

Juries past use-by date: McCusker

The jury system is so outdated that it leads to unjust convictions and to guilty people being acquitted, says leading barrister Malcolm McCusker QC.

He said that various prejudices, including whether or not jurors liked the accused, had been proved to play a part in verdicts.

"It is an unscientific idea that 12 people who combine collective knowledge and wisdom can reach a just verdict," Mr McCusker told a conference at the University of WA organised by the Innocence Project.

"One of the major problems with juries is that very often you don't get a consensus," he said.

"You get two or three people able to make forceful arguments, who may be wrong, and you get the others who are not assertive who meekly go along with them."

He said there was strong evidence that most people didn't understand what was meant by presumption of innocence, even when it was carefully explained by the presiding judge.

From the days when it was possible to interview jurors, it was clear prejudice played a big part in decisions, he said.

"'I don't like that person - I think that person is a crook', was a common theme," he said.

One juror who contacted him told of three women who had made up their minds the accused was guilty by the first break in the first day of a five-day trial.

"They said, 'he's Indian, isn't he? Indians are by and large prone to sharp practices'," Mr McCusker said.

He said judges may also have prejudices, but unlike juries, they must give reasons for their decisions.

Some of the jurors who originally convicted three young men of the murder of Phillip Walsham at Stirling visited the home of Mr Walsham's parents, he said.

"They were outraged that their verdict had been set aside by the court of appeal," said Mr McCusker, who was the defence lawyer in the case.

"The action of going to the parents highlighted the problem that jurors can work on emotions.

"Not one of the jurors said why they convicted those men."

He said the jury system led to the unjust conviction of people who were innocent, and the releasing of people who were guilty, because they liked the accused or felt sorry for them.

"These are recorded facts," he said.

A survey in NSW of 277 jurors showed most did not know what verdict they had just delivered.

"In 40% of trials surveyed, some jurors erroneously believed that the judge had directed them to deliver a verdict of not guilty," he said.

In some cases jurors did not understand the concept of reasonable doubt.

Mr McCusker said the big difference between the 18th and 19th century system and today's was the influence of the news media, which nobody could escape.

He said that in the Walsham case, the three young men had been convicted in the news media before the trial began.

"Later, the jury convicted the men, and jurors were convinced they were right, even after the appeal court overturned their decision," he said.

Appeal courts had to consider whether a reasonable jury could have considered that the case was proved beyond reasonable doubt.

Three appeal judges concluded that the second Walsham jury's verdict was "unreasonable and cannot be supported on the evidence".

Wendy Page, a producer with the ABC's Australian Story program, told the conference that Perth journalists had adopted a herd mentality about the case.

Crime reporters relied on police contacts and friendships and inevitably got caught up in the police version of events, she said.

She produced four episodes of the national program about problems with the convictions.

"I was astounded by the level of hostility I encountered in WA when I embarked on this story, even amongst some of my own Perth relatives," she said.

"One commercial television reporter told me the men were as guilty as hell.

"In the ABC newsroom in Perth - my own organisation - I heard I was being called a 'crim lover'. Imagine the pressure the jurors felt."

Only the POST looked more closely at the facts, she said.

She said it would be fairly remarkable if jurors were not affected by the negative media coverage.

"The wrath of Western Australia descended on the program after the first three episodes were broadcast," she said

But the reaction from other states was completely the opposite.

"In the east the reaction was one of shock and even sadness about the conviction," she said, but from WA it was a "tsunami of abuse".

"Every abusive letter we received was from WA," she said.

"From the east, though, there were many offers of support.

"The difference was that the eastern states viewer had not been contaminated by eight years of negative and

sensational media reporting on the case.

"Parents blame ABC for trio's acquittal" was a headline after the appeal court found the jury's verdict was unreasonable.

She said that in all cases of wrongful conviction she had covered, parents, and especially the mothers, had been unable to accept the ultimate verdict.

She said the WA media should now be pressuring the authorities to find out how Mr Walsham died. They should be campaigning for a cold case review.