Justice

An Australian visiting the United States might not be surprised at the lack of ceremony when judges enter and leave a courtroom nor at the absence of wigs. They might, however, see and hear things quite foreign to the Australian concept of justice, such as a prosecutor appearing on talk-back radio on the morning after a man is sentenced to death for murder.

This story is not about the O J Simpson murder trial which, of course, is a one-off because Simpson is, or was, a super sports star. It concerns two unrelated everyday American court cases which took place in September 1994. On Tuesday 20 September, Lancaster County District Judge Donald Endacott in Lincoln in the State of Nebraska pronounced the death penalty on Roger Bjorklund. Bjorklund had been convicted at an earlier date for the particularly brutal murder of an 18-year-old girl. Next day the *Omaha World-Herald* report of the case included a brief interview with the prosecutor, Lancaster County Attorney Gary Lacey, who expressed only slight hope that Bjorklund's trip to the Nebraska electric chair would be a quick one. "I'll probably be dead before Roger Dale Bjorklund is executed", he told the paper.

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A jury had found Bjorklund, 32, guilty of the abduction, rape and murder of University of Nebraska-Lincoln student Candice Harms. He and another man, Scot Barney, who had pleaded guilty and received a life sentence, had murdered Miss Harms near Lincoln almost two years before, on the night of 22 September 1992. They had searched the streets of Lincoln for a victim to abduct and fulfil a sexual fantasy. Miss Harms was ordered from her car at gunpoint, tortured, raped and later shot dead.

Her partially-buried body was found on 6 December 1992, after Barney led police to her shallow grave in exchange for avoiding the death penalty.

Also on 21 September, the day after the sentencing, Lacey, who is an elected official, appeared on a talk back program on an Omaha radio station and discussed the case with the talk-back hostess, Cathy Fife. Lacey took calls from listeners, one of whom asked whether it was true that the two men had posed as policemen. Lacey told the caller that Bjorklund and Barney had searched for a person for what they wanted to do and were about to give up when they saw Miss Harms driving her car. She was driving home from a date with her boyfriend. They followed her to a parking lot which happened to be only 50 feet from her parents' home.

Bjorklund approached her car with a police radio scanner and a gun, said Lacey. He got inside her car and drove it away. Later they transferred her to their own car.

Another caller asked what pre-trial motions were made in the case. Another asked if the two men were suspected in the murder of another young local girl, to which Lacey said "no".

In reply to the talk-back hostess, Lacey said Bjorklund had recited lines from the thriller film *Cape Fear* to Miss Harms during her ordeal. Also in the interview Lacey told the hostess that after the case concluded, the victim's parents had wanted to know pretty fully the details of what went on in their daughter's ordeal with the murderers. To Americans the appearance of the prosecutor on talk-back radio would be perfectly natural. It was a chance for members of the public to gain information that would not be available from any other source.

The newspaper report also included the following:

"Among the spectators in the packed courtroom were Bjorklund's wife and five members of the jury from his trial. The jury was selected from Cheyenne County in Nebraska's Panhandle. Roxanne Born of Sidney, the jury forewoman, said the group left Sidney at 2am Tuesday to witness the sentencing to 'give us some closure' on the case."

In similar circumstances in either New South Wales or Victoria a newspaper would find it impossible to publish a juror's name as any interview with a juror after a case is forbidden. If interviews with jurors after a case were allowed here, it would at least give jurors an opportunity to explain why they did or did not reach a certain decision. Sometimes jury decisions, or the lack of one, are controversial but literally no one outside the jury room has a clue as to the jury's thinking.

Also in September 1994 this reporter witnessed a civil law suit in its first day, 13 September, in the Superior Court of the County of San Diego, California. Six women, former employees of a bar and restaurant business, sued the company which ran the business, and two managers, one male and one female, alleging sexual harassment in violation of public policy and the law. A jury panel of 50 persons had been summoned to the court and a computer scrambled a non-alphabetical list of their names. The clerk called the first 24 for questioning by the judge with the first 12 actually sitting in the jury box.

In Australian courts, both civil and criminal, the most that is required of any potential juror is their name, address and occupation. Of that, only their name is usually made public. For an Australian visitor, therefore, it was surprising to hear the depth and intimacy of questions asked of this jury panel.

As each name was called, that person was required to answer questions by the presiding Judge, James A McIntyre. The person would state his or her occupation, marital status, what district they lived in, the names and ages of any children and who the children were married to if married. They were asked to give the children's occupations and that of their spouses and what type of work they did, and also whether their own spouse was working outside the home and, if so, where, and what type of work they did. One had nine children of whom eight were married. He gave the ages and occupations of each child and each spouse, what type of work

they did and where they worked.

