

## Chapter 6. Jury Decision-Making

The previous chapters in this report have examined the extent to which those summoned, those serving as jurors and on juries at Crown Courts in England and Wales are representative of the local population. While the analysis examined a range of juror demographics in assessing representation, the focus has been on ethnicity. This reflected both the need for reliable information on the extent to which ethnic minority groups are represented in the jury process and continuing concerns that ethnic minorities may be under-represented on juries in England and Wales. Both the Runciman Commission and Auld Review assumed that the ethnic make-up of juries may affect the fairness of juries, especially towards members of ethnic minorities, and it was this assumption that lay behind their proposals for racially-balanced juries. However, to date there has been no research conducted in this country on how race may affect jury decision-making<sup>245</sup>. This chapter explores the validity of these existing assumptions, and focuses on the question underlying concerns about ethnicity and jury representation: does race actually influence jury decision-making?

### Aims and objectives

This is the first time research on race and jury decision-making has been undertaken in this country. However, such research is not untried and untested. There has been over 30 years of empirical research on race and juror decision-making in the United States, which has examined how a defendant's race may influence jurors' perceptions and judgements, and how the racial composition of a jury may affect deliberations and final verdicts. The current research project benefited from the lessons learned in this earlier research, which has established the necessary requirements of research methodologies in this field and the key steps needed to ensure the highest level of reliability of results<sup>246</sup>.

The core component of the research undertaken in this project was a case simulation study of jury decision-making. This was supported by an exploratory study of jury verdicts in actual cases, which was designed to help identify factors that may need to be considered in interpreting the results of the case simulation study. This follows the methodological approach recommended for examining jury decision-making, in which causal connections between ethnicity and juror decisions are examined through case simulation, and actual case analysis is

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<sup>245</sup> Note on terminology used in this chapter: Because all previous research on race and jury decision-making has been conducted in the United States where the term "race" is widely used and accepted in social science, race-based terminology is used where this previous research is discussed. See note 1.

<sup>246</sup> See Chapter 2 for a full discussion of this body of research.

used to help identify factors that may correlate to race and verdicts in actual cases<sup>247</sup>. It is also important to point out that case simulation has been used *not* because section 8 of the Contempt of Court Act 1981 prohibits interviewing jurors about their deliberations, but because case simulation is the most reliable method of determining whether causal connections exist between case characteristics (such as the race of the defendant) and jury decision-making.

The case simulation involved filming and editing a criminal trial so that selected elements could be systematically varied while all other aspects of the case remained exactly the same. The case was shown to a large number of real jurors, thereby increasing the reliability of findings. Importantly, all jurors who took part in the study participated as part of a jury, and this meant that the study was able to examine the impact of ethnicity on both jury verdicts and the votes of individual jurors. This was a major strength of the research project, as the impact of the racial composition of a jury has rarely been tested empirically, even in the United States. The case simulation examined the following questions:

1. Does the ethnicity of the defendant affect jury verdicts?
2. Is individual juror decision-making affected by the ethnicity of the defendant?
3. To what extent do other case factors, the process of deliberation or other juror characteristics affect juror decision-making?

In order to provide background information on jury verdicts, a limited study of actual verdicts at Blackfriars, Manchester Minshull Street and Reading Crown Courts was also carried out. Actual case analysis has its limitations because of the uniqueness of individual cases<sup>248</sup>, but the intention in this study was to see whether jury verdicts in actual cases suggested any specific factors that should be taken into consideration in interpreting the results of the case simulation study. The study of actual verdicts looked at whether any relationship appeared to exist between jury verdicts, the ethnicity of defendants and the ethnic composition of juries in these courts. The results of this background study are discussed in the section below exploring the factors that may help to explain the main findings of the case simulation study.

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<sup>247</sup> See Sommers and Ellsworth (2003) *supra* note 75.

<sup>248</sup> See Chapter 2 for a discussion of the strengths and weaknesses of actual case analysis.

## Case simulation study

The case simulation research conducted in this study was based on a criminal case in which the defendant is accused of causing actual bodily harm (ABH). The research materials consist of a set of films all containing the same core criminal case, but where each individual film has a seamless variation in the race of the defendant. The male defendant is accused of punching the male victim in the face after a confrontation on the street at night, and 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 ABH<sup>249</sup>, and in some case variations the ethnicity of the victim was also altered. The case is drawn from an actual case tried at Blackfriars Crown Court in 2003, although all names and locations were changed to ensure the anonymity of all parties.

The films contain all the critical elements of an actual trial: prosecution opening statement, evidence-in-chief and cross-examination, prosecution and defence closing arguments and instructions by the judge.<sup>250</sup> Extensive steps were taken to bring the simulation as close as possible to conditions experienced by real juries. The case was filmed in a courtroom at Blackfriars Crown Court, and was presented entirely from the point of view of the jury<sup>251</sup>. The authenticity of the case was further enhanced by the participation of a judge, barristers, court staff and witnesses, and by running the experiments in a Crown Court with real jurors who had just completed their jury service. The study varied the race of the defendant using three different defendants (one White, one Black and one Asian). In order to minimise any individual differences beyond ethnicity, the three men were all of the same general appearance and age and were identically dressed<sup>252</sup>.

The case was piloted in three Crown Courts<sup>253</sup>, and the final experiments were all run at Blackfriars Crown Court. The case simulations were conducted in a jury retiring room at the court, and each jury was shown a randomly selected version of the case. As soon as the case concluded, each juror was given a brief questionnaire to complete. This asked how they would vote (guilty or not guilty) and how confident they felt about their vote at that stage. The jurors

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<sup>249</sup> 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.

<sup>250</sup> This is important in light of the discovery 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.

<sup>251</sup> It was filmed from fixed cameras in the jury box and therefore presented the exact view jurors have of a trial.

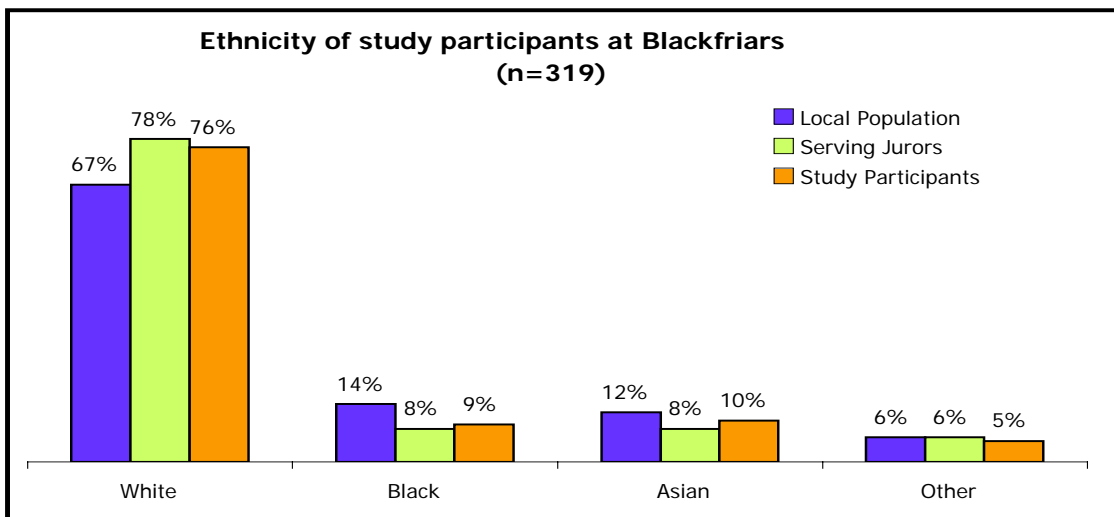
<sup>252</sup> The same approach was also taken with the three different victims.

<sup>253</sup> Southwark, Manchester Minshull Street and Blackfriars

were then left to deliberate as a jury and try to reach a verdict<sup>254</sup>. At the end of the deliberation period, each juror was given a second questionnaire to complete, which repeated the questions on the first questionnaire, but this time asked for their final individual vote. All the jurors were then each given a final questionnaire to complete, which asked for more detailed information about their individual impressions of the evidence and witnesses, as well as their views on the criminal justice system in general.

