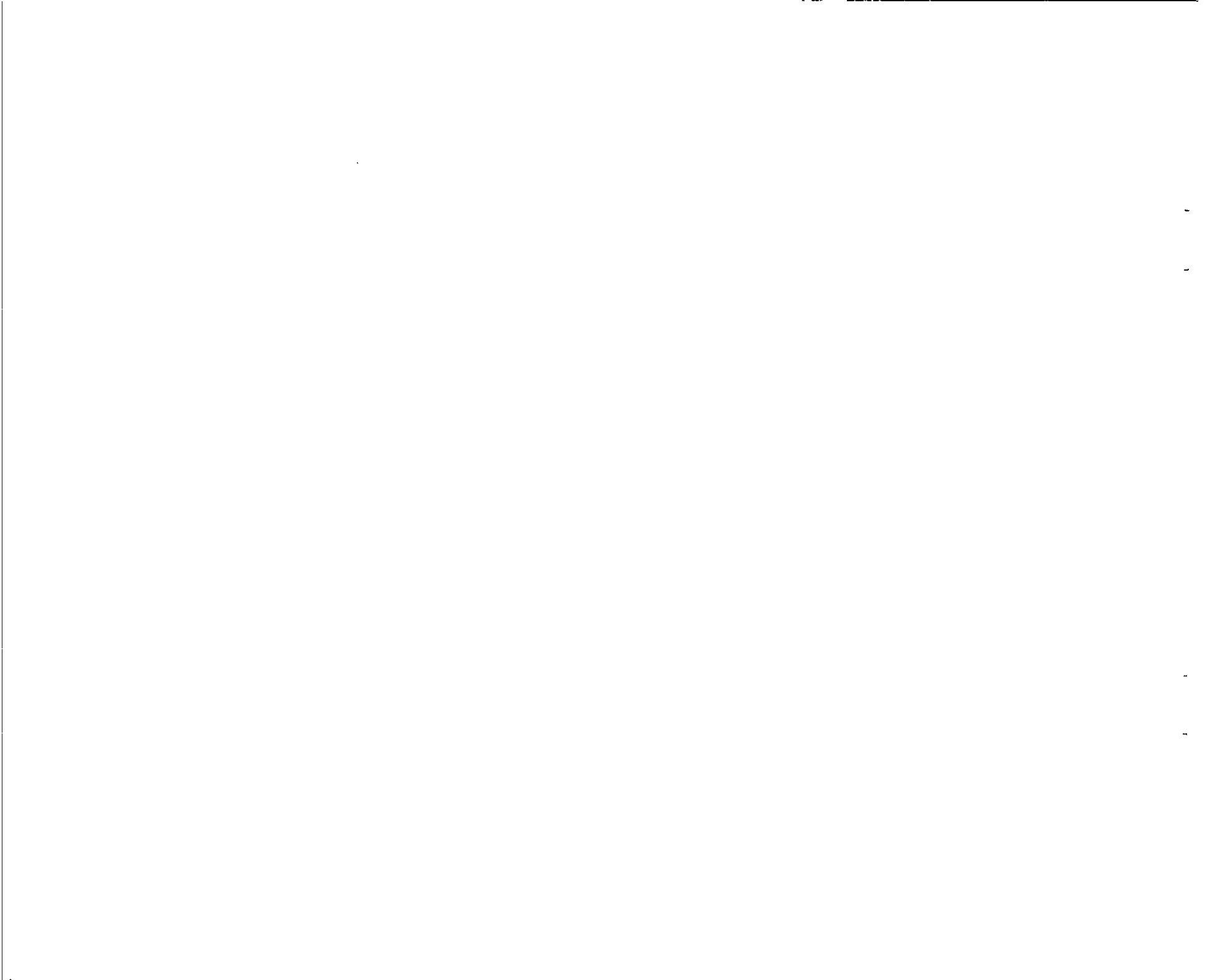




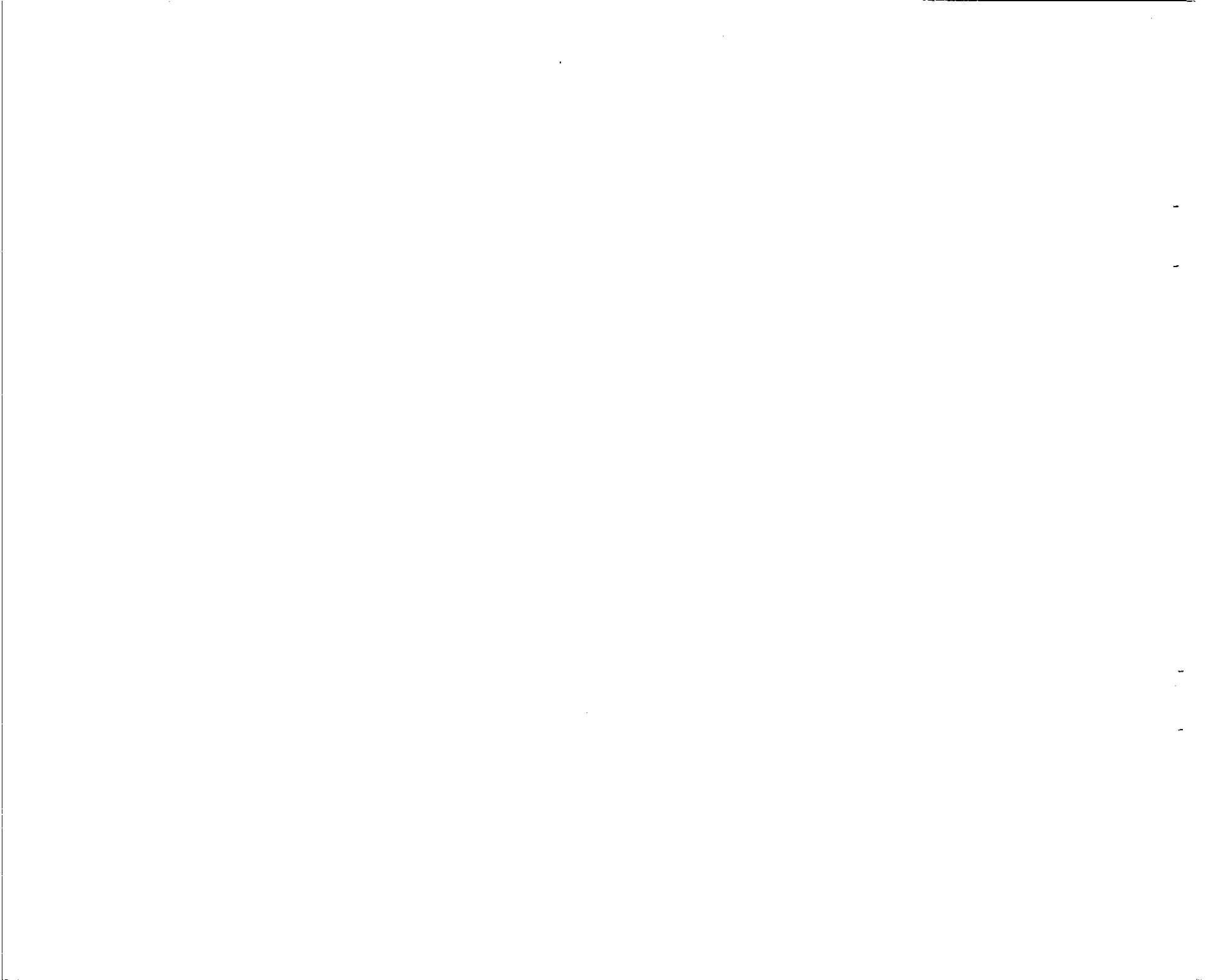
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Jurors



A joint project of the Law Reform Commission
and the Bureau



Background Note

Each year more than 50,000 people play an important role in the administration of justice in New South Wales by performing jury service. Because the jury system is administered at a number of different centres throughout the State there have been few opportunities for determining how representative jurors are of the general community. Nor have jurors had the opportunity in the past to share with the authorities their views on the duties they are called upon to perform, the conditions under which they perform them and possible ways of enhancing the contribution they make to the work of the courts.

