panels. Information on the demographic characteristics of jurors and prospective jurors was collected in the questionnaires completed by these two groups. The sex, age, education, employment status and occupation of jurors and prospective jurors are compared with data on the population of New South Wales to establish whether they are representative of the general population.

3.2 Data available from other parts of this research project, namely, the compilation of the jury roll (Chapter 2) and personal applications to the judge to be excused at the time of the trial (Chapter 4) are incorporated to trace the changing demographic profile of potential jurors from the initial stage of receiving a Notification to the final stage of serving as a juror.

B. Bases of Comparisons

3.3 In commenting on the demographic characteristics of respondents, an attempt has been made to compare the results of the Commission's surveys with the most currently available information on the New South Wales population. In some cases, this information can be obtained from the monthly surveys conducted by the Australian Bureau of Statistics (ABS). In other cases, the comparative information consists of estimates made by the ABS based on data from the 1981 Census and updated using current information. In yet other cases, however, the most recent information available is from the 1981 Census.

3.4 Comparisons are relevant for people aged 18 years or older as this is the minimum voting age and the minimum age for jury service.¹ While all adults are eligible for jury service, those aged 65 or over may claim an exemption as of right. It is to be expected that people in this age group will be under-represented on jury panels and juries. In the population figures used in this chapter, however, all age groups over 18 are included. Because age is statistically related to other demographic characteristics, for example, labour force status and education, it is to be expected that jury panels and jurors will differ on these characteristics from the general population.

3.5 Although detailed and up-to-date information on age-sex distributions was available from the ABS as estimates, such information was not usually available on the other demographic characteristics of interest in these surveys. Comparisons are made with data from the 1981 Census where relevant. Data used in Tables 3.3 and following, derived from the census, usually relates to the population aged 15 years and over.

II. AGE-SEX DISTRIBUTIONS

3.6 The age-sex distribution of respondents to the surveys was compared to the age-sex distribution of people in New South Wales aged 18 and over as reported by the ABS.² In the two survey samples and the 1984 population estimates the proportion of males and females was approximately equal. It is surprising that women were not under-represented especially in the age groups covering the child-bearing and child-raising years. Of those deleted from jury rolls in the three districts analysed, 24%, 12% and 15% were people having the care, custody and control of children under the age of 18. Almost all were women. Of successful personal applications to be excused, 10% related to the care of children and sick relatives and 46 of the 56 people excused for this reason were women. These are small numbers compared to the deletions, and are offset by males who represented the majority of successful personal applications on the basis of their work: 148 of 212.

3.7 As expected, both men and women aged 65 years or more were substantially under-represented in the pool of prospective jurors and among serving jurors. People aged 65 years or more are able to claim an exemption as of right.³ The Commission's own analysis of the jury rolls relating to Penrith, Newcastle-Cessnock and Dubbo-Bathurst-Lithgow compiled in 1985 showed that exemptions on this ground accounted for 15%, 28% and 26% respectively of people deleted from the rolls before they were finalised.

3.8 Other than males and females aged 65 or over, the only age group which was under-represented in both the Survey of Prospective Jurors and the Survey of Jurors was the 18-29 year age group. The disproportionate representation of males in this age group was significant. Possible reasons for this are:

- * males in this age group may be more likely to be disqualified or ineligible for jury service;
- * a proportion may have failed to register on the electoral roll;
- * this age group may be less inclined to regard the jury summons as seriously as older age groups;⁴
- * their attitude to jury service may be different;⁵
- * the electoral roll, although updated at regular intervals, may always exclude a certain number of recently eligible voters;⁶ and
- * this age group may be more mobile than older age groups, moving from place to place so that the Jury Summons is not received.

3.9 Of the 4463 people convicted by higher criminal courts in New South Wales in 1983, 67% were males aged under 30 and 5% were females under 30.⁷ That is to say, almost three-quarters of those convicted were aged under 30. If the jury is to be genuinely representative of the community, it is important that all sections of the community participate. Where the person on trial is relatively young, it may be important for the just and effective operation of the jury system that there are people on the jury who are also relatively young and, therefore, more likely to bring to the jury the kind of experience and social development of the accused person.

Table 3.1
Age-Sex Distribution of People Aged 18 and Over

	Survey of Prospective Jurors October 1985			Survey of Jurors September-December 1985 %			Estimate NSW June 1984*		
	Males	Females	Total	Males	Females	Total	Males	Females	Total
18-29	22.4	24.5	23.3	23.6	25.3	24.3	28.7	27.0	27.8
30-39	22.7	21.4	22.0	29.2	24.5	26.8	22.3	21.1	21.7
40-49	23.8	24.6	24.2	22.5	21.2	21.9	16.2	15.0	15.6
50-59	18.2	19.4	19.0	15.9	19.9	17.8	14.2	13.5	13.9
60-64	9.0	8.0	8.5	6.0	7.9	7.1	6.3	6.6	6.4
65+	3.8	2.0	3.0	2.7	1.2	2.0	12.2	16.9	14.6
Not stated**	(14)	(3)	(36)	—	(4)	(35)	—	—	—
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
n	892	848	1779	893	903	1834	1914379	1969886	3884265
%	51.3	48.7	100.0	49.7	50.3	100.0	49.3	50.7	100.0

* ABS *Estimated Resident Population by Sex and Age: States and Territories of Australia, June 1984* (Cat No 3201.0) pp4-5.

** The number of cases in which information was not stated is shown in brackets and has been omitted when calculating percentages.

3.10 The under-representation of the oldest and youngest age groups was balanced by over-representation of some of the other age groups. In the Survey of Prospective Jurors the 30-39 year age group was proportionately represented. Both males and females, however, were over-represented in each of the 40-49, 50-59 and 60-64 age groups. In the Survey of Jurors all age groups from 30 to 59 were over-represented for both males and females. Males aged 60-64 were proportionately represented while females aged 60-64 were slightly over-represented.

II. OTHER CHARACTERISTICS

A. Employment and Occupation

3.11 As Table 3.2 shows, the distribution of employment status was very similar among jurors and prospective jurors surveyed. Full-time employees constituted 55% of prospective jurors and 58% of jurors. About 10% of both samples were part-time employees. 12% of prospective jurors and 10% of jurors were self-employed and about 12% of both samples were in full-time home duties.

Table 3.2
Employment Status

	Survey of Prospective Jurors		Survey of Jurors	
	n	%	n	%
Full-time employee	957	55.0	1040	57.9
Part-time employee	176	10.1	155	8.6
Self-employed	214	12.3	186	10.4
Retired	123	7.1	113	6.3
Full-time home duties	209	12.0	230	12.8
Unemployed	42	2.4	41	2.3
Student	9	0.5	19	1.1
Employed and student*	7	0.4	9	0.5
Pensioner**	3	0.2	2	0.1
Not stated	(39)		(39)	
Total	1779	100.0	1834	100.0

* Respondents ticked 2 categories

** Respondents wrote in "pensioner".

Table 3.3
Labour Force Status

	Survey of Prospective Jurors		Survey of Jurors		1981 Census 15+ NSW*	
	n	%	n	%	n	%
Wage, salary earner	1140	81.7	1204	84.1	1919421	81.1
Self-employed	214	15.3	186	13.0	185376	7.8
Employer	—	—	—	—	109359	4.6
Other	—	—	—	—	18941	0.8
Unemployed	42	3.0	41	2.9	132899	5.6**
Total in labour force	1396	100.0	1431	100.0	2365994	100.0
% in labour force		78.5	—	78.0		61.1***

* ABS *Cross-Classified Characteristics of Persons and Dwellings 1981 Census of Population and Housing New South Wales* (Cat No 2444.0) p28.

** A labour force survey conducted in October 1985 shows that the unemployment rate had increased to 7.6% of the labour force: ABS *The Labour Force Australia, October 1985* (Cat No 6203.0) p15.

*** The corresponding proportion of the population aged 18 and over is 65.4%.

3.12 Table 3.3 presents the information on employment status grouped in such a way that comparisons can be made with population data. Both jury survey samples included a larger proportion of people in the labour force: 79% of prospective jurors and 78% of jurors compared to 65% of people aged 18 and over in the population. This is related at least in part to the fact, as noted in Chapter 2, that people over 65 and people with the care of children or the ill or aged may claim an exemption as of right.

3.13 Wage and salary earners represented more than 80% of jurors, prospective jurors and the general population in the labour force. Self-employed people were not under-represented among the jurors and prospective jurors surveyed compared to the general population in the labour force (the employer and self-employed categories used in the census are added together). From answers to other questions in the surveys it emerged that it was the self-employed for whom jury service was a burden in terms of time and money. In spite of this, self-employed people attended for jury service. Almost all (84%) of the self-employed who made personal applications to be excused were successful and they represented 12% of all successful personal applications. It is interesting to note, therefore, that self-employed people were not under-represented among jurors.

3.14 The unemployed were substantially under-represented among jurors and prospective jurors, representing less than half the proportion found in the ABS Labour Force Survey conducted at the same time as the Survey of Prospective Jurors. Such under-representation was also found in a 1983 study of jurors conducted by the Law Foundation of New South Wales.⁸ One explanation for this under-representation may be that unemployed people are more likely to have to be mobile and therefore would not receive a Jury Summons delivered to a former address. The significance of the under-representation of unemployed people among jurors and prospective jurors is heightened when compared with their representation as convicted people. In 1983 fully one-half of people convicted by higher criminal courts in New South Wales were unemployed at the time of their arrest.⁹

3.15 Respondents in employment were asked to write in their occupations. These occupations were then coded into categories based on ABS classifications:¹⁰ Table 3.4. In general, prospective jurors were more similar to the population than were jurors. However, the distribution of occupations among respondents to both surveys who were employed and who responded to this question differed from that in the 1981 Census. The largest difference is seen in the category of Tradesmen, Production-process Workers and Labourers. While this group represented 31% of the population at the 1981 Census, it represented only 24% of prospective jurors and only 20% of jurors. In contrast, the 'white-collar' categories (Clerical Workers, Sales Workers, Professional, Technical and Related Workers and Administrative, Executive and Managerial Workers) were at least representative of the general population, with some evidence of over-representation.¹¹

3.16 A number of specific professional categories are itemised separately in Table 3.4 as they are of special interest when considering the compulsory nature of jury service. Nurses and teachers represent substantial minority groups who sometimes lobby to be granted exemption from jury duty. Teachers were somewhat over-represented among jurors and prospective jurors; nurses were not.

Table 3.4
Occupation of Employed People

	Survey of Prospective Jurors		Survey of Jurors		1981 Census (15+) NSW*
	n	%	n	%	%
Professional, Technical and Related Workers	198	18.5	254	23.0	14.5
(nurses)	30	2.8	23	2.1	2.7
(teachers)	60	5.6	83	7.5	4.2
(medical practitioners & dentists)	0	—	1	0.1	0.6
(other professional medical workers)	0	—	4	0.4	0.5
(clergy and related members of religious orders)	1	0.1	0	—	0.3
Administrative, Executive and Managerial Workers	91	8.5	115	10.4	5.4
Clerical Workers	213	19.9	259	23.4	19.4
Sales Workers	134	12.5	112	10.1	9.2
Farmers, Fishermen, Hunters, Timber-getters and Related Workers	34	3.2	28	2.5	5.7
Miners, Quarrymen and Related Workers	8	0.7	3	0.3	0.8
Workers in Transport and Communication	59	5.5	34	3.1	5.3
Tradesmen, Production-process Workers and Labourers	256	23.9	225	20.4	30.8
Service, Sport and Recreation Workers	76	7.1	75	6.8	8.9
Total	1069	100.0	1105	100.0	100.0

* ABS Cross Classified Characteristics of Persons and Dwellings, 1981 Census of Population and Housing New South Wales (Cat No 2444.0) pp32-35.

3.17 Respondents who were retired, in full-time home duties or unemployed were asked to write in their former occupations. These were coded in the same way as occupations: Table 3.5. Of the 374 prospective jurors who said they were retired, in full-time home duties or unemployed, 225 (60%) answered the open-ended question asking for information on their previous occupations. Of the 384 jurors who were retired, in full-time home duties or unemployed, 237 (62%) provided this information. The two samples were very similar, with about 40% having been Clerical Workers and about 20% having been Tradesmen, Production-process Workers and Labourers. As observed in the case of people currently in the labour force, there was a tendency among those jurors and prospective jurors no longer in the labour force to have been white-collar rather than blue-collar workers.

Table 3.5
Former Occupations

	Survey of Prospective Jurors		Survey of Jurors	
	n	%	n	%
Professional, Technical and Related Workers	26	11.6	29	12.2
Administrative, Executive and Managerial Workers	10	4.4	8	3.4
Clerical Workers	87	38.7	102	43.0
Sales workers	21	9.3	23	9.7
Farmers, Fishermen, Hunters Timber-getters and Related Workers	2	0.9	2	0.8
Miners, Quarrymen and Related Workers	0	—	0	—
Workers in Transport and Communication	10	4.4	5	2.1
Tradesmen, Production-process Workers and Labourers	50	22.2	45	19.0
Service, Sport and Recreation Workers	19	8.4	23	9.7
Total	225	100.0	237	100.0

B. Education

3.18 Survey respondents were asked to circle the highest level of education they had completed on a six-point scale which is reproduced in the first column of Table 3.6. The census, in contrast, asked a question of all people aged 15 years or over on qualifications obtained since leaving school. The census data is coded into the following six categories.

- * Higher degree.
- * Graduate diploma.
- * Bachelor degree conferred by a university, or another institution.
- * Diploma.
- * Trade certificate.
- * Other certificate (issued by colleges of technical and further education and business colleges).¹²

The census categories have been collapsed into two categories to provide comparisons with data collected in the Commission's surveys. The first three categories have been considered together as have the last three.

Table 3.6
Highest Level of Education Completed

	Survey of Prospective Jurors		Survey of Jurors		1981 Census (15+) (NSW)*
	n	%	n	%	%
Primary school	97	5.7	48	2.7	
Spent less than 3 years at high school	242	14.2	201	11.5	
Spent 3 years or more at high school	701	41.0	676	38.6	
HSC/leaving/matriculation Certificate	291	17.0	356	20.3	
No qualification since leaving school	1331	77.8	1281	73.1	71.1
Diploma or certificate from a tertiary institution other than a university	274	16.0	332	18.9	23.8
University degree and/or higher degree	105	6.1	140	8.0	4.7
Not adequately described					0.3
Not stated	(69)		(81)		(8.6)
Total	1779	100.0	1834	100.0	100.0

* ABS 1981 Census of Population and Housing Small Area Summary Data — Condensed Format, p4. Those still at school have been omitted from this Table.

3.19 The education levels attained by the jurors and prospective jurors surveyed were generally very similar although there was a slightly higher proportion of people with no qualifications since leaving school among prospective jurors (78%) than among jurors (73%). Prospective jurors tended to have had less formal education than jurors with a greater proportion having completed only primary school or fewer than three years at high school. There was a slightly higher proportion of people with tertiary qualifications among jurors than among prospective jurors. This would suggest that, contrary to recent claims, better educated people are not excluded from juries. On the contrary, on these figures, there is a likelihood that one juror on each jury will be a university graduate and the process of jury selection has actually increased the relative proportion of such graduates.

3.20 The main difference between the two samples and the population was the under-representation of people with a diploma or certificate from a tertiary institution other than a university. 16% of prospective jurors and 19% of jurors fell into that category compared to 24% of the general population. When this is considered together with the under-representation of jurors and prospective jurors in the occupation category of Tradesmen, Production-process Workers and Labourers (Table 3.4), it appears that there was a real under-representation of blue-collar workers among jurors and prospective jurors.

C. Country of Birth

3.21 Respondents were asked to write in their country of birth as well as the country of birth of their parents. This information allowed comparisons to be made with the general population on the representativeness among jurors and prospective jurors of people born overseas and of people born in Australia whose parents were born overseas.

Table 3.7
Country of Birth

	Survey of Prospective Jurors		Survey of Jurors		1981 Census (15+) (NSW)*
	n	%	n	%	%
Australia	1342	75.4	1389	75.7	73.9
New Zealand	12	0.7	19	1.0	1.5
UK & Ireland	181	10.2	169	9.2	8.2
Germany	13	0.7	15	0.8	0.9
Greece	9	0.5	4	0.2	1.2
Italy	17	1.0	12	0.7	1.9
Malta	15	0.8	15	0.8	0.6
Netherlands	12	0.7	11	0.6	0.6
Poland	8	0.4	4	0.2	0.5
Yugoslavia	16	0.9	9	0.5	1.4
Other Europe	31	1.7	44	2.4	2.0
Total Continental Europe	121	6.8	114	6.2	9.2
Lebanon**	8	0.4	4	0.2	0.8
Other Asia**	34	1.9	39	2.1	2.9
America	8	0.4	9	0.5	0.9
Africa	13	0.7	16	0.9	0.8
Oceania	2	0.1	6	0.3	0.3
Not stated	58	3.3	69	3.8	1.4
Total	1779	100.0	1834	100.0	100.0

* ABS Cross-Classified Characteristics of Persons and Dwellings 1981 Census of Population and Housing New South Wales (Cat No 2444.0) p3.

** The ABS codes Lebanon (as well as other Middle East countries) into its category called Asia.

3.22 Although the percentages themselves are small, there was a very slight under-representation of the overseas-born: Table 3.7. However, in general the distribution of place of birth among jurors and prospective jurors was very similar to that in the community. About three-quarters of jurors and prospective jurors, and of the general population, were Australian-born.

3.23 Table 3.8 presents more detailed information on place of birth. The distributions among prospective jurors and jurors were almost identical. They did differ, however, from the general population. Of all people born overseas, people born in Britain were over-represented among prospective jurors and jurors surveyed. The only other major group which was over-represented was that of 'Other Europe'. This category includes countries such as the Netherlands and Germany. Overall, however, European-born people were under-represented among jurors and prospective jurors. It was the Southern European countries of Italy, Greece and Yugoslavia which accounted for this overall under-representation.

3.24 Of the Asian (and Middle East) countries, all individual countries listed, except India, Malaysia and Sri Lanka, were under-represented to some degree among jurors and prospective jurors. This pattern can be explained to some extent by the fact that people born in an English-speaking country are:

- * more likely to be on the electoral roll; and

- * less likely to be ineligible for jury service because of language difficulties.¹³

A number of people were deleted from the jury rolls because they were unable to read or understand the English language: 7%, 4% and 2% of deletions in the areas of Penrith, Newcastle-Cessnock and Dubbo-Bathurst-Lithgow respectively. Furthermore, 6% of successful personal applications to the judge to be excused were made on this ground. Taking this factor into account, the distribution of place of birth was very similar to that of the population.

3.25 Almost all of the jurors and prospective jurors born overseas had been in Australia for at least five years. Only nine prospective jurors (2%) and nine jurors (2%) had been in Australia for less than five years compared to 19% of the total population at the 1981 Census.

3.26 In this context it is relevant to look at the country of birth and length of residence in Australia of people convicted in higher criminal courts in New South Wales so as to compare these characteristics to those of jurors and prospective jurors. Australian-born people represented 83% of those convicted by higher criminal courts in New South Wales in 1983.¹⁴ This proportion exceeds the proportion of Australian-born people among prospective jurors (75%) and jurors (76%) and also the proportion of Australian-born people in the population aged 15 or over at the 1981 Census (74%): Table 3.7.

Table 3.8
Detail of Country of Birth
 (percent of overseas-born)

	Survey of Prospective Jurors		Survey of Jurors		1981 Census (NSW)*
	n	%	n	%	%
New Zealand	12	3.2	19	5.1	6.5
UK & Ireland	181	47.8	169	44.9	32.4
Greece	9	2.4	4	1.1	4.6
Italy	17	4.5	12	3.2	7.4
Yugoslavia	16	4.2	9	2.4	5.6
Eastern Europe	18	4.7	26	6.9	4.7
Other Europe	61	16.1	63	16.8	13.1
Total Continental Europe	121	31.9	114	30.3	35.4
Lebanon	8	2.1	4	1.1	3.6
China	3	0.8	2	0.5	1.4
Cyprus	2	0.5	2	0.5	0.9
India	8	2.1	9	2.4	1.2
Malaysia	3	0.8	4	1.1	0.9
Sri Lanka	3	0.8	3	0.8	0.4
Turkey	1	0.3	0	—	1.0
Vietnam	1	0.3	2	0.5	1.6
Other Asia	13	3.4	17	4.5	5.4
Total Asia	42	11.1	43	11.4	16.4
Canada	1	0.3	4	1.1	0.6
USA	0	—	1	0.3	1.1
Other America	7	1.8	4	1.1	2.6
Total America	8	2.1	9	2.4	4.3
Egypt	3	0.8	7	1.9	1.5
Other Africa	10	2.6	9	2.4	2.0
Total Africa	13	3.4	16	4.3	3.4
Other Oceania	2	0.5	6	1.6	1.5
Total	379	100.0	376	100.0	100.0

* ABS 1981 Census of Population and Housing Small Area Summary Data — Condensed Format p4. Data relates to the total population, not just those aged 15 and over.

Table 3.9
Country of Birth and Length of Residence of People Convicted by
Higher Criminal Courts in NSW, 1983
 (percent of overseas-born)

	Less than 5 years		At least 5 years		Total	
	n	%*	n	%*	n	%
New Zealand	42	43.8	54	56.2	96	12.7
UK & Ireland	8	4.3	178	95.7	186	24.5
Greece	2	8.0	23	92.0	25	3.3
Italy	3	6.7	42	93.3	45	5.9
Yugoslavia	2	3.3	58	96.7	60	7.9
Other Europe	18	17.0	88	83.0	106	14.0
Total Continental Europe	25	10.6	211	89.4	236	31.1
Lebanon	13	17.1	63	82.9	76	10.0
China & Hong Kong	6	50.0	6	50.0	12	1.6
Other Asia	38	39.6	58	60.4	96	12.7
Total Asia	57	31.0	127	69.0	184	24.3
Africa	1	6.3	15	93.8	16	2.1
America	6	30.0	14	70.0	20	2.6
Other	6	30.0	14	70.0	20	2.6
Total	145	19.1	613	80.9	758	100.0

Source: ABS *Higher Criminal Courts New South Wales 1983* p25.

* These percentages add to 100% across the Table.