The study included 319 dismissed jurors at Blackfriars Crown Court, comprising 27 juries. All juries included the required number of jurors to constitute a legally valid jury for an actual trial<sup>255</sup>, and the vast majority of juries (23) had 12 jurors. The Jury Service Study, reported in Chapter five, examined the demographic profile of jury pools at Blackfriars over a number of weeks and assessed the representative nature of those doing jury service at that court in relation to the local population. Identical demographic data were collected from all jurors who participated in the jury decision-making study, and it was therefore possible to assess how closely the participants reflected both the jury pool and the local population for Blackfriars Crown Court. In terms of the key variable in this study (ethnicity), Figure 6.1 below shows that the 319 jurors (243 White and 76 BME) who participated in the study closely reflected the ethnic composition of both jury pools and the local population at Blackfriars.<sup>256</sup>

**Figure 6.1. Ethnicity of jurors participating in case simulation at Blackfriars**



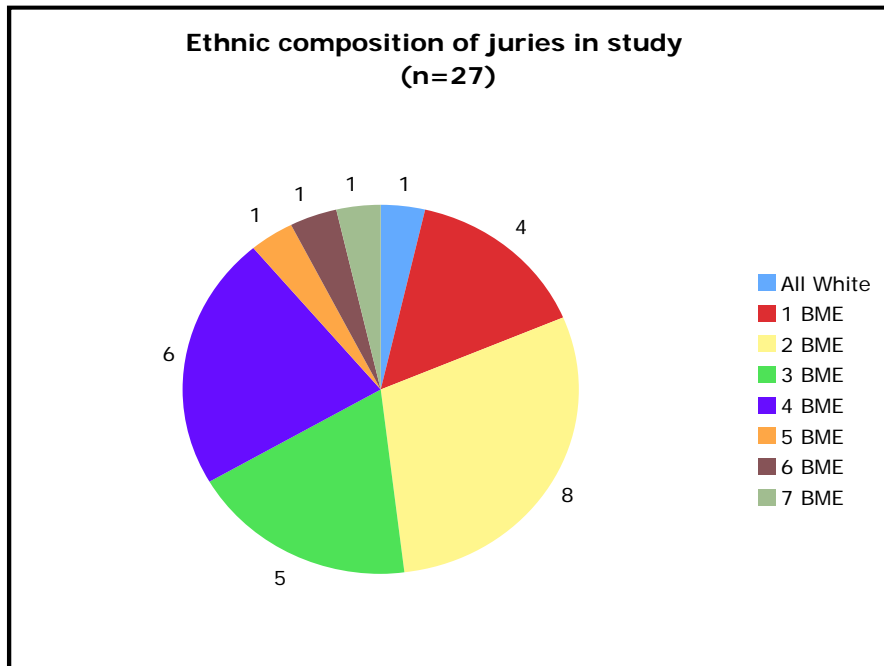
<sup>254</sup> The deliberation time (20 minutes) corresponded proportionally to the time the jury spent deliberating in the original trial in relation to the length of the actual trial and the length of the film version of the case. The deliberating time also reflects jury deliberating times in real trials on short cases. For more details see Chapter 2 supra note 139.

<sup>255</sup> In criminal trials in England and Wales, a verdict can be delivered by a jury of at least 9 and not more than 12 jurors.

<sup>256</sup> The jurors also closely reflected the profile of the jury pool at Blackfriars in terms of all the remaining demographic factors covered in the study (religion, first language, employment status, occupation, income, age and gender). This is discussed in more detail in the section below examining the impact of other juror background characteristics on juror decision-making.

Of the 27 juries that took part in the study at Blackfriars, 26 were racially mixed. This also reflects the findings of the jury service study (reported in Chapter five), which showed that almost all juries at Blackfriars are racially mixed. This is a key feature of the study, and **the findings of the case simulation study therefore relate specifically to decision-making by racially mixed juries and by jurors serving on these juries**. Figure 6.2 below shows the number of juries with different levels of BME representation in the case simulation study group, and that most juries (85%) had between 1 and 4 BME jurors. Even at Blackfriars Crown Court, which has one of the highest levels of BME juror representation of any court in England and Wales, BME jurors are in the minority on almost all juries. However, this accurately reflects BME representation in the local population (33%).

**Figure 6.2. Ethnic composition of juries in case simulation**



The results of the case simulation study address two main issues first: the impact of ethnicity (1) on jury verdicts and (2) on jurors' individual votes on racially mixed juries. The analysis then looks at individual juror decision-making in more detail, exploring whether the existence of an explicit racial aspect to the crime or jury deliberations affected juror decision-making. Next, the chapter examines how juror attitudes and the results of the study of actual jury verdicts at Blackfriars, Manchester Minshull Street and Reading might help to explain the results of the simulated jury decision-making study. Finally, the chapter examines whether the ethnicity of the victim, the number and severity of charges against the defendant affected juror decision-making,

or whether other juror characteristics (such as gender, age, income, occupation, religion and language) may have been more significant than ethnicity in juror votes.

### Jury verdicts and ethnicity

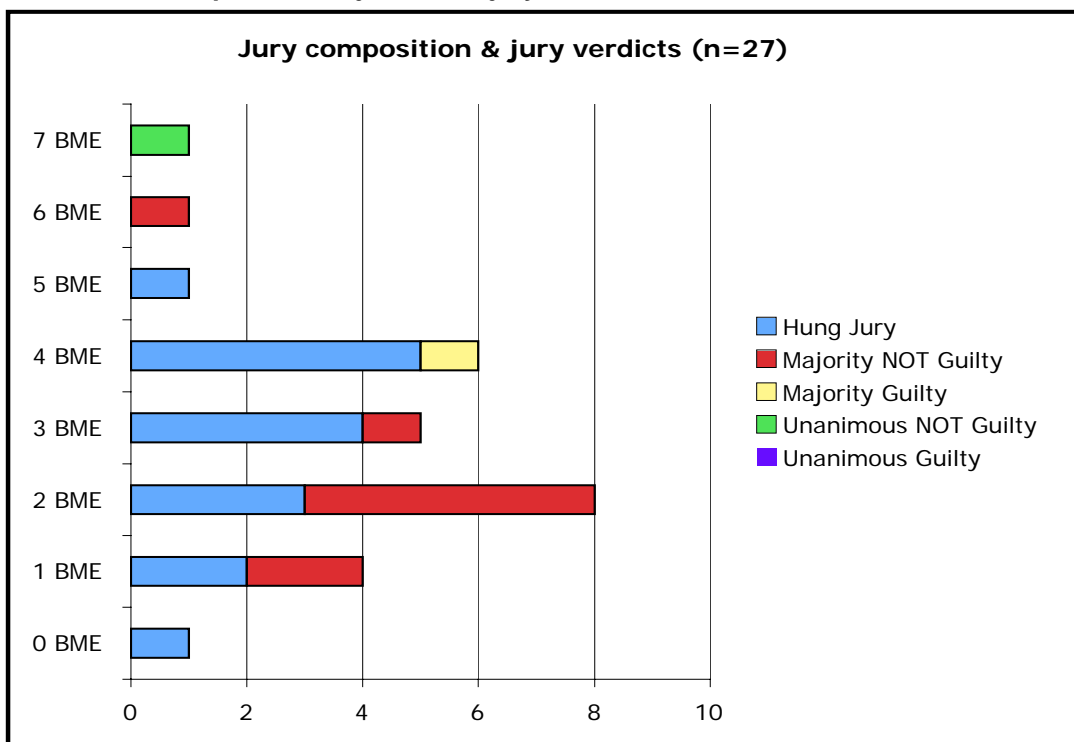
Each of the 319 jurors who participated in this study did so as part of a jury, and the study was therefore able to determine whether the ethnicity of the defendant affected the verdicts of juries. The impact of the racial composition of a jury has rarely been tested empirically, even in the United States, because simulated jury (as opposed to juror) studies can be time-consuming and logistically complicated. As a result, this study marks an important development in the study of race and juries generally, not just in this country. As Table 6.1 below shows, there were no significant differences in jury verdicts based on the ethnicity of the defendant. **In the 54 separate jury decisions, outcomes for both the BME and White defendants were remarkably similar. Whether Asian, Black or White, the defendants were almost always found not guilty by a majority verdict or the outcome was a hung jury<sup>257</sup>.**