The present study conducted jointly by the New South Wales Law Reform Commission and the Bureau of Crime Statistics and Research, breaks new ground in legal research in this State by directly exploring these issues with jurors. It should be emphasised that the study was part of a review designed to suggest possible improvements in the administration of the jury system. It was not intended as an appraisal of the efficacy of trial by jury.

Jurors who had already sacrificed time in rendering a community service, could not be expected to engage in lengthy interviews. Our data had to be gathered quickly and in situations which entailed a minimum of inconvenience to both the Court and the individual respondent. With the prior permission of the Judge, a brief questionnaire was administered to each juror either at the completion of the trial or following dismissal from jury service.

The questionnaire comprised fifteen items. The first section was filled in by all respondents and the second part was completed only by those who had participated in a trial.

Pilot testing showed the advantage of having two field interviewers administer the questionnaire to each group of jurors. Respondents were requested to complete the questionnaire (see Appendix A) but the interviewers were on hand to answer questions and encourage jurors to complete the form. Both the trial judge and the field staff made it clear that the completion of the questionnaire was entirely

voluntary and anonymous. In only three per cent of cases did a juror reject outright the invitation to answer the questions. Interviewing took place between November 1974 and March 1975.

The Sample

Because it was desirable to administer the questionnaire directly to each group of respondents, it was decided to base the study on a representative sample of jurors. In designing the sample we were guided by data obtained from the court register concerning the distribution of cases throughout New South Wales during 1973. The jury panels were sampled with a view to providing the appropriate combination of civil and criminal cases heard in Sydney, Newcastle, Wollongong, and rural centres. This goal was attained with the exception of certain rural cases.

The procedure used was to take the 'next case' listed in each of the sample categories. Attempts to interview country jurors were hampered by a series of decisions which obviated the need for juries - particularly those involved in civil cases. For practical reasons it finally became necessary to compromise on this section of the study.

Table 1 shows that the sample contained a majority of District Court criminal cases in both urban and rural centres. To that extent, it reflected the known predominance of this type of case in the court register. However, our group was less representative of urban Supreme Court criminal juries and rural civil cases:

Table 1 Location of Sample Jurors Compared with Total Jury Panels

	Percentage of Jurors, sample (N=334)		Percentage of NSW Jury Panels, 1973 (N=60 854)	
<u>Urban</u>				
Supreme Court Civil	14.5	16.7		
Supreme Court Criminal	3.9	16.6		
District Court Civil	4.1	4.3		
District Court Criminal	61.1	45.5		
<u>Rural</u>				
District Court Criminal	16.4	12.6		
Supreme/District Court Civil	-	2.1		
Supreme Court Criminal	-	2.3		
	100.0	100.0		

Women Jurors

The sample comprised 593 (93.5 per cent) men and 41 (6.5 per cent) women. The preponderance of males reflects both the under-representation of women on the rolls and the fact that they are frequently excused from jury service because of family commitments. Furthermore, in two of the rural centres studied women simply were not called for jury service. In fact, a check of jury rolls throughout the state showed that at 49 of the 70 courts outside of Sydney no women jurors are listed. Of the 163,830 jurors in New South Wales, 11,856 (7.2 per cent) are women.* The percentage of female jurors in different metropolitan and country centres ranged from 0 to a maximum of 22 per cent at Liverpool and 18 per cent at Parramatta.

*The number of female jurors in the Sydney metropolitan area (6.4 per cent) was slightly less than for the State as a whole.

Age

Jurors tend to be drawn from older age groups. When the age structure of our sample is compared with that of adult men in New South Wales, we find less than half the number of jurors in the 20-29 years age bracket that we would expect on a population basis. The number of 30-39 year old jurors was more representative but the number of 40-59 year olds (55.2 per cent) substantially exceeded the proportion this group represents in the general community (35.9 per cent). Nearly one in eight of the sample were 60 years of age or older (Table 2).

