

Chapter 2. The study methods

Project objectives

The broad objectives of the Jury Diversity Project were to determine the extent of ethnic minority representation in the juror summoning process and among those doing jury service, to assess whether the ethnicity of defendants affected jury decision-making and to assess the relative importance of other socio-economic characteristics to the representative nature and decision-making of juries. To achieve these broad objectives, four interlinking but distinct studies were conducted:

1. **Juror Summoning Survey:** a quantitative study of the ethnicity and other socio-economic background characteristics of all those summoned for jury service and serving in each Crown Court in England and Wales in a one-week period.
2. **Jury Service Study:** a quantitative study of the ethnicity and other socio-economic background characteristics of all those performing jury service over a four-week period in three Crown Courts where substantial numbers of ethnic minorities reside in the local population.
3. **Jury Decision-Making Study:** a case simulation study of the effect of ethnicity on jury decision-making, using real jurors at Crown Courts.
4. **Jury Verdict Study:** a limited quantitative study of the relationship between the ethnic composition of juries, the ethnic background of defendants and jury verdicts in actual cases in three Crown Courts.

This was a large-scale research project, and data gathering took place over a four-year period from 2002 to 2006, and this enabled the study to take into account the changes to juror eligibility rules that were introduced in England and Wales in 2004. This chapter summarises the main methods and approaches to the analysis used in each of the four studies. It also presents information on sample sizes and response rates where this information is not covered in subsequent chapters.

Each of the four studies examined specific stages of the jury process and was distinct in terms of the data gathering techniques used and approaches to analysis. However, these four studies were designed to be complimentary, and taken together they cover the effect of ethnicity in the jury system as a whole in England and Wales. The Juror Summoning Survey and Jury Service Study addressed the impact of each stage of the juror selection process on ethnic minority representation in the process. Figure 2.1 below outlines the individual stages of the juror selection process. The first four stages (catchment areas, source lists, summoning and eligibility) were covered by the Juror Summoning Study, and the last three stages (jury pools, jury panels and jury selection) were covered by the Jury Service Study. The Jury Decision-Making Study and Jury Verdict Study addressed the relationship between ethnicity and jury decision-making. The Jury Decision-making Study examined both jury and individual juror decision-making under the controlled conditions of a case simulation using real jurors, while the Jury Verdict Study was a more limited study of jury verdicts in actual cases in three Crown Courts. Figure 2.2 below outlines the main aspects of jury decision-making covered by these two studies.

