

Impact case study (REF3b)

Institution: University College London
Unit of Assessment: 20 – Law
Title of case study: <i>Influencing law, policy and practice in jury trials in the UK and abroad</i>
1. Summary of the impact (indicative maximum 100 words)

Research by the UCL Jury Project has directly influenced government and judicial policies and practices and public debate both in the UK and abroad. It has:

- identified the need for reform and solutions to problems (on juror internet use, deliberation guidance, judicial directions and government reporting of conviction rates);
- influenced judicial thinking and decision-making (on directing juries and trial by jury in the internet age);
- influenced law reform proposals in the UK and abroad (on contempt, improper juror conduct and the insanity defence);
- influenced government policy decisions (on upper age limit for jury service and anonymity for rape defendants);
- contributed to improving the quality of debate about trial by jury (through wide-spread media coverage of the research).

2. Underpinning research (indicative maximum 500 words)
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The operation of the jury system is a highly confidential and under-researched area. The UCL Jury Project, led by Project Director Professor Cheryl Thomas, conducts empirical research with actual juries at Crown Courts in England and Wales and has pioneered the study of the jury system in this country. Since the Project's establishment in 2007, Thomas has carried out ground-breaking studies of juries tackling sensitive and controversial issues for the first time here and elsewhere.

In 2007 the Ministry of Justice (MoJ) commissioned Thomas to conduct empirical research on a question posed by her previous jury research (conducted prior to her joining UCL):

- Do all-White juries discriminate against ethnic minority defendants?

After consultation with the senior judiciary, Her Majesty's Courts Service (now HMCTS), MoJ, Home Office and the Attorney General, Thomas expanded the scope of the research to address other issues of long-standing concern:

- Do juries rarely convict at certain courts or on certain offences?
- Do jurors understand the jury process?
- What influence do the media have on jurors?

Conducted from 2007 to 2009, the research employed a rigorous, multi-method approach using:

1. Case simulation with real juries at Crown Courts (797 jurors on 68 juries)
2. Large-scale analysis of all actual jury verdicts in all Crown Courts in England and Wales in 2006–08 (over 500,000 charges and over 68,000 jury verdicts)
3. Post-verdict survey of juries at court (668 jurors in 62 cases)

The findings, published in the 2010 report *Are Juries Fair?* [a], exposed numerous myths about juries, showed that juries overall are effective and efficient but need better tools to do their job:

- all-White juries do not discriminate against ethnic minority defendants;
- juries convict more often than acquit in rape cases;
- written directions improve juror comprehension of the law;
- the “fade factor” exists: jurors are least likely to recall media reports the further away they are from trial;
- some jurors look for information about their case on the internet during trial despite judicial directions against this;
- almost half of jurors do not know or are uncertain what to do about improper juror conduct;
- most jurors want more information about how to conduct jury deliberations.

The findings on improper conduct and jury deliberations led to a multi-stage follow-up study funded by ESRC and conducted in collaboration with HMCTS, the senior judiciary and MoJ. Stage 1, conducted in 2011-13, used post-verdict surveys to assess how jurors use the internet, their understanding of improper conduct and what type of deliberation guidance would be helpful. This research [b] found that:

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- 75% of jurors understand the internet use rule;
- 25% of jurors would be uncomfortable reporting another juror's misuse of the internet;
- 8% use the internet in a legally problematic way;
- Jurors are overwhelmingly in favour of written directions.

In 2011 the Law Commission requested an additional study from Thomas on jury verdicts and the insanity defence for its review of insanity and automatism. The study [c] found that:

- jury verdicts of not guilty by reason of insanity are extremely rare (0.1% of verdicts);
- defendants in these cases have a similar profile to defendants in all jury trials;
- but the defence is used in cases involving a narrow range of offences.

3. References to the research (indicative maximum of six references)

- [a] Cheryl Thomas, *Are Juries Fair?* (2010) Ministry of Justice Research Series 01/10
<http://www.justice.gov.uk/publications/research-and-analysis/moj/2010/are-juries-fair>
- [b] Cheryl Thomas, "Avoiding the Perfect Storm of Juror Contempt" *Criminal Law Review* 6(2013)
<http://discovery.ucl.ac.uk/1390245/>
- [c] Cheryl Thomas, "Not Guilty by Reason of Insanity (NGIS) Verdicts 2006–09" in *Insanity and Automatism*, Law Commission Scoping Paper, Annex B (2012)
http://lawcommission.justice.gov.uk/docs/insanity_scoping_supplementary.pdf

Research Grant information:

Grant holder: Professor Cheryl Thomas, UCL Faculty of Laws; **Grant Title:** Race and Jury Decision-Making; **Sponsor:** Ministry of Justice (United Kingdom); **Period of grant:** September 2007 – September 2009; **Value of grant:** £133,965. Led to [a].