		Unanimous Verdict		Majority Verdict		Hung Jury	Total
		Guilty	Not Guilty	Guilty	Not Guilty		
Asian Defendant	Pre-Deliberation Verdict	0	0	0	3	6	9
	Final Verdict	0	1	0	4	4	9
Black Defendant	Pre-Deliberation Verdict	0	0	0	2	6	8
	Final Verdict	0	0	0	3	5	8
White Defendant	Pre-Deliberation Verdict	0	0	0	1	9	10
	Final Verdict	0	0	1	2	7	10
<b>Total</b>		<b>0</b>	<b>1</b>	<b>1</b>	<b>15</b>	<b>37</b>	<b>54</b>

<sup>257</sup> In England and Wales, all juries must initially attempt to reach a unanimous verdict, but if this is not achieved after at least two hours of deliberation the judge may direct the jury to try and reach a majority verdict. Majority verdicts can only occur by either an 11:1 or 10:2 decision on 12-member juries; a 10:1 decision on 11-member juries; or a 9:1 decision on 10-member juries (majority verdicts are not permissible with 9 person juries). If a majority decision cannot be reached, the result is a hung jury.

Final jury verdicts for all defendants followed the same overall pattern, regardless of ethnicity, and this is a crucial finding. In trying the case 27 times, a final verdict was reached in 11 cases (41%), and in almost all these cases (9 or 82%) the jury verdict was a majority not guilty verdict. In just over half of the cases (16 of 27 or 59%), a hung jury was the final result. Only one jury reached a unanimous verdict (Asian defendant found not guilty), and only one jury reached a guilty verdict (White defendant by a majority vote). In both cases, these verdicts were only reached after the jury deliberated. These findings highlight the role of jury deliberations and majority verdicts in jury decision-making. Jury consensus may only emerge after a period of jury deliberation, and even then this may only be a majority consensus. Prior to deliberating, only 6 juries had enough votes to reach a verdict, and none of these were unanimous verdicts. After deliberating, 11 juries had sufficient agreement to reach a verdict, and one of these was a unanimous verdict. Even after deliberating, no consensus at all may emerge, resulting in a hung jury. As Figure 6.3 below shows, there were more hung juries (16) than verdicts (11). But the possibility of reaching a majority verdict clearly produced more jury verdicts (11) than would have been possible if unanimity was required (1).

**Figure 6.3. Ethnic composition of juries and jury verdicts in case simulation**



While the number of hung juries initially increased as the number of BME jurors increased on juries, this does not mean that racially mixed juries necessarily produce more hung juries. Two factors need to be considered here. The first is that a hung jury in the case simulation mirrors the outcome of the actual case on which the simulation is based. In the original case, the jury could only agree that they remained “hopelessly and helplessly divided” after two periods of deliberation.<sup>258</sup> The large number of hung juries in the case simulation is therefore likely to reflect the divisive nature of the case<sup>259</sup>. The other factor to consider is whether, if this was an actual trial, some of the hung juries might have been able to reach a majority verdict. Over half of the 21 hung juries (12) were within two votes of a majority verdict, and 6 were within one vote of a majority verdict. In the case simulation, juries did not face the prospect of having to return to court to announce that they could not reach a verdict, which might force a retrial. It is possible that, in the context of an actual trial, this prospect might have shifted enough votes to produce a majority verdict in some of these cases.

### **Juror votes and ethnicity**

A total of 319 jurors took part in the study, and it was therefore possible to pool all these jurors' votes and to examine whether individual juror votes to convict or acquit the defendant were affected by the ethnicity of the juror or the defendant. Examining juror ethnicity alone revealed only limited differences in juror votes. BME jurors were slightly more likely to vote to convict the defendant (41%) than White jurors (35%). When juror votes were examined in relation to the ethnicity of the defendant, there was some indication that jurors were more likely to vote to acquit a BME defendant (70%) than the White defendant (53%). However, when juror ethnicity and defendant ethnicity were considered together, more significant differences emerged. As Figure 6.4 and Table 6.2 below illustrate, jurors of different ethnic backgrounds reached significantly different verdicts depending on the race of the defendant<sup>260</sup>. BME defendants were less likely to be found guilty than White defendants, while the White defendant was much more likely to be found guilty by BME jurors than White jurors.

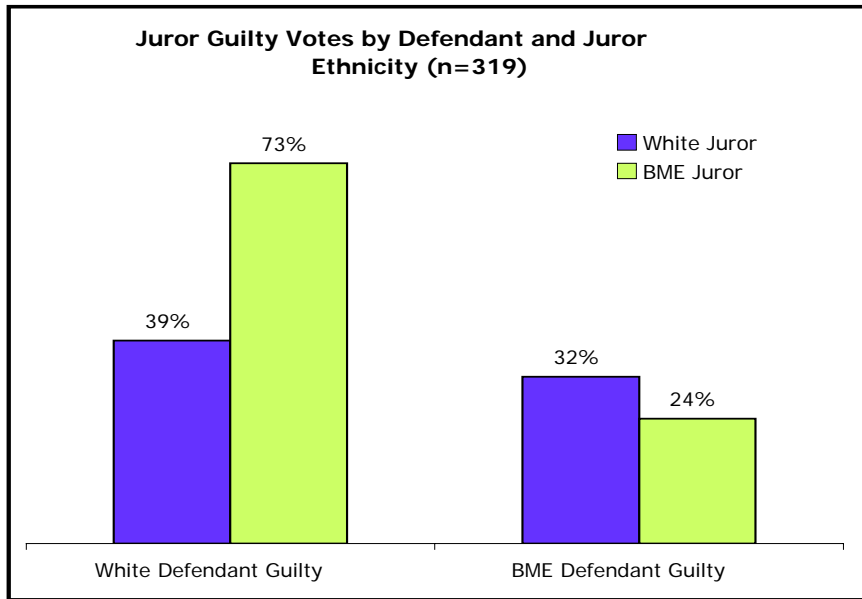
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<sup>258</sup> In the original case, the jury was unable to reach a verdict on the ABH charge, and the CPS did not pursue a retrial.

<sup>259</sup> The divisive nature of the actual case made it ideal for the case simulation, as it was important to have a case where the evidence was likely to generate differences in view between jurors about the guilt or innocence of the defendant.

<sup>260</sup> See Appendix 6 for results of the regression analysis.

**Figure 6.4. Juror guilty votes by defendant and juror ethnicity**



**Table 6.2. Votes (no.) by juror and defendant ethnicity**

Defendant Ethnicity	Juror Ethnicity				Total
	White		BME		
	Guilty	Not Guilty	Guilty	Not Guilty	
White	36	55	19	7	<b>117</b>
BME	48	104	12	38	<b>202</b>
<b>Total</b>	<b>84</b>	<b>159</b>	<b>31</b>	<b>45</b>	<b>319</b>

This evidence of same-race leniency among BME jurors reflects similar findings from the few American case simulation studies that have compared judgements of White and Black jurors. These studies found that the race of the defendant may affect Black jurors' judgements more than it affects White jurors' judgements<sup>261</sup>, and found specifically that Black jurors exhibited same-race leniency towards Black defendants and were more likely to rate White defendants more harshly than Black defendants. In the Blackfriars study, White jurors' low conviction rate for BME defendants also reflects the findings of a recent American study, where White jurors on racially mixed juries were less likely to vote to convict the Black defendant than the White defendant<sup>262</sup>. However, as the following analysis reveals, this same race leniency among jurors in the Blackfriars study only occurred in one specific type of case.