Figure 2.1. Stages of the juror selection process covered by each study

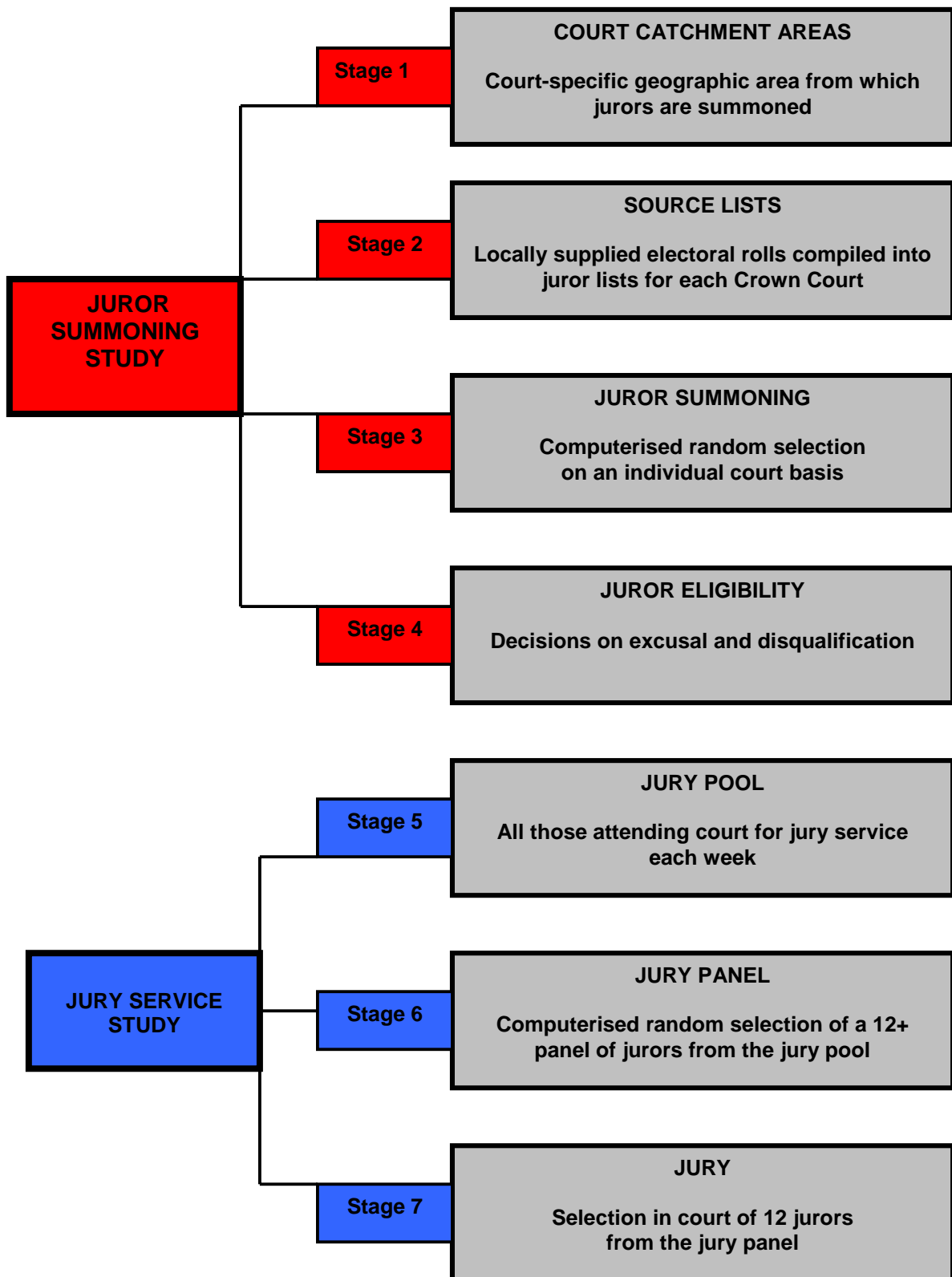
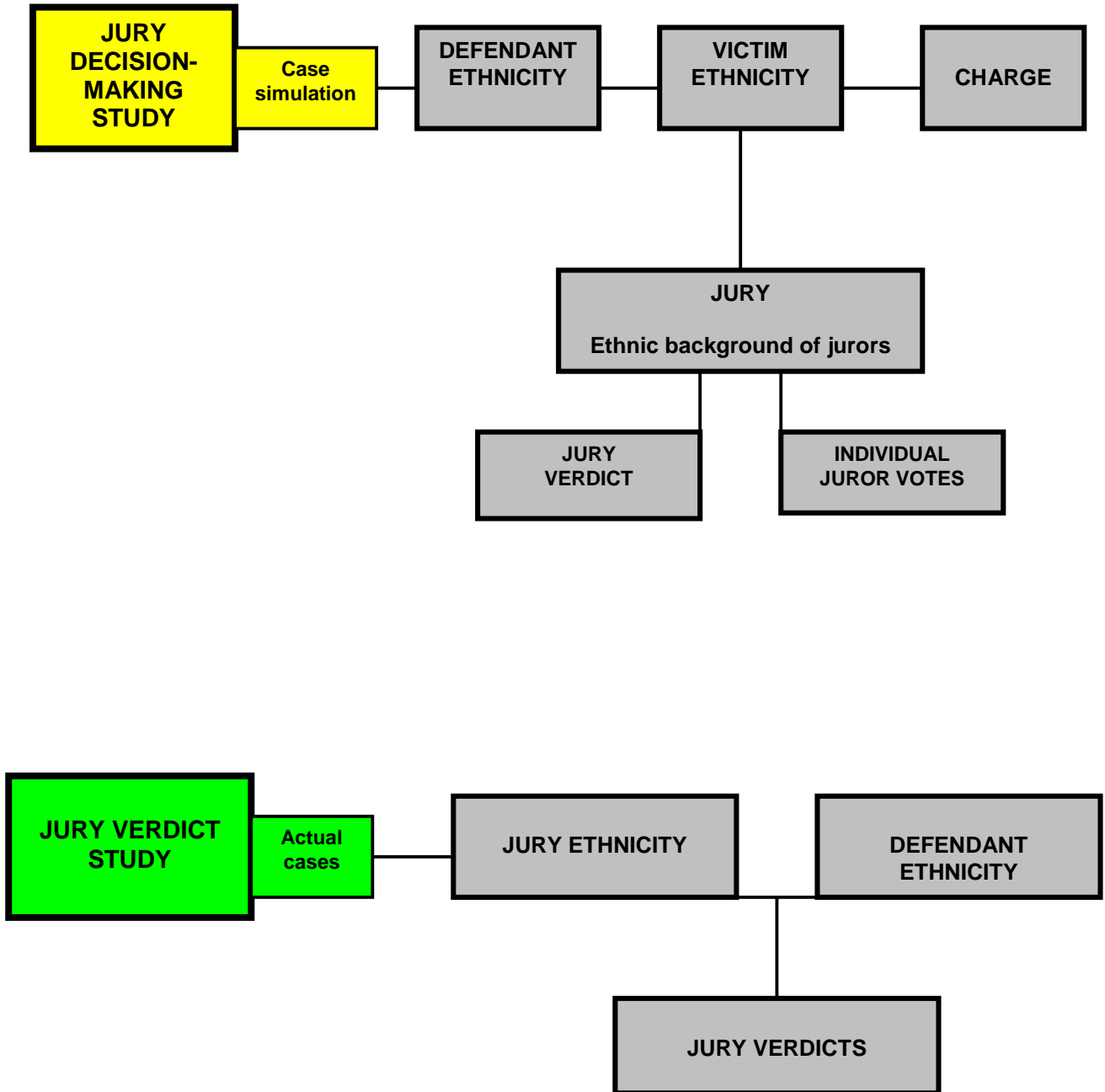


Figure 2.2 Elements of jury decision-making covered by each study



Juror summoning survey

This study was designed to examine four specific issues surrounding ethnicity and the selection of jurors:

1. Whether the proportion of ethnic minorities summoned for each Crown Court in England and Wales is significantly different from the proportion of ethnic minorities in each court's juror catchment area.
2. Whether the proportion of ethnic minorities jurors who serve in each Crown Court in England and Wales is significantly different from the proportion of ethnic minorities in each court's juror catchment area.
3. Whether non-return of summonses indicate a failure to reach ethnic minorities in the summoning process or any unwillingness to do jury service among the BME community.
4. Whether diversity factors other than ethnicity are more determinative of whether those who are summoned actually serve.

Methodology

A socio-economic survey of all those summoned for jury service for all Crown Courts in England and Wales was conducted in one week in 2003 and one week in 2005. Each juror summoned during the survey week received a questionnaire with his or her summons¹⁰⁰. This questionnaire requested a range of information about the prospective juror's socio-economic background. The ethnicity question was framed following guidelines from the Office of National Statistics for requesting ethnicity information from individuals in England and Wales by self-return questionnaire. According to ONS, self-identification is the method that should be used for obtaining ethnicity data, as ethnic group is something subjectively meaningful for the person concerned¹⁰¹. Table 2.1 below shows the ethnic background categories used on the survey.