3.27 Table 3.9 shows that, of the overseas-born, Asians (as defined by the ABS to include those born in Middle East countries) and New Zealanders were over-represented among convicted people in 1983, compared to their representation in the general community (and among jurors and prospective jurors). Those born in Britain were under-represented: Table 3.8. The majority of those convicted had lived in Australia for at least five years at the time of arrest. However, recent migrants were more often represented among convicted people than they were represented as prospective jurors or jurors. Overall, almost 20% of convicted people born overseas had been in Australia for less than five years. This proportion is the same as the proportion of overseas-born people in the general community. However, only 2% of prospective jurors and of jurors who were overseas-born had been in the country for less than five years.

D. Country of Birth of Parents

3.28 The distributions of mother's place of birth and father's place of birth were very similar in the Survey of Prospective Jurors and the Survey of Jurors. Almost two-thirds of parents were Australian-born. About 15% were born in the United Kingdom or Ireland and about 10% were born in continental Europe. Of the 1779 prospective jurors, 116 (7%) were first generation Australians, that is, they were born in Australia of at least one parent born overseas. Of the 1834 jurors, 105 (6%) were first generation Australians. In the New South Wales population at the 1981 Census, first generation Australians represented 9% of the total population (in all age groups, not only those aged 18 or over).

Table 3.10
Country of Birth of Parents

	Survey of Prospective Jurors				Survey of Jurors			
	Mother		Father		Mother		Father	
	n	%	n	%	n	%	n	%
Australia	1148	64.5	1123	63.1	1203	65.6	1157	63.1
New Zealand	16	0.9	21	1.2	23	1.3	20	1.1
UK and Ireland	283	15.9	285	16.0	265	14.4	286	15.6
Germany	15	0.8	11	0.6	11	0.6	14	0.8
Greece	11	0.6	14	0.8	13	0.7	12	0.7
Italy	42	2.4	41	2.3	35	1.9	38	2.1
Malta	22	1.2	24	1.3	19	1.0	20	1.1
Netherlands	18	1.0	16	0.9	18	1.0	23	1.3
Poland	17	1.0	20	1.1	12	0.7	14	0.8
Yugoslavia	21	1.2	26	1.5	14	0.8	17	0.9
Other Europe	42	2.4	48	2.7	57	3.1	60	3.3
Total Continental Europe	188	10.6	200	11.2	179	9.8	198	10.8
Lebanon	7	0.4	8	0.4	5	0.3	4	0.2
Other Asia	36	2.0	38	2.1	38	2.1	33	1.8
America	11	0.6	7	0.4	8	0.4	6	0.3
Africa	10	0.6	9	0.5	11	0.6	16	0.9
Oceania not elsewhere included	4	0.2	3	0.2	5	0.3	6	0.3
Not stated	76	4.3	85	4.8	97	5.3	108	5.9
Total	1779	100.0	1779	100.0	1834	100.0	1834	100.0

E. Aborigines

3.29 Eight (0.4%) prospective jurors and seven (0.4%) jurors were of Aboriginal origin. In the 1981 Census there were 18,737 Aborigines aged 15 or over, representing 0.5% of the population aged 15 or over in New South Wales. (In the 1976 Census there were 21,229 Aborigines aged 15 or over, representing 0.6% of the population aged 15 or over in New South Wales.)¹⁵ It is, of course, difficult to draw conclusions about the representation of Aborigines because they are not evenly distributed throughout the State and represent more significant proportions of some communities. The representation of Aborigines on juries should also be considered from another point of view. 7% of prisoners in New South Wales prisons on 30 June 1984 were Aborigines or Torres Strait Islanders.¹⁶

F. Physical Disability

3.30 Of all those surveyed, 76 (4%) prospective jurors and 70 (4%) jurors said they suffered from a physical disability or handicap. Of those, 13 (17%) prospective jurors and 20 (29%) jurors said it had caused some special difficulty in attending court. The 1981 Survey of Handicapped Persons in Australia conducted by the ABS found that 12% of the New South Wales population were disabled.¹⁷ Two-thirds of disabled people were handicapped.¹⁸

3.31 Not surprisingly, people with a physical disability were under-represented among jurors and prospective jurors. People who are unable because of illness or infirmity to discharge a juror's duties are ineligible for jury duty.¹⁹ The Commission's analysis of the jury rolls relating to Penrith, Newcastle-Cessnock and Dubbo-Bathurst-Lithgow in 1985 showed that this ground accounted for 15%, 25% and 17% respectively of all deletions from the jury rolls in those districts.

IV. SUMMARY

3.32 Before the reform of the Jury Act in 1977, jurors were not representative of the general community. Research conducted in 1974-1975 showed that an overwhelming proportion (94%) of jurors in New South Wales were males and that the number of middle-aged jurors significantly exceeded the proportion in the general community.²⁰ It has been reported previously that the "reforms implemented by the Jury Act (1977) have had the desired effect" with respect to the representativeness of juries.²¹

3.33 In the present study, the comparison of the demographic characteristics of jurors and prospective jurors with the general population confirms that the legislation of 1977 has been effective in making juries generally representative of the population. The present surveys do, however, throw some light on particular segments which may not yet be proportionately represented. In both survey samples the proportion of men and women was about equal and, therefore, representative of the general population. The age-sex distributions in the two surveys were similar to each other, but different from the general population. Of all age-sex groups, the youngest males (males aged 18-29) were most under-represented. Unemployed people and blue-collar workers were under-represented among prospective jurors and jurors.

3.34 A comparison of demographic characteristics of prospective jurors and jurors with available information on the characteristics of convicted people shows that the groups are quite different. More than two-thirds of people convicted in New South Wales higher criminal courts in 1983 were males under 30. Males under 30 constituted only about 10% of our samples of jurors and prospective jurors. Again, one-half of people convicted were unemployed at the time of their arrest. Unemployed people represented only 2% of prospective jurors and of jurors and, like males under 30, were under-represented compared to the general community.

Footnotes

1. The minimum age of jurors is determined by section 20 of the Parliamentary Electorates and Elections Act, 1912 (NSW) requiring Australian citizens 18 and over to enrol to vote. Jury Act 1977 s5 makes "every person who is enrolled as an elector for the Legislative Assembly" qualified and liable for jury service subject to being disqualified or ineligible.
2. *Estimated Resident Population by Sex and Age: States and Territories of Australia, June 1984* (Cat No 3201.0). This was the most up-to-date information available.
3. Jury Act 1977, Schedule 3, clause 4.
4. This is not supported by a comparison of responses of males under 30 in the Survey of Prospective Jurors with those of older males and of females. Although males under 30 most often reported that jury service should not be compulsory, similar proportions of some older males and of females also held this view. Males under 30 were neither the most negative nor most positive group in their attitude to attending court on the day. Although they rated benefit to the community of their jury service lower than most other males (not the lowest), they rated benefit to themselves of jury service higher than did other males.
5. According to the results of a survey asking people in the community how confident they were about the way the jury system works, the youngest age group (18-24 years, males and females combined) were less confident than other age groups. (Irving Saulwick and Associates *Attitudes Towards the Jury System* September 1985).
6. The way in which the electoral rolls are updated (para 2.12) means that, at any time, numbers of currently eligible 18, 19 and 20 year olds are not included.
7. ABS *Higher Criminal Courts New South Wales 1983* (Cat No 4502.1) p23.
8. P Grabosky and C Rizzo *Jurors in New South Wales* (Law Foundation of New South Wales 1983) p5.
9. ABS *Higher Criminal Courts New South Wales 1983* note 7 p27.
10. *Classification and Classified List of Occupations* (Cat No 1206.0) used by the ABS in its coding of census data on occupation.
11. Two issues should be noted when looking at occupation. Firstly, the census survey questionnaire collects more detailed information on the occupation of respondents than is possible in any survey such as the Commission conducted. This means that the coding of census data on occupation will be more accurate than could be possible from the limited amount of information the Commission collected. Secondly, a substantial proportion of people surveyed by the Commission did not provide the information sought by this question. In both surveys, 79% of respondents in employment gave an answer which was able to be coded: 1069 of 1354 prospective jurors and 1105 of 1390 jurors. It may be the case that people in the category Tradesmen, Production-process Workers and Labourers (who were apparently under-represented) were less inclined to answer this question than were people in the other categories and particularly those of Professional, Technical and Related Workers and Clerical Workers for whom the completion of a questionnaire may have been more familiar and, therefore, less daunting. On the other hand, the data on educational achievement suggests that the under-representation of blue-collar workers was real (para 3.21).
12. ABS *Information Paper Census 81-Education Qualifications* (Cat No 2149.0) p2.
13. Clause 11 of Schedule 2 to the Jury Act 1977 makes a person who is unable to read or understand the English language ineligible for jury service.

14. ABS *Higher Criminal Courts New South Wales 1983* note 7 p2.
15. C Y Choi and A Gray *An Evaluation of Census Counts of the Aboriginal Population, 1971, 1976 and 1981 Census* (ABS Occasional Paper No 1985/2).
16. J Walker and D Biles *Australian Prisoners 1984* (Australian Institute of Criminology 1984).
17. According to ABS *Handicapped Persons Australia 1981* (Cat No 4343.0) at p xvi, a person is 'disabled' if he or she has one or more of the following disabilities or impairments which have lasted or was likely to last for 6 months or more:
 - (a) loss of sight (even when wearing glasses or contact lenses);
 - (b) loss of hearing;
 - (c) speech difficulties in native language;
 - (d) blackouts, fits, or loss of consciousness;
 - (e) slowness at learning or understanding;
 - (f) incomplete use of arms or fingers;
 - (g) incomplete use of feet or legs;
 - (h) long term treatment for nerves or an emotional condition;
 - (i) restriction in physical activities or in doing physical work;
 - (j) disfigurement or deformity;
 - (k) need for help or supervision because of a mental disability;
 - (l) long term treatment or medication (but was still restricted in some way by the condition being treated).
18. According to ABS *Handicapped Persons Australia 1981* p10 a 'disabled' person is considered to be 'handicapped' if he or she was limited to some degree in performing activities in one or more of the five areas of self care, mobility, communication, schooling and employment.
19. Jury Act 1977, Schedule 2, clause 12.
20. NSW Bureau of Crime Statistics and Research *Jurors 1975* p3.
21. P Grabosky and C Rizzo note 8 p5.

Chapter 4

Jury Selection

I. PERSONAL APPLICATIONS TO BE EXCUSED

A. Introduction

4.1 In Chapter 1 (para 1.9) we describe the process of making applications to the Sheriff to be excused from attending as a juror when one receives a Jury Summons. Prospective jurors may make such applications up to and including the day before the trial. Applications on the day generally have to be made in person to a judge. These 'personal applications' may be based on any "good cause". People whose applications are refused rejoin the jury panel to which they have been summoned. In the Survey of Court Procedures a record was made of the number of personal applications, the grounds on which they were based and their success or otherwise.

B. Results

4.2 In 143 (73%) of the 197 trials surveyed, there was at least one application to be excused made to the judge by a juror before empanelment procedures commenced. There were 633 applications in all, an average of four per trial. The maximum number in any one trial was 61 in a trial which was expected to extend into a third week. Of the 633 people who made applications to be excused, 348 (55%) were males and 285 (45%) were females. Most (87%) were successful. Table 4.1 is a frequency distribution of personal applications made.

Table 4.1
Number of Personal Applications Made

No of Applications	No of Trials	%
1	28	19.6
2	23	16.1
3	26	18.2
4-5	29	20.3
6-10	32	22.4
More than 10	5	3.5
Total	143	100.0

4.3 Table 4.2 shows the grounds put forward for the applications made. The grounds given were set out in full on the questionnaire by the judge's associate and were categorised at the coding stage. The most common ground (29%) for seeking to be excused related to general employment difficulties (other than being self-employed or having planned a business trip). Being self-employed was the reason given by another 12% of applicants. Ill health was a large category (14%) and is interesting because people who are unable because of illness or infirmity to discharge a juror's duties are ineligible for jury service. It is probable, of course, that for at least some of the personal applications, the applicant was suffering from a temporary illness on the day of the trial but not at the time of receiving the Notification of Inclusion on a Draft Jury Roll.

4.4 A number of people (5%) made applications on the grounds of inadequate command of English, a ground very similar to another ground of ineligibility for jury service. It is people in this category, of course, who are least likely to understand that they are ineligible. Almost 10% of applicants said they were caring for young children or a sick relative. Again, these are grounds of exemption set out in Schedule 3 to the Jury Act. It is possible, of course, that at the time they received the Notification these applicants were not caring for young children or ill or aged people. The resemblance between these grounds for excusal and the grounds of ineligibility and exemption in the Jury Act suggests, however, that prospective jurors may not always be clear whether they are ineligible for jury duty or may claim an exemption as of right. On the other hand, it is clear that in at least some cases their circumstances have changed.

4.5 Table 4.2 shows that 98% of people who applied to be excused on the grounds of ill health, or having the care of children or sick relatives were, in fact, excused. The only excuse with a higher rate of success was a personal crisis or other important family event. 100% of these applicants were excused. Almost all (94%) who applied for excusal on the ground of an inadequate command of English were excused. The proportion of those who were excused on grounds related to their employment was somewhat lower: 84% of those who said they were self-employed were excused, as were 81% of those claiming other employment difficulties. Of those who said they had exams, 90% were excused. All but one of the eight conscientious objectors were excused.

4.6 The proportion of those who had planned a trip and who were excused was lower still. It is clear that at least some of the people who applied to be excused on the grounds of having planned a trip withdrew their applications when informed of the expected length of the trial.

4.7 The miscellaneous category called 'other' contains a number of quite varied grounds such as appearing in another court, having previously served on a long trial, knowing the accused or some other participant, and the expected length of the trial. In this category were also a very small number of people who were actually disqualified under the Jury Act, ineligible or no longer resident in the relevant jury district.

Table 4.2
Grounds of Applications to be Excused

	Applications n	%	% Granted
Employment difficulties other than trip or self-employed (eg employer needs applicant, employer unhappy about jury service)	184	29.1	81.0
Ill health	89	14.1	97.8
Self-employed	75	11.8	84.0
Vacation or business trip planned	68	10.7	77.9
Care of young children or sick relative	57	9.0	98.2
Personal crisis/family event	34	5.4	100.0
Inadequate command of English	32	5.1	93.8
Exams	30	4.7	90.0
Conscientious objection	8	1.3	87.5
Other	56	8.8	76.8
Total	633	100.0	86.7

4.8 Table 4.3 shows that the excuses put forward by males differed from those of females. Females more often than males applied to be excused on the grounds of ill health or of caring for young children or a sick relative. On the other hand, males more often cited being self-employed or having other employment difficulties.

Table 4.3
Grounds x Sex of Applicant

	Males		Females	
	n	%	n	%
Employment difficulties	113	32.5	71	24.9
Ill health	32	9.2	57	20.0
Self-employed	66	19.0	9	3.2
Trip planned	40	11.5	28	9.8
Care of young children or sick relative	10	2.9	47	16.5
Personal crisis/family event	17	4.9	17	6.0
Inadequate command of English	15	4.3	17	6.0
Exams	15	4.3	15	5.3
Conscientious objection	6	1.7	2	0.7
Other	34	9.8	22	7.7
Total	348	100.0	285	100.0

4.9 Table 4.4 shows the rate at which applications to be excused were granted for males and females on each ground. In most cases the rates were comparable. Just over 80% of both males and females who applied to be excused on the ground of employment difficulties were excused. Those who applied to be excused on the grounds of personal crisis or other family event were all excused. Almost all who applied on the grounds of ill health, care of young children or a sick relative, or inadequate command of English were excused. The major difference was that 86% of self-employed men who applied were excused compared to only 67% of self-employed women.

Table 4.4
Rate of Excusal x Ground x Sex

	% Excused	
	Males n=348	Females n=285
Employment difficulties	80.5	81.7
Ill health	100.0	96.5
Self-employed	86.4	66.7
Trip planned	72.5	85.7
Care of young children or sick relative	100.0	97.9
Personal crisis/family event	100.0	100.0
Inadequate command of English	86.7	100.0
Exams	93.3	86.7
Conscientious objection	83.3	100.0
Other	73.5	81.8
Total	84.2	89.8

II. CHALLENGES TO THE ARRAY

4.10 It is open to either counsel in any jury trial to object to the whole panel or 'array' of prospective jurors. Such a challenge must be based on there being an irregularity in either the summoning of the panel or in some earlier process such as drawing up the jury roll. As the rolls and panels are now compiled with the aid of a computer, such a challenge is rarely made and is even more rarely successful. During the survey period there were no challenges to the array.

III. PEREMPTORY CHALLENGES

4.11 The peremptory challenge is in practice the means by which the parties have some control over the composition of the jury. As people are balloted from the jury panel to the jury box, either party may simply utter the word 'challenge' and the prospective juror challenged is eliminated from the jury. No reason need be given for the challenge. Each party has 20 peremptory challenges in a murder trial and eight in any other case. The Crown is entitled to the sum of the challenges available to each accused person.

4.12 In answer to a question in the Survey of Crown Prosecutors, six of the 22 respondents (27%) said they always used their right to make peremptory challenges, while the remaining 16 said they did so sometimes. Those who said they sometimes made use of this right reported that they did so:

- * to ensure a cross-section by age or sex;
- * when they believed the juror could have difficulty doing jury duty;
- * when they had information that the juror was related to the accused or a witness; or
- * when the judge had rejected the juror's personal application to be excused.

16 of the Crown Prosecutors surveyed considered that the availability of the Crown's right to make peremptory challenges was very useful and six considered it somewhat useful.

4.13 Our Survey of Court Procedures revealed that the Crown, in fact, used its right of challenge in 125 (63%) of the trials surveyed. In all 354 people were challenged peremptorily by the Crown. This represents an average of two challenges per trial in those trials where information about Crown challenges was recorded. There were 1062 peremptory challenges made by defence counsel representing 198 accused. The average of five challenges per accused was greater than the average number (two) of challenges per trial made by the Crown. In 8 cases, there were no peremptory challenges made either by the Crown or by the defence and in 12 cases the information was not recorded. There were 17 trials in which the Crown in fact made more challenges than the defence. These were clearly not cases in which the Crown challenges were used solely to redress the imbalances caused by the exercise of defence peremptory challenges.

Table 4.5
Number of Peremptory Challenges Exercised

	By Crown in Each Trial		By Defence for Each Accused	
	n	%	n	%
0	52	29.4	8	3.9
1	37	20.9	5	2.4
2	31	17.5	15	7.3
3	20	11.3	25	12.1
4	13	7.3	27	13.1
5	11	6.2	21	10.2
6	7	4.0	29	14.1
7	2	1.1	44	21.4
8	4	2.3	31	15.0
9	0	—	1	0.5
Not stated	(20)		(12)	
Total	197	100.0	218	100.0

4.14 The sex of each person challenged was recorded and it is interesting to note that defence challenges were quite evenly split between the sexes (561 (53%) men; 501 (47%) women) while the Crown tended to challenge a greater proportion of men (231 (65%) men; 123 (35%) women).

IV. CHALLENGES FOR CAUSE

4.15 Each party may make unlimited challenges for cause. In order to successfully challenge for cause, the reason for eliminating the challenged juror must be proved to the judge's satisfaction, and the reason must be either:

- * that the person is not qualified to serve because not enrolled to vote as required by the Jury Act;
- * that the person is disqualified or ineligible as defined in the Jury Act; or
- * that the person is biased or suspected of bias.²

Because of the lack of information available to the parties about prospective jurors, it is not surprising that challenges for cause are rarely made. One challenge for cause was in fact reported in each of two trials in our Survey of Court Procedures. In one trial (in Liverpool) the ground was inability to speak English and in the other trial (in Penrith) the prospective juror was known to a witness.

V. JURY COMPOSITION

4.16 Men and women were equally represented as jurors overall: 1191 (51%) men and 1147 (49%) women. Table 4.6 shows details of the composition of the juries in each of the trials surveyed. There were no cases of single-sex juries. The composition ranged from 1 man and 11 women to 1 woman and 11 men. The distribution appears symmetrical about the 6:6 jury. Although women were equally represented on juries, foremen tended to be males. There was a male foreman in 142 (79%) of the 180 trials in which the sex of the foreman was recorded.

Table 4.6
Composition of the Jury

	n	%
1 man 11 women	2	1.0
2 men 10 women	1	0.5
3 men 9 women	15	7.6
4 men 8 women	21	10.7
5 men 7 women	37	18.8
6 men 6 women	28	14.2
7 men 5 women	48	24.4
7 men 4 women	2	1.0
8 men 4 women	25	12.7
9 men 3 women	7	3.6
10 men 2 women	7	3.6
11 men 1 woman	2	1.0
Not stated	2	1.0
Total	197	100.0

Table 4.7
Foreman of the Jury

	n	%
Male	142	72.1
Female	38	19.3
Not stated	17	8.6
Total	197	100.0

Footnotes

1. Jury Act 1977 s38.

2. *Halsbury's Laws of England* (4th ed 1979) Vol 26 para 627.

Chapter 5

Profile of Criminal Jury Trials

I. INTRODUCTION

5.1 The Survey of Court Procedures sought information on many aspects of criminal trials. As well as data describing the court location, the charges and the accused, there was detailed information on personal applications to be excused made to the judge, challenges, jury selection and the composition of the jury, and the time spent on various segments of the trial. Data was also collected on jury absences from the courtroom, juror discharges, assistance given to jurors, questions asked by jurors, the time spent in deliberation and details of the verdict. This information is used in this chapter to provide a description of various aspects of the 197 trials surveyed.

5.2 Where applicable, the results of this survey are compared to the latest official figures on trials in the higher courts. The Australian Bureau of Statistics publishes statistics annually on matters dealt with by higher criminal courts in New South Wales. The ABS also provides a copy of trial data on computer tape to the Bureau of Crime Statistics and Research in the New South Wales Attorney General's Department. In 1983, (the most recent year for which data was available) 966 people were tried in the higher criminal courts following a plea of not guilty. They represented 18% of the 5441 cases dealt with in those courts.¹ The Bureau was able to make available data on a number of characteristics of these 966 people and these are compared with the survey results where applicable. These comparisons are necessarily approximate because:

- * different years are compared (the most recent year for which data from the ABS collection is available is 1983, while the Commission survey took place in 1985);
- * the definitions of certain offence groups may be more strictly applied in the ABS data than in the survey data;
- * the ABS codes only the offence considered to be most serious for each person whereas in the present survey a maximum of two offence categories has been coded;
- * all but one of the trials covered by the Commission's survey were held in the District Court. This means that murder and other major offences are omitted; and
- * the 218 accused people in the survey included people outside the strict definition of "tried" as applied by the ABS. For example, five of them changed their pleas and for ABS purposes would not be described as "tried".

