

**Gertie's Law
Episode 6 - Twelve Ordinary Men and Women**

Justice Kaye (court recording)

Thank you very much, ladies and gentlemen, for all you have done. I will shortly discharge you from your further service as jurors in the matter, but firstly I want to thank you for all you have done in the case and your service to the court.

I said this to my last jury, but every jury I have I think is better than every one I've had before, and I say the same to you. I'm just amazed how we can bring together twelve members of the community who can go about their work in the way each and every one of you have done so.

Evan Martin

That's Justice Kaye, who usually sits in the Court of Appeal, addressing the jury at the end of a 5-week murder trial.

Justice Kaye (court recording)

The court and I are very conscious of the fact that we ask an enormous amount of jurors. There's no doubt about that. It's a lot of work. We take you away from your own lives, from your families, from your work and from your recreation and ask you really to devote yourselves to the close detail of cases we do.

Evan Martin

The jury had just found a woman guilty of murder and her co-accused guilty of attempted murder. They were later sentenced to 30 years and 12.5 years in prison, respectively.

Justice Kaye (court recording)

It's a very onerous responsibility that's cast on the shoulders of each of you. It's a painful responsibility and I don't think there's any doubt about it that in peace time, it's the most onerous responsibility this country can place on the shoulders of its individuals.

Evan Martin

They are deciding trials in Victorian courtrooms every day, and for a lot of people, they're the only direct interaction they'll ever have with the courts.

In fact, if you're on the electoral roll, there's a decent chance that one day, it will be your turn to join them.

This episode is about juries.

[Opening theme]

Evan Martin

I'm Evan Martin. This is Gertie's Law.

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It may be hard to believe that 12 randomly selected Australians, often with no experience in or knowledge of the law, are the best people to pass judgement on a fellow human, but the jury system has forever been one of the most important aspects of the Victorian justice system.

Associate (court recording)

Madam foreperson and members of the jury, have you agreed upon your verdict?

Jury foreperson (court recording)

We have.

Associate (court recording)

Do you find the accused, John Smith, guilty or not guilty of the charge of manslaughter?

Jury foreperson (court recording)

Guilty.

Evan Martin

Juries have existed for centuries, with many variations across the globe.

Trials in ancient Athens were often heard before a jury of hundreds of citizens, however it's the Magna Carta, published in 13th century England, which is widely credited as the foundation of the trial-by-jury system.

But why do we still have juries? Why not leave the hard decisions to judges?

Andrea Petrie

Juries are vital to the administration of justice because they lead to community acceptance of verdicts, particularly in relation to the most serious offences which cause the public the most concern, that is violent offences, sexual offences, drug offences, etcetera.

Evan Martin

Andrea Petrie is an academic and former court reporter.

Andrea Petrie

You know, they involve members of the community in the legal process and because they're playing a role it is considered that decisions are more likely to be accepted, verdicts are more likely to be accepted, if jurors, like members of the community, have played a part.

Chief Judge Kidd

At the moment, we're in this atmosphere where there is this distrust of institutions.

Evan Martin

Justice Kidd is Chief Judge of the County Court and also a Judge of the Supreme Court

Chief Judge Kidd

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There are probably many complex reasons why that distrust seems to have increased in recent times.

I've got no doubt that the advent of social media and the internet, and some of the vitriolic and misinformed commentary that goes on, has contributed to that mistrust.

And that, to me, reinforces why it's so important to maintain the jury system. Because that's an opportunity of ongoing connection and engagement with the community at a time when we need it most.

Evan Martin

Ultimately, the Victorian justice system is a human system, and it's inevitable that mistakes will be made on occasion.

Chief Judge Kidd

Do they get it wrong from time to time? Well, the answer is yes.

Of course, the alternative to the jury system would be to have a judge alone judge somebody. I have no doubt that judges sitting alone would acquit themselves superbly with that task, but judges are human as well, and judges also make mistakes.

So, simply because juries make mistakes is not a good reason to say that we shouldn't use juries but we should use judges.

Evan Martin

Justice Whelan was a judge in the Criminal Division, and now sits in the Court of Appeal.