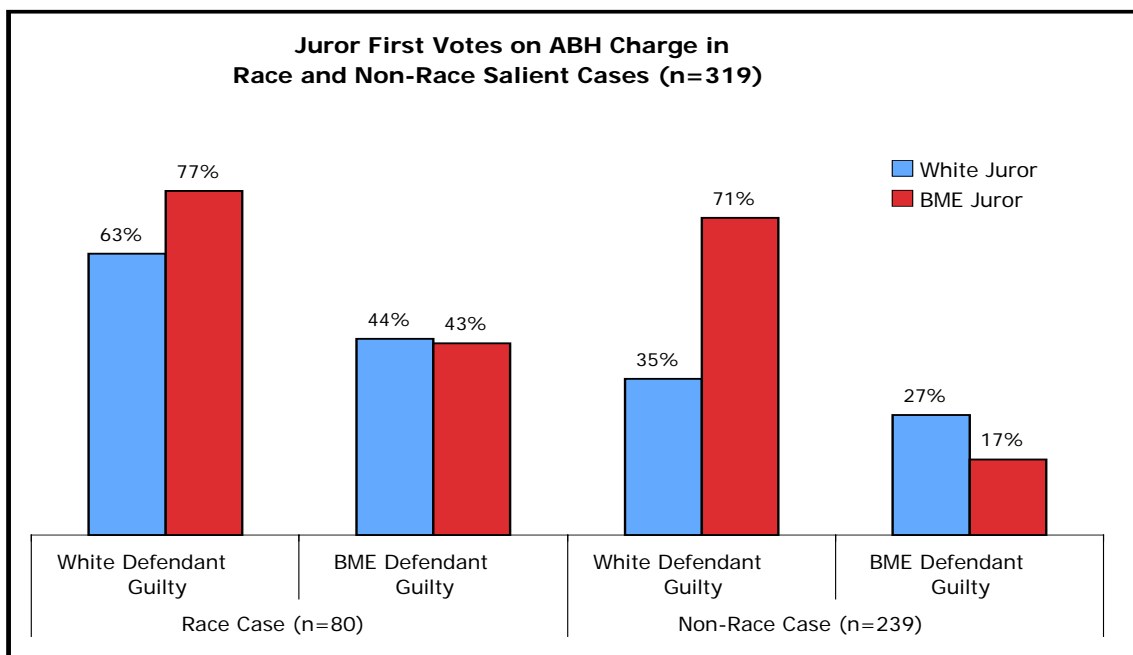
<sup>261</sup> P. Skolnick and J. Shaw "The O.J. Simpson Criminal Trial Verdict: Racism or Status Shield?" 53 *Journal of Social Issues* 503 (1997); D. Abwender and K. Hough "Interactive Effects of Characteristics of Defendant and Mock Juror on US Participants' Judgements and Sentencing Recommendations 141 *Journal of Social Psychology* 603 (2001)

<sup>262</sup> Sommers (2006) supra note 83.

## Race saliency

Previous case simulation studies in the United States have indicated that the existence of an explicit racial dimension to a case (race saliency) could affect White and non-White juror decision-making<sup>263</sup>. In order to see if this was also the case here, the Blackfriars study varied the charges and evidence against the defendant in the ABH case, so that in some cases the defendant was also charged with a second count of Racially-aggravated ABH. This charge was based on accusations that the defendant used racist language towards the victim prior to punching him<sup>264</sup>. On the specific charge of Racially-aggravated ABH, all juries returned a not guilty vote and there were almost no individual juror votes to convict on this specific charge<sup>265</sup>. However, Figure 6.5 below shows that in these cases where defendants were charge with both ABH and Racially-aggravated ABH (race case), there were some distinct differences in juror conviction rates compared to identical cases where the defendant was only charged with ABH and there was no explicit racial element to the case.

**Figure 6.5. Juror conviction rates in race salient and non-race salient cases<sup>266</sup>**



<sup>263</sup> Sommers and Ellsworth (2000) supra note 76.

<sup>264</sup> See details of the charge supra note 133.

<sup>265</sup> Prior to deliberation only 5 of the 80 jurors (6%) who saw the race salient version of the case voted to convict the defendant on the charge of Racially-aggravated ABH; after deliberation this fell to only 1 of the 80 jurors (1%). No White juror voted to convict the White defendant of Racially-aggravated ABH, 4 BME jurors voted to convict the defendant of Racially-aggravated ABH (2 where the defendant was White, 2 where the defendant was Asian), and 2 White jurors voted to convict the Asian defendant of Racially-aggravated ABH.

<sup>266</sup> This figure shows results of juror first votes (before deliberation)

In the race salient cases, there was little difference between White and BME juror conviction rates for the White and BME defendants. When the White defendant was accused of both ABH and Racially-aggravated ABH, the juror votes to convict were high among both White and BME jurors (63% and 77% respectively). While the conviction rates were somewhat lower for a BME defendant accused of both ABH and Racially-aggravated ABH, there was no difference between the conviction rate from White jurors and BME jurors for this defendant (44% and 43%). **Only in the cases where the defendant was only charged with ABH and race was not mentioned in evidence as a factor in the case (non-race cases) did differences clearly emerge between White and BME juror votes. In these non-race cases, White jurors had low conviction rates for both the White and BME defendants (35% and 27% respectively), while BME jurors had a high conviction rate for the White defendant (71%) and a low conviction rate for the BME defendant (17%).**

A similar study in the United States also found that explicit references to racial issues in a case had different effects on White and Non-White jurors<sup>267</sup>, although in different ways than in the Blackfriars study. In the American study, White jurors showed bias against the Black defendant when race was not raised in evidence, while Black jurors showed same race leniency towards the Black defendant in both the race and non-race versions of the case. However, the American study did not involve jurors deciding cases as part of a jury or with any period of deliberation, and this raises an important distinction that needs to be taken into account in interpreting the results of the Blackfriars study.

### **Juror versus jury bias**

While the differences between BME and White juror votes in non-race salient cases are interesting, the only decision that ultimately matters in the real world of criminal trials is the verdict of the jury. Jury verdicts are the result of a group decision-making process, and individual juror decisions only have meaning in relation to the verdict of the jury as a whole. **Individually, BME jurors may have been more likely to acquit a BME defendant and more likely to convict the White defendant in non-race salient cases, but these clear differences in jurors' individual votes did not produce any significant differences in jury verdicts for BME and White defendants in either race salient or non-race salient cases.**

Given the high probability that a BME juror would vote to convict a White defendant in the non-race assault case, it might be expected that some of the juries in the case simulation would

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<sup>267</sup> Sommers and Ellsworth (2000) supra note 76.

have convicted the White defendant in these cases. But eight separate juries tried this case, and none of the juries convicted the White defendant. The explanation for this apparent contradiction lies in part in the number of jurors needed to reach a verdict and the process of group decision-making that occurs on juries. Blackfriars Crown Court has one of the highest levels of BME juror representation of any court in England and Wales. But BME jurors were nonetheless in the minority on virtually all juries in the study (which accurately reflects the fact that BME groups comprise a minority of the local population). White jurors, who are almost always in the majority on these racially mixed juries, were less likely to convict either the White defendant or the BME defendant when race was not a direct factor of the case. A majority verdict requires an absolute majority of at least 10 jurors to be in agreement, and it is therefore not surprising that no juries convicted the White defendant in these non-race salient versions of the case. Even if BME jurors individually were more likely to convict the White defendant than the BME defendant, not all BME jurors voted to convict the White defendant and BME jurors were in the minority on almost all these juries. Out of the 27 juries that heard the case, there was only one conviction. This was for the White defendant where he was also charged with Racially-aggravated ABH, which is not surprising given the fact that this was the only type of case where both White and BME jurors were more likely to convict the defendant than acquit. Even then, this conviction was a majority verdict.

Jury verdicts are the result of the process of group consensus, and it appears that the dynamics of these racially mixed juries at Blackfriars helped to ensure that any individual juror biases were not allowed to dictate the verdicts of these juries. These findings highlight the benefits of permitting majority verdicts and of having 12 jurors on a jury. When unanimity could not be achieved, the possibility of reaching a majority consensus clearly produced more verdicts than would have been possible otherwise. If the jury size had been smaller, there would also have been a greater chance that individual juror bias could have affected the outcome.