II. TRIAL DESCRIPTION

A. Jurisdiction and Location

5.3 Of the 197 trials surveyed, 196 took place in the District Court and only one in the Supreme Court. Table 5.1 shows that 40% of the trials were conducted in the city, 36% in outer metropolitan courts, 18% in country courts, 2% in Newcastle and 4% in Wollongong.

Table 5.1
Location of Court

	n	%
City	79	40.1
Outer metropolitan	71	36.0
Newcastle	4	2.0
Wollongong	7	3.6
Country	35	17.8
Not stated	1	0.5
Total	197	100.0

B. The Accused

5.4 The 197 trials which commenced in the survey period involved 218 accused people. In the majority of cases (91%) there was one accused person only. In 15 cases there were two accused people; there was one case with three accused people and one with five.

Table 5.2
Number of Accused

	n	%
One	180	91.4
Two	15	7.6
Three	1	0.5
Five	1	0.5
Total	197	100.0

5.5 The majority of the accused people in the trials surveyed were males. As Table 5.3 shows, the sex of the accused person was often omitted by the associates who participated in the survey. This probably reflects a fault in its positioning on the questionnaire.

Table 5.3
Sex of Accused

	n	%
Male	168	77.1
Female	17	7.8
Not stated	33	15.1
Total	218	100.0

C. Number and Type of Charges

5.6 The number of charges for each accused person ranged from one to eight. Table 5.4 shows that about one-third of accused people were charged with more than one offence. The distribution of the number of offences was very similar to that of the 966 people tried in higher criminal courts in New South Wales in 1983. The main difference between the two distributions is that a higher proportion of people tried in 1983 was charged with five or more offences (in fact the maximum was 46 offences). This reflects the fact that the Commission's survey did not include very long-running trials and also suggests that we did not capture many very complex cases. However, our sample is representative of the majority of criminal trials in this respect.

Table 5.4
Number of Charges

	1985 Commission Survey		1983 Higher Criminal Courts NSW	
	n	%	n	%
1	144	66.1	605	62.6
2	42	19.3	186	19.3
3	20	9.2	75	7.8
4	8	3.7	37	3.8
5+	4	1.8	63	6.5
Total	218	100.0	966	100.0

5.7 The offences charged were coded into the broad categories listed in Table 5.5.² A maximum of two offence categories was allowed for each accused person. Thus, if the accused was charged with two property offences this was coded once under property, whereas if the accused person was charged with break, enter and steal as well as possessing drugs this was coded as a property offence and a drug offence. Table 5.5 shows that about one-quarter of the accused people were charged with offences against the person and more than one-quarter were charged with property offences. Next in order of frequency were drug offences, culpable driving, sexual offences and fraud. The distribution of offences found in the survey was very similar to that of the 966 people tried in higher criminal courts in New South Wales in 1983.

Table 5.5
Type of Offence

	1985 Commission Survey		1983 Higher Criminal Courts NSW	
	n	% of 218 Accused	n	%
Property offence	60	27.5	325	33.6
Offence against the person	56	25.7	222	23.0
Drug offence	35	16.1	118	12.2
Culpable driving	29	13.3	116	12.0
Sexual offence	26	9.6	93	9.6
Fraud	17	7.8	72	7.5
Other	2	0.9	20	2.1
Total	225		966	100.0

D. Outcomes

5.8 The outcome of his or her trial for each accused person was coded into the categories listed in Table 5.6. One-third of the accused people in the survey were found guilty on all charges and over one-third were found not guilty on all charges. Of the acquittals, more than one-quarter were directed by the judge. If we leave out of consideration the five accused people who changed their pleas and the cases where the juries were discharged before being asked to deliberate on their verdict, we can compare our results with the figures for the higher criminal courts in New South Wales in 1983. Of the 966 people trial in 1983, 391 (41%) were acquitted on all charges. This rate is very similar to that found in the Commission's survey, where all not guilty and all acquittal by direction represent 43% of verdicts (including jury unable to agree). The high proportion (16%) of cases where a verdict was not taken from an empanelled jury is of concern, especially when considered together with the 23 acquittals by direction. The jury's function was effectively negated in all of these cases, a total of 58 (27%). The proportion (3%) of hung juries, however, gives little cause for concern. In two cases the jury added a rider to its verdict which was a recommendation for leniency. In both cases the judge is recorded as having 'acknowledged' the rider.

Table 5.6
Outcome x Accused

	n	%
Guilty on all charges	71	32.6
Guilty only of alternative (ie lesser) offence	2	0.9
Change of plea (ie to guilty)	5	2.3
Not guilty on all charges	58	26.6
Acquittal by direction on all charges	23	10.6
Not guilty by reason of mental illness	1	0.5
Jury unable to agree	7	3.2
Jury discharged without being asked to consider a verdict (other than change of plea)	23	10.6
Combination of 2 or more of the above	21	9.6
No outcome recorded	7	3.2
Total	218	100.0

5.9 Table 5.7 presents outcomes according to the offence charged. As two offence categories could be coded for each accused person, only the first category has been used in this Table. Over one-third of all fraud cases resulted in acquittals by direction compared with the average rate of such verdicts in all cases: 12%. Almost one-half of sexual and driving charges resulted in jury verdicts of not guilty. The highest rate of convictions was in the drug offence category: 63%.

Table 5.7
Outcome x Offence Charged

	Offence Against the Person		Sexual Offence		Property Offence		Culpable Driving		Fraud		Drug Offence		Other		Total	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
All guilty	15	30.0	5	31.2	17	35.4	9	34.7	6	37.5	19	63.3	0	—	71	38.0
All not guilty	20	40.0	7	43.8	12	25.0	12	46.2	2	12.5	5	16.7	0	—	58	31.0
All acquittal by direction	5	10.0	0	—	8	16.7	1	3.8	6	37.5	3	10.0	0	—	23	12.3
All not guilty by reason of mental illness	1	2.0	0	—	0	—	0	—	0	—	0	—	0	—	1	0.5
Guilty only of alternative offence	0	—	0	—	2	4.2	0	—	0	—	0	—	0	—	2	1.1
Jury unable to agree	0	—	0	—	2	4.2	3	11.5	2	12.5	0	—	0	—	7	3.7
Combination of two or more of the above	7	14.0	4	25.0	5	10.4	1	3.8	0	—	2	6.7	1	100.0	20	10.7
Change of plea	2	4.0	0	—	2	4.2	0	—	0	—	1	3.3	0	—	5	2.7
Total	50	100.0	16	100.0	48	100.0	26	100.0	16	100.0	30	100.0	1	100.0	187	100.0

5.10 Table 5.8 presents the length of jury deliberations in those cases where the verdict was either guilty or not guilty on all offences charged. The times taken did not vary much at all between guilty and not guilty verdicts. The majority of verdicts were delivered during the afternoon. In the case which resulted in a verdict of not guilty by reason of mental illness, the jury deliberated for more than four hours, eventually bringing in its verdict at nine o'clock at night. Two juries which were unable to agree deliberated for between two and three hours and three others for more than four hours. There was no information recorded on the length of deliberation of the two remaining hung juries.

Table 5.8
Length of Deliberation x Outcome

	All Guilty		All Not Guilty	
	n	%	n	%
30 minutes or less	3	5.0	6	11.5
0.5-1 hour	11	18.3	10	19.2
1-1.5 hours	10	16.7	7	13.5
1.5-2 hours	12	20.0	12	23.1
2-3 hours	10	16.7	6	11.5
3-4 hours	10	16.7	7	13.5
More than 4 hours	4	6.2	4	7.7
Total	60	100.0	52	100.0

III. COURSE OF THE TRIAL

A. Length of Trial

5.11 The lengths of the trials surveyed ranged from one day or less (18%) to fourteen days. The average length was three days. The survey did not cover any long trials; see also para 5.6.

Table 5.9
Length of Trial

	n	%
1 day or less	36	18.3
2 days	71	36.0
3 days	48	24.4
4 days	21	10.7
5-7 days	9	4.6
8-14 days	9	4.6
Other*	2	1.0
Not stated	1	0.5
Total	197	100.0

* In two cases the jury was discharged before the evidence commenced.

B. Duration of Segments of the Trial

5.12 As part of this survey, associates completed a page which itemised the various segments of each trial recording the time at which each segment began and finished. Table 5.10 presents a summary of this information. Each segment is considered in greater detail in Tables 5.11-5.20.

Table 5.10
Segments of the Trial

Segment	Mean Time	Number of Trials (Accused)*	Min.	Max.
Length of trial	3 days	194	20 mins	14 days
Judge's introductory remarks	8 mins	176	1 min	30 mins
Crown opening	12 mins	183	2 mins	1 hr
				48 mins
Crown case	4 hrs	172	5 mins	6 days
	36 mins			3 hrs
				48 mins
Defence opening	5 mins	(44)	1 min	26 mins
Defence case	1 hr	(147)	1 min	2 days
	36 mins			2 hrs
				30 mins
Accused: unsworn statement/sworn evidence	23 mins	(161)	1 min	4 hrs
				47 mins
Accused: cross-examination	53 mins	(64)	4 mins	4 hrs
				19 mins
Crown address	39 mins	147	4 mins	4 hrs
				53 mins
Defence address	52 mins	(151)	6 mins	4 hrs
				22 mins
Judge's summing-up	1 hr	148	18 mins	7 hrs
	26 mins			50 mins
Jury's deliberations	2 hrs	145	1 min	12 hrs
	17 mins			21 mins

* Times relating to all aspects of the defence case are presented on the basis of the time taken for each accused, rather than for each trial. In the majority of trials these quantities are the same since there was only one accused person.

5.13 The judge's introductory remarks, the Crown opening and the defence opening were usually very brief. On average the judge's introductory remarks took eight minutes and in 83% of cases in which introductory remarks were made the time taken was 10 minutes or less. On average the Crown opening took 12 minutes. In 85% of all cases, it took 15 minutes or less.

Table 5.11
Duration of Judges' Introductory Remarks

	n	%
5 minutes or less	69	39.2
6-10 minutes	77	43.8
11-20 minutes	24	13.6
21-30 minutes	6	3.4
Total	176	100.0

Table 5.12
Duration of Crown Opening

	n	%
5 minutes or less	43	23.5
6-10 minutes	67	36.6
11-15 minutes	45	24.6
16-20 minutes	12	6.6
21-60 minutes	14	7.7
More than 1 hour	2	1.1
Total	183	100.0

5.14 The defence, unlike the Crown, is not obliged to open its case to the jury and in fact does not have the right to do so unless it is intended to call sworn evidence in the defence case. In only 44 cases (22%) was a time recorded for the defence opening. The average time taken was five minutes. The maximum was 26 minutes. 71% of defence openings took five minutes or less and 86% took 10 minutes or less. It is to be noted that the defence did not open on many occasions.

Table 5.13
Duration of Defence Opening

	n	%
5 minutes or less	31	70.5
6-10 minutes	7	15.9
More than 10 minutes	6	13.6
Total	44	100.0

5.15 The Crown case on average took about four and a half hours. The time taken to present the Crown case in the trials surveyed varied greatly depending, of course, on the type of trial and its complexities. The longest Crown case surveyed took more than six days. Table 5.14 shows that in the majority of cases the Crown case took less than a day but that there was a fairly even spread from less than one hour to more than four hours in that one day.

Table 5.14
Duration of Crown Case

	n	%
One hour or less	25	14.5
1-2 hours*	33	19.2
2-3 hours	23	13.4
3-4 hours	33	19.2
4 hours-1 day	19	11.0
1-2 days	26	15.1
More than 2 days	13	7.6
Total	172	100.0

* The 1-2 hour category includes '2 hours exactly' but not '1 hour exactly' which is included in the first category.

5.16 The defence case was usually much shorter than the Crown case, the average length being about one and a half hours. The longest took almost 13 hours to present. Table 5.15 shows that more than 20% of defence cases took less than five minutes to present. Only 6% of defence cases surveyed took more than one day.

Table 5.15
Duration of Defence Case

	n	%
5 minutes or less	32	21.8
6-10 minutes	11	7.5
11-20 minutes	12	8.2
21-40 minutes	17	11.6
41 minutes-1 hour	15	10.2
1-2 hours	26	17.7
2 hours-1 day	25	17.0
More than 1 day	9	6.1
Total	147	100.0

5.17 In the 197 trials surveyed, 167 accused people reached the stage of deciding whether to make an unsworn statement or give sworn evidence. 96 (57%) accused people made unsworn statements, 62 (37%) gave sworn evidence, three (2%) did both and three did neither. We have no information about the remaining three. Table 5.16 shows that those accused people who gave sworn evidence took substantially longer than those who made an unsworn statement. Sworn evidence averaged about 45 minutes while unsworn statements averaged about 10 minutes. Of all unsworn statements, 58% took 5 minutes or less. On the other hand, 18% of those giving sworn evidence took more than one hour.

Table 5.16
Duration of Evidence Given by the Accused

	Unsworn Statement		Sworn Evidence		Both		Total	
	n	%	n	%	n	%	n	%
5 mins or less	56	58.3	2	3.2	0	—	58	36.0
6-10 mins	19	19.8	5	8.1	1	33.3	25	15.5
11-20 mins	14	14.6	16	25.8	0	—	30	18.6
21 mins-1 hr	6	6.3	28	45.2	1	33.3	35	21.7
More than 1 hr	1	1.0	11	17.7	1	33.3	13	8.1
Total	96	100.0	62	100.0	3	100.0	161	100.0
Minimum	1 min		3 mins		8 mins		1 min	
Maximum	1 hr		4 hrs		1 hr		4 hrs	
	40 mins		47 mins		5 mins		47 mins	
Mean	9 mins		44 mins		38 mins		27 mins	

5.18 All of the 65 accused people who gave sworn evidence were cross-examined. This took an average of just under one hour (the length of cross-examination of one of these accused people was not recorded). For two-thirds of these accused people, cross-examination lasted more than 20 minutes but less than two hours.

Table 5.17
Duration of Cross-Examination of Accused

	n	%
10 minutes or less	5	7.8
11-20 minutes	11	17.2
21-30 minutes	9	14.1
31 minutes-1 hour	16	25.0
1-2 hours	19	29.7
More than 2 hours	4	6.3
Total	64	100.0

5.19 The closing addresses of counsel were substantially longer than their opening addresses. The closing address by the Crown took an average of 39 minutes, which was shorter than the closing defence address average of 52 minutes. The longest Crown address lasted for almost five hours while the longest defence address was four and a half hours. 58% of Crown addresses were over in half an hour compared with 45% of defence addresses.

Table 5.18
Duration of Crown's Closing Address

	n	%
10 minutes or less	10	6.8
11-20 minutes	49	33.3
21-30 minutes	26	17.7
31-40 minutes	21	14.3
41 minutes-1 hour	24	16.3
More than 1 hour	17	11.6
Total	147	100.0

Table 5.19
Duration of Defence Closing Address

	n	%
10 minutes or less	10	6.6
11-20 minutes	24	15.9
21-30 minutes	34	22.5
31-40 minutes	21	13.9
41 minutes-1 hour	23	15.2
1-2 hours	27	17.9
More than 2 hours	12	7.9
Total	151	100.0

5.20 The judge's summing-up tended to be longer than the addresses of counsel. On average, the judge's summing-up took about one and a half hours. The longest took almost eight hours, while the shortest lasted just 18 minutes. Over one-half of the judges took between 40 minutes and two hours to sum up.

Table 5.20
Duration of Judge's Summing-up

	n	%
30 minutes or less	15	10.1
31-40 minutes	17	11.5
41 mins-1 hour	33	22.3
1-1.5 hours	32	21.6
1.5-2 hours	21	14.2
2-3 hours	19	12.8
More than 3 hours	11	7.4
Total	148	100.0

C. Jury Absences

5.21 On each occasion that the jury was absent from the court, excluding normal breaks such as lunch adjournments, the associate recorded the duration of and the reason for the absence. There were 165 trials (84%) where at least one jury absence was recorded. The maximum number recorded for any one jury was 18 and the average was three absences per trial. Table 5.21 shows that in one-quarter of the 197 trials there was only one absence and in a further one-quarter there were only two.

Table 5.21
Number of Jury Absences

	n	%
1	47	23.9
2	48	24.4
3-4	41	20.8
5 or more	29	14.7
None recorded	32	16.2
Total	197	100.0

5.22 A total of 520 reasons was recorded for the 504 occasions on which a jury was absent from court: in 16 instances two reasons were given.³ By far the most common reason (44%) was for the purpose of determining the admissibility of evidence, including *voir dres*. In almost one-quarter of absences the reason was an application of a different kind made by the defence whereas only 5% of absences related to applications by the Crown. More than 10% of absences were concerned with the clarification of legal issues.

Table 5.22
Reason for Jury Absences

	n	% of 504*
Argument about admissibility (including <i>voir dres</i>)	224	44.4
Application by defence	122	24.2
Application by Crown	25	5.0
Clarification of legal issues	59	11.7
Adjournment or absence for benefit or at initiation of jury	9	1.8
Other issues of prejudice	4	0.8
Discussion re summing-up	25	5.0
Adjournment for judge to deal with matters not related to this trial	41	8.1
Other	8	1.6
Not adequately described	3	0.6

* It was possible for multiple answers to be given to this question. 520 reasons were given for 504 absences.

D. Length of Deliberation on Verdict

5.23 Table 5.10 shows that on average the jury deliberation time was just over two hours. The maximum time spent by any one jury in our sample was over 12 hours. Very few took half an hour or less and there was a fairly even spread from half an hour to four hours. More than two-thirds took between half an hour and three hours.

Table 5.23
Length of Jury Deliberation

	n	%
30 minutes or less	10	6.9
31 minutes-1 hour	23	15.9
1-1.5 hours	21	14.5
1.5-2 hours	27	18.6
2-3 hours	28	19.3
3-4 hours	19	13.1
More than 4 hours	17	11.7
Total	145	100.0

IV. DISCHARGE BEFORE VERDICT

A. Discharge of the Whole Jury during the Trial

5.24 In 26 (13%) of the trials surveyed the jury was discharged before being asked to deliver a verdict. When a jury is discharged before giving its verdict, the jurors are free to leave the court. The accused, unless he or she changed the plea to one of guilty, will generally be re-tried by another jury. Table 5.24 shows that most were discharged either before any evidence commenced or during the Crown case.

Table 5.24
Stage at which Jury Discharged

	n
Before evidence commenced	10
During the Crown case	15
During the defence case	1
After completion of the evidence	0
Total	26

5.25 The reasons for discharge of the whole jury covered a wide range: Table 5.25. In over one-third of cases there had been prejudice in the Crown opening or in the Crown case which could only be resolved by the discharge of the jury. In another two cases there had been prejudicial publicity.

Table 5.25
Reason for Jury Discharge

	n
Change of plea	3
Prejudicial remark in Crown opening	5
Prejudicial evidence etc in Crown case	5
Prejudicial publicity	2
Prejudice in defence case	1
Adjournment application granted	1
Juror(s) known to participant, and whole jury tainted*	3
Juror(s) perceived own bias and whole jury tainted*	1
Other	3
Not stated	2
Total	26

* Bias of this kind is not necessarily transmitted by the prejudiced juror to his or her fellows. Often, however, the judge will reasonably suspect communication on the subject and discharge the entire jury. Alternatively, there may be reason to fear that the jury as a whole is tainted and the judge may discharge them.

B. Discharge of Individual Jurors

5.26 In seven trials, individual jurors were discharged. When an individual juror is discharged, the remaining members continue to hear the case and deliberate on their verdict. Up to two jurors can be discharged without affecting the trial. If a third juror has to be discharged, the trial cannot continue without the written consent of the Crown and the accused person.⁴ In each of the seven cases, only one juror was discharged. In no case was the stage reached where the judge had to consider whether each of the parties would consent to the trial continuing with a jury of fewer than 10 people. It should be borne in mind that this survey did not cover any very long-running trials. The results, therefore, do not assist the Commission in assessing the need for the additional juror system recommended in the Report⁵ which is intended as a safeguard in long trials. As Table 5.26 shows, the discharge of individual jurors occurred at various stages of the trials before the evidence was completed.

Table 5.26
Stage at which Juror Discharged

	n
Before evidence commenced	1
During the Crown case	4
During the defence case	2
After completion of the evidence	0
Total	7

5.27 Three of the jurors were discharged because of ill health. Table 5.27 shows that another two jurors were discharged because they were known to the accused or another participant.

Table 5.27
Reason for Discharge of Individual Juror

	n
Juror's ill health	3
Juror known to accused or relative of accused	1
Juror known to witness or other participant	1
Juror may have overheard prosecutor and witness outside courtroom	1
Personal crisis or other family event	1
Total	7

C. Unsuccessful Applications for Jury to be Discharged

5.28 In 25 trials there was at least one unsuccessful application for the jury to be discharged. These unsuccessful applications can be added to the total of successful applications to give an indication of the true level of discontent of applicants. The fact of an application, whether successful or unsuccessful, implies that the applicant considered it would be unsatisfactory for the trial to continue before the jury which has been empanelled. There was a total of 35 such applications and most were made by the defence. As Table 5.28 shows, there was only one such unsuccessful application in the majority of the 25 trials. Only two of the 35 applications were made by the Crown and both occurred in the same trial.

Table 5.28
Unsuccessful Applications for Jury to be Discharged

Applications	Trials
1	19
2	4
3	1
5	1
Total	25

5.29 Table 5.29 shows the grounds on which these applications were based. The most common ground (25) was that of prejudice in the Crown's opening, its case or in its closing address. Taking into account both successful and unsuccessful applications for the discharge of the jury, the number based on the ground that the Crown opening or its case was prejudicial is significant (35 of 61:57%).