Table 2 Age of Jurors Compared with Male Population

Age group	Percentage of sample (N=634)	Percentage NSW Males over 20 yrs. (1971)
20 - 29 years	10.4	26.2
30 - 39 years	21.6	20.0
40 - 49 years	28.2	20.4
50 - 59 years	27.0	16.2
60 years+	12.8	17.2
	<hr/> 100.0	<hr/> 100.0

Occupation

If the age pattern of jurors differs significantly from the general population, there is another respect in which our sample more closely resembles the community.

Many sociological studies have shown that occupational prestige – the amount of status accorded an occupational position by the Australian public – is an effective indicator of variation in life-style and opportunities. Jurors were allocated to one of four categories according to their 'usual' occupation. These groups were: 'A', which corresponds to professional and managerial positions, 'B', semi-professional and other managerial occupations, 'C', sales, small business, clerical trades and semi-skilled, and 'D' (unskilled) workers.

A comparison of the occupational status structure of our sample of jurors and that existing in the general community (see Table 3 below) shows that both groups contain equal proportions of 'A' and 'D' status people. The jury sample contained somewhat more 'B' status people and fewer 'C' status people than are to be found in the general community.

**Table 3 Occupational Status of Jurors
Compared with General Community**

Occupational status group	Percentage of jurors (N=634)	Percentage of adults, Sydney metropolitan area*
'A' (professional/managerial)	3.9	3.8
'B'	27.3	19.2
'C'	45.4	56.6
'D' (unskilled)	19.7	20.4
Unstated	3.7	—
	<hr/> 100.0	<hr/> 100.0

*Based on previous surveys. (See, for example, Bureau of Crime Statistics and Research Statistical Report 17 p.23).

Part 1

Becoming a Juror

Because they play such a key role in the administration of justice it is obviously important that jurors be competent to carry out their duties. The nature of that competence has never been fully defined but clearly they should be devoid of such obvious mental and physical handicaps as might hinder their ability to follow Court proceedings and evaluate the information presented to them.

For these reasons the Jury Act 1942 - 1987 apart from disqualifying from the roll 'any elector who has been attainted of any treason or felony, or convicted of any crime that is infamous', also provides for the exemption from service of persons above the age of 60 years and persons incapacitated by disease or infirmity.

Furthermore, in preparing the lists the revision court should remove the names of those 'disabled by lunacy or imbecility of mind or by deafness, blindness or other infirmity of body and also the names of all men of bad fame or of immoral character or repute'.

While the Act provides such grounds for the exemption of jurors there is no procedure which guarantees that such people will be excluded. To a large extent, the responsibility lies with the juror to seek exemption.

The problem of ensuring the suitability of jurors could be minimised if they were subjected to a thorough initial screening and if their eligibility for service was periodically reviewed. Under the conditions of modern community living, it can no longer be assumed that the relevant attributes of jurors are known to local justices or the police. At the very least it would require personal contact with the potential juror to assess whether he fulfils the basic requirements.

That the current procedures are inadequate is suggested by two of the findings of the present study:

(i) there was a substantial number of people who claimed they did not know how they came to be on the jury roll;

(ii) cases were uncovered of the types of handicaps which the Act intended should exclude people from jury service.

Awareness of Enrolment Procedure

Answers to the question 'How did you come to be on the jury roll?' lead to the conclusion that almost half of our sample of jurors either were not interviewed before being enrolled or that their contact with the police was very brief.

In practice, the Police include in the rolls those people who have been subject to a character check for some other purpose.* Additional names are gathered by selecting a street and calling at homes until the required number of new jurors has been obtained. Frequently contact is made with another member of the household and later an official check is made to see whether the prospective juror has a criminal record.

More than one in three of those we interviewed did not know how they had come to be on the roll. One in 13 recalled having been 'notified by post'. Less than 2 per cent had actually applied for jury service. The same number assumed that being made a Justice of the Peace was somehow connected with their names having been placed on the roll (Table 4).

Slightly more than half of those interviewed linked their enrolment to a visit which the police had made to their home:

* New South Wales Police Department Instructions.