Justice Whelan

I think group decisions are more reliable than individual ones, by and large. The cases we do here, being murder, substantial drug trafficking, they're often about issues that ordinary members of the public are pretty capable to decide. They know as much about the sort of problems that can lead to a murder as judges do.

Evan Martin

Here's Justice Kaye again, continuing his address to the jury.

Justice Kaye (Court recording)

The very best and fairest method of deciding cases like this is to bring together juries, that comprise twelve men and women from our community, drawn at random, who have no connection to the case, and who can bring into this court their life experience, their fair judgment and their good sense, as you each have done in this case.

Those qualities are invaluable to our system of justice. You brought into court Australia's very best natural asset, it's people, and you have applied yourselves accordingly. There simply is an irreplaceable method we have and I think it's the greatest insurance we have that the correct verdicts are delivered in each case.

Evan Martin

'Reaching the correct verdict.'

It's the one job the jury has, and it's perhaps the most important function of the court. Lives are constantly at stake here, so it's understandable why, in criminal trials, the burden of proof is so high.

Justice Hollingworth, Principal Judge of the Criminal Division.

Justice Hollingworth

Our legal system has always been premised in modern times on the assumption that it's better that 10 guilty men or women go free than that one innocent man or woman is wrongfully convicted.

Evan Martin

In a criminal trial, to come to a guilty verdict, the jury needs to, unanimously, believe beyond reasonable doubt that the accused committed the crime.

Take this case, from 1899, where a man was accused of assaulting an 8-year-old girl.

After deliberating for two hours, the jury returned a verdict of not guilty. On hearing the decision, the accused man became hysterical. He first laughed and shouted, and then burst into tears. Suddenly, he leaned over the dock and said to the jury...

Accused man (actor)

Thank you, gentlemen of the jury. I am much obliged to you. You have brought in a true bill of justice.

Evan Martin

Justice A'Beckett, the judge presiding over the trial, addressed the accused.

Justice A'Beckett (actor)

As you have made a remark, let me tell you that it is a highly indecent thing for prisoners to thank the jury for what they consider their duty. In your case, the jury probably thought that although they could not believe you on your oath, and although you are a ruffian on your own showing, there was not sufficient evidence to satisfy them of what they probably believed you did and have therefore conscientiously brought in this verdict.

They have felt it to be their duty not being quite certain of your guilt. I will order your release, which places you in a position to assault other children, but the verdict is no testimony of your character. It simply means that the jury had not sufficient facts before them to pronounce you guilty.

If I have wrongly interpreted the verdict of the jury, they, through their foreman, will say so. But, I take it that I am right in assuming that for the reasons indicated they acquitted you.

Foreman (actor)

Quite right, your Honour.

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Justice A'Beckett (actor)

Thank you.

Evan Martin

He turned back to the accused man.

Justice A'Beckett (actor)

It is because you ventured to thank the jury for the verdict which, in my opinion, is an indecent exhibition, that I felt bound to make these remarks.

Leave the court, sir. You are disgraced, though not convicted.

Evan Martin

'Beyond reasonable doubt.' It's a phrase we're all familiar with, especially if you've ever watched a courtroom drama on TV, but what does it actually mean?

Trial judge Justice Macaulay works with juries in both the criminal and common law divisions.

Justice Macaulay

Beyond reasonable doubt means beyond reasonable doubt, and as often as judges have tried to tease that out with using other words, you end up getting into strife for altering the standard.

Evan Martin

The Juries Directions Act states that judges can elaborate on the term if asked by the jury, however they are rather limited in how they do so.

They can refer to the presumption of innocence and the prosecution's obligation to prove that the accused is guilty.

Maybe they'll explain that a belief of 'probable' or 'very likely' guilt is not sufficient.

Or that it's almost impossible to prove anything with absolute certainty when reconstructing past events, and the prosecution doesn't have to do so.

Justice Macaulay

I guess when you say to people, "You shouldn't decide in favour of the prosecution unless you've excluded reasonable doubts," or put another way, "If you maintain a reasonable doubt as to whether the person did it or didn't do it, then you must acquit them," different people could construe those words in slightly variable ways, but they are English words.