Table 5.29
Grounds of Applications for Jury to be Discharged

	n	%
Prejudice in Crown opening, case or closing address	25	1.4
Prejudice in judicial observation or summing-up	3	8.6
Prejudicial publicity	1	2.9
Crown application based on prejudice to the Crown case	2	5.7
One prejudiced juror had tainted entire jury	2	5.7
Time needed to gather further evidence	2	5.7
Total	35	100.0

V. DISCHARGE FOLLOWING VERDICT

5.30 Strictly speaking a jury's task is complete upon the delivery of its verdict.⁶ There is a debate as to whether a jury should be detained to hear the proceedings on sentence after a verdict of guilty. Some argue that this is unwise on the ground that it may lead to unwarranted speculation about the character of the accused person if those jurors are again required to serve on a jury. Others argue that jurors should be entitled to know the result of the case.⁷ Table 5.30 shows that almost one-half of the juries surveyed who had given a verdict of guilty were discharged before evidence relevant to sentence was called, while about one-half were discharged after evidence relevant to sentence was called but before sentence was passed. Only three juries were discharged after sentence was passed.

Table 5.30
Discharge Following Verdict

	n	%
Before evidence relevant to sentence was called	33	46.5
After evidence relevant to sentence was called but before sentence was passed	35	49.3
After sentence was passed	3	4.2
Total	71	100.0

Footnotes

1. ABS *Higher Criminal Courts New South Wales 1983* (Cat No 4502.1).

2. Offences were coded into seven categories as follows:

Property offences (includes burglary, larceny, arson).

Offences against the person (*excludes* sexual offences but *includes* murder, assault, assault and rob, manslaughter.)

Offences involving drugs (includes importing).

Culpable driving (includes culpable driving causing death or grievous bodily harm and all other indictable driving offences).

Sexual offences (includes assault with intent to have sexual intercourse, and indecent assault).

Frauds (includes fraudulent misappropriation and false pretences).

Other.

3. The categories in full are as follows:

Voir dire or argument about admissibility: admissibility of evidence, document, record of interview, confession, medical report, cross-examination as to credit; competence of expert witnesses; declaration that witness is hostile.

Application by counsel for defence or by accused: to adduce alibi evidence; to introduce new evidence; to recall a witness; to lead evidence in reply; jury to be taken on a view; jury to be discharged; no case to answer; acquittal by direction; to seek instructions; to await witness; to await other participants; to find new counsel; to interview witness; to serve a subpoena.

Application by Crown Prosecutor: to introduce new evidence; to recall a witness; to lead evidence in reply; jury to be taken on a view; to make a supplementary address (s405 Crimes Act); for discharge of the jury for prejudice; to seek instructions; to await witness; to await other participants; to interview witness; to serve a subpoena.

Clarification of legal issues: whether the transcript is accurate; form of the indictment; nature of the charges; interpretation of statutory provisions; need for interpreter; whether trial should be held in camera; whether publication should be prohibited.

Adjournment or absence for benefit or at initiation of jury: to examine exhibits; as a result of jury questions; request for a view; etc.

Issues of prejudice not coded above.

Discussion/argument/submissions concerning the content of the summing-up *before* jury is charged to consider its verdict.

Adjournment for judge to deal with matters not related to this trial: eg, other short matters; taking verdict from another jury; sentencing another accused; applications related to other trials.

4. Jury Act 1977 s22.

5. LRC 48, para 10.16.

6. *Id*, para 7.43.

7. This was a matter on which the Commission itself was split; *id*, paras 7.42-7.46.

Chapter 6

Presentation of the Case to the Jury

I. INTRODUCTION

6.1 Judges have a wide discretion in the assistance they provide to a jury and in the procedures they permit counsel to employ. Judges cannot always obtain guidance from established law and practice in the exercise of this discretion. Our Survey of Judges revealed that judges in fact diverge widely in their trial practices. Not only do judges vary among themselves, but practices appropriate, in one judge's opinion, to a particular case or a particular jury will not necessarily be appropriate to another. Procedures adopted also depend largely on the initiative of counsel and on the willingness of opposing counsel to acquiesce in their use. These factors not only result in wide variations among cases but probably also lead to a conservative approach by most counsel and trial judges. In this chapter we consider the ways in which criminal cases are presented to juries, the effectiveness of this presentation and various suggestions for improvement. Our Surveys of Court Procedures, Prospective Jurors, Jurors, Judges and Crown Prosecutors all reveal aspects of current practice and for that reason they are all used as sources in this chapter. All participants, namely jurors and prospective jurors, judges and prosecutors, had views on the effectiveness of current procedures and contributed suggestions for improvement.

II. INFORMATION NEEDS

A. Prospective Jurors

6.2 The Commission sought information as to whether jurors were adequately prepared for the task ahead of them. 229 (13%) of prospective jurors who were asked whether there was some aspect of the jury system or the operation of the courts about which they would like information said that there was. Of these 229 respondents, 208 nominated at least one specific area on which they would like information. Information on how the system works, on court procedure, on the role and duties of jurors and on the jury selection procedure were most frequently cited. These prospective jurors would have received an information sheet with the Jury Summons mentioning some aspects of trial procedure, the difference between civil and criminal trials, the jury selection process, the election of a foreman and how to obtain further information. In assessing the preparedness of people for jury service, it should be remembered that approximately one-fifth of prospective jurors surveyed had previously served on a jury : para 7.1.

Table 6.1
Information Desired by Prospective Jurors

	n	%
Yes	229	12.9
No	1425	80.1
Not stated	125	7.0
Total	1779	100.0

Table 6.2
Subjects on which Information Desired

	n	% of 208***
General*	82	39.4
Court procedure	46	22.1
Role, duties and rights of jurors**	42	20.2
Jury selection procedure/exemption criteria/length of jury service	31	14.9
Personal comments on jury system/court system and/or suggested improvement (eg majority decisions/less ceremony/full-time jurors/sentencing)	12	5.8
Information on specific case/evidence/legal implications	11	5.3
Broader aspects of law	5	2.4
Role of judges and/or magistrates	3	1.4

* Information on how the system works, on car parking, a contact number, overnight stays, receiving information before attendance.

** Information on, eg, right to take notes, anonymity of jurors.

*** It was possible for prospective jurors to give multiple answers to this question. 208 respondents gave 232 answers in all.

6.3 Table 6.3 shows that those prospective jurors who had some sort of tertiary qualification were more likely to say they wanted information than those who did not. Over one-fifth of those prospective jurors who held tertiary qualifications felt a need for further information about jury service.

Table 6.4
Information Desired by Jurors Before Coming to Court

	n	% of 276*
Role, rights and duties of jurors	91	33.0
Court procedures	65	23.6
General information (meals, sleeping arrangements and other practical issues)	61	22.1
Information on specific case (copy of charges/elements of case/outline of case)	35	12.7
Possible length of trial	31	11.2
Jury selection procedures/exemptions/challenges	27	9.8
Broader aspects of law	18	6.5
Clearer and simpler visual presentation (maps/photos)	2	0.7
Other	9	3.3

* It was possible for jurors to give multiple answers to this question. 276 respondents gave 339 answers in all.

6.5 Jurors were also asked whether they had suggestions for improving the information provided at the beginning of the trial and 224 respondents (12%) made at least one suggestion. The suggestions made fall into the same categories as those made for information provided before coming to court. The main difference is that at the beginning of the trial more emphasis was placed on information relating to the specific case. There was less concern about general administrative and practical matters. Information on the role, rights and duties of jurors was still at this stage one of the most important issues as far as jurors themselves were concerned.

Table 6.3
Information Desired x Education*

	Require Information	
	%	n
Primary school	12.9	85
Less than 3 years at high school	10.6	218
3 years or more at high school	10.5	665
HSC/leaving/matriculation	13.5	275
Diploma/certificate	20.1	259
Degree +	22.3	103
Total	13.5 **	1605

* The percentages reported in this Table represent the proportions of people in each education category who said they would like further information: eg 20.1% of the 259 prospective jurors with a diploma or certificate said they required information.

** Only those prospective jurors who responded to both questions are included in this Table.

B. Jurors

6.4 Jurors who had completed their jury service were also asked whether they would have liked better information before attending court. 276 of the 1834 jurors surveyed (15%) made at least one suggestion for improving the information given to jurors before coming to court. The same three areas were nominated most often by these respondents as in the Survey of Prospective Jurors, namely information on the role, rights and duties of jurors, on court procedures and on practical matters like meals. Jurors, however, with the benefit of hindsight, felt a greater need for more information about the role, rights and duties of jurors, while prospective jurors more often expressed a desire for general information.

Table 6.5
Information Desired by Jurors at the Beginning of the Trial

	n	% of 224*
Role, rights and duties of jurors	69	30.8
Information on specific case (copy of charges/elements of case/copies of statements)	69	30.8
Clearer and simpler visual presentation (maps/photos)	30	13.4
Broader aspects of law	30	13.4
Court procedures	20	8.9
Jury selection procedure/exemptions/challenges	9	4.0
General information	11	4.9
Possible length of trial	15	6.7
Other	2	0.9

* It was possible for jurors to give multiple answers to this question. 224 respondents gave 255 answers in all.

III. DIFFICULTY OF THE TRIAL

6.6 Respondents to the Survey of Jurors were asked whether the trial on which they had served had been difficult to follow. 278 (15%) considered that it was. Table 6.6 shows that in 14 of the 181 juries which were represented in the Survey of Jurors, at least one-half of the jurors who responded considered the trial was difficult to follow. In 39% of trials represented in the survey, none of the jurors who responded considered the trial had been difficult to follow. In more than one-half of the trials the majority of jurors did not consider the trial had been difficult to follow. This suggests that juror's difficulties were directly related to particular cases.

Table 6.6
Trial Difficult to Follow

	Juries	
	n	%
At least half the jurors said yes	14	7.7
Fewer than half said yes	95	52.5
All said yes	2*	1.1
All said no	70	38.7
Total	181	100.0

* In one of these juries only two jurors responded; in the other only one juror responded.

6.7 Of the 278 jurors who had found their trial difficult to follow, 258 specified reasons which are listed in Table 6.7. It can be seen that the reasons expressed covered a wide range. The most common complaint was that the evidence had been confusing or contradictory, or that there had not seemed to be enough of it. For 62 jurors, however, the trial had been difficult to follow because of poor acoustics. In answer to a similar question in the 1983 Law Foundation survey of jurors, an even greater proportion of respondents (24%) said it was sometimes difficult to understand what was going on during the trial. The majority of these problems were related to poor acoustics.

Table 6.7
Why Trial Difficult to Follow

	n	% of 258*
Inadequacies of evidence (not enough/confusing/contradictory)	125	48.4
Poor acoustics	62	24.0
Conduct of trial (lack of understanding of court procedure/points of law/objectives of trial/etc)	29	11.2
Criticism of counsel (unprepared/vague/disorganised)	20	7.8
Trial boring/repetitious/long	11	4.3
Difficulties with legal language	11	4.3
Difficulties with having to leave and return to court	9	3.5
Confusion over number of charges or accused	8	3.1
Difficulties with English — either juror had problems with English or difficulty with English of someone in case	7	2.7
Other	6	2.3

* It was possible for jurors to give multiple answers to this question. 258 respondents gave 288 answers in all.

6.8 The majority of judges surveyed by the Commission (25 of 42:60%) stated that there are some cases which, even if properly prepared and clearly presented, are so complex as to be unsuitable for trial before a jury of people without special qualifications. However, 16 judges (38%) consider there are no such cases. Of the 25 judges who consider there are such complex cases, a majority (18:72%) considers that such complexity arises from scientific or technical evidence, or the large volume of evidence in particular cases. The number of charges or the number of accused people are considered to be possible complicating factors by 14 judges. Nine (21%) of the judges surveyed said they had personally presided in a jury trial which they considered was so complex as to be unsuitable for jury trial.

IV. JUDGE'S INTRODUCTION

A. Eliminating Bias

6.9 The Survey of Judges questionnaire sought to find out how prospective jurors are made aware that they should notify the court if they are acquainted with participants in the trial or are in some other way connected with the case. Judges were asked if they advise the panel before selection of the jury of a number of facts. Table 6.8 shows that of the judges who responded to the question, at least one-half never advise the panel of the matters listed. A small number (three) always advise the panel of the general nature of the case and two judges always advise the jury panel of any specific feature of the case which might raise issues of bias. One judge always advises the jury of the identity of the accused person and of the victim. Judges rarely identify witnesses before the jury selection procedure.

Table 6.8
Judges' Advice to Jury Panel

	Always	Sometimes	Never	Not Stated	Total
General nature of the case	3	12	21	6	42
Any specific feature of the case which may create bias	2	15	19	6	42
The identity of the accused	1	15	21	5	42
The identity of the victim	1	11	26	4	42
The identity of the witnesses	0	8	28	6	42

6.10 Judges who gave the answer 'sometimes' to any of the five parts of this question were asked in what particular circumstances they do so advise the panel. Table 6.9 shows those responses which were given at least five times. A substantial number of judges (13) so advise the panel if the trial is held in a country town. When asked specifically whether their practice varies according to whether they are sitting in the city or the country, 15 judges stated that it does.

Table 6.9
Particular Circumstances in which the Judge
Advises the Panel

	n
In a country town	13
Where accused, victim or witnesses known	10
Where there is an obvious or possible source of bias	7
Where case has been the subject of publicity	5

B. Estimating the Length of the Trial

6.11 A minority of the judges surveyed (5:12%) said they always advise the panel before selection of the jury of the estimated length of the trial in order to enable any prospective juror to make an application to be excused. A large number (33:79%) does so sometimes and one judge never does so (this judge said he had never had a trial lasting longer than a week but that, if he ever should, he would warn the panel). Again, judges who sometimes advise the panel of the estimated length of the trial were asked in what particular circumstances they do so and the circumstances most often identified were:

- * the judge considers that the trial is likely to be lengthy;
- * the trial is likely to be longer than 'average'; and
- * the trial takes place at a time when there are school holidays or straddling a long weekend.

Some judges stated the number of days they use as the cut-off point when deciding whether to advise the panel of the estimated length of the trial. This varies substantially among judges from two days to some weeks. The most frequently occurring figure was one week.

Table 6.10
When Judge Advises the Panel of the Estimated Length of the Trial

	n
If trial likely to exceed 2 days	1
If trial likely to exceed 2-3 days	2
If trial likely to exceed 3 days	2
If trial likely to exceed 4 days	2
If trial likely to exceed 1 week	14
If trial likely to exceed 10 days	1
If trial likely to exceed 14 days	2
If trial likely to last some weeks	2

C. Preliminary Instruction

6.12 Judges were also asked about the usual practice adopted to give the jury once empanelled information about a number of matters before the evidence commences. These have been ranked in Table 6.11 according to how often judges advert to them. The majority of judges (27 of 42:64%) always informs the jury of the general role and obligations of jurors and of the format or sequence of events to be followed at the trial. There were 11 judges who always inform jurors of their right to take notes and a further 19 who do so sometimes (usually in complex or lengthy trials). A significant number (nine) never do so. In contrast, the majority of judges (27 of 42:64%) never informs the jury at the beginning of the trial of matters relevant to the rules of evidence or the elements of the offence charged. This is understandable in light of the fact that the rules of evidence will not usually be of importance to the jury, nor will the judge always know in advance of the trial what issues are likely to arise.

Table 6.11
Preliminary Instructions to Jury

	Always	Sometimes	Never	Not Stated	Total
The general role and obligations of jurors	27	6	6	3	42
The format or sequence of events to be followed at the trial	27	5	7	3	42
The right of jurors to take notes	11	19	9	3	42
The right of jurors to have questions asked of witnesses through the judge	13	9	17	3	42
The nature of the case	11	9	18	4	42
The burden and standard of proof	10	6	21	5	42
Matters relevant to rules of evidence	6	5	27	4	42
The elements of the offence charged	4	6	27	5	42

6.13 The majority of the judges surveyed (36:86%) stated that it would be helpful to give instructions before the commencement of evidence on these matters. In answer to a question as to how this could be done, the majority of those who responded (27:64%) stated it should be at the judge's discretion while a minority (seven:17%) felt a set formula would be appropriate.

6.14 Crown Prosecutors were asked their opinion as to whether the judge should instruct the jury on a range of matters before any evidence is called. Table 6.12 shows that there was almost unanimous support for giving instructions before the commencement of the evidence on the role and function of the jury and the burden and standard of proof while three respondents felt that the judge should never give preliminary instructions on the ingredients of the offence charged or any other relevant law.

Table 6.12
Prosecutors' Opinions About Subjects for Judicial Preliminary Instructions

	Always Include	Sometimes Include	Never Include	No Response	Total
Jury's role and function	20	1	—	1	22
Burden and standard of proof	19	2	—	1	22
Ingredients of offence charged	10	8	3	1	22
Other relevant law	8	10	3	1	22

6.15 Prosecutors were also asked whether the instruction on these matters should come before or should follow the Crown opening. Table 6.13 shows that, with respect to the role of the jury and the burden of proof, all but one of the respondents agreed the instruction should precede the Crown opening. The difficulty with instructing on the ingredients of the offence and other relevant law was expressed by some to be that the judge may not know what is relevant before hearing the opening. Those who felt it to be sometimes appropriate for the judge to pre-instruct on the ingredients of the offence and other relevant law, cited two main situations:

- * in cases of special complexity such as fraud and conspiracy; and
- * where the Crown did not adequately or accurately cover it in the Crown opening.

Table 6.13
Prosecutors' Opinions of Timing of Judicial Preliminary Instructions

	Before Crown Opening	After Crown Opening	No Response	Total
Jury's role and function	20	1	1	22
Burden and standard of proof	20	1	1	22
Ingredients of offence charged	10	7	5	22
Other relevant law	10	7	5	22

V. CROWN OPENING

6.16 The traditional method of introducing a criminal case to a jury has been to require the Crown Prosecutor to address the jury once it has been empanelled. The object of this address, known as the 'Crown opening', is to provide a background to the evidence by stating the facts of the case and the evidence which will be presented by the prosecution. Whilst there are rules of professional ethics relating to the opening speech, including the requirement that it is not to be delivered in an argumentative manner, the delivery and content of the Crown opening is very much a matter for the individual prosecutor concerned. We decided to examine the practice not only because it appears to be so varied, but also because it was believed that a significant number of juries are discharged because of complications caused by the opening statement. In fact, in our Survey of Court Procedures, five (19%) of the 26 juries discharged before verdict had had to be discharged because of prejudice in the Crown opening.

6.17 Crown Prosecutors were asked whether, in opening a case to a jury, they cover four broad subject areas. Table 6.14 shows that even an area as basic as the ingredients of the offence charged is not universally covered. Prosecutors who do not make it an invariable practice were asked in what circumstances they would cover the matters listed. Table 6.15 shows that most of those prosecutors do cover the jury's role and the burden of proof if the judge has not already done so. With respect to the ingredients of the offence and other relevant law there is some wariness of judicial attitudes and, at the same time, a recognition of the jury's need for some pre-instruction on relevant law, particularly in complex cases.

Table 6.14
Coverage of Crown Opening

	Always Include	Sometimes Include	Never Include	Total Total
Jury's role and function	13	8	1	22
Burden and standard of proof	17	5	—	22
Ingredients of offence charged	16	6	—	22
Other relevant law	6	15	1	22

Table 6.15
Circumstances in which Coverage Deemed Appropriate

		n
Jury's role and function	• if not mentioned by judge	5
	• depends on judge's permission	1
	• not sure	1
Burden and standard of proof	• if not mentioned by judge	2
	• depends on judge's permission	1
	• where of special importance to mention before evidence	1
Ingredients of offence charged	• depends on judge's permission	3
	• where not clear from count	1
	• unless too complex	1
Other relevant law	• necessary to aid jury	9
	• difficult instruction, eg self-defence, common purpose	2
	• depends on judge's permission	2
	• if not mentioned by judge	1

6.18 Table 6.16 shows that a greater, and a consistent, number of prosecutors agree that coverage of the four broad topics in the Crown opening would be both valuable and proper. Some prosecutors, however, repeated the comment that these matters are usually, or better, left to the judge.

Table 6.16
Prosecutors' Opinions of Value and Propriety of Coverage in Crown Opening

	Valuable?		Proper?	
	Yes	No	Yes	No
Jury's role and function	18	1	19	1
Burden and standard of proof	18	2	17	2
Ingredients of offence charged	19	1	18	1
Other relevant law	17	1	17	2

6.19 In the Commission's Survey of Judges, responding judges were asked to evaluate Crown openings. 39 of the 40 judges responding to this question stated that Crown Prosecutors sometimes open the case to the jury adequately. One judge considers they always do so. One judge commented that "sometimes in this context means not very often - rarely are facts and circumstances relied upon by the Crown adequately stated".

6.20 18 (43%) of the judges surveyed considered that the judge should sometimes have a role in canvassing the contents of the Crown Prosecutor's opening before it is given. Another 19 (45%) judges consider they should never have this role. Some judges are prepared to become involved if specifically asked by either or both counsel. Others consider their involvement necessary only if there is doubt as to matters of law or an obvious difficulty which might mislead the jury or result in a miscarriage of the trial. In their comments on the inclusion of matters of law in the Crown Prosecutor's opening, judges reported widely different views. One judge requires the Crown to include the elements of the offence charged and the burden and standard of proof in his or her opening, while other judges consider that Crown Prosecutors should not open any legal topic but should restrict the opening to a statement of facts to be proved in the Crown case and the inferences sought to be drawn from them.

6.21 Respondents to the Commission's Survey of Jurors were also invited to evaluate the Crown openings they had heard. Jurors were asked if the Crown Prosecutor's opening was clear enough on the five subjects listed in Table 6.17. The majority of jurors considered that the opening was clear enough on each of the subjects listed. Almost 20%, however, considered the opening was not clear enough on the burden and standard of proof, 10% considered the opening was not clear enough on what the Crown had to prove and 12% thought it not clear enough on the sequence of events to be followed in the trial.

Table 6.17
Jurors' Opinions of Clarity of Crown Opening

	Clear %	Not Clear %	No Response %	Total %
The nature of the case	93.7	4.5	1.7	100.0
What the Crown had to prove	86.9	9.5	3.7	100.0
The burden and standard of proof	73.9	18.8	7.4	100.0
The sequence of events to be followed at the trial	81.5	12.4	6.2	100.0
The role of the jury	88.7	6.1	5.3	100.0

6.22 Table 6.18 shows how these attitudes expressed by individual jurors were distributed among juries. The general pattern is the same as that seen in Table 6.17. In almost 70% of juries all respondents considered the Crown opening was clear enough on the nature of the case. In almost all other juries the majority of jurors considered it was clear enough. The burden and standard of proof was considered least clearly explained. In 6% of juries there were more jurors who considered that the coverage of this subject was not clear.