Table 4 Recall of How Enrolled (N= 634)

	Number	Percentage
Police called at home	340	53.6
Applied for jury service	10	1.6
Because a Justice of Peace	10	1.6
Notified by post	49	7.7
Not known	226	35.6
	<hr/>	
	634	100.0

Disabilities

It was never intended that the study should focus on physical or other disabilities experienced by jurors. Nevertheless, their special difficulties intruded into the attempts to gather other data and commonsense dictated that some note should be taken of them.

Before presenting the information two preliminary points need to be made. First, since the observation of jurors' physical, mental or language difficulties was not a prime aim of the study, our comments are likely to understate rather than overstate their magnitude. Second, the observations relate to panels of jurors in waiting and not necessarily those who participated in trials. In some cases the handicapped person may have been stood

down because of his particular difficulty. The question remains, however, as to what can be done to exclude or remove such people from the jury roll.

For example, we found it almost impossible to interview six jurors because they were virtually unable to speak English. Another six said they found jury service a great hardship because of their advanced age. Their frail appearances and average age of seventy lent some truth to their claim.

Numerically more significant was the number of jurors who either reported difficulty or might be assumed to have experienced difficulty, in hearing what transpired in Court. In 13 cases we found it difficult to communicate with respondents because of their defective hearing. In another 64 cases, jurors reported at various points in the questionnaire that they found it hard to follow what was being said in court. That meant that 77 jurors (or 12.1 per cent of the total sample) had a level of hearing which under court conditions, made it difficult for them to perform their duty.

It might be thought that some of these expressed concerns reflect a general disenchantment with jury service. Such a view is not supported by answers to the question 'Do you have any objection to serving as a juror?' (Table 5). More than eight out of ten (85.5 per cent) of our respondents said they had no objection. The number who raised these particular objections might have been smaller but for the large section of the non-commercial population which is, by statutory exemption, excluded from jury service.

Exclusions from the jury roll are granted to all state and federal employees ranging from teachers and government transport employees to rangers and rabbit inspectors. Non-government exemptions apply not only to clergymen, bank tellers and cashiers but also to commercial travellers and to druggists.

Such exclusions automatically diminish the number available for enrolment for jury service with the result that the entrepreneur groups are over-represented.

Part 2 Mechanics of Jury Service

**Table 5 Reason for Objections
to Jury Service**

	Number	Percentage (N=92)
Time lost from work	27	29.3
One man business	18	19.6
Loss of money	9	9.8
Hard of hearing	7	7.6
Not qualified to serve on juries	6	6.5
Too old to serve	6	6.5
Not able to speak English	4	4.3
Time required too long	2	2.2
Reason not stated	13	14.2
	<hr/>	
	92	100.0

Jurors receive a notice from the Sheriff's Office telling them when and where to report for service (see appendix B). The notice is so specific with respect to the time a person is required to attend that it should be understood by anyone who can read English. That, in fact, was the finding of the survey for almost all respondents (98.6 per cent) said the notice summoning them for jury service was 'sufficiently clear as to when they would be required to serve'. People with a poor understanding of English usually asked their employer or a neighbour to explain the instructions.

The notice is a little less specific with regard to where jurors are to attend. There appears to be more scope for misunderstanding of this point. Forty people (6.3 per cent) said the notice was 'not sufficiently clear as to where they would be required to serve'. Since this group was equally representative of all age groups and occupational status categories, it would seem appropriate to question whether the problem resides in the form of the instruction itself. The Court at which the juror is required to give service is mentioned by name but no details are provided regarding the specific point to which jurors should report. Thus, it was the larger court complexes - especially Darlington - which caused the greatest difficulty.

It is in the nature of a jury trial that one cannot be sure how long it will continue. Therefore, it was to be expected that more jurors would find the indication of how long they would be required to serve, 'insufficiently clear'. However, the fact that almost seven out of ten (69.2 per cent) registered this complaint may be a reflection of more than the uncertainty of jury selection and the time taken to complete the trial. It may also indicate the need to revise the somewhat antiquated and legalistic phrasing of the official notice:

"...and you are there to attend from day to day until you shall be discharged by said court, under a penalty of the fine by law imposed in this behalf".