¹⁰⁰ See Appendix 7 for questionnaire.

¹⁰¹ Office of National Statistics, *Ethnic Group Statistics: A Guide for the Collection and Classification of Ethnicity Data*, HMSO 2003 p.7

Table 2.1. Ethnic group self-identification options on summoning survey

Main ethnic group	Specific ethnic group
White	British
	Irish
	Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian or Asian British	Indian
	Pakistani
	Bangladeshi
	Any other Asian background
Black or Black British	Caribbean African Any other Black background
Other ethnic groups	Chinese
	Any other

Table 2.2 below outlines the other socio-economic factors covered on the survey questionnaire and the parameters available to respondents.

Table 2.2. Other socio-economic questions on summoning survey	
Socio-economic characteristic	Parameter
Gender	Male
	Female
Prior jury service	No
	Yes
Household Income	Under £10,000
	£10,000 - £19,999
	£20,000 - £34,999
	£35,000 - £49,999
	£50,000 - £64,999
	Over £65,000
Employment	Full time
	Part time
	Self-employed
	Retired
	Student
	Looking after family
	Looking for work
	Other
Religion	None
	Christian
	Buddhist
	Hindu
	Jewish
	Muslim
	Sikh
	Other
First language	English
	Other
Welsh language fluency*	Yes
	No

* This question was included only in questionnaires for the Welsh courts.

All those summoned for the Welsh Crown Courts received bilingual questionnaires along with their bilingual summonses¹⁰². Age was not specifically requested on the survey questionnaire,

¹⁰² These were kindly translated for the project by the HMCS Welsh translation office.

as date of birth information is requested on the official summons and this information was made available to the project by the JCSB.

The survey was piloted in February 2003, and a full summoning survey was conducted in April 2003, covering 8,599 jurors. However, in 2004 new juror eligibility rules came into effect, and the juror catchment areas for a number of Crown Courts also changed. A second survey was therefore conducted in February 2005, covering jurors summoned to do jury service in nine weeks' time (April 2005) under the new juror eligibility rules. As a result, virtually all the findings in this report are based on the 2005 survey, and all references to "the survey" mean the survey conducted in 2005. The 2003 survey was used only to examine what affect, if any, the juror eligibility rule changes that came into effect in 2004 may have had on juror representation, including representation of ethnic minorities.

Jury service is usually for two working weeks, and the aim was to obtain as complete a picture as possible of the process of summoning and the profiles of those serving and not serving for each Crown Court¹⁰³. However, jury summoning in any one week does not completely cover a particular period of jury service. The inclusion of the questionnaire in all summonses in one week could not guarantee that everyone who did jury service nine weeks later (the study week) would receive a questionnaire. Some jurors serving in the study week may have originally been summoned earlier and then deferred into the study week, or been summoned after the survey was sent out if courts found that they needed additional jurors. In addition, some jurors who were summoned for jury service for the study week had their jury service deferred to a later date.

Questionnaires for all the English Crown Courts were machine coded with the unique juror number and pool number for each person summoned and posted along with the summonses. This ensured that all data from the questionnaires could later be linked to information about the final status of all those summoned for jury service. The use of juror numbers also ensured that the identity of prospective jurors did not need to be revealed to the project. Information printed on the questionnaire explained to prospective jurors that the questionnaires were voluntary, were part of a study of jury service by the University of Birmingham, and that information provided would remain confidential and would not affect their jury service¹⁰⁴. Prospective jurors were asked to return the questionnaires with the reply section of their summonses to the JCSB

¹⁰³ The week the jurors were summoned for was considered a normal period of jury service. The survey week did not fall either in the school summer holidays (which might generate more than average numbers of requests for deferral) or in a bank holiday period (when the number of jurors summoned might be lower than normal).

¹⁰⁴ The Jury Summoning Survey adhered to the eight principles of data protection as required by the Data Protection Act 1998.

in the return envelopes provided. Once the period of jury service covered by the survey was complete, EDS supplied the project with a dataset containing information on the final status of all jurors in the survey, and the two datasets were merged for analysis based on the unique juror numbers.

Response rate

The survey encompassed 7,050 individuals summoned for jury service in one week in February 2005 for all Crown Courts which summoned jurors that week. This covered 84 of the 94 Crown Courts in England and Wales¹⁰⁵. There was a high rate of response to the survey questionnaire. As Table 2.3 below shows, the overall response rate to the survey was 82%, with the highest response rate (91%) among those who served on the date for which they were summoned¹⁰⁶.

Juror Status	No. of summonses returned	No. of questionnaires returned	Survey response rate
Served on date summoned	2,833	2,569	91%
Served but Deferred	1,012	853	84%
Did Not Serve	2,141	1,486	69%
Total	5,986	4,908	82%

There are some large differences between Crown Courts in the number of jurors summoned each week, which reflect the fact that the number of jurors needed each week varies widely between courts. At the lower end, there are 20 courts that summon less than 35 jurors per week on average. At the upper end, there are 10 courts that summon over 150 jurors per week on average, and all of these are large metropolitan courts¹⁰⁷. However, the analysis was able to take the number of jurors summoned for each court into account in assessing the representative nature of those summoned for each court¹⁰⁸.

¹⁰⁵ The total number of Crown Courts in England and Wales is sometimes reported as 78 not 94. This refers to the 78 Crown Court Centres, which also include 16 satellite courts; 75 of the 78 Crown Court Centres and 9 of the 16 satellite courts were included in the summoning survey. The 3 Crown Court Centres not to summon jurors in the study week were Dorchester, Salisbury and Northampton. The 7 satellite courts that did not summon jurors in the study week were: Lancaster, Barnstaple, Bury St. Edmunds, Redditch, Dolgellau, Haverfordwest and Welshpool.