Table 6.18
Juries' Opinions of Clarity of Crown Opening

	More jurors said yes %	More jurors said no %	All jurors said yes %	All jurors said no %	Total Juries %
The nature of the case	30.4	0.6	69.1	—	100.0
What the Crown had to prove	53.6	1.1	45.3	—	100.0
The burden and standard of proof	70.2	5.5	22.7	1.7 *	100.0
The sequence of events to be followed at the trial	56.4	2.8	40.3	0.6 **	100.0
The role of the jury	43.1	—	56.9	—	100.0

* 3 juries of 2, 2 and 3 respondents only.

** 1 jury of 1 respondent only.

VI. WRITTEN MATERIALS

A. Taking Notes

6.23 Table 6.19 shows that about one-third of jurors (from 120 of the 181 juries represented in the Survey of Jurors) did take notes during the trial. This is greater than the proportion found in the Law Foundation survey of 1983, when only 19% of jurors surveyed said they had taken notes. Of those who did not take notes, over 40% said they would have been assisted by taking notes. This was the same proportion as found in the 1983 survey.

Table 6.21
Individual Copies of Documentary Exhibits

	n	%
Yes	777	42.4
No	1011	55.1
Photographs only	5	0.3
No response	41	2.2
Total	1834	100.0

Table 6.22
Individual Copies Would Have Assisted*

	n	%
Of assistance	473	46.8
Not of assistance	508	50.2
No response	30	3.0
Total	1011	100.0

* This question was asked of jurors who did not receive a copy of documentary exhibits and took the form "If you did not receive a copy of ... would it have been of assistance?"

6.26 There were some documentary exhibits in 143 (73%) of the trials surveyed in our Survey of Court Procedures, but individual copies were rarely provided to the jury. In 10 (7%) of those trials the associate recorded that all of the documents were copied and made available to individual jurors but it is possible, and in a few cases probable, that these associates misunderstood the question. In six (4%) cases, the jurors were provided with individual copies of one or more of the documentary exhibits.

Table 6.23
Jurors Provided With Individual Copies of Documentary Exhibits

	n	%
All provided	10	7.0
Some provided	6	4.2
None provided	107	74.8
No response	20	14.0
Total	143	100.0

Table 6.19
Taking Notes

	n	%
Yes	592	32.3
No	1200	65.4
No response	42	2.3
Total	1834	100.0

Table 6.20
Taking Notes Would Have Assisted*

	n	%
Of assistance	506	42.2
Not of assistance	544	45.3
No response	150	12.5
Total	1200	100.0

* This question was asked of jurors who did not take notes and took the form "would you have found it of assistance to take notes?".

6.24 Judges' directions on the right of jurors to take notes vary substantially. As noted above, in the Commission's Survey of Judges it was found that 11 of the 42 judges who responded (26%) always inform jurors, before the evidence commences, of their right to take notes, 19 (45%) do so sometimes (mainly in complex or lengthy trials) and nine (21%) never do so. In its Report of March 1986, the Commission recommended that legislation should confirm the right of jurors to take notes and require that means to do so be provided and that the judge advise jurors of this right.¹

B. Documentary Exhibits

6.25 An exhibit is a document or thing referred to in the evidence of a witness and admitted as part of the evidence in the case. It is rare for exhibits to be withheld from the jury. Exhibits will usually only be withheld if they could endanger jurors. In only 13 of the 197 trials in the Survey of Court Procedures were exhibits withheld from the jury. These exhibits were mainly drugs, firearms or items of value such as jewellery. It is rare for jurors to have more than one copy of any documentary exhibit. Jurors were asked if each of them had been provided with a copy of the documentary exhibits and photographs. Over 40% of jurors said that each member of their jury had been provided with a copy of the documentary exhibits and photographs. Five jurors said they had been provided with photos but not documentary exhibits. Results from a similar question in our Survey of Court Procedures show, however, that individual copies were rarely provided to jurors (para 6.26). It seems probable, therefore, that respondents misunderstood this question in the Survey of Jurors. Over 45% of jurors who had not had their own copies said it would have been of assistance. In its Report, the Commission recommended that it would be good practice for multiple copies of documentary exhibits and photographs to be provided to the jury.²

C. Other Documents

6.27 In 32 (16%) of the 197 trials covered by our Survey of Court Procedures, jurors were given written materials other than exhibits. Such materials may be provided at the initiative of the judge (as in the case of a written statement of the charge) or counsel may request the judge's permission to distribute a document. In considering whether to provide the jury with written material, the judge will hear the objections, if any, of counsel. In 27 of those trials a copy of the indictment, or a statement of the charges, was given to the jury.

6.28 In one trial a brief but comprehensive set of instructions was provided setting out the questions they would be asked, a list of possible verdicts and other guidelines to aid them in coming to their verdict. In two other trials written or typed directions of law were provided. This practice was approved by the Court of Criminal Appeal in 1980.³ The difficulties identified by the court in that judgment, however, may be the reason why the practice is not more widespread. Among other things, the court affirmed the importance of oral directions in communicating the law to the jury. Nevertheless, there seems to be considerable support for the provision of a written summary of some or all of the summing-up in cases involving provocation, self-defence and diminished responsibility.⁴

6.29 The transcript of the accused's statement from the dock and a copy of records of interview admitted into evidence were provided to the jury in one trial. The transcript records every word spoken in the trial. It may be tape recorded or taken down by a shorthand writer. The logistical problems involved have so far pre-empted reasoned debate about the value of providing transcripts to the jury, even in very long trials. In only 46 trials (23%) did counsel and the judge have a running transcript of evidence. If a transcript were to be provided to a jury, it would need to be checked for accuracy and edited to eliminate inadmissible material. Where the jury requires some reference to the evidence, the current practice is for judges to re-read sections of the transcript: see Table 6.32. In nine of the trials surveyed the jury did ask for a copy of the transcript. In the last of the 32 trials in which jurors received additional written materials, the written materials provided were a photostat copy of a street directory map and a list of the possible verdicts.

6.30 Jurors responding to our Survey of Jurors were asked whether their jury had been provided with a copy of all or part of the transcript of evidence in the case. The relatively high affirmative response, when contrasted with the information in the Survey of Court Procedures (inherently more reliable on matters of this kind), suggests that some jurors, even at the end of a trial, did not know what the transcript was.⁵ Two-thirds of jurors answering a subsequent question believed the transcript would have assisted them.

Table 6.24
Copy of Transcript

	n	%
Yes	557	30.4
No	1221	66.6
No response	56	3.1
Total	1834	100.0

Table 6.25
Copy of Transcript Would Have Assisted*

	n	%
Of assistance	820	67.2
Not of assistance	342	28.0
No response	59	4.8
Total	1221	100.0

*This question was asked of jurors who said the jury had not been provided with the transcript and took the form "If you did not receive a copy ... would it have been of assistance?"

6.31 Jurors were also asked if they believed they would have been assisted by having four other specific types of written material. Over one-half of the jurors said they would have been helped by having:

- * a statement of what the Crown had to prove;
- * a copy of the charge(s) against the accused person; and
- * the judge's summing-up or part of it.

Just under one-half of the jurors said they would have been helped by having a list of the available verdicts.

Table 6.26
Assistance of Written Materials

	Of Assistance %
A statement of what the Crown had to prove	56.6
A copy of the charge(s) against the accused	55.9
The judge's summing-up or part of it	52.1
A list of the available verdicts	47.0

6.32 As Table 6.27 shows, judges responding to our Survey of Judges were divided on the question whether a copy of the transcript would be of assistance to jurors when they retire to consider their verdict. It is in long or complex cases or in cases of a technical nature that a transcript is considered most useful, and also in those cases where there needs to be a comparison made between the evidence of witnesses on a fact in issue. The main danger identified by judges in providing a copy of the transcript to jurors is that it is too easily misunderstood and could cause confusion. The practical difficulties of availability and of the need for the transcript to be edited and checked for accuracy, as well as the impact on the length of the trial and the expense, were also considered important.

Table 6.27
Judges' Opinions of Assistance of Transcript

	n	%
Always of assistance	7	16.7
Sometimes of assistance	16	38.1
Never of assistance	18	42.9
Not stated	1	2.4
Total	42	100.0

6.33 Over one-half of judges surveyed (24:57%) considered that jurors would not be assisted by being given, at the beginning of the trial, a written summary of the facts to be proved. However, a substantial minority (15:36%) considered that this would help jurors, at least in some cases. Four judges considered it would help jurors in all cases. Those in favour of such a summary felt it would be particularly useful in complicated cases, that is, where there is a large number of charges or where an offence involves complex elements. The problems associated with a written summary are seen to be that it would give an unfair advantage to the Crown, that it would be difficult to prepare an agreed summary and that 'facts' listed in such a summary may not actually be proved thus causing confusion to the jury and possibly giving rise to the need to discharge the jury.

6.34 Crown Prosecutors were also asked whether certain written materials could aid jurors' comprehension in complex cases. Table 6.28 shows that there is considerable support for the proposition that such materials would be valuable but more doubt as to their propriety and some concern that they would in fact be dangerous. Prosecutors were also invited to suggest other methods of assisting the jury and the following are among the suggestions made:

- * a list of the charges with names of witnesses and documents related thereto;
- * schedules of documentary exhibits;
- * individual copies of exhibits; and
- * schematic diagrams analysing the evidence.

6.28
Prosecutors' Opinions of Written Materials

	Valuable?		Proper?		Dangerous?	
	Yes	No	Yes	No	Yes	No
Prosecution entitled to give the jury a written summary of the facts to be proved in its case	15	4	10	5	11	6
Jury is given a copy of the transcript of proceedings when it retires to consider its verdict	12	5	10	5	8	9

VII. OTHER ASSISTANCE

A. Introduction of Witnesses

6.35 The majority of judges surveyed (29:69%) did not agree that the Crown Prosecutor (and counsel for the accused in his or her case) should be entitled to point out briefly to a jury as each witness is called the general subject matter to which the witness would speak. It is the Commission's view that a statutory provision would probably be required to allow this practice. Counsel now simply call a witness by reference to his or her name alone. A significant minority of judges (11:26%), however, agreed with this suggestion. Some of the judges in favour of the idea consider that the presiding judge should still have the power to regulate the commentary and emphasis was placed on ensuring that such an introduction should be brief. Some judges opposed to the idea consider it should remain a part of the opening address of counsel.

6.36 Crown Prosecutors were asked their opinions of the proposal that they should, immediately before calling a witness, briefly introduce him or her by stating the facts which the witness is called to prove. Of 19 respondents to this question, 13 (68%) agreed such a procedure would be valuable in assisting the jurors' comprehension in complex cases. Of the 16 prosecutors who answered the question whether the procedure would be proper, only 10 (63%) agreed that it would. Of the 14 who answered the question whether the procedure would be dangerous, 10 (71%) felt that it would not. One, however, stated that the procedure would be "disruptive and somewhat dangerous" and noted that the prosecution "can only hope" that the witness will give particular evidence.

B. Visual Aids

6.37 In seven trials (4%) covered by our Survey of Court Procedures it was reported that counsel or the judge used some type of equipment or visual aid (other than photographs) to assist communication with the jury. The following were among the aids used or provided:

- * video recorder and television display screen;
- * plan;
- * magnifying glass to view map plans;
- * white board with sketch plan of scene, marked during evidence with felt pens; and
- * large scale plan held in front of jury with witnesses standing to the side and pointing to various positions.

6.38 Crown Prosecutors were asked whether they use visual aids to assist in presenting a case to the jury. More than two-thirds (15 of 22:68%) do so at least sometimes: Table 6.29. Those who do use visual aids tend to rely on them in complex cases. Some concern was expressed that defence objections and the judge's rejection sometimes prevent the use of visual aids.

Table 6.29
Prosecutors' Use of Visual Aids

Used	n
Frequently	4
Sometimes	11
Rarely	3
Never	4
Total	22

6.39 In the light of the responses to the question about practice, it is interesting to note that the majority (82%) of prosecutors considers that the use of visual aids could be dangerous: Table 6.30. One commented that visual aids would not be dangerous provided the accused person is represented while another advocated legislation to "enable modern techniques to be used without ancient strict proofs". Another of the prosecutors stated that judges need to be more flexible about the use of visual aids.

Table 6.30
Prosecutors' Opinions of Visual Aids

	Yes	No
Valuable?	19	1
Proper?	19	—
Dangerous?	18	—

C. View

6.40 Only two (1%) of the 197 juries covered by our Survey of Court Procedures were taken on a view of the scene of the offence. Juries may themselves request a view or counsel may request one. If the judge permits a view, the entire jury, under the supervision of a Sheriff's officer, is taken to the place or thing to be viewed, most often the scene of the alleged offence. Sometimes a view involves the examination of an object, such as a motor vehicle involved in an offence, which is too large to be brought into court as an exhibit.

VIII. JURORS' QUESTIONS

6.41 In 88 (45%) of the 197 trials covered by our Survey of Court Procedures the jury asked at least one question. The maximum number of questions asked by any one jury in the survey was nine. Table 6.31 shows that the majority of juries asked between one and three questions. The mean was two.

Table 6.31
Number of Questions Asked by Jury

	n	%
1	32	36.4
2	25	28.4
3	17	19.3
4	8	9.1
5	2	2.3
6	3	3.4
9	1	1.1
Total	88	100.0

6.42 Table 6.32 shows that about one-third of questions asked were requests for additional evidence or for clarification of evidence during proceedings. Requests to be reminded of evidence during deliberations constituted 17% of questions and a similar proportion (16%) were requests for directions of law to be repeated during deliberations.

Table 6.32
Questions Asked by Jury

	n	%
During proceedings — request for additional evidence or for clarification of evidence	64	31.7
During proceedings or deliberations — request for additional information about accused	3	1.5
During proceedings or deliberations — explanation of meaning of charge	19	9.4
During proceedings or deliberations — request for jury copy of document or exhibit	26	12.9
During deliberations — remind of evidence or read from transcript	34	16.8
During deliberations — repeat direction(s) of law	32	15.8
During deliberations — request for additional evidence or for clarification of evidence	2	1.0
During deliberations — difficulty achieving unanimity	4	2.0
Other	18	8.9
Total	202	100.0

6.43 Our Survey of Judges revealed that only 31% (13 of 42) of the judges responding always advise juries of their right to submit questions to the judge (usually by reducing them to writing) while another 40% (17 of 42) never so advise juries. It is not surprising then that over one-half (55%) of juries surveyed did not submit a single question nor that, of those which did, 23% only asked the judge to remind them of the evidence or to repeat a direction of law. Active participation by a jury in the proceedings was relatively rare.

6.44 Over 45% of jurors said that either they or their foreman had asked questions of the judge.⁶ Of those who had not asked questions or had them asked by the foreman, over 45% said they would have been of assistance.

Table 6.33
Jurors Asked Questions

	n	%
Yes	853	46.5
No	924	50.4
No response	57	3.1
Total	1834	100.0

Table 6.34
Asking Questions Would Have Assisted*

	n	%
Of assistance	428	46.3
Not of assistance	405	43.8
No response	91	9.8
Total	924	100.0

* This question was asked of jurors who had not asked questions and took the form "... would you have found it of assistance to ask questions?"

IX. JURY ABSENCES

6.45 Jury absences from court during proceedings can have a number of detrimental effects. They tend to interrupt the flow of the presentation of the evidence, are tedious for the jurors to endure and can lead to improper speculation among the jurors. Our Survey of Court Procedures revealed that in 84% of trials in our sample (165 of 197) at least one jury absence was recorded. In one trial there was a total of 18 absences. In all cases the shortest absence lasted a matter of minutes while the longest total time a jury was absent during a trial was about 13 hours. This represents a total of almost three days court time. One of the Crown Prosecutors surveyed by the Commission recognised the problems caused by jury absences and advocated the holding of pre-trial hearings to settle admissibility questions so that the jury can hear the trial without interruption.

X. THE SUMMING-UP

A. Difficulties

6.46 Of the 42 judges surveyed by the Commission, 30 (71%) agreed that some of the instructions required to be given on matters of law are too difficult for jurors to understand. Eight (19%) considered that none of the instructions are too difficult for jurors to understand. (Four did not answer this question.) There were 18 specific areas listed and judges were asked to indicate those areas they considered difficult for jurors to understand. They were also asked if they considered each area to be conceptually difficult, whether it is made difficult by the formulation of words required to be given or both. In addition, respondents were asked to nominate any other direction of law which they felt was difficult for jurors to understand.

6.47 Table 6.35 shows that self-defence stands out as the area which a majority of judges (23:55%) considered to be difficult for jurors to understand. Of those 23 judges, 12 (52%) considered it is conceptually difficult but six (26%) said it is only made difficult by the formulation of words required to be given. Next in order of difficulty is intoxication: 16 (38%) judges considered it difficult for jurors to understand. Almost all (15 of the 16) considered that the reason for the difficulty is the formulation of words required to be given.

6.48 The instructions on mental illness, conspiracy, diminished responsibility and provocation were assessed in a similar way by all judges surveyed. In each case, about one-third of judges considered the area difficult to understand. In each case seven or eight considered that comprehension is made difficult by the formulation of words required to be given. Previous inconsistent statements are in a conspicuously different category. Although 13 judges thought it conceptually difficult only two thought it is made difficult by the formulation of words required. At the other end of the scale, only one judge thought that the alibi instruction is difficult for jurors to understand. Alibi is the only area in which no judge considered the words required to be given make it difficult to understand. Crown Prosecutors also identified some difficult instructions: "deemed possession", self-defence, circumstantial evidence, common purpose, recent possession, provocation, diminished responsibility and conspiracy.

Table 6.35
Judges' Evaluation of Difficulty of Instructions of Law

	Difficult to Understand	Conceptually Difficult	Made Difficult by Formulation of Words Required to be Given
Self-defence	23	12	19
Intoxication	16	15	14
Mental illness	15	15	7
Conspiracy	15	14	8
Diminished responsibility	15	13	8
Provocation	13	13	7
Previous inconsistent statements	13	13	2
Common purpose	12	12	5
Circumstantial evidence	10	10	5
Intent	10	10	4
Corroboration	9	9	4
Lies	6	5	1
Attempt	5	5	4
Character	5	6	2
Identification	4	1	3
Burden of proof	4	2	1
Standard of proof	1	2	2
Alibi	1	1	0

6.49 Jurors were asked if the judge's summing-up at the end of the trial helped them to understand the case. Of the 1697 jurors who answered this question, 95% considered that the judge's summing-up did help them to understand the case.

Table 6.36
Jurors Assisted by Summing-up

	n	%
Yes	1606	94.6
No	89	5.2
Yes and No	2	0.1
Trial aborted	(50)	—
No response	(87)	—
Total	1697	100.0

6.50 Table 6.37 shows that, in about two-thirds of trials covered by our Survey of Jurors, all the responding jurors considered the judge's summing-up helped their understanding, while in the other one-third most jurors did. This means that any dissatisfaction was spread across juries rather than being concentrated in a small number of them. In no jury was there a majority of respondents who reported the judge's summing-up did not help their understanding of the case. 65 jurors gave reasons why the judge's summing-up in their trial was not helpful. Of these, 17 said that the summing-up was unnecessary because they already understood the case clearly. Other reasons were as listed in Table 6.38.

Table 6.37
Juries Assisted by Summing-up

	n	Juries %
More jurors said yes	60	34.9
More jurors said no	0	—
All jurors said yes	112	65.1
All jurors said no	0	—
Total	172	100.0

Table 6.38
Why Judge's Summing-up Unhelpful

	n	% of 65*
Summing-up unnecessary — already understood	17	26.2
Certain points of law still not understood	17	26.2
Summing-up confusing/unclear	15	23.1
Summing-up too long/boring	14	21.5
Case too confusing/didn't understand charge	5	7.7
Not a clear speaker	3	4.6
Other	5	7.7

*It was possible for jurors to give multiple answers to this question. 65 jurors gave 76 answers in all.

B. Written Directions

6.51 Of the 42 judges surveyed, 24 (57%) agreed that the provision of their directions of law in writing would assist jurors to comprehend the difficult directions listed in Table 6.35. In fact, eight (19%) judges considered their written directions would assist the jurors to comprehend all the areas listed. The specific areas which were nominated by at least five judges are self-defence (eight judges) and the standard and burden of proof (five judges). The judges were asked for other ideas on how these directions might be better understood. The two suggestions most often made are clear, simple explanation (six judges) and note-taking by jurors (five judges).

6.52 Crown Prosecutors were also asked their opinion of the provision to jurors of a written copy of the judge's directions on difficult matters of law in complex cases. As Table 6.39 shows, there was overwhelming support for this proposal.

Table 6.39
Prosecutors' Opinions of Written Directions

	Yes	No	No Response	Total
Valuable?	20	1	1	22
Proper?	18	1	3	22
Dangerous?	—	14	8	22

C. Standard Directions

6.53 Of the 42 judges surveyed, 32 (76%) considered that, in principle, standard directions would be of assistance to judges and 27 (64%) considered they would be of assistance to jurors. Those who agreed they would be useful considered standard instructions would ensure the directions are accurate, concise, comprehensive, up-to-date and would provide a useful guide or checklist. Other judges commented, however, that there is no such thing as a standard case or a standard set of facts. Accordingly, standard directions could only be used as a basic model which would require modification to meet the circumstances of the individual case.

XI. JURORS' SUGGESTIONS FOR IMPROVEMENT

6.54 Of the jurors who responded to the Survey of Jurors, 280 (15%) made at least one suggestion for improving trials by jury. The most common suggestion (18% of all suggestions) was that transcripts or written information or an outline of the case be made available to jurors. A small number of jurors (41.2% of all jurors) advocated the introduction of majority verdicts. There were also suggestions relating to other aspects of jury service such as having professional jurors and screening jurors before requiring them to serve.