Exemption from Service

Many jurors were confused about how they could claim exemption from either the jury roll or from attending a particular court. Very few (2 per cent) of those interviewed had sought to be excused from serving in their panel. That this number might have been depressed by jurors' lack of knowledge of the exemption procedures, was suggested by the answers to two further questions.

Asked, 'did you know you could apply for exemption?', almost one in six (16 per cent) said they did not. When the remainder were asked the further question, 'how did you think you could apply for exemption from jury service?' more than one in four (26 per cent) indicated they did not know. The latter group was drawn from all age and occupational status groups.

This result may seem a little surprising in view of the fact that the NOTES FOR THE GUIDANCE OF JURORS on the back of the sheriff's notice set out the grounds for seeking exemption from service. Four such grounds are described in the note. If we were to judge from answers to our earlier question concerning objections to jury service, the first three categories (absence from district, illness and death) represent infrequent reasons for wishing to claim exemption.

Far more relevant is the fourth category listed in the notice: 'undue hardship or undue public inconvenience'. Three items 'time lost from work', 'one man business' and 'loss of money' accounted for almost six out of ten (58.7 per cent) of the objections to jury service. Thus 'hardship' would appear to be the most likely basis for seeking exemption. But unlike the three other grounds listed in the notice, the meanings of 'undue hardship' and 'undue public inconvenience' remain unexplained. Those required to give service simply are told:

"A juror seeking relief on these grounds should contact the Sheriff's Office for guidance".

Nor is there encouragement for those people who feel handicapped in their ability to provide competent jury service to raise the matter with the authorities. For example, the people who wished to gain exemption on the basis that they were hard of hearing or those who were unable to speak English or who considered they were too old, would receive little guidance from the NOTES.

Preferred Time of Service

Under the existing scheme, jury panels are rotated in an effort to ensure that approximately equal demands are made on those who are enrolled. (Usually a person will be required to give jury service once every twelve months but if the lists are exhausted he may be called up again within that period). If the timing of the service poses special difficulties, then it is the individual's responsibility to seek exemption on the grounds discussed in the previous section.

Perhaps the convenience of jurors and the needs of the justice administration would be better served if the present system were modified to take account of the preferences of those on the roll.

Jurors might be asked to indicate when they wished to be called up for service and an attempt made to reconcile their preferences with court schedules. Naturally, the latter consideration would have to take priority. Technically the problem is not unlike that faced by a University which allocates students to Faculties on the basis of its own criteria but also takes account of expressed preferences.

Before such an approach could be considered it would be necessary to know whether jurors have definite preferences concerning the timing of their court service. On the present evidence they are much more definite about the times they do not wish to serve than they are about the times they would prefer to be called up. Questioned, "Are there any months of the year when you would ask not to be called up for jury service?", one in three (34.7 per cent) answered in the affirmative. On the other hand, slightly more than one in ten (11.4 per cent) indicated a preference for a particular month.

Table 6 Preferred Time of Jury Service

When the two sets of answers are related (see Table 6 opposite) the implications are fairly clear. Respect for the preferences of jurors could pose special difficulties for the scheduling of trials during the November-January period. Otherwise jurors are more selective about the months they wish to be called up, with somewhere between 92 and 96 per cent opting for service during the remaining months of the year. This would appear to mean that, at least for nine months of the year, account could be taken of jurors' preferences without seriously disrupting court schedules.

Furthermore, the number who would wish to be exempted during November-January poses less of a challenge than might appear to be the case. Not many trials are scheduled during the six weeks period surrounding the Christmas holiday season.