It is also important to note that guilty verdicts for the White defendant did not necessarily increase as the proportion of BME jurors increased on juries. While the one guilty verdict for the White defendant (by a narrow majority and only after deliberation) was on a jury with 4 BME jurors, there was a jury with 5 BME jurors that did not find the White defendant guilty. These findings provide the first evidence to support a widely held belief: that racially mixed juries do not discriminate against defendants based on the defendant's ethnic background. The assumption has been that racially mixed juries in particular will not discriminate against ethnic minority defendants, but this study showed that racially mixed juries also did not discriminate against White defendants.

## Deliberation

In the case simulation, all jurors were asked to record two votes: one before and one after they deliberated as a jury. Immediately after viewing the case and before any deliberations took place, each juror recorded his or her initial vote of guilty or not guilty and a level of confidence in this verdict. The jurors then deliberated as a jury and, following the deliberations, each juror recorded his or her individual final vote and a level of confidence in it. By comparing jurors' first and final votes and their confidence levels before and after deliberation, it was possible to examine what effect, if any, the process of jury deliberation had on juror decision-making.

Table 6.3 below shows that, in general, there was very little deliberation effect on jurors' votes, but that the trend was towards deliberation increasing not guilty votes. The number of votes that changed after deliberation was small either way. Only 20 out of 319 jurors (6%) changed their votes after deliberation; the overwhelming majority of these (17 of 20) changed their vote from guilty to not guilty, with only 3 not guilty votes changing to guilty votes after deliberation. Overall, this indicates that juror first votes are highly predictive of their final votes, and this mirrors the findings of previous research on juror votes in actual cases in the United States<sup>268</sup>.

**Table 6.3. Juror votes on ABH charge before and after deliberation**

		After deliberation		Total
		Guilty	Not guilty	
Before	Guilty	98	17	<b>115 (36%)</b>
	Not guilty	3	201	<b>204 (64%)</b>
Total		<b>101 (32%)</b>	<b>218 (68%)</b>	<b>319</b>

Given the finding that White and BME jurors had significantly different conviction rates depending on the race of the defendant in certain cases, the analysis examined whether jurors from different ethnic groups were affected differently by the process of deliberation. A regression analysis, which took into account the fact that jurors deliberated within individual juries, found that after deliberation BME jurors still had significantly different votes depending on the race of the defendant, but that the probability of a BME juror finding a White defendant guilty fell from 0.73 to 0.59 following deliberation<sup>269</sup>. However, the true differences in the effect of deliberation on jurors of different ethnic backgrounds again only emerge when a distinction was drawn between race and non-race salient cases.

<sup>268</sup> See H. Kalven and H. Zeisel, *The American Jury* (1966) and more recently Garvey et al (2004) supra note 118.

<sup>269</sup> See Appendix 6.

If Figure 6.6 below is compared with the previous figure (6.5), it illustrates further that only when race was not presented as an explicit element in the case did jurors from different ethnic backgrounds reached substantially different decisions about the guilt of the defendant according to the defendant's ethnic background. After deliberation, there were virtually no differences between White and BME juror conviction rates for White and BME defendants when the defendant was accused of having a racial motive to the assault. In the non-race version of the case, after deliberation BME jurors still showed some same race leniency for the BME defendant, but they were less likely to find the White defendant guilty than before deliberation.

**Figure 6.6. Juror votes on ABH charge before and after deliberation**

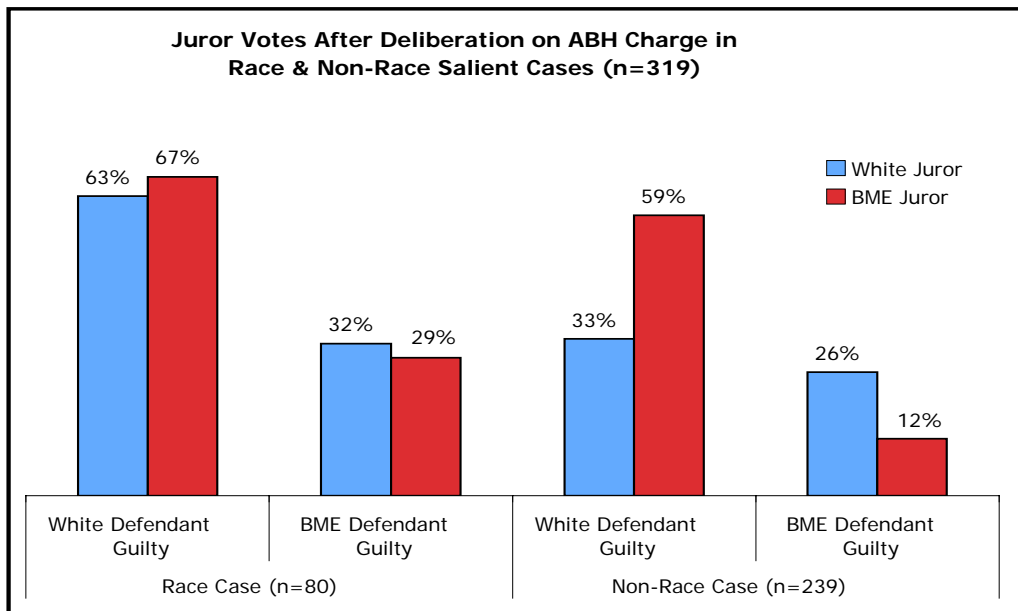
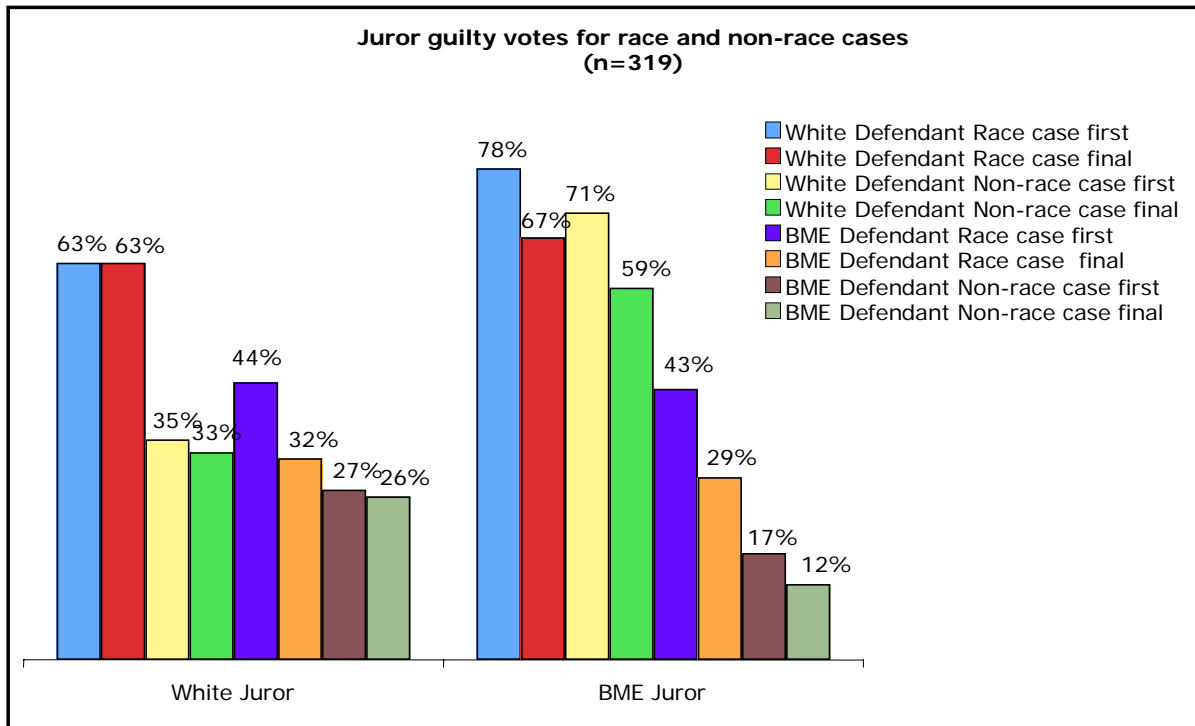


Figure 6.7 below shows that White juror conviction rates were virtually unaffected by deliberation, with one exception. The White juror conviction rate for the BME defendant fell after deliberation in cases where race was an explicit issue in the case. The story is very different for BME jurors. BME juror conviction rates fell following deliberation in all instances, regardless of the race of the defendant or the existence of a charge of racial aggravation.