Each potential juror stated if they had any previous jury experience, criminal or civil; and if they had, whether they reached verdicts in those cases. They were also asked if they had been a party or witness in any previous court case, and what type of case it was. Two potential female jurors indicated they had been involved in cases relating to sexual matters. Asked by Judge McIntyre if they wished to describe them in public they said they would not and he said they could speak later in private.

He also asked each potential juror: "Is there anything in your background or experience of which you have not already spoken which you should tell us about?" One said he would not place as much credit on the evidence of a psychiatrist as he would on that of other witnesses. Asked why by the Judge he said psychiatry was an "inexact science". The Judge said that perhaps he should serve on another type of jury and discharged him.

At the end of the first day, about 4.10pm, Judge McIntyre had not completed his questioning of the panel. As you would expect, before sending them home he advised them not to discuss their jury duty beyond saying they were involved in a jury. Because if they said it was a sexual harassment case that would invite comments from other people which would be unwelcome to potential jurors. "When the case is over you can talk about it to your heart's content", he said with an avuncular smile, a comment you would be unlikely to hear from a judge in New South Wales or Victoria.

On subsequent days counsel for the parties would quiz the panel with even more pointed questions before the final selection. (In San Diego County the same procedure is used for the selection of juries in criminal trials.) As I had to leave San Diego on the second day I could no longer follow the case, but I later learned that a jury of six women and six men and a male and female alternate were sworn on the third day. The trial took 26 court days including jury deliberations of slightly over three days and they returned their verdict on 1 November 1994. The jury returned several days later to decide on punitive damages and awarded none.

The jury found for the company and the female manager on all the matters in which they were involved. Ultimately, the only plaintiff to succeed was the sixth plaintiff. The jury found that the male manager committed assault and battery and intentionally inflicted emotional stress on all the women except the fifth plaintiff, but the offences caused damage or injury only to the sixth plaintiff. The jury awarded her $US27,140 in compensatory damages. The plaintiffs subsequently requested a new trial and judgment notwithstanding the verdict but Judge McIntyre denied both motions.

In no Australian State or Territory is there any courtroom examination of prospective jurors except applications to the judge to be exempted from serving on the jury.

The most information that is available in any Australian jurisdiction for a criminal or civil jury is the name, address, occupation and appearance of each potential juror. In some States it is even less. For example, in New South Wales in a criminal trial legal representatives become aware of only the names and appearance of prospective jurors on the day on which they are summonsed - that is the day the jury is chosen. No other information is available to either the prosecution or defence.

More information is available in Queensland where by the *Jury Act* of 1929 the Sheriff is required to publish lists of jurors in some conspicuous place in the courthouse. Jury lists contain the full names, occupations and addresses of prospective jurors. The relevant jury list in a criminal case is made available to the defence usually on the day before a trial commences or, on a Friday if it is to commence on the following Monday.

In Queensland a number of commentators have argued that the publication of the lists in this manner is inconsistent with the right of a juror to remain anonymous. The contrary view is that an accused person is entitled to know whether the jurors are suitable to try his or her case. For example, is it fair for an accused charged with armed robbery of a bank to be ignorant of the fact that the jury panel for that trial contains a number of bank officers? A Queensland legal source says the English judge, Lord Denning, has succinctly stated the competing principles in his 1980 judgment in *R v Sheffield Crown Court; Ex parte Brownlow*:

> "There are two rival philosophies here. One philosophy says that the parties to a dispute ought to know whether the jurors are suitable to try the case. They ought to have access to the antecedents of the persons on the panel. ... That philosophy prevails in the United States of America. ... That philosophy has never prevailed in England. Our philosophy is that the jury should be selected at random - from a panel of persons who are nominated at random. [1980] QB 530, 541."

In civil cases in Queensland the same procedure applies. ❑ Tom Downes

Who's Interviewing Whom?

Your client telephoned before he arrived, asking for directions. He advertised the peculiarity of his presentation even before turning up.

He made a play on the words in a manner which suggested he was being deliberately facetious. His appearance fitted his manner. He has long hair tied into a tail and colourful bohemian clothes. His presentation fitted that of a denizen of Nimbin. He had a pack and he drank from a can of Coke. I asked him to drink it outside on the lawn, from which he conducted an affable friendly conversation with me through the window. He found my back garden attractive. I believe it is. ❑

(Extract from psychiatrist's medico-legal report.)