¹⁰⁶ The response rate of summonses during the survey period (5,986 of 7,050 or 85%) was similar to the average response rate of summonses.

¹⁰⁷ 7 courts in London along with Birmingham, Liverpool and Manchester Minshull Street Crown Courts

¹⁰⁸ Not all courts summoned jurors in the study week in numbers that corresponded to their weekly average. In some instances, courts only summoned a small number of jurors during the study week because the court did not need as many jurors as usual.

Analysis

The main question the analysis addressed first was to what extent those summoned by computerised random selection were representative of the local population for each Crown Court in England and Wales. A key feature of this research was that it adopted a court-based approach to the analysis of juror representation. Summoning is carried out on a court-by-court basis, and each Crown Court in England and Wales has a unique catchment area for summoning jurors. This is geographically defined by postcode district, and the study was able to create individual population profiles for each Crown Court using 2001 census data by postcode district. There may be some limited differences between populations based on census data and the population profiles of those on summoning source lists¹⁰⁹. However, the ability to correlate census population data precisely with Crown Court juror catchment areas by postcode district meant that this provided the most accurate estimate possible of the population demographics for each Crown Court.

Jurors are summoned from voter registration lists provided to the JCSB by local authorities. The study was not designed to specifically analyse the representative nature of summoning source lists. However, if it was found that those summoned were not representative this would indicate a potential lack of representation on the source lists. Conversely, if those summoned were representative of the census populations in that area, then this would suggest that no particular problem existed with the source lists. Research on the representative nature of electoral registers suggests that some under-representation of ethnic minorities summoned from electoral registers could be expected. However, there is no clear agreement about which ethnic groups are under-represented on electoral lists¹¹⁰, and the Electoral Commission has found that other demographic factors (such as age, social class and location) are equally, if not more, influential in determining voter registration¹¹¹.

Analysis of the summoning survey focused first on ethnic minority representation among those summoned on a court-by-court basis. It determined whether there was any statistically significant difference between BME representation in the juror catchment area and BME representation among those summoned for each Crown Court. This resulted in a classification of Crown Courts as either “High Ethnicity Courts” or “Low Ethnicity Courts” based on the size of the BME population in a court’s juror catchment area. Non-return of summonses was also

¹⁰⁹ See discussion in Chapter 3.

¹¹⁰ See discussion in Chapter 3.

¹¹¹ *Voter Engagement among Black and Minority Ethnic Communities* Electoral Commission Research Report (July 2002).

examined to explore whether there appeared to be any failure to reach ethnic minorities in the summoning process or unwillingness on the part of ethnic minorities to do jury service. The analysis then examined the second key issue: the representative nature of those doing jury service. It first determined whether the proportion of BME jurors serving in each Crown Court was significantly different from the proportion of BME groups in the court's juror catchment area, and then examined the extent to which other socio-economic factors had a greater impact than ethnicity on determining whether those summoned actually served or not.

Jury service study

One limitation of the summoning survey was that it covered only one week of juror summoning, and therefore it was not possible to determine whether random selection resulted in any significant fluctuations in the proportion of ethnic minorities serving at each court from week to week. In addition, as other jurors may have been summoned later for the same jury service date covered by the study, it was not possible to be certain of the exact composition of the jury pool (those who attend court for jury service) and individual juries in each court. As a result, a more detailed study was undertaken of the composition of jury pools (Stage 5 of the juror selection process), jury panels (Stage 6) and juries (Stage 7)¹¹² in three Crown Courts where there are substantial numbers of ethnic minorities in the local population. This study addressed three specific questions:

1. How representative of the local population are jury pools in terms of ethnicity and a range of demographic factors?
2. How ethnically representative are jury panels and actual juries in relation to the local population?
3. Does final selection of the jury in court indicate any bias against ethnic minorities?

Methodology

A socio-economic survey of all those doing jury service over a four-week period at three Crown Courts was conducted. Each juror attending court for jury service in this period was asked to complete a voluntary questionnaire, which was almost identical to the questionnaire in the summoning survey. Two additional questions were included on the jury service questionnaire: type of profession and age group. The question on profession was designed to provide a more complete picture of social class, and the age question was included because the summoning survey had found that a substantial proportion of jurors (most of whom did not serve) did not

¹¹² See Figures 2.1.

provide the JCSB with the date of birth information requested on the summonses¹¹³. All other questions were exactly the same as those used on the summoning survey. The anonymity of all jurors was again ensured through the use of unique juror numbers.

At the time of selecting the three Crown Courts for the Jury Service Study, 2001 census data in postcode district form had not yet become available, and it was therefore not possible to establish a precise population profile for each court's juror catchment area. The courts therefore had to be chosen based on the best available information at the time about the BME population in the court area and the profile of the court itself. Blackfriars, Reading and Manchester Minshull Street Crown Courts were selected, as they all had a substantial number of jurors serving in the jury pool each week and appeared to have high ethnic minority population levels in the catchment area, but they had different ethnic profiles and covered different court regions. Blackfriars is an Inner London court with a juror catchment area containing one of the largest BME populations in the country as well as a highly diverse BME population. Reading is in the South East court region and has several large Asian populations in the catchment area (centred around Slough and Reading), but also a wide juror catchment area covering an affluent suburban south east population as well as a rural population. Manchester Minshull Street is a large northern inner city Crown Court, with a large catchment area encompassing the Greater Manchester area, which includes several large BME populations centres (such as Oldham). All three courts hear the broad range of cases that can be tried in a Crown Court.