Month	Percentage not wishing call-up	Percentage wishing call-up
January	21.8	2.1
February	8.2	5.2
March	6.3	5.4
April	4.4	5.5
May	6.3	6.5
June	5.2	6.0
July	4.7	6.0
August	6.8	5.4
September	7.6	4.1
October	6.3	4.3
November	10.7	3.5
December	24.3	1.4

Part 3 During The Trial

The System of Challenge

Respondents were asked if the system of challenge and selection of jurors at the trial caused them any embarrassment. One of the problems with this question was that unlike the other items, it touched on a matter experienced by relatively few of those interviewed. Unfortunately we do not have precise information about the number who were challenged. Experienced court officers believe that in Supreme Court criminal trials (for example rape and murder) the number challenged could range between seven and ten of the 40 to 48 people presented for selection. A similar pattern is said to prevail within the District Court.

These numbers would indicate that only a fraction of the 275 jurors who did not reach the stage of participating in a trial were 'stood aside' or challenged. In many cases they were simply not empanelled.

In retrospect, it would have been wiser to study the system of selection by taking a separate and substantial sample of those challenged or not selected. Meanwhile, it is interesting to note that only eight people said the present system caused them 'embarrassment'. Further, despite the fact that four-fifths of our sample came from the criminal jurisdiction five of the eight jurors who indicated embarrassment were from civil courts where jurors are subjected to closer scrutiny. Indeed, one juror - a 30 year old business man - observed "It is the juror who seems to be on trial".

Regardless of who he is or how he was selected, once the juror becomes a participant in a trial our prime concern must be to support him in his difficult role. It was considered important, therefore, that we should ask the 359 jurors who reached this stage about any difficulty they experienced in following the court proceedings and invite their reactions to possible forms of assistance.

In fact, only a minority indicated that they felt they had a problem in following the proceedings. A little more than one in ten (11.9 per cent) said they experienced difficulty in 'understanding the trial procedure'. A slightly greater number (15 per cent) had difficulty in 'following the evidence'. In both cases the problem was somewhat greater (18 per cent) among jurors over 60 years of age.

Nevertheless, the majority of jurors apparently felt that they could have performed their duties even more effectively if they had had the benefit of a copy of the record of evidence and a list of issues to be decided. With respect to the record of evidence, six out of ten (60.2 per cent) felt they would have been assisted while a slightly greater number (68.5 per cent) would have welcomed a list of issues to be decided. These views were shared equally by people of all age and occupation groups.

Invited to suggest other forms of assistance, only 18 additional ideas were put forward by the jurors. In four cases they said it would have been helpful to be able to ask the judge questions in the course of proceedings. Another four jurors requested more detailed instructions by the presiding judge.

More ideas were forthcoming when jurors were asked if they had any final suggestions for improving the contribution they could make to the work of the court. Many of their comments, however, really were directed at improving the physical comfort and convenience of jurors. One in eight of the 134 who offered suggestions complained about what they considered to be the wasting of jurors' time, especially at the stage where juries are being selected.

One in ten would like to be called upon less frequently. An equal number requested better parking arrangements.

Another group of comments focused on the condition and comfort of the jury room. Although these remarks were confined to one in eight of those offering suggestions, the comments were reminiscent of those made recently by an American juror: "If the court room was a tragedy the jury room was a disaster".* Eleven of the local jurors sought tea or coffee making facilities to sustain them during their deliberations; an equal number entered a general plea for brighter, more congenial conditions in which to work.

Air conditioning, better seating and improved pay were among the other suggestions which were put forward. But not all the comments were of this kind. More than one in eight saw the necessity for improving the acoustics of the court room. (All but one of these jurors were over forty years of age). Nine respondents thought jurors should be selected with greater care; eight would like the right to question the judge in the course of the proceedings. Three people considered the information contained in the 'Notes for the guidance of jurors' to be inadequate. They would like to see more written information provided about the selection procedure and the duties of the juror.

* Connelly, M., "Jury Duty - the juror's view", Judicature, Vol. 55. No.3. pp.118-121.