We are stuck with language as the tools which we use to communicate things and as to set standards, and experience has taught us, I think, that we ought not to play around with those words for better or for worse.

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It's emphasised and emphasised and emphasised, both by the judge and by the lawyers, to the jurors, and there's 12 of them, and I think that creates an innate sense of discipline amongst them, and they must all agree, so it's quite a disciplined process.

Evan Martin

Juries sometimes decide common law cases too.

Justice Bell, of the Trial Division.

Justice Bell

The role of a jury in a civil case and a criminal case is actually the same, to determine what the facts of the case are, but there is a fundamental difference.

The role of the jury in a criminal case is to determine whether the jury is satisfied beyond reasonable doubt of the guilt of the accused, and the onus of establishing that guilt beyond reasonable doubt is on the prosecution.

The civil jury's responsibility is to determine whether, on the balance of probabilities, for example, the injury was caused by the employer, and the onus of proving that is upon the worker in that kind of case. So the standard of proof in a criminal trial is the highest known to the law; it's beyond reasonable doubt. The standard of proof in a – in a civil case is lower, and it's the balance of probabilities. That difference is fundamental.

Evan Martin

Justice Macaulay.

Justice Macaulay

If you reach a conclusion that it's more probable than not that X went through a traffic light when it was red, then for the purposes of the law, he went through a traffic light that was red. In fact, if you allow for a 49 percent possibility that he didn't, of course he may not have, but the law says, in civil cases, it will be satisfied on the balance of probabilities, and when it is, it happened, as a matter of fact.

We tell jurors it's just like the scales, and if you tip something on one side that tips the scales just ever so slightly in favour of one direction, that's more probable than not.

I don't know how jurors do it, but I, for myself, and I think other judges, are looking for that sense of persuasion in yourself, on the balance of probabilities, as to what is more probable than not.

Evan Martin

Another challenge for jurors can be leaving their sympathy at home.

Justice Macaulay

In a circuit case I did – I said to my associates after I had finished my charge and sent the jury off to deliberate, "We will find out from this jury whether they're thinking with their head or thinking with their heart," because your emotional response would go in one direction, but your intellectual, rational response would go in the opposite direction.

It involved a terrible injury to a young child from dogs – a dog attack in circumstances where she had gotten from one side of her – from her fence to another. Gone from her backyard to the neighbour's backyard and had been attacked by the dogs. Awful injuries, everyone felt terrible, but the legal question was whether the landlord of the next-door premises could be held to blame for what had occurred. And as I say, I think after all of the evidence, your heart would have said, "Please find a way to give the little girl some damages," but your head would have said, "Look, it's not really a proper legal case against the landlord,"

And they came back with what I would call the intellectual, rational response. So, that was sort of heartening, really.

Evan Martin

So, how does one end up on a jury?

I've never sat on one, and I don't think many of my friends or family have either.

I put this to Paul Dore, the Juries Commissioner.

Paul Dore

This is the conspiracy theory you'd like me to... I have confirmed with the Victorian Electoral Commissioner that their algorithm that randomly selects people from the electoral roll is as random as an algorithm could be.

The IT geeks tell me that you can't – nothing can be truly random, but you can get darn close.

Evan Martin

We sit in an office in the County Court building. A baseball sits on the shelf behind us alongside multiple framed photos of Bruce Springsteen.

Paul Dore

Look, we get into these conversations with citizens. It's hilarious, they've done their own research, you know, they'll show up with a summons and say, "Well, I surveyed my workforce, you know, and four people between the age of 18 and 35 have been selected and eight haven't, and Beryl's lived for 100 years and never been selected, so you're picking on me"

And so the answer to that question is, every time we ask for 10,000 names in Melbourne, there's probably 3 million people on that electoral roll. So you can do the math. Some people play TattsLotto all their lives and don't win, and some people win TattsLotto twice or three times, and that's because each time you go into the bucket, you've got the same chance as you did the last time. And that's all I know about random theory.