The project director attended court on the first day of jury service for each new pool of jurors, explained the study to all new jurors and asked them to complete the voluntary questionnaire. The means of ensuring their anonymity through their juror number was explained, and a locked letter box was provided in the jury lounge for jurors to leave their completed questionnaires. The morning of the first day of jury service is an extremely busy time for both jurors and court staff, but both were enormously cooperative at all three courts, and the success of this study owes much to the assistance of the staff at all three courts. The data collection method was piloted for three weeks at Blackfriars Crown Court in December 2002 and January 2003¹¹⁴, and then run for a further three consecutive weeks in March and April 2003. The survey was then run at Reading Crown Court for four consecutive weeks in July 2003 and for four consecutive weeks at Manchester Minshull Street Crown Court during October and November 2003.

¹¹³ Among those jurors who did jury service, 93% provided data of birth information on their summons reply sheet, while only 25% of those who did not serve (i.e., were disqualified or excused) provided this date of birth information.

¹¹⁴ Piloting showed that a high response rate to the questionnaire depended on direct requests to jurors by an independent researcher who could explain why the information was needed.

As Table 2.4 below shows, there was a very high response rate to the survey at all three courts, and this was crucial to establishing as complete a picture as possible of the ethnic composition of actual juries in each court.

Court	Total in Jury Pools	Responses to survey	Survey response rate
Manchester Minshull Street	266	256	96%
Reading	174	161	93%
Blackfriars	200	171	86%
Total	640	588	92%

EDS subsequently provided information to the project on juror number, trial number for any case where a juror was selected for a jury panel, and whether or not a juror served on the jury when he or she was selected for a jury panel. Table 2.5 below shows the total number of trials in each court where jury panels were created and where juries were empanelled.

Court	Trials with Jury Panels	Juries Empanelled
Blackfriars	37	25
Manchester Minshull Street	34	25
Reading	21	19
Total	92	69

Analysis

The first part of the analysis examined the representative nature of the jury pools in each court. To do this detailed demographic profiles were created for each court based on census data for the postcode districts comprising the court’s juror catchment area. The first issue examined was whether there were any substantial fluctuations from week to week in the proportion of ethnic minorities in the jury pool at each court. By establishing the level of BME representation in complete jury pools in these three courts, the jury service study was also able to indicate how accurate the summoning survey was in determining the level of BME representation among those serving in individual courts. The representative nature of jury pools, and the relative

importance of ethnicity in terms of representation, was explored further by comparing the age, gender, income, profession, employment status and religion of those in the jury pool in each court with the population demographics in each court's juror catchment area.

The analysis then determined how ethnically representative the final two stages of juror selection were: jury panels and juries. Even when a juror is in the jury pool, he or she may not be selected to be on a jury panel. The jury panel is the group of jurors who are selected from the jury pool by the court's computerised random selection programme when a jury is needed in court. The number of jurors on a panel can vary, but it is always more than 12. It is from this group that the final jury will be selected. However, even if a juror is selected for a jury panel, he or she may still not serve on the final jury. The names of each member of the jury panel are printed on index cards and given to the court clerk. All members of the jury panel are then brought into court, and the clerk shuffles the cards and reads out the first 12 names. These 12 jurors then form the jury (unless there is any challenge to a juror or the judge excuses a juror from the case). This final stage of jury selection (jury empanelling) is the only stage that does not involve computerised random selection of jurors, and it had been suggested that court clerks might sometimes inadvertently avoid cards where a juror's name was difficult to pronounce. It is reasonable to suppose that this was more likely to occur with jurors from a BME background than with White British jurors. The analysis examined whether there were any differences between White and BME jurors in the extent to which they were selected for actual juries once they were on a jury panel.

Jury decision-making study

Concern about the under-representation of ethnic minorities on juries implicitly assumes that the ethnic make-up of juries may affect the jury's fairness, especially towards ethnic minorities. However, little is known in this country about the influence of race on jury decision-making. This study represents the first time research into racial bias and juries has been carried out in this country. The specific Issues examined include:

1. Does ethnicity of the defendant affect jury verdicts?
2. Does ethnicity affect individual juror votes?
3. Are other factors more influential in jury decision-making than ethnicity?

While this type of research has never been carried out here before, it is not untried and untested. There has been over 30 years of empirical research into race and juries in the United States, and this study profited from the lessons learned in that earlier research.

Jury decision-making research

Three main methodologies can be used to examine the relationship between race and criminal jury decision-making: archival analysis of verdicts in actual cases, post-trial interviews with jurors, and case simulation¹¹⁵ experiments in which cases are presented in a controlled setting. Research with actual cases and juries has the inherent problem that no two cases are identical, and this makes it very difficult to disentangle the factors and influences that may have led to a particular verdict, and to draw conclusions that can be extrapolated beyond individual cases. Case simulation permits a systematic and controlled study of the impact of ethnicity on jury decision-making and can therefore produce more insights and more reliable findings than research on actual juries. However, it is important to recognise that case simulation does not place jurors in the position where their decisions have real consequences for a defendant. Therefore, decision-making research will ideally include both simulated and actual case analysis, and this is the approach taken in this study.

Even though actual criminal trials contain a vast number of variables other than race which may affect outcomes¹¹⁶ and these studies cannot establish a causal relationship between race and jury decisions¹¹⁷, actual case analysis can still be valuable, particularly in identifying case factors that consistently appear to be related to verdicts. For instance, a large-scale study of race and jury decision-making in a number of different court regions in the United States found that juror race did appear to be related to jurors' first votes in one court region¹¹⁸. Post-verdict interviews with jurors, like actual verdict analysis, also cannot establish causal relationships, only possible correlations between case factors and jury verdicts. Interviews rely entirely on jurors' self-reported perceptions and recollections, and it is well documented that individuals often lack the ability to accurately identify the factors that influence their judgement and behaviour¹¹⁹. This can be particularly problematic in relation to racial issues¹²⁰, where jurors may intentionally not provide accurate answers to direct questions about race, or they may not be consciously aware of how race influenced them. This can be seen in the contradictory findings which have emerged from juror interview research in the United States¹²¹.