Grant Holder: Professor Cheryl Thomas; **Grant Title:** Preventing Improper Juror Conduct and Improving Jury Deliberations; **Sponsor:** ESRC; **Period of Grant:** September 2011 – February 2014; **Value of grant:** £112,990. Led to [b].

4. Details of the impact (indicative maximum 750 words)
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Those benefiting from the research are numerous and varied, including: the judiciary of England and Wales, HMCTS, MoJ, Judicial College, Law Commission of England and Wales, criminal law professionals, public as serving jurors and defendants in serious criminal trials. The research [a, b] has been widely covered in the press and generated substantial public debate [13]. It has also been highlighted by the senior judiciary as influential in judicial thinking about the future of trial by jury in this country [3] and been used in reviews of the jury system in other jurisdictions, e.g. Northern Ireland, the Republic of Ireland and the US [7, 9, 10]. Benefits arising from the research include:

- Resolving long-standing concerns about the need for: racially balanced juries, anonymity for those accused of rape, and change in upper age limit for jury service;
- Reforming official government reporting of conviction rates;
- Prompting re-evaluation of judges' use of written directions;
- Helping to prevent improper juror conduct and improve deliberations;
- Influencing Law Commission proposals on reforms of contempt and insanity laws.

Racially-balanced juries: *Are Juries Fair?* [a] resolved long-standing concerns that racially balanced juries are needed to ensure fairness in trials of ethnic minority defendants through its robust evidence that all-White juries do not discriminate against ethnic minority defendants. Previous reviews (Auld Review and the Runciman Commission) had recommended racially balanced juries, but acknowledged that they did so in the absence of reliable research, and this research has resulted in abandonment of proposals to artificially construct racially mixed juries [1].

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Re-evaluation of juries and rape cases: The research [a] also provided robust empirical evidence that, contrary to popular belief and previous official reports, juries convict more often than they acquit in rape. These findings were cited in the independent review of how public authorities handle rape complaints (Stern Review 2010), and were relied on in the report's conclusion that it was not realistic to achieve a much higher jury conviction rate in rape cases [4, pp. 15, 16, 43, 91, 92, 94]. The research findings on jury conviction rates in rape cases and media coverage of jury trials [a] were further relied upon in the 2010 government review on providing anonymity for those accused of rape [5, p. vi, 19, 20, 21, 23, 32, 33].

Official reporting of conviction rates: *Are Juries Fair?* [a] identified that official conviction rates in Crown Courts do not distinguish between guilty pleas and verdicts decided by a jury and can therefore provide misleading information about conviction rates. This was relied upon in the Stern Review's call for a re-evaluation of how official conviction rates for rape are reported, and the recommendation that the publication of crime statistics always be accompanied by enough explanation to ensure that their meaning can be widely understood and makes clear what conclusions can and cannot be drawn from those data [4, pp. 10, 18, 32, 33]. It was also relied on by the MoJ in its decision to work with the National Statistician to clarify rape conviction rates and review how conviction rates are measured in official government statistical bulletins for all offences [5, p. vi, 19, 20, 21, 23].

Re-evaluation of the use of written legal directions: The findings that juror comprehension of legal directions can be substantially improved when a written summary is provided at the same time as the judge gives oral legal directions to the jury [a] and that jurors prefer written directions [b] has prompted a re-evaluation of the use of written directions by the judiciary in England and Wales. In 2010 the Court of Appeal relied on the findings [a] in *R v Thompson et al* in the guidance it provided to the judiciary on using written directions [2, para. 13, 94], and it is now common practice for written directions to be used in most jury trials in England and Wales. The Irish Law Reform Commission also relied on this research [a] in recommending that jurors should have written information provided to them in all cases to aid comprehension [9, para. 10.24–10.26].

Upper age limit for jury service: Findings [a] on the ability of jurors from different age groups to comprehend judicial instructions, and analysis of the proportion of each age group serving as jurors at each Crown Court in England and Wales was relied upon by the government in considering whether to raise the upper age limit for jury service to 75 [6, p.19]. This research was also relied upon by the Northern Ireland Department of Justice in its 2011 Consultation Paper examining whether there should be an upper age limit for jurors [7, pp. 3, 34, 56, 62].

Insanity defence: The Law Commission relied upon the research finding [c] that jury verdicts of "not guilty by reason of insanity" are extremely rare in deciding in 2012 that it could not proceed directly with proposals to reform the insanity defence law [11, para. 1.3 and 1.4]. This resulted in the Law Commission taking the unusual step of issuing a "scoping paper" to find out how the defence operates in practice [12, para. 1.23, 1.40, 1.44].