Table 6.40
Jurors' Suggestions for Improving Trial by Jury

	n	%
Make transcripts/written information/outline of case available	57	18.0
Should have majority verdict	41	13.0
Suggestions re changes in jury service (reduce number/have professional jurors/manner of choosing jury/unnecessary for certain offences/abolish juries/anonymity/screen jurors/examine bias/male-female ratio/give people choice of serving or not) — not to do with performance in court room	40	12.7
Cut down on delays in court (eg interruptions, repetition, waiting time)	39	12.3
Criticisms and suggestions on conduct of trial including police preparation/investigation	35	11.1
Jurors should be able to (or made aware that they can) ask questions of the judge/accused/ witnesses	32	10.1
Guidelines for jurors and/or foreman	24	7.6
More or better clarification/simplification for example by counsel and judge	16	5.1
Explain reason why jurors have to leave courtroom	8	2.5
Other	24	7.6
Total	316	100.0

Footnotes

1. LRC 48, para 6.20.
2. *Id.*, para 6.32.
3. *Petroff* [1980] 2 A Crim R 101.
4. *Ibid.* See also *Ruano* Supreme Court of NSW (unreported, 15 February 1977) and *Salem* Supreme Court of NSW (unreported, 13-14 March 1979).
5. In fact, in 140 of the 181 juries there were discrepancies among the answers given by jurors to this question.
6. There was some discrepancy among jurors' answers to this question in 25 juries (14%). The confusion was not as great as on the issue of the provision of transcripts (para 6.30) and the result is generally confirmed by the Survey of Court Procedures (para 6.41).

Chapter 7

Attitudes and Experiences of Prospective Jurors and Jurors

I. PROSPECTIVE JURORS

A. Previous Experience of Jury Service

7.1 Almost one-fifth of the prospective jurors surveyed had served on a jury before. The proportion varied substantially between court locations. Of those attending for jury service in city courts, 28% had served on a jury before. The proportion was also high in the outer metropolitan courts: 17%. It decreased significantly to 12% in Wollongong, 8% in Newcastle and 7% in country courts.

Table 7.1
Previous Jury Service

	n	%
Yes	324	18.2
No	1439	80.9
Not stated	16	.9
Total	1779	100.0

Table 7.2
Previous Jury Service x Court Location*

	% Yes	n
City	27.9	621
Outer metropolitan	17.3	577
Wollongong	12.0	83
Newcastle	8.4	184
Country	7.4	297
Total	18.2	1779

* In a number of Tables in this chapter (such as Table 7.2), a different presentation has been adopted. In Table 7.2 the '% Yes' column shows the proportion of people in each of the different court location categories who said they had served on a jury before: eg 27.9% of 621 jurors serving in city courts had served as jurors before.

B. Attitudes to Jury Service

7.2 Prospective jurors were asked four questions the answers to which would disclose some of their attitudes to jury service. They were asked their opinion of the desirability of jury service being compulsory, their attitude to attending court on the day, and whether they thought there was either personal or community benefit to be derived from jury service.

1. Opinions of Compulsory Jury Service

7.3 Almost three-quarters of prospective jurors favoured the principle of compulsory jury service. Overall there was little difference between men and women in their support for this principle and among women there was no obvious trend with age. Among the males, however, there was a tendency for support to increase with age, with the oldest males being the most positive. The national survey conducted by Irving Saulwick and Associates on public attitudes towards the jury system¹ showed results along the same lines. When asked how confident they were that the jury system works well, men were more confident than women. Confidence in the jury system increased with age among respondents in the national survey. In the Commission's survey, support for the compulsory nature of jury service also varied according to employment status. The self-employed as a group were least in favour of it, while those in full-time home duties were most in favour.

Table 7.3
Opinions of Compulsory Jury Service

Total	% Agree 74.1	n 1381
Males	74.3	875
Males under 30	69.3	199
30-39	77.0	200
40-49	70.4	206
50-59	74.5	161
60-64	84.0	75
65+	88.2	34
Females	76.7	831
Females under 30	76.0	204
30-39	77.1	179
40-49	79.8	203
50-59	75.8	161
60-64	70.6	68
65+	75.0	16
Full-time employee	75.0	944
Part-time employee	79.1	172
Self-employed	70.6	211
Retired	76.9	121
Full-time home duties	81.1	206
Student	77.8	9
Unemployed	70.0	40
Employed and student	100.0	7
Pensioner	33.3	3

2. Attitudes to Attending Court

7.4 Of prospective jurors, 18% (315) said they objected to attending court. 80% (1429 of 1779) said they did not object. Men and women expressed different attitudes on this matter, with men more likely to object to attending court. It was males aged between 40 and 59 and women over 65 who objected most often. The group that objected least were males over 65 (who also reported the highest degree of support for compulsory jury service). Whether or not prospective jurors objected to attending court on the day also varied with their employment status. Self-employed and unemployed people objected the most (almost one-third), while retired people, people in full-time home duties and part-time employees objected the least (10%). Students and full-time employees fell in the middle.

7.5 Table 7.4 shows that people's attitudes to attending correlated to some extent with whether or not they had served on a jury before: 24% of those who had served before objected compared to 17% of those who had not. This is one of the factors which led the Commission to recommend measures to reduce the number of occasions on which people are required to attend for jury service.² Not surprisingly there was a strong association between people's attitudes to compulsory jury service and their attitudes to attending court. Of those who thought jury service should not be compulsory, 46% objected to attending compared to only 9% of those who agreed it should be compulsory.

Table 7.4
Prospective Jurors' Attitudes to Attending Court

	% Objected	n
Total	17.7	315
Males	21.8	871
Males under 30	20.9	196
30-39	20.0	200
40-49	26.8	205
50-59	25.8	159
60-64	14.1	78
65+	6.1	33
Females	13.5	832
Females under 30	13.6	206
30-39	11.7	179
40-49	9.9	202
50-59	19.4	160
60-64	11.8	68
65+	23.5	17
Full-time employee	18.3	939
Part-time employee	10.5	172
Self-employed	31.1	209
Retired	9.8	122
Full-time home duties	10.6	208
Student	22.2	9
Unemployed	27.5	40
Employed and student	0.0	7
Pensioner	0.0	3
Had served on a jury before	23.6	75
Had not served on a jury before	16.8	239
Favour compulsory jury service	9.0	118
Do not favour compulsory jury service	46.2	193

3. Personal Benefit from Jury Service

7.6 Although the majority of respondents (70%) expected to benefit from their jury service, a substantial proportion (27%) thought they would not benefit. Attitudes toward the personal benefits to be derived from jury service varied somewhat according to age and sex. It was females aged between 30 and 49, more than any other group, who expected to benefit in some way from their jury service. In each age group (except in the 65 and over age group where the proportions are equal) a higher proportion of women than of men considered they might benefit. People who had not served before were slightly more likely than those who had done so to consider they might benefit from their jury service. Those who felt there was some benefit to themselves were much less likely to object to attending on the day.

Table 7.5
Expected Personal Benefit from Jury Service

	% Yes	n
Total	70.3	1250
Males	67.4	867
Males under 30	71.9	199
30-39	65.5	197
40-49	68.8	202
50-59	66.9	160
60-64	57.9	76
65+	66.7	33
Females	78.4	824
Females under 30	76.8	207
30-39	85.5	179
40-49	80.3	203
50-59	71.0	155
60-64	78.5	65
65+	66.7	15
Had served on a jury before	68.7	215
Had not served on a jury before	73.4	1033

Table 7.6
Attitude to Attending Court x
Expected Personal Benefit from Jury Service

	Benefit		No Benefit	
	n	%	n	%
Objected	140	11.3	165	35.3
Did not object	1098	88.7	302	64.7
Total	1238	100.0	467	100.0

4. Benefit to the Community from Jury Service

7.7 Although the majority of respondents (66%) believed the community would benefit from their jury service, a substantial proportion (29%) thought the community would not benefit. The non-response rate for this question also increased somewhat over that for the question on personal benefit, suggesting that some respondents may have considered the question either difficult to answer or not worth answering.

Table 7.7
Expected Community Benefit from Jury Service

	n	%
Yes	1168	65.7
No	510	28.7
Not stated	101	5.7
Total	1779	100.0

7.8 Attitudes toward likely benefits to the community varied according to age and sex. While a greater proportion of female prospective jurors aged 30 to 49 expected to derive a personal benefit from their jury service, it was males over 50 who, more than any other age-sex group, felt the community would benefit from their jury service. More of those who had previously served on a jury considered the community would benefit. This contrasted with the pattern found in the case of personal benefit (Table 7.5) though the difference is not very great in either case. Those in favour of compulsory jury service were, as could be expected, much more likely to consider that the community would benefit from their jury service.

Table 7.8
Expected Community Benefit from Jury Service

	% Yes	n
Total	65.7	1168
Males	71.0	842
Males under 30	66.8	193
30-39	72.3	195
40-49	66.0	197
50-59	74.3	148
60-64	78.9	76
65 +	84.8	33
Females	68.1	802
Females under 30	72.3	202
30-39	64.4	174
40-49	70.2	198
50-59	64.1	153
60-64	67.7	62
65 +	69.2	13
Had served on a jury before	72.6	220
Had not served on a jury before	68.9	943
Favour compulsory jury service	78.1	982
Do not favour compulsory jury service	42.7	1155

7.9 There was a definite correlation between respondents' attitudes to the personal and community benefits of jury service. A significant number of prospective jurors (276 of 1665 who answered both questions: 17%) thought neither they nor the community would benefit.

Table 7.9
Personal Benefit x Community Benefit

Community Benefit	Personal Benefit				Total	
	Yes		No			
	n	% *	n	%	n	%
Yes	973	58.4	186	11.2	1159	69.6
No	230	13.8	276	16.6	506	30.4
Total	1203	72.3	462	27.7	1665	100.0

* Percentages in this Table and similar Tables in this chapter are based on the total number of respondents (1665) who answered both questions on possible benefits to be gained from jury duty.

7.10 Those who felt there was some benefit to the community in jury service were less likely to object to attending on the day. In this respect the trend was similar to that regarding the expectation of personal benefit: Table 7.6.

Table 7.10
Attitude to Attending Court x Community Benefit

	Benefit		No Benefit	
	n	%	n	%
Objected	133	11.5	168	33.7
Did not object	1025	88.5	331	66.3
Total	1158	100.0	499	100.0

C. Financial Loss

7.11 Of all prospective jurors surveyed, 29% reported that attending court had caused them financial loss. Respondents to the Survey of Prospective Jurors were not asked the amount of financial loss incurred. (This question was asked, however, in the Survey of Jurors: paras 7.27-7.28.)

Table 7.11
Financial Loss Reported by Prospective Jurors

	n	%
Yes	514	28.9
No	1222	68.7
Not stated	43	2.4
Total	1779	100.0

7.12 Financial loss varied according to employment status. Males who were self-employed (79%) or part-time employees (74%) reported financial loss much more often than other groups. Among females it was also those who were part-time employees (43%) or were self-employed (34%) who most often reported suffering financial loss.

Table 7.12
Financial Loss x Employment Status x Sex (Prospective Jurors)

	Reported Financial Loss			
	Males		Females	
	%	n	%	n
Full-time employee	29.7	603	21.9	329
Part-time employee	73.7	19	43.3	150
Self-employed	79.2	149	33.9	59
Retired	8.1	73	8.3	48
Full-time home duties	—	0	2.4	205
Student	25.0	4	0.0	4
Unemployed	18.9	16	16.0	25
Employed and student	0.0	4	33.3	3
Pensioner	—	0	0.0	3
Total	37.0	868	20.7	826

7.13 Table 7.13 shows that a larger porportion of people who reported some financial loss said they objected to attending on the day.

Table 7.13
Attitude to Attending Court x Financial Loss
(Prospective Jurors)

	Financial Loss		No Financial Loss	
	n	%	n	%
Objected	134	26.8	176	14.5
Did not object	366	73.2	1036	85.5
Total	500	100.0	1212	100.0

D. Other Personal Problems or Inconvenience

7.14 Of all prospective jurors surveyed, 22% reported that attending court had caused them personal problems or inconvenience other than financial loss. The types of problems reported by men and women are set out in Table 7.15. Although problems in all categories were reported by both men and women, men were more likely to report other personal problems and specifically problems related to childcare.

Table 7.14
Other Problems or Inconvenience Reported by Prospective Jurors

	n	%
Yes	399	22.4
No	1334	75.0
Not stated	46	2.6
Total	1779	100.0

Table 7.15
Nature of Problems x Sex (Prospective Jurors)

	Males		Females	
	n	% of 205	n	% of 179
Difficulties getting time off/getting replacement/ short-staffed/ inconvenience to employer	64	31.2	31	17.3
Interference with work/project/meetings/ deadlines/workload/responsibilities/pressures	66	32.2	23	12.8
Loss of income/will have to work unpaid overtime	12	5.9	4	2.2
Work problems unspecified	11	5.4	8	4.5
Interference with study and/or exams	6	2.9	4	2.2
Parking problems (includes lack of space and lack of information)	11	5.4	11	6.1
Transport difficulties	15	7.3	16	8.9
Childcare	3	1.5	40	22.3
Sick relatives	10	4.9	16	8.9
Other personal problems/inconvenience (includes own health)	32	15.6	50	27.9

7.15 Table 7.16 shows that the experience of such personal problems and inconvenience clearly affected the attitudes of respondents towards attending court. Of those who experienced personal problems or other inconvenience, 42% objected to attending on the day compared to only 11% of those who did not experience any problems.

Table 7.16
Prospective Jurors' Attitudes to Attending Court x Problems Reported

	Problems		No Problems	
	n	%	n	%
Objected	165	42.2	141	10.7
Did not object	226	57.8	1178	89.3
Total	391	100.0	131.9	100.0

E. Exemption from Jury Service

7.16 Prospective jurors were asked if they thought that a person having their occupation, calling or other responsibilities should be exempt from jury service. More than 10% thought that people in their position should be exempt from jury service. This varied according to the person's employment status. For example, 25% of self-employed people considered they should be exempt whereas only 11% of full-time employees thought this.

Table 7.17
Prospective Jurors' Attitudes to Exemption

	n	%
Should be exempt	203	11.4
Should not be exempt	1529	85.9
Not stated	47	2.6
Total	1779	100.0

Table 7.18
Prospective Jurors' Attitudes to Exemption x Employment Status

	Consider People in Their Position Should be Exempt	
	% Yes	n
Full-time employee	11.0	944
Part-time employee	8.2	171
Self-employed	25.4	209
Retired	5.9	119
Full-time home duties	6.9	203
Student	25.0	8
Employed and student	14.3	7
Unemployed	5.1	39
Total	11.6	1703

7.17 Of the 203 prospective jurors who considered people in their position should be exempt, 158 gave an explanation. Table 7.19 shows that the most frequent reason involved work inconvenience not related to a specific occupation. The self-employed (as observed in Table 7.18) represented a significant proportion of those who consider they should be exempt from jury service. The only specific occupations which were nominated were those of teaching (five cases out of the 60 teachers in the sample) and nursing (four cases out of the 30 nurses in the sample). There were 14 people who considered themselves not suitable for a variety of other reasons, some of which would currently be grounds for ineligibility (such as poor English, ill health) or exemption as of right (old age).

Table 7.19
Proposed Grounds for Exemption

	n	%
Work inconvenience (shifts/distance/replacement difficulties)	65	41.1
Self-employed (loss of business/income/etc)	40	25.3
Considers self unsuitable (age/education/poor English/religious beliefs/health/against jury system)	14	8.9
Family responsibilities	12	7.6
Loses time/pay	10	6.3
Teacher	5	3.1
Nurse	4	2.5
Other	8	5.1
Total	158	100.0

7.1C Those who did not favour compulsory jury service were more likely to consider that people having their occupation, calling or other responsibilities should be exempt from jury service. There was, however, a substantial number of prospective jurors (92) who thought jury service should be compulsory and, at the same time, that people in their situation should be exempt.

Table 7.20
Favour Compulsory Jury Service x Attitude to Exemption

	Compulsory Jury Service					
	Favour		Do not Favour		Total	
	n	%	n	%	n	%
Should be exempt	92	5.4	109	6.4	201	11.7
Should not be exempt	1205	70.3	308	18.0	1513	88.3
Total	1297	75.7	417	24.3	1714	100.0

F. Summary

7.19 Almost one-fifth of prospective jurors surveyed had served on a jury before. Previous jury experience made little difference to their experience of financial loss and other personal problems or inconvenience in coming to court. Nor did it affect their attitudes to the personal benefit and the benefit to the community which might be gained from jury service. Respondents with previous jury experience were more likely to object to attending on this occasion, however.

7.20 Overall, however, fewer than 20% of prospective jurors objected to attending court on the day. Almost one-third of self-employed people objected. Attitudes to attending also depended to some extent on:

- * previous jury service;
- * attitude to compulsory jury service;
- * experience of financial loss and other personal problems or inconvenience; and
- * expectation of personal and community benefit from jury service.

II. JURORS

A. Attitudes to Jury Trials

7.21 A large majority (93%) of jurors agreed that juries in criminal trials should continue. Only 75 jurors (4%) said no, while 45 (3%) did not respond. This is particularly interesting given the finding of a national survey that "two in every five ... say they have little confidence that the (jury) system is working well".³ The majority of jurors had held their opinion, whether negative or positive, before their experience as a juror. However, a substantial number of jurors (252:15% of the 1789 jurors who answered both questions) changed their opinion as a result of their experience as jurors and thereafter supported the continued use of juries in criminal trials. As a result of their experience, 28 people had changed their opinion and felt that juries should be abandoned.

Table 7.21
Attitude to Criminal Juries x Effect of Juror Experience

Effect of Juror Experience	Support Criminal Juries					
	Yes		No		Total	
	n	%	n	%	n	%
Attitude changed	252	14.7	28	37.3	280	15.7
Attitude did not change	1408	82.1	42	56.0	1450	81.1
No answer	54	3.2	5	6.7	59	3.3
Total	1714	100.0	75	100.0	1789	100.0

7.22 Overall, males and females did not differ in their support of the use of juries in criminal trials. Of the males, the youngest and oldest were the most supportive. The least support of all was observed among women in the 65 and over age group, although it should be borne in mind that this was a small group of only 11 people. In all other age groups, women showed a high level of support. Support was uniformly high in all categories of employment status. In particular, a large proportion of the self-employed (98%) agreed with the continued use of juries in criminal trials.

Table 7.22
Support Criminal Juries

Total	% Yes 93.5*	n 1834
Males	95.4	885
Males under 30	96.2	208
30-39	96.9	261
40-49	95.5	199
50-59	92.2	141
60-64	92.6	54
65+	100.0	22
Females	96.3	881
Females under 30	96.0	226
30-39	97.2	214
40-49	95.7	185
50-59	96.5	173
60-64	98.5	68
65+	81.8	11
Full-time employee	95.3	1027
Part-time employee	96.0	150
Self-employed	97.8	185
Retired	96.3	107
Full-time home duties	95.6	225
Student	94.7	19
Unemployed	97.5	40
Employed and student	100.0	9
Pensioner	100.0	2

* 95.8% of 1789 who responded to this question.

B. Attitudes to Jury Duty

7.23 Of the 1834 jurors surveyed, only 136 (7%) said that they had objected to serving. The majority said they did not object (90%) while a small number (19) selected both responses, 'yes' and 'no'. This pattern is the same as that found in the 1983 Law Foundation Survey in which 7% of jurors said they objected to serving.

Table 7.23
Jurors Objected to Serving

	n	%
Yes	136	7.4
No	1646	89.7
Yes and No	19	1.0
No response	33	1.8
Total	1834	100.0

7.24 Attitudes to serving as a juror varied according to jurors' age and sex. Only 4% of the oldest males (60 and over) objected to serving and it was the youngest women (under 30) who objected most (11%). Attitudes to serving as a juror also varied according to jurors' employment status. About one-quarter of students objected to serving. Relatively high proportions of the self-employed (16%), the unemployed (13%) and part-time employees (11%) objected. It was retired people (5%) and people in full-time home duties (6%) who objected least.

Table 7.24
Jurors Objected to Serving

	% Yes*	n
Total	8.5	1834
Males	7.9	883
Males under 30	7.1	210
30-39	7.7	260
40-49	9.5	199
50-59	9.4	139
60-64	3.8	52
65 +	4.3	23
Females	9.0	892
Females under 30	11.2	224
30-39	7.4	217
40-49	9.5	190
50-59	8.0	176
60-64	7.1	70
65 +	9.1	11
Full-time employee	7.3	1029
Part-time employee	10.5	153
Self-employed	15.8	184
Retired	5.4	111
Full-time home duties	5.7	228
Student	26.3	19
Unemployed	12.5	40
Employed and student	22.2	9
Pensioner	0.0	1

* 19 people who answered yes and no have been included as yes.

7.25 Of the jurors who said they did not object to serving, 1025 gave at least one reason why not. About one-third said they found the experience informative and educational and that it gave them an insight into the legal system. About one-third said it had been an interesting experience. Over 20% considered it was their duty.

Table 7.25
Jurors' Reasons for not Objecting

	n	% of 1025*
Informative/educational/insight into legal system	342	33.4
Interesting/worthwhile experience	320	31.2
Duty/obligation	225	22.0
Jury system fairest way to conduct trial/it works well/part of our democratic way of life	156	15.2
Service to community/civic responsibility	145	14.1
Chance to involve self in justice system/makes one think of consequences of breaking law	59	5.8
No inconvenience to me	42	4.1
Somebody has to do it	47	4.6
Other	25	2.4

* It was possible for jurors to give multiple answers to this question. 1025 respondents gave 1361 answers in all.

7.26 Of the 154 jurors who had objected to serving, 143 gave reasons. About one-third said they found it difficult to stand in judgment of others or to make a decision as to guilt. Over 20% cited emotional stress as the reason they objected. Disruption or inconvenience at work and financial loss were also reasons given by more than 10% of jurors who objected to serving. The reasons put forward were similar to those found in the 1983 Law Foundation survey.

Table 7.26
Jurors' Reasons for Objecting

	n	% of 143*
Difficult to stand in judgment of others/difficult to make decision of whether guilty or not	47	32.9
Emotional stress	32	22.4
Disruption to work/inconvenience at work	27	18.9
Financial loss/lack of financial compensation	17	11.9
Too time consuming/time wasted during trial	11	7.7
Dissatisfied with trial	11	7.7
Personal inconvenience (eg childcare)	10	7.0
Not qualified/unfair to call those who do not wish to serve	6	4.2
Have served enough times	4	2.8
Other	4	2.8

* It was possible for jurors to give multiple answers to this question. 143 respondents gave 169 answers in all.