¹¹⁵ Sometimes also referred to as mock jury research.

¹¹⁶ The quality of legal representation, type of case, evidence, area where case is tried, etc..

¹¹⁷ The US Supreme Court acknowledged that this analysis can only identify a discrepancy that appears to correlate with race. See *McCleskey v. Kemp* 481 U.S. 279, 312 (1987).

¹¹⁸ In Washington D.C., African American jurors were more likely to vote not guilty in first votes where the defendant was from an ethnic minority group and accused of a drugs offence; however, this difference did not survive to the jury's final verdict. S. Garvey et al, "Juror First Votes in Criminal Trials" *Cornell Law School Legal Studies Research Paper Series*, Paper 3 (2004)

¹¹⁹ R. Nisbett & T. DeCamp Wilson "Telling More than We Can Know: Verbal Reports on Mental Processes" 84 *Psychology Review* 231 (1977)

¹²⁰ A. Greenwald & M. Banaji "Implicit Social Cognition: Attitudes, Self-Esteem and Stereotypes" 102 *Psychology Review* 4 (1995)

¹²¹ Compare findings from W. Bowers et al "Death Sentencing in Black and White" 2 *University of Pennsylvania Journal of Constitutional Law* 171 (2001) and findings from N. Marder "Juries, Justice and Multiculturalism" 75

In contrast to case analysis and juror interviewers, case simulation is recognised as the most methodologically sound approach to understanding the causal relationship between juror decisions and factors such as race. With case simulation, a trial can be filmed and then edited so that separate cases can be created where the only differences between versions of the case are the specific factors of interest (such as the race of the defendant). Case simulation is therefore able to do what actual case analysis and juror interviews cannot; it enables a systematic and controlled study of jury decision-making that can reveal causal connections between case elements and juror decision-making. Criticisms made of case simulation in the past relate primarily to the way the method has been used rather than the method itself. Earlier studies in the United States relied heavily on university students as participants, used written case summaries instead of actual or reconstructed trials, and failed to provide participants with jury instructions. A major review of over 30 case simulation studies¹²² noted that many of these studies involved such small numbers of participants that the results were not statistically significant, examined the judgements of individual jurors not juries, and did not allow for deliberation among participants.

In addition, almost all previous research has been concerned with whether White jurors are biased against Black defendants. While no clear consensus has emerged from these studies in the United States¹²³, several statistically reliable studies have indicated that certain factors may affect whether White jurors demonstrate bias against Black defendants. These include the nature of the evidence, judicial instructions, type of crime and the existence of racially-charged evidence. One study found that White jurors ignored incriminating but inadmissible evidence when the defendant was White but not when the defendant was Black¹²⁴. Another found that in the absence of judicial instructions emphasising the importance of juror impartiality, White jurors gave higher guilt ratings to Black defendants than to White defendants.¹²⁵ There is also an indication that jurors have stereotypes about the types of crimes defendants from different ethnic groups tend to commit, and that White jurors were more likely to demonstrate racial bias when a Black defendant commits a violent crime¹²⁶. Furthermore, White jurors did not appear to

California Law Review 659 (2002). Bowers found that Black jurors were more likely to perceive the jury as close-minded, to feel like an outsider and to regret the jury verdict, while Marder found no consistent differences in jurors' perceptions of the deliberation process based on racial differences.

¹²² Sommers and Ellsworth (2003) *supra* note 75.

¹²³ See R. Mazzella and A. Feingold "The Effects of Physical Attractiveness, Race, Socioeconomic Status, and Gender of Defendants and Victims on Judgements of Mock Jurors: A Meta-Analysis" 24 *Journal of Applied Social Psychology* 1315 (1994); R. Poulson "Mock Juror Attribution of Criminal Responsibility" 20 *Journal of Applied Social Psychology* 1596 (1990)

¹²⁴ J. Johnson "Justice is Still Not Colorblind: Differential Racial Effects of Exposure to Inadmissible Evidence" 21 *Personality and Social Psychology Bulletin* 893 (1995)

¹²⁵ E. Hill and J. Pfeifer "Nullification Instructions and Juror Guilt Ratings: An Examination of Modern Racism" 16 *Contemporary Social Psychology* 6 (1992)

¹²⁶ This was first suggested by Sunnfrank and Fontes and confirmed in empirical research by Gordon. See M. Sunnfrank and N. Fontes "General and Crime Related Racial Stereotypes and Influence on Juridic Decision" 17

be influenced by the race of the defendant where there were overt racial issues in a case, but where these racial issues were removed White jurors were more likely to vote to convict the Black defendant¹²⁷.

Little research has been conducted with non-White jurors, and the few studies that have done so have been confined almost exclusively to comparing the judgements of White and Black jurors, not other ethnic groups¹²⁸. The few studies to compare White and Black juror judgements found that the race of the defendant affects Black jurors' judgements more than White jurors' judgements. These studies found that Black jurors exhibited same-race leniency towards Black defendants and were more likely to rate White defendants more harshly than Black defendants¹²⁹. However, there is no research evidence that Black jurors are responsible for widespread acquittals of Black defendants. Finally, almost all this previous research has examined the impact of race on individual jurors' judgements and attitudes, not verdicts of juries¹³⁰. This is because jury decision-making studies are more time consuming and logistically complicated. However, in the real world of criminal trials it is ultimately only the verdict of the jury that counts, not individual juror votes.