Evan Martin

When lightning does strike - your name is called and you are given a date - you head to the courts and enter the jury pool.

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Paul Dore

The jury pool is in the pool room, and from that group of people, maybe 50, 100, 200 people, we will randomly select small subsets called panels to go into courtrooms. You know, 30 go there, 30 go there, 40 go there, kind of thing. So once they're in the courtroom, it's at that point the judge will tell that panel what the trial's about.

She will say, "My name is Justice Smith, these are my staff, these are the lawyers. I'll tell you a little about what's going on here. That person in the back of the room has been accused of this". They'll read out the list of witnesses that are coming, and the judge will say, "So now, knowing all that, which isn't everything, but just a bit about the trial and who's involved, I'll offer you an opportunity to apply to be excused"

Evan Martin

Jury members aren't allowed to know anybody involved in the trial, for obvious reasons, which can be problematic when empanelling a jury in a regional town.

Justice Hollingworth again.

Justice Hollingworth

I must say, in a country town you do get those sorts of interconnectedness that somebody lived down the road from or their mother plays in the same bowls club as someone or rather. The other interesting thing, particularly in a country town, is how often witnesses are known only by their nicknames. I've had many cases in country towns where you have to inquire as to whether jurors know someone and they don't know you, for instance, as Dave Smith.

They only know you as Chooker or Ferret or whatever your nickname happens to be. And so I must say when we're empanelling juries in a country town I make sure that I've got all the nicknames of prospective witnesses as well as their legal names because it is quite remarkable the fact that someone's full name is – is often not known by prospective jurors.

Evan Martin

Being on a jury can be a big commitment. It might take you away from your work and your family for weeks, occasionally months. So before a jury is empaneled, each prospective juror is given chance to excuse themselves.

Serving on a jury is one of the most important civic duties one can perform. The entire justice system relies on it.

But judges still hear some pretty creative excuses to get out of it.

Justice Macaulay

I had a case recently in circuit where there were people getting up and giving their excuses for why they shouldn't be on the jury.

I had a fellow who got into the witness box. He was a big burly sort of a fellow with a gruff voice and he said, "Well, your Honour, about 10 years ago I was a taxi driver." I said, "Right."

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And he said, "I got a job to take a bloke from the hotel to the airport. He was a judge." I said, "Right." "I think it might have been you." And I said, "No, I don't think it was me," but he was a very entertaining fellow.

So he remained on the panel. He didn't ultimately get on the jury, but I thought 10 years ago a possible taxi ride in a car was stretching it a bit.

Evan Martin

There are many valid excuses for not serving, or at least deferring your jury service, though.

Here are some examples.

There's age.

Paul Dore

There is no upper age limit, but if you're advance aged, if you want to be excused, you ask and you're out without question.

Evan Martin

Then there's living distance from the court.

Paul Dore

If you live more than 50 kilometres away from the court or 60 kilometres away from a regional court. But you have to apply to be excused. You could live 100 kilometres away and if you're happy to drive, we're happy to have you.

Evan Martin

There's unnecessary hardship, financial or otherwise.

Paul Dore

Those are assessed on a case-by-case basis, so if you work in a small business or you're self-employed, and being here on jury service means you're going to lose money, then you can apply to be excused. If you take care of children during business hours, or you're unwell, or any personal reason you think you would like to apply to be excused for, we'll assess that.

If you're busy at work, we'll defer you to another time. So work in and of itself is not a reason to be excused, because the employer's obliged to release you and make up your pay to what you would have been.

Evan Martin

Personal history.

Paul Dore

Judges will excuse people who have applied to them who have, themselves, got some history. You know, so if it's a sexual offending trial and a person themselves have been a victim, or whatever, the judges will certainly allow people to be excused for that reason.

Evan Martin

There are also people who are not allowed to serve on juries, including those convicted of certain offences, and people in particular professions.

Paul Dore

There's only a very narrow group of ineligible occupations. You know, the governor, judges, police officers, anybody involved in criminal or penal administration. It used to be that a lot of occupations, teachers and pilots and priests and public servants were not eligible for jury service, but now it's a very narrow group of occupations.