C. Financial Loss

7.27 As a result of jury service, 411 jurors (22%) reported suffering financial loss. Two of them volunteered the information that they did not mind. This is less than the proportion (29%) of prospective jurors who said they had incurred some financial loss but similar to the pattern observed in the 1983 Law Foundation survey. In the latter survey, 19% of jurors said they had incurred financial loss and 2% did not know at the time of completing the questionnaire. Of the 411 jurors in the Commission's survey who had incurred some financial loss, over one-half had lost between \$50 and \$500, while 27 jurors had lost more than \$500. These losses in relatively short trials raise concern about the losses borne by jurors in unusually long trials, none of which were captured in this survey.

Table 7.27
Amount of Financial Loss
 (Jurors)

	n	%
Less than \$50	131	31.9
\$50 — \$500	243	59.1
Over \$500	27	6.6
Not known	10	2.4
Total	411	100.0

7.28 Financial loss varied according to employment status. The pattern observed is very similar to that observed among prospective jurors: Table 7.12. Males who were self-employed (74%) or part-time employees (67%) reported financial loss much more often than other groups. Among women it was the self-employed (38%) who most often reported financial loss.

Table 7.28
Financial Loss x Employment Status x Sex
 (Jurors)

	Incurred Financial Loss			
	Males		Females	
	%	n	%	n
Full-time employee	26.2	626	19.4	355
Part-time employee	66.7	12	21.8	133
Self-employed	74.0	123	38.2	55
Retired	6.9	58	2.1	48
Full-time home duties	0.0	3	5.1	216
Student	33.3	6	0.0	13
Unemployed	15.4	26	0.0	15
Employed and student	0.0	1	37.5	8
Pensioner	0.0	1	0.0	1
Total	31.9	856	15.9	844

7.29 A larger proportion of people who reported some financial loss said they objected to serving as a juror. It is interesting to note that the level of objection to serving as a juror was lower than the level of objection to attending court expressed by prospective jurors: Table 7.13.

Table 7.29
Attitude to Jury Duty x Financial Loss
 (Jurors)

	Financial Loss		No Financial Loss	
	n	%	n	%
Objected	66	16.3	76	5.8
Did not object	338	83.7	1228	94.2
Total	404	100.0	1304	100.0

7.30 Most financial loss was work-related. In one-third of cases the financial loss was incurred because of lost wages, and in a further 14% of cases financial loss was due to a combination of lost wages and travelling expenses. In a further 16% of cases financial loss was reported by self-employed people.

Table 7.30
Nature of Financial Loss
 (Jurors)

	n	%
Wages	134	32.9
Wages plus travelling expenses	56	13.8
Wages and overtime	13	3.2
Overtime/penalty rates/commission	34	8.4
Financial loss as self-employed	66	16.2
Travelling expenses (includes parking fines)	59	14.5
Childcare and other financial loss	16	3.9
Payment for childcare	6	1.5
Combination of more than one category	17	4.2
Other	6	1.5
Total	407	100.0

D. Other Personal Problems or Inconvenience

7.31 314 jurors (17%) said their service had caused other personal problems or inconvenience. As for financial loss, the rate is less than that reported by prospective jurors (22%) but greater than the proportion (12%) found in the 1983 Law Foundation survey. The problems or inconvenience experienced (specified by 306 respondents) fell into five main categories: problems with childcare or sick relatives, other personal problems (such as interruptions to private life, unsettled family life and experience of stress), problems to do with work, problems with exams and study, and parking and transport problems.

Table 7.31
Nature of Problems
 (Jurors)

	n	% of 306*
Problems with childcare	39	12.7
Problems with sick relatives	5	1.6
Other personal problems: total	114	37.3
: interruption to private life	41	13.6
: family life unsettled	24	7.8
: stress or lack of sleep	24	7.8
: other	25	8.2
Interference with work/meetings/workload	60	19.6
Difficulty getting time off	45	14.7
Loss of income/will have to work unpaid overtime	12	3.9
Other work problems	17	5.6
Parking problems	14	4.6
Transport problems	17	5.6
Interference with study and/or exams	15	4.9

* It was possible for jurors to give multiple answers to this question. 306 respondents have given 452 answers in all.

7.32 Both men and women reported problems in all categories. Women jurors more often reported problems with childcare. This was also observed among prospective jurors: Table 7.15. Men more often reported work-related problems but the difference between men and women was not as great as that observed among prospective jurors: Table 7.15.

Table 7.32
Nature of Problems x Sex
 (Jurors)

	Males		Females	
	n	% of 141	n	% of 165
Problems with childcare	3	2.1	36	21.8
Problems with sick relatives	3	2.1	2	1.2
Other personal problems	52	36.9	62	37.6
Interference with work/meetings/workload	34	24.1	26	15.8
Difficulty getting time off	23	16.3	22	13.3
Loss of income/will have to work unpaid overtime	10	7.1	2	1.2
Other work problems	9	6.4	8	4.8
Parking problems	5	3.5	9	5.5
Transport problems	7	5.0	10	6.1
Interference with study and/or exams	6	4.3	9	5.5

7.33 Those jurors who reported experiencing other problems or inconvenience were more likely to object to serving as a juror.

Table 7.33
Objected to Serving x Problems Reported
 (Jurors)

	Problems		No Problems	
	n	%	n	%
Objected	53	17.0	93	6.4
Did not object	259	83.0	1349	93.6
Total	312	100.0	1442	100.0

E. Exemption from Jury Service

7.34 Of the 1834 jurors surveyed, 142 (8%) thought that a person having their occupation, calling or other responsibilities should be exempt from jury service. This is lower than the proportion found in the Survey of Prospective Jurors (11%). Many of the prospective jurors wishing to be exempt may in fact have been excused after making application to the trial judge. The proportion was the same as that found in the 1983 Law Foundation survey where 8% of jurors felt this way. The attitude of jurors to exemption varied with their employment status. About 20% of the self-employed considered they should be exempt. Less than 10% of full-time and part-time employees considered they should be exempt and even fewer (5% or less) of students, retired people and people in full-time home duties considered they should be exempt.

Table 7.34
Jurors' Attitudes to Exemption x Employment Status

	% Consider People in their Position Should be Exempt	
	%	n
Full-time employee	7.3	1021
Part-time employee	7.5	147
Self-employed	19.4	180
Retired	3.7	107
Full-time home duties	5.4	224
Student	5.3	19
Unemployed	2.5	40
Employed and student	25.0	8
Pensioner	50.0	2
Total	8.1	1748

7.35 Of these 142 jurors, 124 gave an explanation as to why they should be exempt. The two main reasons were work inconvenience and being self-employed. A third group of reasons cited was considering oneself unsuitable on the basis of age, education, poor English, religious belief, health or opposition to the jury system. Only two specific occupations were mentioned in any numbers: teachers and nurses. The reasons are the same as those found in the Survey of Prospective Jurors where, again, the only specific occupations mentioned were teachers and nurses.

Table 7.35
Proposed Grounds for Exemption

	n	%
Work inconvenience (shifts/distance/replacement difficulties)	41	33.1
Self-employed (loss of business/income/etc)	30	24.2
Loses time/pay	4	3.2
Teacher	11	8.9
Nurse	4	3.2
Student	1	0.8
Considers self unsuitable	13	10.5
Family responsibilities	9	7.3
Other	11	8.9
Total	124	100.0

7.36 Those who did not support the use of juries in criminal trials were more likely to consider that people having their occupation, calling or other responsibilities should be exempt from jury service. There was, however, a substantial number (118) who supported the use of juries and, at the same time, considered that people in their position should be exempt. Those who objected to serving as a juror were much more likely to consider people in their position should be exempt.

Table 7.36
Jurors' Attitudes to Exemption x Support Criminal Juries

	Support		Do not Support		Total
	n	%	n	%	
Should be exempt	118	7.0	24	33.3	142
Should not be exempt	1566	93.0	48	66.7	1614
Total	1684	100.0	72	100.0	1756

Table 7.37
Attitude to Exemption x Objected to Serving as a Juror

	Objected*		Did not Object		Total
	n	%	n	%	
Should be exempt	55	38.2	83	5.2	138
Should not be exempt	89	61.8	1525	94.8	1614
Total	144	100.0	1608	100.0	1752

* Includes jurors who answered 'yes and no'.

F. Jurors' Suggestions for Improving Conditions

7.37 392 jurors (21%) made at least one suggestion for improving the conditions in which jurors work. The most common suggestion was better or more comfortable seating. Other suggestions related to the provision of coffee/tea/drink facilities, microphones, better meals, parking facilities and air-conditioning. There was evidence of clustering among juries in this response. That is to say, the need for specific improvements was identified by a number of jurors in particular juries rather than randomly spread across all jurors.

Table 7.38
Improving Conditions

	n	% of 392*
Better or more comfortable seating	112	28.6
Improved conditions in jury room	90	23.0
Coffee/tea-making facilities/juice/water	83	21.2
Microphones (including comments that people should speak louder)	50	12.8
Improve and/or increase meals/refreshments	46	11.7
More and/or better parking facilities	38	9.7
Air-conditioning/better air conditioning/better ventilation	37	9.4
Perceptions of wasted time (start earlier, fewer breaks)	25	6.4
Problems of non-smokers/smokers	14	3.6
Other	20	5.1

* It was possible for jurors to give multiple answers to this question. 392 respondents gave 515 answers in all.

G. Summary

7.38 The overwhelming majority (93%) of jurors surveyed supported the retention of juries in criminal trials. A significant proportion had come to this view as a result of their jury experience. A similar majority (90%) reported that they had no objection to serving. Jurors' attitudes to serving did depend to some extent on:

- * employment status;
- * experience of financial loss and other personal problems or inconvenience; and
- * attitude to exemption from jury service.

7.39 As a group jurors seemed to be more positive about the system they had experienced than were prospective jurors. Only 8% of jurors said they had objected to serving, whereas 18% of prospective jurors objected to attending court on the day of jury selection. Of jurors, 8% considered that people in their position should be exempt from jury duty compared to 11% of prospective jurors. Lower proportions of jurors than of prospective jurors reported financial loss and other personal problems or inconvenience. It is possible that prospective jurors who were reluctant to serve were challenged more often or that they made successful personal applications to the judge to be excused. It is also possible that, having served as jurors, people gained a better understanding of the system or perhaps were more inclined to favour the system once they had contributed to it. One juror stated that the experience "made me appreciate the judicial system as something to value and to be protected".

Footnotes

1. Irving Saulwick and Associates *Attitudes Towards the Jury System* September 1985. The specific question was as follows:

In Australia, trial by jury is a well established practice. In recent years, however, there have been a number of cases in which the verdicts of juries have been questioned by public figures, by the police and even by the juries themselves.

Thinking about the jury system in general, how confident are you that it works well? Would you say that you were (hand card and read out)

very confident
quite confident
not very confident
not confident at all
that the system works well?

2. *The Jury in a Criminal Trial* (LRC 48 1986) para 4.14.
3. Sydney Morning Herald, 9 October 1985, report of survey conducted by Irving Saulwick and Associates: see para 7.3.

Appendix A

Survey of Prospective Jurors

The New South Wales Law Reform Commission is carrying out an investigation of the criminal justice system in New South Wales. An important part of this is the role of the jury. The Commission is surveying people who have been called for jury service.

Please complete this form by circling the appropriate numbers and writing in your answers where appropriate. Return the form to the Sheriff's Officer. Your responses are anonymous and will be treated confidentially.

	<u>Yes</u>	<u>No</u>
1. Have you ever served on a jury before?	1	2

	<u>Yes</u>	<u>No</u>
2. Do you agree with jury service being compulsory?	1	2

	<u>Yes</u>	<u>No</u>
3. Do you mind attending today?	1	2

	<u>Yes</u>	<u>No</u>
4. Has coming to court today caused you any financial loss?	1	2

	<u>Yes</u>	<u>No</u>
5. (a) Has coming to court today caused you any other personal problems or inconvenience?	1	2

(b) If **Yes**, please specify what sort of problems or inconvenience:

	<u>Yes</u>	<u>No</u>
6. (a) Do you think that a person having your occupation, calling or other responsibilities, should be exempt from jury service?	1	2

(b) If **Yes**, please explain why:

	<u>Yes</u>	<u>No</u>
7. Do you think that you may benefit in any way from your jury service?	1	2

	<u>Yes</u>	<u>No</u>
8. Do you think that the community would benefit from your jury service?	1	2

	<u>Yes</u>	<u>No</u>
9. (a) Is there any aspect of the jury system or the operation of the courts about which you would like information?	1	2

(b) If **Yes**, what aspect or aspects would you like information about?

While your responses are anonymous, we would like some information about you to enable us to analyse the opinions of different groups.

10. Are you —	Male	1
	Female	2

11. In what age group are you?	Under 30	1
	30-39	2
	40-49	3
	50-59	4
	60-64	5
	65 and over	6

12. At the moment are you —	A full-time employee	1
	A part-time employee	2
	Self-employed	3
	Retired	4
	Full-time home duties	5
	A Student	6
	Unemployed	7

13. If you are an employee or self-employed, what is your occupation?

14. If you are unemployed, retired or involved in full-time home duties, what was your occupation, if any?

15. What is the **highest** level of education you have completed?

- Primary school.....1
 Spent less than 3 years at high school.....2
 Spent 3 years or more at high school.....3
 Gained HSC/Leaving/Matriculation certificate.....4
 Gained diploma or certificate from tertiary institution other than a university.....5
 Gained university degree and/or higher degree.....6

16. (a) In what country were you born? _____

(b) If you were born outside Australia, how long have you been in Australia?

- Less than 5 years.....1
 5 years or more.....2

	<u>Yes</u>	<u>No</u>
17. Are you of Aboriginal origin?	1	2

18. (a) In what country was your mother born? _____

(b) In what country was your father born? _____

	<u>Yes</u>	<u>No</u>
19. (a) Do you suffer from any physical disability or handicap?	1	2

	<u>Yes</u>	<u>No</u>
(b) If Yes , has your disability or handicap caused you any special difficulty in attending court today?	1	2

Please specify -

Appendix B

Survey of Prospective Jurors

RETURN TO BE COMPLETED BY SHERIFF'S OFFICER

Location of Court?

District Court or Supreme Court?.....

Please complete the following table for each jury panel surveyed.

[illegible]

Appendix C

Survey of Jurors

The New South Wales Law Reform Commission is conducting an investigation of the criminal justice system in New South Wales. An important aspect of this system is the role of the jury. As you have just finished your jury service, the Commission is interested in your views.

Please complete this form by circling the appropriate numbers and writing in your answers where appropriate. Return the completed form to the Sheriff's Officer. Your responses are anonymous and will be treated confidentially.

- | | | |
|---|------------|-----------|
| 1. (a) During your time as a juror — | <u>Yes</u> | <u>No</u> |
| (i) did you take notes? | 1 | 2 |
| (ii) did you or your foreman ask questions of the Judge? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| (b) If No to either of the above, would you have found it of assistance — | | |
| (i) to take notes? | 1 | 2 |
| (ii) to ask questions of the Judge? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| 2. (a) Was each juror provided with a copy of the documentary exhibits and photographs? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| (b) If No , would it have helped you to have your own copy? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| 3. (a) Was the jury provided with a copy of all or part of the transcripts of evidence? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| (b) If No , would it have helped the jury to have a copy? | 1 | 2 |
| | <u>Yes</u> | <u>No</u> |
| 4. (a) Was the trial difficult to follow? | 1 | 2 |
| (b) If Yes , in what ways? | | |

5. (a) Was the Crown Prosecutor's introduction clear enough about:

	<u>Yes</u>	<u>No</u>
(i) the nature of the case?	1	2
(ii) what the Crown had to prove?	1	2
(iii) the burden and standard of proof?	1	2
(iv) the sequence of events to be followed at the trial?	1	2
(v) the role of the jury?	1	2

	<u>Yes</u>	<u>No</u>
(b) If No to any of the above, did the Judge give an explanation?	1	2

	<u>Yes</u>	<u>No</u>
6. (a) Do you have any suggestions for improving the information given to jurors before coming to court?	1	2

(b) Please specify —

	<u>Yes</u>	<u>No</u>
7. (a) Do you have any suggestions for improving the information given to jurors at the beginning of the trial?	1	2

(b) Please specify —

	<u>Yes</u>	<u>No</u>
8. (a) Did the Judge's summing-up at the end of the trial help you to understand the case?	1	2

(b) If **No**, what matters were confusing?

9. Do you think you would have been helped by having the following written materials:

	<u>Yes</u>	<u>No</u>
(i) a copy of the charge(s) against the accused?	1	2
(ii) a statement of what the Crown had to prove?	1	2
(iii) the Judge's summing-up or part of it?	1	2
(iv) a list of the available verdicts?	1	2

10. (a) Do you have any suggestions for improving trials by jury?

<u>Yes</u>	<u>No</u>
1	2

(b) If **Yes**, in what ways?

11. (a) Do you have any other suggestions for improving the working conditions of jurors?

<u>Yes</u>	<u>No</u>
1	2

(b) If **Yes**, in what ways?

12. (a) Overall, did you mind serving as a juror?

<u>Yes</u>	<u>No</u>
1	2

(b) If **Yes**, why?

(c) If **No**, why not?

	<u>Yes</u>	<u>No</u>
13. (a) Do you think we should continue to have juries in criminal trials? . .	1	2

	<u>Yes</u>	<u>No</u>
(b) Has your opinion about this changed as a result of your experience as a juror?	1	2

	<u>Yes</u>	<u>No</u>
14. (a) Do you think that a person having your occupation, calling, or other responsibilities should be exempt from jury service?	1	2

(b) If **Yes**, please explain why:

	<u>Yes</u>	<u>No</u>
15. (a) Did you suffer any financial loss as a result of your jury service? . . .	1	2

(b) If **Yes**, how much? less than \$50 1
 \$50 — \$500 2
 Over \$500 3

(c) Please describe briefly the type of financial loss
 (e.g. wages; travelling expenses; child care; etc.)

- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 16. (a) Did your service as a juror cause any other personal problems or inconvenience? | 1 | 2 |

(b) If **Yes**, please specify:

While your responses are anonymous, we would like some information about you to enable us to analyse the opinions of different groups.

- | | | |
|--|-----------------------------|---|
| 1. Are you — | Male | 1 |
| | Female | 2 |
| 2. In what age group are you? | Under 30 | 1 |
| | 30-39 | 2 |
| | 40-49 | 3 |
| | 50-59 | 4 |
| | 60-64 | 5 |
| | 65 and over | 6 |
| 3. At the moment are you — | A full-time employee | 1 |
| | A part-time employee | 2 |
| | Self-employed | 3 |
| | Retired | 4 |
| | Full-time home duties | 5 |
| | A Student | 6 |
| | Unemployed | 7 |
| 4. If you are an employee or self-employed, what is your occupation? | | |

5. If you are unemployed, retired or involved in full-time home duties, what was your occupation, if any?

6. What is the **highest** level of education you have completed?

- Primary school.....1
 Spent less than 3 years at high school.....2
 Spent 3 years or more at high school.....3
 Gained HSC/Leaving/Matriculation certificate.....4
 Gained diploma or certificate from tertiary institution other than a university.....5
 Gained university degree and/or higher degree.....6

7. (a) In what country were you born? _____

(b) If you were born outside Australia, how long have you been in Australia?

- Less than 5 years.....1
 5 years or more.....2

(c) Are you of Aboriginal origin?

<u>Yes</u>	<u>No</u>
1	2

8. (a) In what country was your mother born? _____

(b) In what country was your father born? _____

9. (a) Do you suffer from any physical disability or handicap?

<u>Yes</u>	<u>No</u>
1	2

(b) If **Yes**, has your disability or handicap caused you any special difficulty in performing jury service?

<u>Yes</u>	<u>No</u>
1	2

Please specify —

Appendix D

Survey of Court Procedures and Jurors

Section 1: Details of the Trial

1.1 (a) Date trial started: _____/_____/_____

(b) Time trial started: _____ am/pm

1.2 District Court 1

Supreme Court 2

1.3 Location of Court:

1.4 Number of accused:

1.5 Charges:

N.B. If you prefer, attach a copy of each indictment with the name(s) of the accused omitted.

Gender	Accused 1 M/F	Accused 2 M/F	Accused 3 M/F
Charge 1			
2			
3			
4			
5			

1.6 (a) Date trial finished: ____/____/____

(b) Time trial finished: ____ am/pm

1.7 Duration: **Either** number of sitting days: ____ days

or, if less than one day, number of hours: ____ hours

1.8 Outcome:

Please write in appropriate outcome for each accused and on each charge as follows: jury discharged without a verdict; accused changed his/her plea; acquittal by direction; jury unable to agree; guilty; not guilty.

Charge	Accused 1	Accused 2	Accused 3
1			
2			
3			
4			
5			

1.9 For each segment of the trial please complete the following table:

Segment	Time Commenced	Time Finished
Judge's introductory remarks	Day___; _____ am/pm	Day___; _____ am/pm
Crown Opening	Day___; _____ am/pm	Day___; _____ am/pm
Crown Case	Day___; _____ am/pm	Day___; _____ am/pm
Defence Opening	Day___; _____ am/pm	Day___; _____ am/pm
Defence Case	Day___; _____ am/pm	Day___; _____ am/pm
Accused: unsworn statement/sworn evidence*	Day___; _____ am/pm	Day___; _____ am/pm
Accused: cross-examination	Day___; _____ am/pm	Day___; _____ am/pm
Crown Address	Day___; _____ am/pm	Day___; _____ am/pm
Defence Address	Day___; _____ am/pm	Day___; _____ am/pm
Judge's summing-up	Day___; _____ am/pm	Day___; _____ am/pm
Jury's deliberations	Day___; _____ am/pm	Day___; _____ am/pm

*Cross out whichever is inapplicable.

Section 2: The Selection of Jurors

2.1 Personal Applications to be Excused

For each personal application to the Judge to be excused, please complete the following table.