**Figure 6.7. Effect of race saliency and deliberation on juror conviction rates**



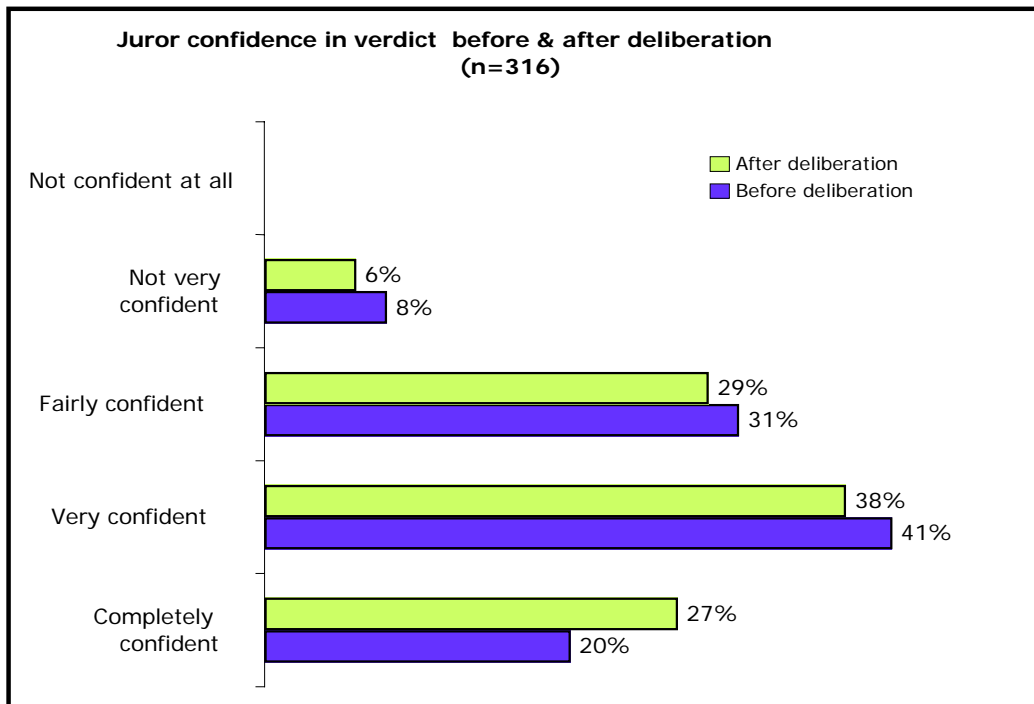
There is some similarity between this finding and the results of recent research on race and jury deliberations in the United States. One study of actual cases found that African American jurors in a particular jurisdiction (Washington DC) showed same race leniency in their first votes, but this leniency did not exist after jury deliberations<sup>270</sup>. Another study comparing deliberations of racially mixed and all-White juries found that deliberating on racially mixed juries encouraged White jurors to think about and discuss more issues, and that White jurors were less likely to find a Black defendant guilty when deliberating on a racially mixed jury<sup>271</sup>. **The fact that BME jurors on racially mixed juries at Blackfriars were less likely to find the White defendant guilty after deliberating suggests that the process of deliberation on racially mixed juries may also help to shape the decision-making process of ethnic minority jurors.** However, the Blackfriars study only investigated the affect of jury deliberations on racially mixed juries, and therefore it is not possible at this point to say whether White jurors in this country may also be affected differently by deliberating on all-White juries.

The extent to which jury deliberation affected jurors' confidence in their votes was also examined. As Figure 6.8 below shows, **the main effect of deliberation was to increase the proportion of jurors who felt completely confident of their votes.**

<sup>270</sup> See Garvey et al (2004) supra note 118.

<sup>271</sup> Sommers (2006) supra note 83.

**Figure 6.8. Effect of deliberation on juror confidence in individual vote**



This is an interesting finding in light of recent research in the United States showing that jury deliberations can have much broader consequences for jurors and the democratic process in general<sup>272</sup>. It found that citizens who served on a jury that deliberated (even if it didn't reach a verdict) were more likely to vote in subsequent elections than jurors who were not able to deliberate in the course of their jury service, and this was particularly the case for jurors who had rarely voted in the past. This suggests that the experience of deliberating on a jury has the ability to strengthen individuals' beliefs more generally in the power of public decision-making<sup>273</sup>, and indicates that jury trials could have much wider benefits to the democratic process than previously considered. It is interesting to note that even in a case simulation setting, jury deliberation increased jurors' confidence in their own decision-making abilities, which suggests that actual jury deliberations with real outcomes could at least have a similar positive effect.

### **Juror attitudes**

Even though there were no significant differences in the jury verdicts for defendants of different ethnic backgrounds, it is important to try and understand why some jurors (who sat on these juries) tended to vote in significantly different ways depending on their ethnicity, the defendant's ethnicity and the racial aspect of the case. The study at Blackfriars explored whether there were

<sup>272</sup> J. Gastil et al supra note 17.

<sup>273</sup> For a review of the literature in this area see S. Chambers "Deliberative Democratic Theory" *Annual Review of Political Science* 6 (2003).

any significant differences found in juror attitudes based on the ethnicity of the juror that may account for the differences in individual juror votes. After deliberating, jurors were asked to indicate how strongly they agreed or disagreed with a number of statements about the witnesses they had seen and the evidence they had heard, as well as more general statements about the criminal justice system. This included whether they felt the prosecution or defence cases were strong, whether they believed the police evidence, whether more generally they had trust and confidence in the courts and police, felt crime was a serious problem in their community or felt the courts treated ethnic minority defendants more harshly than White defendants.

### ***Perceptions of the fairness of courts***

Psychological studies of ethnic minority attitudes in the United States have suggested that same race leniency among non-White jurors may reflect a greater tendency on the part of non-White jurors to perceive racial inequalities in the criminal justice system<sup>274</sup>. One consequence of this is that ethnic minority jurors may have a tendency (consciously or not) to set the certainty bar higher before they will convict an ethnic minority defendant as a means of levelling the playing field<sup>275</sup>, or they may simply interpret the evidence presented to them differently when the defendant is from an ethnic minority group<sup>276</sup>. In the Blackfriars study, while no significant differences were found between White and BME juror attitudes to trust and confidence in the police and the courts, whether crime was a problem in their community, the importance and believability of police evidence and the strength of the prosecution and defence cases, there was one issue where highly significant differences existed between White and BME jurors<sup>277</sup>. Figure 6.9 below shows that **the BME jurors who took part in the study were strongly of the view that ethnic minorities are treated more harshly by the courts than White people, while White jurors clearly disagreed with the statement**<sup>278</sup>.

