



## Jury Issues

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### 1. Jury selection

It is not the function of the prosecutor to seek to achieve a jury that will favour the prosecution. The primary duty of the prosecutor is to be fair.

The prosecutor should aim to select a jury that is:

- impartial;
- balanced; and
- generally representative of the community.

**The decision whether to challenge or stand aside a potential juror depends on the professional judgment of the prosecutor.**

He or she may take into account:

- any available information which is relevant to that decision.
- any views expressed by the AFP, or other agency, giving such weight as is appropriate. [Prosecutors do not act on instructions in jury selection].

**If a prosecutor has information concerning a potential juror that suggests he or she may unduly favour the prosecution the prosecutor should either challenge or stand aside the potential juror or make the information available to the defence. There is no corresponding obligation on the defence.**

A prosecutor should not challenge, or stand aside, a potential juror on grounds of:

- gender;
- race;
- religion or;
- (unless it has a bearing on fitness for jury service) age.

A prosecutor may have regard to the fact that a potential juror has a previous conviction, even if that conviction does not disqualify him or her from jury service.

[**Note:** *Katsuno v R* (1999) 199 CLR 40: the HC held that provision to the prosecutor of name and criminal history of persons on the jury panel prior to the delivery of a copy of the panel in open court was unlawful being a breach of the *Juries Act 1967* (Vic). It would be prudent to check local legislation in light of *Katsuno*.]

To decide whether to challenge or stand aside the juror, the prosecutor should consider:

- the details of the conviction; and
- the facts of the case on trial,

**and should provide to the defence (unless to do so would be contrary to law or to the conditions under which that information was provided to the prosecution):**

- information concerning the juror's non-disqualifying conviction

The prosecutor should not discuss with anyone, especially anyone connected with the defence, the reasons for challenging or standing aside a juror. Nor should he or she ask the defence the reasons for its challenges.

Any material provided to the prosecution by a court official for use during the selection process should be returned to that official when the jury has been selected.

In some jurisdictions the prosecution is not provided with a copy of the jury list until the first day of the trial. In those places the police cannot inquire about non-disqualifying convictions of potential jurors.

## 2 The number of challenges to jurors

In some jurisdictions the prosecution may stand aside or challenge more potential jurors than the defence.

Prosecutors should voluntarily limit the number of potential jurors they challenge or stand aside to the number of challenges available to the defence. Prosecutors may challenge more potential jurors only in exceptional cases where the interest of justice clearly requires it.

Where there is more than one defendant, the limit is a number equal to the total number of challenges available to the defendants.

### 3 The power to stand aside a juror

In some jurisdictions the prosecution may challenge and stand aside an unsuitable potential juror. There is no objection to the prosecutor doing this. However the prosecution should generally not assume greater rights than the defence in the jury selection process.

### 4 Approaches to jurors during a trial

Prosecutors and officers instructing them should avoid all contact with jurors in the course of a trial. If a prosecutor is seen talking to a juror it may give the impression that there has been collusion even if the conversation had nothing to do with the trial.

If a prosecutor has accidental contact with a juror he or she should draw it to the attention of the defence and the trial judge in the absence of the jury, as soon as practicable.

If a prosecutor becomes aware that any person other than an appropriate court official has approached a juror, he or she should inform the trial judge as soon as practicable.

Under no circumstances should a prosecutor approach a juror when the trial is over to ascertain the reasons for the jury's decision. Nor should a prosecutor suggest to a police officer or other investigator that he or she do so.

In most States there are offences for seeking details of a jury's deliberations, though in some jurisdictions it is only an offence to do so if threats or intimidation accompany the approach. However, it is clearly improper. Jurors are entitled to merge back into the community when the trial is over and no one has the right to delay that process, see generally:

Re Armstrong (1922) 15 Cr App R 149, Re Matthews and Ford [1973] VR 199; Re Donovan's Application [1957] VR 333; Ex Parte Hartstein; in re a Solicitor (noted at (1972) 46 ALJ 369); Prothonotary v. Jackson [1976] 2 NSWLR 457; AG v. New Statesman and Nation Publishing Co Ltd [1981] QB 1.

If a prosecutor meets a former juror in a social or other context he or she should not discuss the case.

If a prosecutor believes that there may have been an improper approach to a juror in the course of the trial, or that improper pressure may have been brought to bear, he or she should inform the appropriate Deputy Director. On no account should the prosecutor initiate investigative action without approval from the Deputy Director.