Applicant	Gender	Specify the grounds put forward for the application (not just "for good cause")	Tick if excused
1			
2			
3			
4			
5			
7			
8			
9			
10			
11			
12			
13			
14			

2.2 Challenge to the Array (or to the whole jury panel):

- (a) Was a challenge to the array made? Yes 1
No 2
- (b) If **Yes**, was the challenge made —
 (i) by the Crown 1
 (ii) by the defence 2
- (c) What were the grounds put forward for the challenge?

2.3 Peremptory Challenges

(a) Total number of peremptory challenges by Crown:

_____ Males
_____ Females

(b) Total number of peremptory challenges by Defence:

Challenges	Accused 1	Accused 2	Accused 3
Males			
Females			

2.4 Challenges for Cause

(a) Total number of challenges for cause:

_____ Males
_____ Females

(b) For each challenge for cause, please complete the following table.

Challenge	Gender	Made by Crown or Defence?	Cause put forward	Tick if successful
1				
2				
3				
4				
5				

2.5 Composition of the Jury

(a) How many males are on the jury? _____

(b) How many females are on the jury? _____

(c) Is the foreman male or female?

Male 1
Female 2

(d) Are there any other particular features of the jury?

(e.g. majority of young people; presence of Aboriginal jurors; members of specific ethnic origin; etc).

Please specify:

Section 4: Assistance to Jurors

Part A: Exhibits other than Documentary Exhibits

4.1 (a) Please list the exhibits other than documentary exhibits in the case.

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____

(b) Were any exhibits kept out of the jury room?

Yes.....1

No2

(c) If **Yes**, please list them by number and give the reason for their exclusion.

Exhibit

Reason for Exclusion

_____	_____

_____	_____

_____	_____

Part B: Documentary Exhibits

4.2 Please complete the following table for each documentary exhibit in the case:

Documentary Exhibit	Description or Title	No. of Pages	Was a copy provided to each juror?
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Part C: Other Written Materials

4.3 (a) Were the jurors given any written materials other than the exhibits in the case?

Yes 1

No 2

(b) If **Yes**, please specify (e.g. a copy of the indictment; written directions of law; etc):

Part D: Visual Aids

4.4 (a) Did either counsel or the Judge use any type of equipment or visual aid to assist communication with the jury?

Yes 1

No 2

(b) If **Yes**, please specify:

Part E: View

4.5 (a) Was the jury taken on a view?

Yes 1

No 2

(b) If **Yes**, what was the purpose of the view (e.g. inspection of an exhibit; examination of the scene of the offence; etc.)? Please specify:

Section 5: Discharge of Jurors during the Trial

Part A: Discharge of the Whole Jury

5.1 Was the whole jury discharged during the trial? Yes 1
No 2

5.2 (a) If **Yes**, at what stage was the jury discharged?

- (i) Before evidence commenced 1
- (ii) During the Crown case 2
- (iii) During the defence case 3
- (iv) After completion of the evidence 4

(b) What was the reason for the discharge?

Please specify:

Part B: Discharge of Individual Jurors

5.3 Were any individual jurors discharged during the trial? Yes 1
No 2

5.4 If **Yes**:

(a) How many jurors were discharged? _____

(b) At what stage(s)?

- (i) Before evidence commenced 1
- (ii) During the Crown case 2
- (iii) During the defence case 3
- (iv) After completion of the evidence 4

(c) What was the reason for the discharge(s)?

Please specify:

Section 6: Other Incidents Involving the Jury

6.1 (a) Were there any unsuccessful applications for the jury to be discharged?

Yes.....1

No 2

(b) For each application please complete the following table.

Application	Made by Whom?	Grounds
1 _____	_____	_____
	_____	_____
	_____	_____
	_____	_____
2 _____	_____	_____
	_____	_____
	_____	_____
	_____	_____
3 _____	_____	_____
	_____	_____
	_____	_____
	_____	_____
4 _____	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

6.2 Was there a defence submission of “no case to answer” at the end of the Crown case?

Yes.....1

No 2

6.3 Did the jury, at any time, ask for a copy of the transcript of evidence?

Yes. 1

No 2

6.4 Did counsel and the Judge have a running transcript of the evidence?

Yes 1

No 2

6.5 Were there any other incidents during the trial, including the deliberations, which concerned the jury and which were unusual or of particular interest?

Please specify —

[illegible]

Section 7: Questions Asked by the Jury

7.1 How many questions did the jury ask? _____

7.2 Please complete the following table with details about the questions asked by the jury. Describe the questions as fully as possible or, if you prefer, copy out the questions in full. Give details, also, of the Judge's answers to those questions.

Question	When asked? (Please specify stage of trial)	Text of question and answer
1	_____	Q: _____ _____ _____ A: _____ _____ _____
2	_____	Q: _____ _____ _____ A: _____ _____ _____
3	_____	Q: _____ _____ _____ A: _____ _____ _____

Question	When asked? During proceedings or during deliberations	Text of question and answer
4	<hr/>	Q: <hr/> <hr/> <hr/> A: <hr/> <hr/> <hr/>
5	<hr/>	Q: <hr/> <hr/> <hr/> A: <hr/> <hr/> <hr/>
6	<hr/>	Q: <hr/> <hr/> <hr/> A: <hr/> <hr/> <hr/>
7	<hr/>	Q: <hr/> <hr/> <hr/> A: <hr/> <hr/> <hr/>

Section 8: The Jury's Deliberation

8.1 Please record the jury's deliberation period in the table at paragraph 1.9.

8.2 Please record the jury's verdict at paragraph 1.8.

8.3 (a) Did the jury add a rider to its verdict or make any additional statement qualifying or explaining its verdict?

Yes 1

No 2

(b) If **Yes**, please specify —

8.4 What was the Judge's response to the additional statement(s) if any? Please specify —

Section 9: Discharge of the Jury

N.B. This Section relates only to the discharge of a jury which has given a verdict of guilty on one or more charges.

9.1 When was the jury discharged?

(a) Before evidence relevant to sentence was called 1

(b) After evidence relevant to sentence was called but before sentence was passed . . 2

(c) After sentence was passed 3

Appendix E

Survey of Judges

(Note: In the questionnaires used for this survey, there was more space left for respondents' comments)

Please complete the questionnaire by circling the appropriate answers and writing in your comments. This questionnaire is anonymous and the information you give will be treated confidentially.

Potential Bias

1. (a) It is of interest to the New South Wales Law Reform Commission to know how people, called to the court for jury duty, are made aware that they ought to notify the court, before they are selected as jurors, that they are acquainted with participants in the trial or are in some way connected with the case.

In this regard, do you advise the panel before selection of the jury of the following:

	Always	Sometimes	Never
(i) the general nature of the case	1	2	3
(ii) any specific feature of the case which may create bias	1	2	3
(iii) the identity of the accused	1	2	3
(iv) the identity of the victim	1	2	3
(v) the identity of the witnesses	1	2	3

- (b) If you answered **sometimes** to any of the above, in what particular circumstances do you so advise the panel?

- (c) Does your practice in advising the panel vary according to whether you are sitting in the city or in the country?

Yes 1
No 2
Not applicable (e.g. only sit in city) 3

- (d) Do you consider that instructing a jury panel in this way is effective in reducing bias?

Yes, always 1
Yes, in some cases . . . 2
No 3

Length of Trial

2. (a) Do you advise the panel before selection of the jury of the estimated length of the trial in order to enable any juror to make an application to be excused?

Always 1

Sometimes 2

Never 3

- (b) If **sometimes**, in what particular circumstances do you advise the panel?

Instructing the jury at the commencement of the trial

3. (a) Before the trial commences do you tell the jury about —

	Always	Sometimes	Never
(i) the elements of the offence charged	1	2	3
(ii) the burden and standard of proof	1	2	3
(iii) the format or sequence of events to be followed at the trial	1	2	3
(iv) the nature of the case	1	2	3
(v) the general role and obligations of jurors	1	2	3
(vi) matters relevant to rules of evidence	1	2	3
(vii) the right of jurors to take notes	1	2	3
(viii) the right of jurors to have questions asked of witnesses through the judge	1	2	3

- (b) Where you answer **sometimes** to any of the above subjects, please indicate below against that subject, those types of cases in which you tell the jury about:

- (i) the elements of the offence charged —

- (ii) the burden and standard of proof —

- (iii) the format or sequence of events to be followed at the trial —

- (iv) the nature of the case —

(v) the general role and obligations of jurors —

(vi) matters relevant to rules of evidence —

(vii) the right of jurors to take notes —

(viii) the right of jurors to have questions asked of witnesses through the Judge —

(c) Do you consider it would be helpful to the jury to give instructions beforehand on all or any of the above matters?

Yes 1

No 2

(d) If **yes**, do you consider it should be done by using a set formula (as far as possible of course) or should it be left to each Judge to deal with the matter as he or she sees fit?

By formula 1

At the Judge's discretion 2

Other (please specify) 3

The Role of Crown Prosecutors

4. (a) Do you consider that Crown Prosecutors adequately open a case to the jury?

Always 1

Sometimes 2

Never 3

(b) Should the Judge have any role in canvassing the contents of the Crown Prosecutor's opening before it is given?

Always 1

Sometimes 2

Never 3

(c) Comment —

Instructions on Matters of Law

5. (a) Do you consider that any of the instructions required to be given on matters of law are too difficult for jurors to understand?

Yes.....1

No 2

- (b) If **yes**, which areas are difficult for jurors to understand, and what is the reason for this difficulty?

	Difficult for jurors to understand		Conceptually difficult		Made difficult by formulation of words required to be given	
	Yes	No	Yes	No	Yes	No
(i) standard of proof...	1	2	1	2	1	2
(ii) burden of proof....	1	2	1	2	1	2
(iii) self-defence	1	2	1	2	1	2
(iv) provocation	1	2	1	2	1	2
(v) previous inconsistent statements	1	2	1	2	1	2
(vi) lies	1	2	1	2	1	2
(vii) corroboration	1	2	1	2	1	2
(viii) common purpose .	1	2	1	2	1	2
(ix) intoxication	1	2	1	2	1	2
(x) intent	1	2	1	2	1	2
(xi) circumstantial evidence	1	2	1	2	1	2
(xii) attempt	1	2	1	2	1	2
(xiii) conspiracy	1	2	1	2	1	2
(xiv) mental illness	1	2	1	2	1	2
(xv) diminished responsibility	1	2	1	2	1	2
(xvi) character	1	2	1	2	1	2
(xvii) alibi	1	2	1	2	1	2
(xviii) identification	1	2	1	2	1	2
(xix) other (please specify)	1	2	1	2	1	2

- (c) Would the provision of your instructions in writing assist jurors to comprehend any of these matters?

Yes.....1

No 2

- (d) If **yes**, in which areas?

- 5.(e) If you have any other ideas as to the means by which these instructions may be better understood, please specify —

Verdict by Direction

6. (a) Do you consider that the current law relating to the Judge's power to direct a verdict of not guilty is sufficiently clear?

Yes.....1
No 2

- (b) If you think the law can be improved, in what way?

Standard Instructions

7. Do you consider that, in principle, standard instructions would be of assistance to —

	Yes	No
(i) Judges	1	2
(ii) jurors	1	2

Please comment —

Transcripts

8. (a) Do you consider that jurors would be assisted by having a copy of the transcript of the evidence of the trial when they retire to consider their verdict?

Always.....1
Sometimes.....2
Never.....3

8. (b) In what types of cases do you consider a jury would be assisted by having a copy of the transcript when they retire to consider their verdict?

- (c) If you see dangers in providing a copy of the transcript to jurors when they retire to consider their verdict, please comment —

Written Summary

9. (a) Do you consider that jurors would be assisted if at the beginning of the trial they were given a written summary of the facts to be proved in the case?

Yes, in all cases 1

Yes, in some cases 2

No 3

- (b) If **yes**, to what particular classes of cases would this apply?

- (c) If you see any problems with providing such a summary, please comment —

Introduction of Witnesses

10. (a) Do you consider that the Crown Prosecutor (and counsel for the accused in his/her case) should be entitled to briefly point out to a jury as each witness is called the general subject matter to which the witness will speak?

Yes 1

No 2

Please comment —

Complex Cases

11. (a) Whether or not you have presided over such cases, do you consider that there are some cases which, even if properly prepared and clearly presented, are so complex as to be unsuitable for trial before a jury?

Yes 1

No 2

- (b) If **yes**, would this be because of —
(circle all that apply)

- (i) scientific evidence 1
 (ii) technical evidence 1
 (iii) volume of evidence 1
 (iv) number of charges 1
 (v) number of accused 1
 (vi) other, please specify — 1
-

- (c) If **yes** (to 11(a)), which of the following do you consider to be suitable alternative modes of trial? (circle all that apply)

- (i) Judge alone 1
 (ii) panel of Judges 1
 (iii) a Judge and assessors 1
 (iv) panel of lay people advised by experts 1
 (v) special jury 1
 (vi) other, please specify — 1
-

- (d) Have you personally presided over a jury trial in a case which you considered to be so complex as to be unsuitable for trial before a jury?

Yes 1

No 2

Personal

12. (a) Of which court are you a member?

District 1

Supreme 2

- (b) Which of the following best describes the nature of your current jurisdiction?

Mostly criminal 1

Mostly non-criminal 2

Roughly 50/50 criminal and non-criminal 3

Appendix F

Survey of Crown Prosecutors

Part I: Pre-Trial Procedure

Q.1 (a) Do you ensure that the defence is provided with a list of the names of the prosecution witnesses?

(Please answer by circling one number in each line)

	Fre- quently	Some- times	Rarely	Never
(i) Witnesses called at committal and intended to be called at trial.	1	2	3	4
(ii) Witnesses not called at committal but intended to be called at trial.	1	2	3	4
(iii) Witnesses called at committal but not intended to be called at trial.	1	2	3	4
(iv) People (of whom the prosecution is aware) not called at committal nor intended to be called at trial.	1	2	3	4

(b) In what particular circumstances do you ensure that the defence is provided with a list of the names of the witnesses in each of the above four groups?

(i) _____

(ii) _____

(iii) _____

(iv) _____

- (c) Do you ensure that the defence is provided with copies of the statements of the prosecution witnesses?

(Please answer by circling one number in each line)

	Fre- quently	Some- times	Rarely	Never
(i) Witnesses called at committal and intended to be called at trial.....	1	2	3	4
(ii) Witnesses not called at committal but intended to be called at trial.....	1	2	3	4
(iii) Witnesses called at committal but not intended to be called at trial.....	1	2	3	4
(iv) People (of whom the prosecution is aware) not called at committal nor intended to be called at trial.....	1	2	3	4

- (d) In what particular circumstances do you ensure that the defence is provided copies of statements?

(for each of the above four groups)

(i) _____

(ii) _____

(iii) _____

(iv) _____

Q.2 Where the prosecution is aware of a witness whose evidence it does not propose to rely on but who is capable of giving relevant evidence at trial:

- (a) (i) Do you call the witness during the prosecution's case to enable him or her to be cross-examined by the defence?

Frequently 1
 Sometimes 2
 Rarely 3
 Never 4

(ii) In what particular circumstances do you do so?

- (b) (i) Do you ensure that the defence is informed that the witness will not be called at trial but that the witness will be at court available to be called by the defence at trial?

Frequently 1
Sometimes 2
Rarely 3
Never 4

(ii) In what particular circumstances do you do so?

- (c) (i) Do you ensure that the defence is informed that the witness will not be called and leave it to the defence to arrange for the witness' presence at the trial?

Frequently 1
Sometimes 2
Rarely 3
Never 4

(ii) In what particular circumstances do you do so?

Q.3 Do you ensure that the following categories of evidence are disclosed to the defence before the trial commences?

(Please answer by circling two numbers in each line: one for evidence intended to be used at trial, and one for material in possession of prosecution but not proposed to be used at trial.)

Evidence intended to be used at trial					Material in possession of prosecution but not proposed to be used at trial			
	Fre- quently	Some- times	Rarely	Never	Fre- quently	Some- times	Rarely	Never
(a) Scientific or technical reports	1	2	3	4	1	2	3	4
(b) Medical or mental health reports in relation to accused	1	2	3	4	1	2	3	4
(c) Medical or mental health reports in relation to prosecution witnesses	1	2	3	4	1	2	3	4
(d) Copies of accused's criminal record	1	2	3	4	1	2	3	4
(e) Copies of prosecution witnesses' criminal record	1	2	3	4	1	2	3	4
(f) Copies of documentary exhibits including photographs	1	2	3	4	1	2	3	4
(g) Copies of statements made by the accused to the police	1	2	3	4	1	2	3	4
(h) Other (please specify) —								

Comment:

Q.4 (a) Should the prosecution be obliged to disclose any of the following categories of material to the defence before trial?

	Yes	No
(i) Scientific or technical reports	1	2
(ii) Medical or mental health reports in relation to the accused	1	2
(iii) Medical or mental health reports in relation to prosecution witnesses	1	2
(iv) Copies of the accused's criminal record	1	2
(v) Copies of the prosecution witnesses' criminal record	1	2
(vi) Copies of documentary exhibits including photographs	1	2
(vii) Copies of statements made by the accused to police	1	2
(viii) Names and addresses of all potential witnesses who can give relevant evidence, including those witnesses whom the prosecution does not intend to call at trial	1	2
(ix) Copies of statements of all potential witnesses who can give relevant evidence, including those witnesses whom the prosecution does not intend to call at trial	1	2
(x) Details of any indemnification against prosecution given to prosecution witnesses	1	2
(xi) Information which poses a risk to national security	1	2
(xii) Internal working documents prepared by the police or prosecution	1	2
(xiii) Privileged or confidential material	1	2
(xiv) Information which identifies police informers	1	2
(xv) Information which, if disclosed, could lead to intimidation of, physical harm to, or bribery of witnesses	1	2
(xvi) Other (please specify) —		

(b) If Yes to any of the above, how should the obligation to disclose be enforced?

By ethical rules governing professional conduct	1
By order of the court on application by the accused	2
In accordance with guidelines issued by the Attorney-General	3
At the discretion of the court	4
By specific statutory provisions	5
Other (please specify)	6

Comment: _____

- Q.5 (a) If you consider that the case is one in which a plea of guilty to a lesser or alternative count is acceptable in full discharge of the indictment, do you ensure that this attitude is conveyed to the accused or his/her legal representative before the trial?

Frequently 1
 Sometimes 2
 Rarely 3
 Never 4

- (b) In what particular circumstances is this done?

- (c) In what circumstances do you consider the practice described in Q.5(a) to be a desirable one?

- (d) Do you ensure that the victim of the offence (where a victim can be identified) has been consulted on the question of accepting a plea of guilty to a lesser or alternative charge?

Frequently 1
 Sometimes 2
 Rarely 3
 Never 4

- (e) In what particular circumstances is this done?

- (f) In what circumstances do you consider the practice described in Q.5(d) to be a desirable one?

Part II: Criminal Jury Trials

Q.1 Peremptory Challenges

- (a) Do you make use of the Crown's right of peremptory challenge?

Always 1
 Sometimes 2
 Never 3

- (b) If **sometimes**, in what particular circumstances do you exercise this right?

- (c) In your opinion, is the availability of the Crown's right of peremptory challenge useful?

Very useful.....1
 Somewhat useful.....2
 Not useful.....3

Q.2 Crown Opening

- (a) In opening the Crown case to the jury, do you cover the following matters?

	Always	Sometimes	Never
(i) the jury's role and function.....	1	2	3
(ii) the burden and standard of proof.....	1	2	3
(iii) the ingredients of the offence charged....	1	2	3
(iv) any other relevant law.....	1	2	3

- (b) If you do **sometimes**, in what particular circumstances do you cover the following matters?

(i) the jury's role and function —

(ii) the burden and standard of proof —

(iii) the ingredients of the offence charged —

(iv) any other relevant law —

(c) In your opinion, would it be valuable and proper for you to address the jury on:

	Valuable		Proper	
	Yes	No	Yes	No
(i) the jury's role and function.....	1	2	1	2
(ii) the burden and standard of proof.....	1	2	1	2
(iii) the ingredients of the offence charged.....	1	2	1	2
(iv) any other relevant law.....	1	2	1	2

Comment: _____

Q.3 Judge's Introductory Remarks

(a) In your opinion, should the judge instruct the jury, before any evidence is called on:

	Always	Sometimes	Never
(i) the jury's role and function.....	1	2	3
(ii) the burden and standard of proof.....	1	2	3
(iii) the ingredients of the offence charged....	1	2	3
(iv) any other relevant law.....	1	2	3

(b) If **always** or **sometimes**, should these instructions occur before the Crown opening or after the Crown opening?

	Before	After
(i) the jury's role and function.....	1	2
(ii) the burden and standard of proof.....	1	2
(iii) the ingredients of the offence charged.....	1	2
(iv) any other relevant law.....	1	2

(c) If **sometimes**, in what particular circumstances should the judge instruct the jury on:

- (i) the jury's role and function — _____
- (ii) the burden and standard of proof — _____
- (iii) the ingredients of the offence charged — _____
- (iv) any other relevant law — _____

Q.4 Presenting a Case

- (a) Do you use visual aids to assist in presenting a case to the jury?
- | | |
|------------------|---|
| Frequently | 1 |
| Sometimes | 2 |
| Rarely | 3 |
| Never | 4 |

- (b) If you ever use visual aids, in what circumstances do you use them?
-
-

- (c) In your opinion is the use of visual aids:

	Yes	No
(i) valuable	1	2
(ii) proper	1	2
(iii) dangerous	1	2

Comment: _____

Q.5 Jury Comprehension in Complex Cases

- (a) In your opinion would the following procedures, designed to assist the jurors' comprehension in complex cases, be valuable, proper and/or dangerous?

	Valuable		Proper		Dangerous	
	Yes	No	Yes	No	Yes	No
(i) the prosecution is entitled to give the jury a written summary of the facts to be proved in its case	1	2	1	2	1	2
(ii) the prosecution, immediately before calling a witness, briefly introduces each witness by stating the facts which the witness is called to prove...	1	2	1	2	1	2
(iii) the jury is given a copy of the transcript of the proceedings when it retires to consider its verdict	1	2	1	2	1	2
(iv) jurors are given a written copy of the judge's directions on difficult matters of law	1	2	1	2	1	2

- (b) Are there any other procedures which you consider would assist the jurors in complex cases?
-
-