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<sup>274</sup> See R.M. Sellers and J.N. Shelton "The Role of Racial Identity in Perceived Racial Discrimination" *Journal of Personality and Social Psychology* 84 (2003)

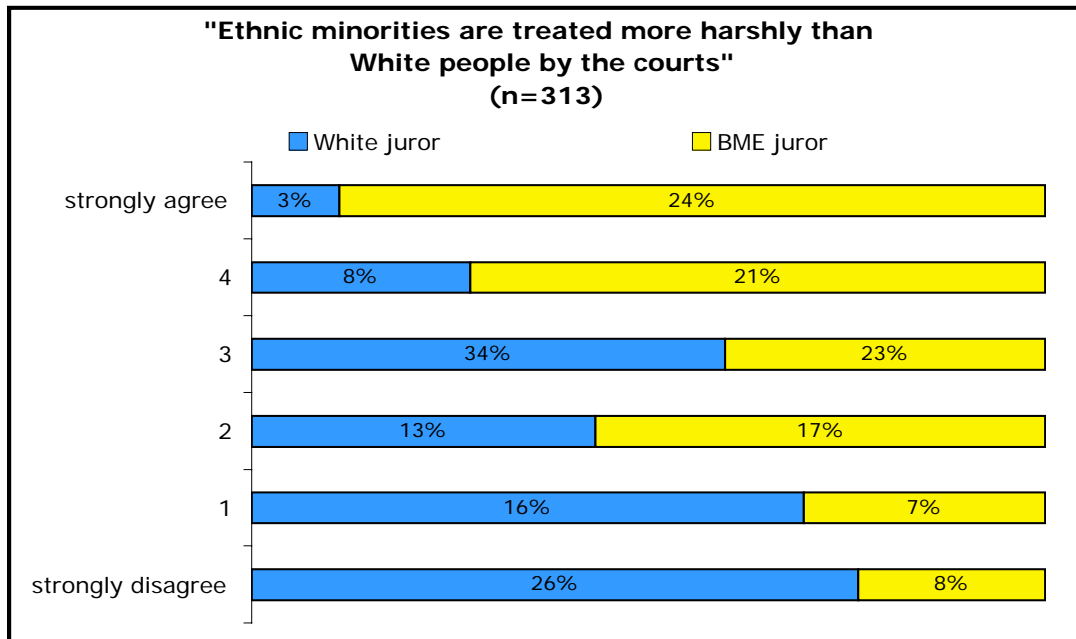
<sup>275</sup> See J. Jones "Whites are from Mars, O.J. is from Planet Hollywood" in *Off White: Readings on Race, Power, and Society* (1997)

<sup>276</sup> N. Pennington and R. Hastie, "Explaining the Evidence: Tests of the Story Model for Juror Decision Making" 62 *Journal of Personality and Social Psychology* 90 (1992).

<sup>277</sup> There were some surprising findings regarding juror views of the police evidence, with BME jurors more likely to believe the police evidence and believe it was important to the case than the White jurors. It was also curious that BME jurors had similarly high levels of trust and confidence in the courts as White jurors, given that BME jurors clearly believed courts treat ethnic minority defendants more harshly than White defendants.

<sup>278</sup> Mean differences were large: 1.92 for White jurors compared to 3.15 for BME jurors.

**Figure 6.9. BME and White juror attitudes to courts' treatment of ethnic minorities**



In finding similar trends in juror attitudes in the United States, Sommers and Ellsworth offered an explanation of how this could explain the same race leniency among ethnic minority jurors. They suggested that ethnic minority jurors may see being a juror as one of the few opportunities they have to personally act to eliminate racial inequalities, and because they appear to view courts as inherently biased against ethnic minority defendants, ethnic minority jurors' conception of fairness may motivate them to exercise same race leniency in order to compensate for that bias<sup>279</sup>.

***Perceptions of the defendant***

Jurors were also asked about their impressions of the defendant. This involved expressing a level of agreement or disagreement (on a scale of 0 to 5) with a number of positive and negative statements about the defendant. What emerges is an intriguing picture. It is important, first of all, to remember that there were two BME defendants (one Black and one Asian), and these results are therefore not likely to be effects based on any common response to a particular individual defendant. Both BME and White jurors consistently rated the BME defendant higher on all the positive statements and consistently rated the White defendant higher on all the negative statements. Table 6.4 below shows the mean scores for the eight different statements about the defendant, with the highest levels of agreement shown in bold.

<sup>279</sup> Somers and Ellsworth (2000) supra note 76, p.1376.

**Table 6.4. Juror impressions of defendant by ethnicity of juror and defendant (highest level of agreement in bold)**

	White Juror		BME Juror	
	White Defendant	BME Defendant	White Defendant	BME Defendant
	Mean score		Mean Score	
<b>Attitude to defendant</b>				
Believed defendant's evidence	2.82	<b>3.30</b>	2.56	<b>3.36</b>
Defendant dislikes violence	1.99	<b>2.36</b>	1.80	<b>2.48</b>
Defendant is kind to others	2.61	<b>2.75</b>	2.69	<b>2.74</b>
Defendant is likely to inflict ABH	<b>3.36</b>	3.05	<b>3.12</b>	2.88
Defendant often tells lies	<b>3.46</b>	2.81	<b>4.04</b>	2.74
Defendant often gets drunk	<b>3.99</b>	3.34	<b>3.72</b>	2.80
Defendant likely to be aggressive	<b>3.40</b>	3.11	<b>3.40</b>	2.86
Defendant often starts fights	<b>2.23</b>	1.63	<b>2.84</b>	1.84

These results have some important implications. It would be expected that jurors' impressions of the defendants' behaviour would reflect their guilt ratings for the defendants. Given that both BME and White jurors rated the BME defendants highly on believability and honesty, and rated the White defendant highly on dishonesty and likelihood of inflicting ABH, Table 6.5 below illustrates the expected levels of "not guilty" votes for each defendant. Both BME and White jurors would be expected to have a high proportion of not guilty votes for the BME defendant and a low proportion of not guilty votes for the White defendant. Yet as the table shows, only the votes of BME jurors were completely consistent with their attitudes towards the BME and White defendants.

**Table 6.5. Expected and actual juror votes based on impressions of defendant**

	BME Defendant		White Defendant	
	Expected Not Guilty Votes	Actual Not Guilty Votes	Expected Not Guilty Votes	Actual Not Guilty Votes
<b>BME Jurors</b>	High	High (76%)	Low	Low (27%)
<b>White Jurors</b>	High	High (68%)	Low	High (61%)

As expected, BME jurors had a high proportion of not guilty votes for the BME defendant (73%) and a low proportion of not guilty votes for the White defendant (24%). **White juror votes, however, did not reflect their negative view of the honesty and credibility of the White defendant, with a high percentage (61%) finding the White defendant not guilty.** This suggests that White jurors may also be exercising same race leniency for the White defendant. When the cases are separated out according to whether race was or was not a salient issue, it is clear that **the inconsistency in White juror votes for the White defendant (and therefore the same race leniency) occurred in cases where race was not a salient issue. In these cases, most White jurors (65%) found the White defendant not guilty, which was inconsistent with their negative view of the White defendant.** But in the cases where the defendant was also charged with Racially-aggravated ABH, there was a low level of not guilty votes (37%) for the White defendant by White jurors, in line with their negative impressions of this defendant.

As this is the first time research into race and juror decision-making has been conducted in this country, at this stage the reasons for such inconsistency in White jurors attitudes and their individual decisions can only be surmised drawing on similar research in the United States. One theory, often referred to as “aversive racism”, suggests that White people are no longer likely to demonstrate direct and obvious prejudice, and that if bias is demonstrated it is likely to be in a more subtle way<sup>280</sup>. Previous studies in the United States have indicated that in cases where race is an explicit issue, White jurors become conscious of the need not to discriminate, and something similar may be occurring here with White jurors in racially-aggravated cases (the only version of the case where they have high guilt ratings for the White defendant). Recent studies have also shown that White jurors in America who serve on racially mixed juries were more likely than those who served on all-White juries to be aware of the need not to discriminate against non-White defendants. The current study took place with racially mixed juries at Blackfriars Crown Court, where the local population is among the most highly diverse in the country. It is therefore perhaps not surprising that White jurors at Blackfriars do not demonstrate bias *against* BME defendants, but instead show a more subtle bias *in favour of* the White defendant.