Materials and methodology

The research materials developed for this study consisted of a set of films all containing the identical criminal case, but where each individual film has a seamless variation in the race of specific participants. Juries viewed different versions of the same case, one in which the defendant was White and one in which the defendant was from a BME group (either Asian or Black). These juries were randomly assigned to view one of the trial versions, and therefore any differences in their judgments of the case can be logically attributed to the influence of the defendant's race. It is important to recognise that case simulation has been used in this study not because the Contempt of Court Act prevents research on actual jury deliberations, but because the case simulation method permits a systematic and controlled study of jury decision-making and can therefore produce more reliable findings than research on actual juries.

Cornell Journal of Social Relations 1 (1983) and R. Gordon "The Effect of Strong Versus Weak Evidence on the Assessment of Race Stereotypic and Race Nonstereotypic Crimes" 23 *Journal of Applied Social Psychology* 734 (1993)

¹²⁷ S. Sommers and P. Ellsworth, "White Juror Bias: An Investigation of Racial Prejudice against Black Defendants in the American Courtroom" 7 *Psychology, Public Policy and Law* 201 (2001)

¹²⁸ One exception is a study comparing the judgements of White and Hispanic mock jurors. J. Lipton "Racism in the Jury Box: The Hispanic Defendant" 5 *Hispanic Journal of Behavioural Sciences* 275 (1983)

¹²⁹ See P. Skolnick & J. Shaw "The O.J. Simpson Criminal Trial Verdict: Racism or Status Shield?" 53 *Journal of Social Issues* 503 (1997); Sommers & Ellsworth (2000) *supra* note 76.; D. Abwender & K. Hough "Interactive Effects of Characteristics of Defendant and Mock Juror on U.S. Participants' Judgement and Sentencing Recommendations" 141 *Journal of Social Psychology* 603 (2001)

¹³⁰ One exception is the recent study by Sommers that examined the impact of jury ethnicity on jury decision-making. See Sommers (2006) *supra* note 83.

The main criticism of case simulation studies is that they lack the authenticity of actual cases, either in the subjects that take part or in the case materials. However, extensive efforts were made to bring the case simulation in this study as close as possible to conditions experienced by real juries. This was done through the use of an actual case as the basis for the case materials¹³¹, the use of a real courtroom, judge, barristers, police, court staff and witnesses in the making of the experimental materials, as well as the use of real jurors sitting as a jury at a Crown Court as the participants in the experiments.

The case involves a male defendant accused of causing actual bodily harm (ABH)¹³², by punching a male victim in the face after a confrontation outside a bar late at night. In the core case, the defendant is charged with a single count of ABH. However, in some case variations the defendant is also charged with an additional offence of Racially-aggravated ABH¹³³. The design of the case reconstruction was based on the use of original case materials (i.e., witness statements), and on the author's observations of the actual case. Development and piloting of the case materials was carried out between June 2004 and January 2005¹³⁴, and the experiments were run at Blackfriars Crown Court between February 2005 and June 2006. The case simulation films contained all the main elements of an actual trial: prosecution opening statement, testimonial evidence, prosecution and defence closing arguments, and instructions on the law by the judge.¹³⁵ The following elements of the case were controlled for in each version: case facts, witnesses, evidence, judge, barristers and court staff. Table 2.6 below outlines each element presented in the case and the possible variations.

¹³¹ The choice of case was based on monitoring cases at Crown Courts during 2002-2003, and the selection of a case where the evidence had clearly divided the jury and resulted in a hung jury. However, all names and locations in the original case were altered in order to ensure anonymity of any persons involved in the original case.

¹³² Under Section 47 of the Offences Against the Person Act 1861.

¹³³ Under Section 29 (1) (b) of the Crime and Disorder Act 1998. The evidence of racial aggravation is that, before the defendant punched the victim (which is not disputed) it is claimed that he said "have some you Black/Paki/White bastard". In the version with a single charge of ABH, the claim is that the defendant said "have some you bastard" before he punched the victim.

¹³⁴ The case materials were piloted with actual jurors at Southwark, Manchester Minshull Street and Blackfriars Crown Courts from July to September 2004. Feedback indicated that the authenticity of the case could be increased further by increasing the number of witnesses giving evidence, and as a result additional evidence was filmed in October 2004. The new case materials and the method of recruiting jurors as participants were piloted in December 2004 and January 2005 at Blackfriars and Manchester Minshull Street Crown Court.

¹³⁵ This is important in light of the finding that jury instructions are significant in mitigating racial bias. See J. Pfeifer and J. Ogloff, 'Ambiguity and Guilt Determinations: A Modern Racism Perspective', 21 *Journal of Applied Social Psychology*. 1713 (1991).

Table 2.6. Elements of case and variations in the case simulation

Case element	Variation
Charge	ABH
	ABH & Racially-aggravated ABH
Prosecution opening	
Prosecution witness 1: Victim	Black
	White
	Asian
Prosecution witness 2: Victim's friend	
Prosecution witness 3: Police Constable	
Defence witness 1: Defendant	Black
	White
	Asian
Defence witness 2: Defendant's friend	
Defence witness 3: Barman	
Prosecution closing	
Defence closing	
Judge's instructions on the law	

One of the unique aspects of this project was the authenticity of the participants in the study. All participants were real jurors who had just been dismissed from jury service, and the group of jurors recruited to participate in the experiments were selected by the same computerised random selection system used for creating actual jury panels. When more than 12 jurors were about to be dismissed from jury service, the jury manager programmed the court computer system to randomly select a group of jurors in the same way it would select a jury panel for an actual case. Once these jurors were dismissed, they were asked if they would be willing to take part in the research project¹³⁶. They were told it involved watching a film of a case, deliberating for a short period and completing questionnaires¹³⁷. Participants were paid £20 for taking part in the study, and there was a 98% participation rate among dismissed jurors. This helped to ensure a larger sample size than in any other similar study on race and juries conducted in other jurisdictions, and a sample where not only all the participants were real jurors but where each

¹³⁶ Some dismissed jurors had served on a jury during this or a previous period of jury service, while others had not served on a jury. However, this did not present a methodological issue, as selection of jury panels in real cases may also combine jurors with and without experience of serving on a jury. The Crown Courts Study, for instance, found that of 8,232 jurors serving on trials at Crown Courts in a two-week period, 43% of these jurors had already served on a trial during their current period of jury service. Zander and Henderson *supra* note 12 at p.226.