Table 7 Suggestions for Improving Contributions of Jurors (N=134)

	Number	Percentage
Improve acoustics or select jurors with good hearing	18	13.5
Selection process too slow - jurors' time wasted	17	12.7
Better parking arrangements	13	9.7
Less frequent service/enlarge pool of jurors	13	9.7
Coffee/tea making facilities	11	8.2
Brighter, more congenial conditions in jury room	9	6.7
More comfortable seating	9	6.7
Improve selection of jurors	9	6.7
Improve payment	8	6.0
Judge should permit questions by jurors	8	6.0
Air conditioning	5	3.7
More information about selection procedure/duties	3	2.2
Other	11	8.2
	134	100.0

Appendix A

Questionnaire for Jurors on Completion of Jury Service

- 1 How did you come to be on the jury roll?
- 2 Do you have any objection to serving as juror?
(Please state the nature of any objection).
- 3 Was your notice summoning you for jury service sufficiently clear as to:
 - (i) When you would be required to serve
 - (ii) Where you would be required to serve
 - (iii) and for how long you would be required to serve?
- 4 Did you seek exemption from serving on this panel?
- 5 (i) Did you know you could apply for exemption?
(ii) IF YES
How did you think you could apply for exemption from jury service?
6. (i) Are there any months of the year when you would ask especially not to be called up for jury service?
(ii) IF YES
Please specify month/s
7. (i) Are there any months when you would prefer to be called up for jury service?
(ii) IF YES
Please specify month/s
8. What about the system of challenge and selection of jurors at the trial - did it cause you any embarrassment?

During The Trial

9. (i) Did you experience any difficulty in understanding the trial procedure?
(ii) IF YES
Please give details
10. Did you experience any difficulty in following the evidence?
(ii) IF YES
Please give details
11. Could you have been assisted by:
 - (i) A copy of the record of evidence
 - (ii) A list of issues to be decided by you?
 - (iii) Anything else? (Please state)
12. Have you any suggestions for improving the contribution of jurors to the work of the court?

For Statistical Purposes Only

13. Sex
14. Age range
15. Usual occupation Please give full details
If retired please state former occupation

Thank you for your co-operation in completing this questionnaire

Appendix B

Jury Notice



Sheriff's Department, Supreme Court.
King Street, Sydney, N.S.W. 2000.

Telephone: 231 3422 EXT. 20 or 21

You are hereby required to appear as a Juror in the SUPREME COURT, to be holden at the Court House, at
on
the day of
at a quarter to Ten o'clock in the forenoon; and you are there to attend from day to day until you shall be discharged by the said Court, under a penalty of the fine by law imposed in this behalf.

Sheriff

Please bring this notice with you—See other side

Notes for Guidance of Jurors

Absence from district—It is requested that permanent removal from the Jurors' District or temporary absence therefrom at time of receipt of summons and extending beyond date of this Court be reported (by the juror or by someone on his behalf) to the Sheriff, Box 3 G.P.O., Sydney, N.S.W. 2001, promptly after receipt of summons—with summons attached thereto.

Illness—Where a juror is unable because of illness to attend Court, evidence of the illness should be submitted promptly to the Sheriff. A medical certificate accompanying a Statutory Declaration by the juror or by someone on his behalf will suffice if the medical certificate states that the juror is unfit to attend.

In cases of Death a short note by a relative or friend of the date of publication of the death notice and the name of the newspaper would be helpful in amending the records.

Undue hardship or undue public inconvenience—A juror seeking relief on these grounds should contact the Sheriff's Office for guidance.

Exemption on other than statutory grounds is in the discretion of the presiding judge. The Sheriff has no authority to relieve a juror from attendance—but his officers will give guidance on request.

Mileage is payable from a juror's usual place of abode within the Jurors' District.

Sydney Jurors Only

The Law List and Notices for each day's sitting of the Courts cannot be compiled until the conclusion of the sitting on the previous day. If a change in the time or date of your required attendance as a juror on the day for which you are summoned becomes necessary a telegram is despatched when possible. On occasions, however, insufficient time makes this course impracticable.

Accordingly, to avoid unnecessary attendance, and for your convenience, it is suggested that each day you are required to attend, you will look in the *Sydney Morning Herald* under "Law Notices" concerning the Court mentioned on the front hereof, where information concerning jurors will be inserted.