Evan Martin

Back to the empanelment. 30 people have been sent from the pool room to the courtroom and let's assume the judge has excused three people.

So, now the panel is down to 27.

Paul Dore

The 27 names on little cards go into a box. The judge's associate shakes it up and pulls out a card and reads the number and the occupation.

Associate (court recording)

Juror number 49, dental nurse.

Paul Dore

And that person then gets up and walks towards the jury box, and in the time that that person leaves his or her chair in the public area of the court and sits down in the box, the accused person can challenge that prospective juror.

Evan Martin

Challenges allow the accused person to effectively veto the potential juror from sitting on the jury. They can challenge up to three people without showing any cause.

Justice Dixon

Traditionally, there's a lot of – of amateur psychology practised by lawyers about the way juries think and work.

Evan Martin

Justice Dixon is the Principal Judge of the Common Law division.

Justice Dixon

It can be amusing at times. I'm sure the psychologists would find it amusing, but it's often just kind of a folklore impression about who you should have on a jury and who you shouldn't have on a jury and – and they often don't work. But lawyers are very committed to these ideas and they work actively in jury selection to put them into – put them into place.

Evan Martin

The Law Reform Commission did some research around this and found that over four years, women were challenged more than men at a rate of two to one.

Paul Dore.

Paul Dore

The thinking around that is that it's probably less to do with gender and more to do with occupation because if you were in what we called a "caring occupation" – a nurse, a teacher, a child-care worker, a psychologist, social work, those sort of occupations – you were more likely to be challenged. Didn't matter if you were a man or a woman. So it's probably likely that it's just that women are more represented in those occupations, nurses and teachers and that sort of thing.

Evan Martin

Once you have 12 people in the jury box, that's the jury for the duration of the trial.

Juries in Common Law trials are made up of only six people. The empanelment process is also a little different, and I can't be the only one reminded of the horrors of a schoolyard pick...

Paul Dore

They get to the courtroom in the same way, but once they're in the courtroom and the judge tells them a little bit – exactly as in a criminal trial, a little bit about the trial and who's involved, but then what they do is pull out 12 names, and those people stand up. And then the barristers turn around and look at those 12 people standing up, and they've got a list of the panel numbers and the occupation, and then the first barrister strikes out three, and then the second strikes out three, and they're left with six, and then those six are on the jury.

Evan Martin

Once the jury has been empaneled, the trial begins almost immediately.

Justice Hollingworth.

Justice Hollingworth

You can see on day one when the jury are first selected most of them have that, "Oh my goodness. How did I end up here?" look. They're a bit startled. They're not sure they want to be here. They are just ordinary members of the community who have been brought into the criminal justice system with no previous exposure, have been exposed to things that they've probably never encountered in their life, and are asked to make extraordinarily difficult decisions on behalf of the community.

And then over the course of the next day or two you see them starting to understand the seriousness of their role and to really grow into it and to become engaged. By the end of a trial, I usually have quite a strong affection for my jury. I think, by and large, they do a remarkable job.

Chief Judge Kidd

When you've sat in jury trials like we obviously did as practitioners and then as judges...

Evan Martin

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Chief Judge Peter Kidd.

Chief Judge Kidd

...what becomes apparent to you over the course of a trial is just how focused the jury becomes on the evidence and the issues in the trial as the trial develops.

It's apparent to the participants in the trial that as those trials develop and as those issues become more intense, that whatever the juror was thinking beforehand or whatever else is going on outside the courtroom, just pales into insignificance.

Evan Martin

The jury attends every day of the trial until it is complete. If even one jury member is sick, or can't make it to court, the trial is adjourned.

In the early days of this court, juries were sequestered and housed in the court while they reached their verdict.

Joanne Boyd

Back in the old days, in this building, they used to put them up in the dome here in the library.

Evan Martin

Joanne Boyd is one of the court's archivists.

Joanne Boyd

So, there were bunk beds , apparently, and there were little kitchenettes.