Contempt, the media and improper juror conduct: The research findings on improper juror conduct [a, b] have had far-reaching impacts on jury reforms in this jurisdiction and abroad. Findings that a substantial proportion of jurors were uncertain what to do about improper conduct [a] were relied upon in the Court of Appeal's 2010 judgment, *R v Thompson et al*, in which it recommended that HMCTS should consult the Judicial College on how best to explain to jurors their collective responsibility, and that judges should direct juries on their collective responsibility as part of their initial remarks to the jury after they were sworn [2, para. 7, 8]. Findings on juror use of the internet [a] have also been relied upon by:

- The Law Commission for England and Wales in its 2013 review of Contempt of Court in proposals for reducing contempts committed by jurors involving use of the internet and modern media [8, para. 1.9, 2.25, 4.16, 4.23, 4.28, 4.55];
- The Irish Law Reform Commission in proposals that specific statutory provisions and administrative arrangements be put in place to reduce the risk of inappropriate juror use of the internet [9, para. 8.18, 8.19, 8.24];

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- The US National Center for State Courts in its review of jurors' use of new media, citing the research as the only systematically-based estimate of juror misconduct anywhere in the world [10, p.3].

5. Sources to corroborate the impact (indicative maximum of 10 references)

The benefit to the policy process can be measured by the extent to which this research is relied upon in significant court judgments, official law and policy reform documents, speeches by the senior judiciary, government policy announcements and media coverage. A sample (referenced above) includes:

- 1) "Ground-breaking research finds juries are fair and effective" Ministry of Justice Press Release, 17 February 2010
<http://webarchive.nationalarchives.gov.uk/20100512150326/http://www.justice.gov.uk/news/newsrelease170210a.htm>
- 2) Court of Appeal judgment in *R v Thompson et al* [2010] EWCA Crim 1623
<http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/thompson-judgment.pdf>
- 3) Lord Chief Justice Lord Judge, "Jury Trials" *Judicial Studies Board Lecture*, Belfast 16 November 2010 <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/speech-lcj-jury-trials-jsb-lecture-belfast.pdf>
- 4) *The Stern Review: A Report by Baroness Vivien Stern CBE of an Independent Review into How Rape Complaints are Handled by Public Authorities in England and Wales*, Government Equalities Office and Home Office (2010) http://beneaththewig.com/wp-content/uploads/2011/08/Stern_Review_acc_FINAL4.pdf
- 5) *Providing Anonymity to Those Accused of Rape: An Assessment of Evidence*, Ministry of Justice Research Series 20/10 (November 2010)
<http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/anonymity-rape-research-report.pdf>
- 6) The Upper Age Limit for Jury Service in England and Wales, Ministry of Justice Consultation Paper CP 05/10 (16 March 2010). Available on request.
- 7) *The Upper Age Limit for Jury Service in Northern Ireland*, Department of Justice of Northern Ireland, (21 November 2011) <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/upper-age-limit.pdf>
- 8) *Contempt of Court: A Consultation Paper*, Law Commission Consultation Paper No. 209 (2012)
http://lawcommission.justice.gov.uk/docs/cp209_contempt_of_court.pdf
- 9) *Jury Service*, Report of the Irish Law Reform Commission (LRC 107-2013) (April 2013)
<http://www.lawreform.ie/fileupload/Reports/r107.pdf>
- 10) *Juror and Jury Use of New Media: A Baseline Exploration*, National Center for State Courts Perspectives on State Court Leadership Series (2012)
https://www.bja.gov/Publications/HarvardExecSession_JurorAndJuryUse.pdf
- 11) *Insanity and Automatism: Supplemental Material to the Scoping Paper*, Law Commission (18 July 2012) http://lawcommission.justice.gov.uk/docs/insanity_scoping_supplementary.pdf
- 12) *Insanity and Automatism: A Scoping Paper*, Law Commission (18 July 2012)
http://lawcommission.justice.gov.uk/docs/insanity_scoping.pdf
- 13) The research has been extensively covered in the media. A brief sample includes: Frances Gibb, "Verdict on juries: Confused and erratic but not racist" *The Times* 17 November 2010 (Front page main news story) <http://www.thetimes.co.uk/tto/law/article2215550.ece>; BBC News "Do media reports influence juries?" 17 February 2010 <http://news.bbc.co.uk/1/hi/8519995.stm>; "Jury trial: Case dismissed", *Guardian* Lead Editorial 18 February 2010
<http://www.guardian.co.uk/commentisfree/2010/feb/18/case-for-juries-criminal-justice>; "Juries show society at its fairest" *Independent* editorial 19 February 2010
<http://www.independent.co.uk/opinion/commentators/andreas-whittam-smith/andreas-whittam-smith-juries-show-society-at-its-fairest-1903991.html>; Joshua Rozenburg "Verdict on juries: placing blind trust in them helps no one" *Guardian* 15 May 2013
<http://www.theguardian.com/law/2013/may/15/juries-research-internet-use>; Frances Gibb, "Internet access puts jurors at risk" *The Times* 16 May 2013
<http://www.thetimes.co.uk/tto/law/article3765846.ece>; BBC News, "Warning over juror internet research" 16 May 2013 <http://www.bbc.co.uk/news/uk-22550323>