Secrets of the jury room

By George Hampel

***Secrets of the Jury Room*, an SBS project, was an interesting experiment and an important contribution to learning about the dynamics of jury decision making.**

For the first time, to my knowledge, two juries were empanelled to hear and decide the same criminal trial at the same time in a most realistic courtroom setting. The trial was recorded and so were each jury's deliberations. The deliberations were watched on closed circuit television.

The trial scenario was carefully scripted and professionally produced. Witnesses were briefed and exhibits prepared. A young Lebanese man, who was an actor and looked obviously Middle-Eastern, was charged with the murder of his partner, an older, Anglo-Saxon man. The alternative charge to murder was of assisted suicide. The two men had lived in a homosexual relationship. The older man was terminally ill and had discussed and planned taking his own life. The accused stood to gain financially from his partner's death. The accused had purchased the tablets, an overdose of which later caused the older man's death.

The real issue at the trial was whether the accused either administered the drugs which killed the deceased, in which case he would be guilty of murder, or alternatively, whether the accused was guilty of assisting suicide by being present, encouraging and assisting the deceased in taking the overdose.

The accused did not dispute that the subject of suicide was discussed and that he had purchased the drugs, as was his normal practice. However, he denied that he was in the room when the deceased must have taken the drugs or that he assisted him in any way.

A consequential issue in the trial was whether the deceased, because of his disability, was capable of self-administering the drugs without assistance. Expert medical evidence was called by the prosecution that the deceased would not have been able to self-administer. However, in a well-conducted cross-examination, the witness made a number of concessions which opened the possibility of self-administration.

The trial was held in the setting of the New South Wales Supreme Court in Taylor Square, Sydney. Each side was represented by senior counsel and I acted as the judge. In accordance with my brief from the producers, I conducted the trial exactly as a real trial. The two juries were selected from the community so as to be as representative as possible in gender, age, ethnicity and occupation.

The jury

When it came to the election of the foreperson, in one jury, a man with a strong, aggressive personality put himself forward and was chosen. He turned out to be a poor foreman and another foreman was chosen.

At the end of the prosecution case, much to the surprise and concern of the producers, and after a discussion with counsel, I ruled that there was insufficient evidence to support the charge of murder. The juries were directed to acquit of murder and did so. The trial proceeded on the alternative charge of assisted suicide. This made it better, as the issues for the juries became less complicated.

At the conclusion of the evidence, both counsel addressed the juries and I gave the juries a charge, explaining the law and relating the facts to the legal issues. The two juries

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retired to consider their verdict. No result was reached on that day. The juries were sent to a hotel overnight and returned to deliberate next morning. After a short time, one jury delivered an unanimous verdict of 'not guilty' and later the other jury was finally not able to reach agreement.

Jury deliberations

A number of interesting features emerged during the deliberations.

Despite their knowledge that this was not a real case and that their deliberations were being recorded and watched, both juries approached their tasks very seriously. Their discussions and arguments were forceful, sometimes passionate.

The relationship between the people on each jury and the way they came to their conclusions were very different. In the jury that acquitted the accused, the debate was more orderly and more focused on the facts and the issues. There were a number of irrelevant matters discussed but, ultimately, the jurors returned to the factual and legal issues as directed.

The other jury had more difficulties. The discussion in that jury had many more irrelevancies and they had difficulty focusing on the real issues. There was much more aggression in their discussions and sometimes the argument became personal. There was much less communication between jurors and some found themselves locked into positions and not listening to others. At one stage, when there appeared to be a deadlock, a small group of jurors separated themselves from the others so that they could have a discussion without being overwhelmed by their colleagues.

There was no obvious compromise or giving in to the views of others, despite their being told that they would be kept together overnight. The seriousness of their deliberations showed that they had forgotten that this was not a real trial.

Despite the obvious opportunities for prejudice provided by the scenario and the characters involved, there was no indication that any decisions were made on the basis of prejudice. There were no prejudicial references to the ethnicity of the accused, the homosexual relationship or to mercy killing as an ethical or social issue. Ultimately, both juries grappled with the main issues, that is, whether the accused was present and assisting suicide.

There was repeated and appropriate reference to there having to be proof beyond reasonable doubt.

Feedback from the 'trial'

After the trial, I had a long discussion with the 24 jurors. They asked interesting questions about the trial process, about the role of the judge, and about criminal trials generally. I took the opportunity of asking them what they thought of the process. The overwhelming view was that the process was fair and open. They liked their involvement, although some seemed to be exhausted by it. There was a general view in favour of the jury system.

The jurors were very interested in what I thought and what I would have decided, had I had to make a decision. I was pleased that I had not given away my personal view during the trial or my instruction of the jury. I would have found the accused 'not guilty' on the available evidence.

I was later interviewed about my reaction to the experiment. The interviewer challenged my strong view that the jury system was overall a good one despite some of its problems. I was asked why I still thought so when two juries, hearing the same trial, produced a different result. I said that I was not concerned about the difference, because neither jury came out with what would have been the wrong verdict on the evidence, namely a conviction. I pointed out that the jury that disagreed had a majority in favour of acquittal and that I thought it was unlikely that any jury hearing this trial would have convicted the accused.

This experiment reinforced my strong belief in the jury system as one with the right slant. It is that people charged with criminal offences are unlikely to be wrongly convicted.

The experience was also an interesting one for me, as it gave me another opportunity, after 25 years of trial work as a barrister and 17 as a judge, to preside over a trial after I had left the Bench.