But they used to have to be careful, because they used to have to make sure that you were quite fit and healthy, because there were no lifts in the building and you were climbing a lot of stairs to get up into the dome, and I can only think that it must have been hot in the summer and cold in the winter.

There are fireplaces around, so they must have had to have stoked their own fires as well.

But what that meant was, for many years, that was the excuse used for not using women on juries. So, women got the vote, as we know, in Victoria in 1908, but they didn't appear on a jury until the late-60s, and there was a lot of, 'Where are we going to put them if we have to sequester them?'

There was a huge reluctance to do it, and the accommodation was used as the excuse, but I think that's all it was - an excuse.

Joan Rosanove QC, the first female QC, she was agitating for women to be on juries back in the 1940s. Joan Rosanove's practice was mainly what we now call family law. She was a well-known divorce lawyer, and sometimes they used to have juries on divorces. So, I think that she thought that, not that it would necessarily give her clients a better status, but I think she understood that you have to have all voices and opinions within society rather than just white males making a decision.

Evan Martin

The practice of sequestering a jury has largely died out in Australia.

Nowadays, jurors typically arrive at the court at 10am each day and leave around 4.30. They have a few breaks, but spend the majority of their time in the jury box watching and listening to the presented evidence.

When I started working here, my first impression was just how slow everything moved in the courtroom. Evidence is worked through methodically. Every small detail is scrutinised.

And it makes sense. Not only is a lot at stake, but the evidence can be complicated. Really complicated.

Justice Champion

There are challenges with that.

Some expert evidence, particularly forensic evidence of a scientific nature or medical evidence, is incredibly challenging for juries to understand.

Evan Martin

Justice Champion, of the Criminal Division.

Justice Champion

Not just in forensic evidence of a human nature, but evidence to do with computers, cyber space or complicated fraud cases – this evidence is getting more complicated as the years go by.

So the challenge for the courts will be to be able to distil that into something that is understandable to people who are on juries who are, after all – we regard as lay people.

Evan Martin

Remember, in a jury, a Rhode scholar could be sitting next to a person with little or no education, and they're both doing the same job.

Justice Macaulay.

Justice Macaulay

In the civil area, one of the ways in which that can be dealt with, ultimately, is for a judge to accede to an application to take the matter away from the jury and have the judge decide the whole case because the technical material is so difficult. In the criminal area, that solution doesn't really arise, so the judge's challenge, and the parties' challenge, is to be able to present difficult things not by dumbing it down, but present difficult things in a way that's methodical and understandable and a layperson can come up with a reliable answer. The more technical it gets, the more difficult that gets.

Evan Martin

Paul Dore doesn't seem too concerned.

Paul Dore

There's often a worry, and some academics look at this, about whether, you know – should jurors, citizens, be used as jurors in trials where there's complex forensic evidence, and I guess the argument is, well, would you want, if it was a fraud trial – are you better off with 12 people who are just, you know, average Victorian citizens, and having the judge and the lawyers and the expert witnesses explain the evidence in a way that everybody understands, or are you better off having 12 forensic accountants on the jury. I don't think you want 12 experts. You know, there's enough experts in the courtroom arguing, I don't think you want 12 experts in the jury.

You certainly don't need to know legal terms or technical terms. That's for the lawyers and the judges to explain to people in court.

Evan Martin

The Jury system is facing another challenge - social media.

Most people are on it - multiple times a day

Whether it's Twitter, Facebook, Instagram or Snapchat - It's how a lot of us get our news and information.

In order to protect the presumption of innocence and keep the jury system operative, we have to tell people to stay off it. But that's easier said than done.

Andrea Petrie

I'm Andrea Petrie.

In 2015 I, as part of my Masters of Criminology that I was studying at Melbourne University, I completed a minor thesis about Victorian criminal judges' attitudes towards and experiences of internet related juror misconduct.

Evan Martin

We sat down next to her bookshelf - overflowing with true crime novels and books on the JFK assassination.

Andrea Petrie

I had attended a conference where a judge spoke about this huge problem that was wreaking havoc in courts across the world where jurors were going online to investigate aspects of a case they were sitting on or they were getting on social media and discussing what had been said in court: the evidence they had heard.