¹³⁷ Jurors were assured of their anonymity and the confidentiality of the views expressed in the experiment, and they were able to remain anonymous by being assigned a unique number to be used in the study.

group comprised a valid number of jurors to constitute a jury (between 9 and 12).¹³⁸ Table 2.7 below shows the total number of jurors, juries and defendants in the final study at Blackfriars Crown Court.

Table 2.7. Sample size and parameters in case simulation study

Size of the Jury	Number of Juries in the Study	Total Number of Jurors
12 persons	23	276
11 persons	3	33
10 persons	1	10
Total	27	319

Another unique aspect of the research was that it included BME as well as White jurors. Few studies in the United States have included ethnic minority participants, and even fewer have included ethnic minority and White participants in the same study. By running the experiments at Blackfriars Crown Court, where a significant proportion of the jurors are from BME backgrounds, this enabled the study to draw direct comparisons between the decision-making of White and BME jurors.

Each jury was shown a randomly selected version of the case, and after viewing the case, each juror was asked to record his or her initial vote on whether the defendant was guilty or not guilty and a degree of confidence in that assessment. The jurors then deliberated as a jury in an actual jury deliberating room, after which they recorded their final individual votes, as well as their impressions of the evidence and the courtroom participants and more general views of the legal system and jury trials¹³⁹. All participants also completed personal profile forms covering their gender, age, income, profession, employment status, ethnicity, religion and first language.¹⁴⁰

¹³⁸ One of the largest previous mock jury studies had a sample of 200 jurors (see Sommers supra note 83). Only 60% of the “jurors” in that study were real jurors, with the remaining participants recruited through advertisements in local newspapers. The study used 6-person juries. Juries of less than 12 jurors and as few as 6 are used in a number of states in the US, although more often for civil rather than criminal trials. Research has shown that the size of the jury can affect decision-making, see R. Rope “Jury Size and Verdict Consistency” 14 *Law and Society Review* (Summer 1980).

¹³⁹ The experiment times were determined by the actual trial the case was based on. The trial-to-deliberation ratio (3:1) was the same in both the experiments and the actual case. The actual trial lasted 15 hours and deliberation 5 hours (two separate two-and-a-half hour blocks). The case simulation included a trial film lasting one hour followed by 20 minutes of deliberation. The deliberation time also reflects findings from the Crown Court Study, which found that the vast majority of real juries (75%) deliberated for under an hour when the trial lasted for under half a day. Zander and Henderson supra note 12 p.225.

¹⁴⁰ Once all the jurors had completed the questionnaires, the author discussed the case and the research project with the jurors and answered any questions about the research. The jurors were also able to provide feedback to the author on the authenticity of the case materials and the deliberation process.

Analysis

A unique aspect of this research is that the methodology enabled the analysis to explore the impact of ethnicity on both *jury* decision-making and *individual juror* decision-making. Previous research in the United States has almost exclusively examined race in relation to the decision-making of individual participants (jurors), not the impact of race on group (jury) decision-making¹⁴¹. Due to the way jurors were recruited for this study, it was possible to analyse the impact of individual juror decision-making on the verdict of the jury as a whole. It was also possible to examine how a number of other factors affected juror decision-making and how important they were in relation to ethnicity. These included: the existence of an explicit racial dimension to the case, jury deliberation, victim ethnicity, number and severity of charges against the defendant, and other juror background characteristics.

Jury verdict study

It has been recognised that any study of the relationship between ethnicity and jury verdicts is best served by the use of multiple methodologies¹⁴². The jury project was able to employ case simulation, supplemented by a limited analysis of actual jury verdicts. The Jury Verdict Study explored whether, in actual cases in three Crown Courts (Blackfriars, Manchester Minshull Street and Reading), any differences in jury verdicts appeared to be associated with the ethnicity of the jury or the defendant, and whether there were any general differences in verdicts between courts¹⁴³. The analysis only considered those verdicts that were reached by jury deliberation (i.e., directed verdicts were excluded), and Table 2.8 below shows the total number of verdicts by deliberation in each court during the study period¹⁴⁴.

Court	No. of jury verdicts by deliberation
Manchester Minshull Street	51
Blackfriars	49
Reading	86
Total	186

¹⁴¹ See Sommers (2006) supra note 83.

¹⁴² Sommers and Ellsworth (2003) supra note 75.

¹⁴³ Three databases were combined for the analysis: the Jury Service Study database on individual juror demographics in each court, the Juror database on juror selection for juries at each court and the Crest database on these jury trials (defendant ethnicity, offence and verdict) at each court. The three databases were linked by juror number and trial number, and this ensured complete anonymity of both jurors and defendants.

¹⁴⁴ There are more verdicts than trials due to multiple defendants in trials or multiple charges against a defendant.

The analysis examined, first, whether there was any correlation between jury verdicts and the ethnic composition of the juries (mixed ethnicity versus all-White juries) in the three individual courts and, then, whether any correlation appeared to exist between jury verdicts and the ethnicity of defendants (White versus BME) in each court.¹⁴⁵ The intention of the study was to provide a limited exploration of actual jury verdicts in these courts, which might help to shed light on the results of the case simulation study.

¹⁴⁵ This part of the study only encompassed verdicts at Blackfriars and Manchester Minshull Street Crown Courts. Reading Crown Court had to be excluded from this part of the analysis because the ethnicity of the vast majority of defendants at that court had not been entered into the HMCS Crest database during the study period.