Of course, Judges were very, very concerned about it because one of the most important aspects of juries' involvements in trials is that they base their verdict on the evidence that is presented in court and not influenced by anything or anyone from the outside.

Now, this is very different to how we've been taught to learn. Like when we're at school or when you're making any decision in life you find out as much information you can about the

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issue or the topic in question and you, sort of, weigh up the pros and cons and then you make a decision which you believe is the best decision, but when you're on a jury you're not making a decision on how accurate something is. You're weighing up what is just according to the evidence as opposed to all of the available information.

Which is why a lot of jurors really struggle when they're told, "You're not allowed to go online."

With the click of a few buttons on our smart phone, and most people have smartphones, we can find out anything in the digital age. You just need to type something into a search engine, a name, a legal term, you know, anything, and within seconds we are presented with lists and lists of information or social media profiles. So that means that we can be influenced on what we read which might be completely irrelevant to the case. It could be legislation in a completely different state or different country and that could influence how we, or how a jury decides something. Now, that's hardly fair on the accused person is it?

Evan Martin

While doing your own research is not allowed, it often is well-intentioned.

Justice Dixon.

Justice Dixon

It's a natural – it's a natural thing to do.

All judges face the same thing when they first get appointed. They're used to being barristers or solicitors and being involved in the – the process of preparing, investigating, or getting the dispute ready for trial, but once you become a judge you – you take what is presented in court and you resolve the dispute on that basis. You don't need to go beyond it.

When you tell them to stay away from the internet, to stay away from their devices, to just decide the case on what they hear in the court, overwhelmingly they – they take that on board and that's what they do.

There are those who don't, but the system tends to police itself as well. The 12 jurors will – will say to the one who has been looking something up on their iPad overnight, "Well, the judge told use can't do that". So - you know, and they will isolate that person to some extent, perhaps even report them to the judge.

Evan Martin

Depending on the severity of the misconduct, juries can be dismissed for conducting outside research.

Paul Dore remembers one particular case.

Paul Dore

A six-week trial, and on the first day of deliberations, there were three or four jurors already in the deliberation room when the fifth person showed up with reams of papers printed off

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the internet on every theory ever written on post-traumatic stress syndrome and repressed memories. Some of that might have been academically sound, bits of peer-reviewed research, and some of it might have been written by 40-year-old men who live in their mother's basement. And the internet doesn't know the difference, and it's not been contested.

So, the judge brought in each of those jurors one at a time, and by the third or fourth person said, "You've all seen enough material that now does not give the person in the back of the room, the accused person, a fair trial, so no choice but to discharge the entire jury and start all over".

And he went home that night, he told me he did the math. He figures it was about a million dollars in taxpayers' money alone.

But, you know, forget the money, says the public servant, it's more the – you know, everybody had to go through it again. The complainant, the witnesses, the judge, the judge's staff, 12 new jurors and the accused guy, who could have been not guilty.

Evan Martin

Social media can create other issues too.

Andrea Petrie again.

Andrea Petrie

Arguably the most high profile example of internet related juror misconduct was in the UK where a juror by the name of Joanne Fraill was actually jailed in 2011 for eight months for contempt of court for befriending and exchanging Facebook messages, believe it or not, with a co-accused in a multi-million pound drug trial. This included discussions about deliberations that were continuing for one of the co-accused after the woman that she was communicating with had been acquitted. So, you know, extraordinary situation you've got there.

Evan Martin

Juries are also supposed to be entirely anonymous, so what this Victorian jury did when they were empaneled wasn't ideal either.

Andrea Petrie

A juror was so excited about being empanelled on a jury that once they got into the jury room, took a selfie in the jury room and then put that on social media and tagged all of the other jurors.

Now, this created so many problems, because jurors are supposed to be anonymous.

Paul Dore

Before the trial even started, somebody had published the details that identify a juror. So the judge gave them a rip-roaring civics lesson, and then discharged them and started all over with a new jury. What a waste of time and money for everybody.

SUPREME COURT OF VICTORIA

Paul Dore

If you meet somebody and you become friends with somebody on jury service, great. There was a guy here about six months ago who said, "I was here 20 years ago and met my wife. My current wife – I met her in the jury pool room. She was really nervous that I was coming for jury service, you know, 20 years later because the last time I was here, I found the love of my life."

So, you know, we've had marriages out of jury service, and I'm sure before the internet people went out for a beer after jury service. I mean, it's humans meeting; of course you're going to get along.

Evan Martin

Despite the matchmaking potential, jury service can be an rough experience.

Chief Judge Peter Kidd.

Chief Judge Kidd

It's often apparent to us that members of the jury find their job challenging or demanding, emotionally and intellectually. In fact, just like judges do.

The subject matter of a lot of the cases that are presented to juries, and upon which they must render their verdict, can be very difficult.

Sometimes they're asked to judge cases involving deaths. You might have a young 21-year-old in the dock who's otherwise of good character and had a terrific future. But you have a dead 21-year-old and their family in court, and the jury is being asked to render a verdict on that particular case.

It can be incredibly emotionally charged.

So, not only can the subject matter be difficult, but because members of the jury are taken, or summonsed randomly, from various sections of the community, often they've never had any experience with court matters. They may not have had any experience with some of the subject matter we're talking about apart from seeing it on TV. But it's a very different thing when you're in a courtroom and you're dealing with it live and you're being asked to judge it.

Judges see that, with sometimes the emotional responses of jury members during the trials. They can become, unsurprisingly, emotional at times, especially during intense and difficult moments in evidence.

Evan Martin

Often the toll that the case has taken upon a jury is evident at the time of their verdict.

I've been in court for a couple of verdicts. There's quite a tension in the room. Is that palpable up on the bench?

Chief Judge Kidd

Absolutely

It's a moment, often, of significant human drama, and the consequences are very substantial for many people involved. The accused person is potentially - the consequences can be catastrophic, if found guilty of a serious offence. Not only are they convicted of a serious criminal offence, but they may be facing jail time. So it's life-changing.

If the case involves complainants or victims or the death of people and their other family members there, then the consequences for them are also grave.

It's a very heavy moment. The jury is completing its solemn duty in returning its verdict, and whether they're convicting or acquitting, it can be a very difficult exercise.

It's clear that some jurors can be distressed, arising from that deliberation process in itself, so that in itself is another challenge to their mental wellbeing.

It's often a unique, intense experience for people who are effectively removed from their daily lives to engage in a moment of great importance, with which they previously had very little familiarity.

Evan Martin

A Juror Support Program offers all jurors free counselling, which is available for as long as the counsellor deems necessary.

Research is also being conducted by the Victorian Institute for Forensic Medicine into the best way to present particularly gruesome evidence to juries.

Despite all of the challenges that juries face, judges here overwhelmingly trust them.

Justice Champion

I do inherently trust their judgment. There haven't been very many occasions where I've walked away from a jury trial thinking, "That jury got it wrong".

Justice Dixon

I have not had the experience of disagreeing with – with a jury verdict in the sense that I thought they got it wrong.

Justice Hollingworth

I must admit I was a bit sceptical of juries. I wasn't sure whether I would want my case to be judged by 12 ordinary members of the community. I wasn't sure how they would go about the task. But I must say, over my 14 years as a judge I've come to be really impressed by juries. I think they generally get it right. Sometimes they get it right for reasons that may not be apparent to us, but I think generally speaking they're – they bring the collective wisdom of many members of the community and they bring a collective assessment of character and how witnesses are behaving and where the truth lies.

Evan Martin

Gertie's Law is brought to you by the Supreme Court of Victoria.

SUPREME COURT OF VICTORIA

If you've got a question you'd like answered, either by us, a judge or someone else at the court, drop us an email at gertie@supcourt.vic.gov.au.

Send in text - or even better - an audio file, so we can hear you ask the question. Next episode, we'll be endeavouring to answer them.

And remember, the Supreme Court is a public building. Come in and see for yourself - you don't have to be a jury member to see how these trials play out.

[ends]