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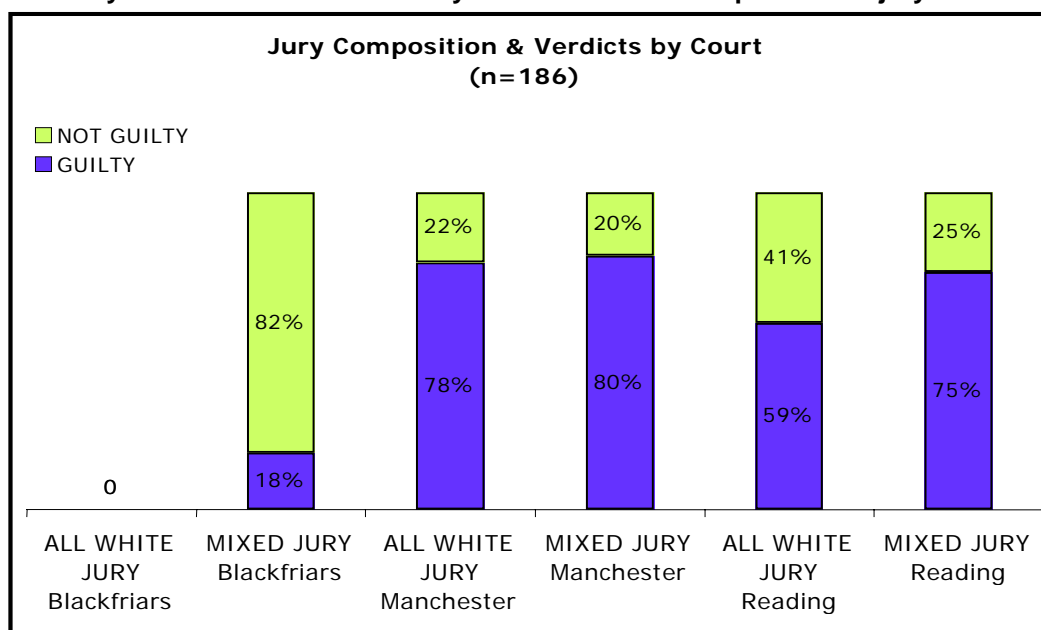
<sup>280</sup> See S. Gaertner and J. Dovidio “The Aversive Form of Racism” in Dovidio and Gaertner (eds) *Prejudice, Discrimination, and Racism* (1986); Jones (1997) *supra* note 275.

### Court-based differences

Consideration of the racial norms of the community from which jurors are drawn is essential to understanding juror decision-making<sup>281</sup>, and the results of the study of verdicts in actual cases in three different communities suggest that there may be different racial norms operating in different Crown Court communities. The supporting study of jury verdicts in actual cases at Blackfriars,

Reading and Manchester Minshull Street Crown Courts examined what correlations, if any, there were between the racial composition of the jury, the race of the defendant and jury verdicts. When actual jury verdicts from the three courts were combined there appeared to be a direct correlation between jury composition and jury verdicts, with all-White juries having a very high conviction rate (75%) and racially mixed juries having a correspondingly low conviction rate (32%). However, when these results were separated out by court, there were very clear court-based differences in jury verdicts. As Figure 6.10 below illustrates, actual jury verdicts at Blackfriars were predominantly acquittals (82%), while verdicts at Reading and Manchester Minshull Street were predominantly convictions, regardless of the racial composition of the juries.

**Figure 6.10. Jury verdicts in actual cases by court and racial composition of jury**



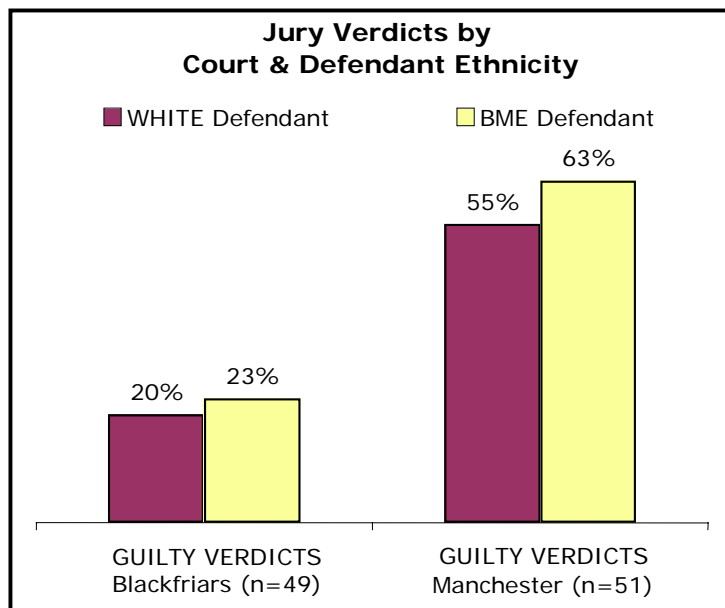
All the juries at Blackfriars were racially mixed, and there was an overall conviction rate of only 18%. In contrast, juries at Manchester and Reading included both racially mixed and all-White juries, and both types of juries had high conviction rates (75% and 80% for racially mixed juries respectively, and 59% and 78% for all-White juries respectively). **This suggests that the**

<sup>281</sup> Sommers and Ellsworth (2003) supra note 75.

particular dynamics of the local community in a Crown Court juror catchment area may be an important factor in jury verdicts, not simply whether the jury is a racially mixed or an all-White jury.

This was reinforced when the relationship between jury verdicts and the ethnicity of defendants was examined. When jury verdicts from Blackfriars and Manchester Minhsull Street were combined<sup>282</sup>, it appeared that in most cases defendants were found not guilty, especially BME defendants (68% BME and 55% White defendants found not guilty). But once the jury verdicts were separated out by court, once again there were clear court-based differences in the verdicts. As Figure 6.11 below shows, all defendants, regardless of ethnicity, were more likely to be found not guilty than guilty at Blackfriars. In contrast, a higher proportion of defendants, regardless of ethnicity, were found guilty than not guilty at Manchester.

**Figure 6.11. Jury verdicts in actual cases by court and defendant ethnicity**



Both of these findings suggest that court-based differences may exist in jury decision-making, irrespective of whether a jury is racially mixed or all-White. This may in part help to explain the low conviction rate for both White and BME defendants among White jurors who participated in the case simulation study at Blackfriars, where juries generally appear to have low conviction rates. The main difference between Blackfriars, Manchester Minshull Street and Reading Crown Courts is that the juror catchment area for Blackfriars has a much higher level of ethnic diversity (33%) than the other two (11-12%). However, these are only exploratory findings about

<sup>282</sup> During the study period, Reading Crown Court had not begun to record information on the ethnic background of defendants on the Crest database.

the relationship between race and actual jury verdicts. Analysis with a much larger sample size of courts and cases would need to be conducted in order to draw more definitive correlations between ethnicity, jury verdicts in actual cases, and individual or regional court differences in conviction rates<sup>283</sup>.

**What can be concluded from the analysis of jury decision-making in both the case simulation and actual verdict studies is that racially mixed juries drawn from a highly diverse community did not discriminate against either BME or White defendants. This is despite the fact that, individually, both BME and White jurors on these juries demonstrated some leniency to defendants of their own racial group. In addition, racially mixed juries in such highly diverse communities may also show differences in decision-making, not only from all-White juries in other communities, but from racially mixed juries in other courts where there is lower level of diversity in the local community.**

In the case simulation study it was also possible to examine whether other factors might influence juror decision-making, and if so how significant these other factors were in relation to ethnicity. The remaining analysis explores the influence of jury deliberations, victim ethnicity, the number and severity of charges against the defendant, and other juror characteristics (gender, age, income, employment, religion, language and profession) on juror votes. Wherever possible, it also examines the extent to which there are differences in juror decision-making between BME jurors, by examining the decision-making of Black and Asian jurors separately. It is important to bear in mind that the remaining results refer only to jurors' individual votes, not jury verdicts. As such they illustrate general trends in juror decision-making among jurors who served on racially mixed juries at a Crown Court where there is a very high level of ethnic diversity in the local population.

### **Disaggregating ethnicity**

The previous analysis only examined individual juror decision-making for two broad ethnic groups: White and BME jurors. However, one of the unique aspects of the case simulation study at Blackfriars is that, unlike virtually all American research, it was able to examine ethnicity beyond a simple White and Non-White dimension, by including both Black and Asian defendants as well as Black and Asian jurors<sup>284</sup>. Figure 6.12 below shows the distribution of

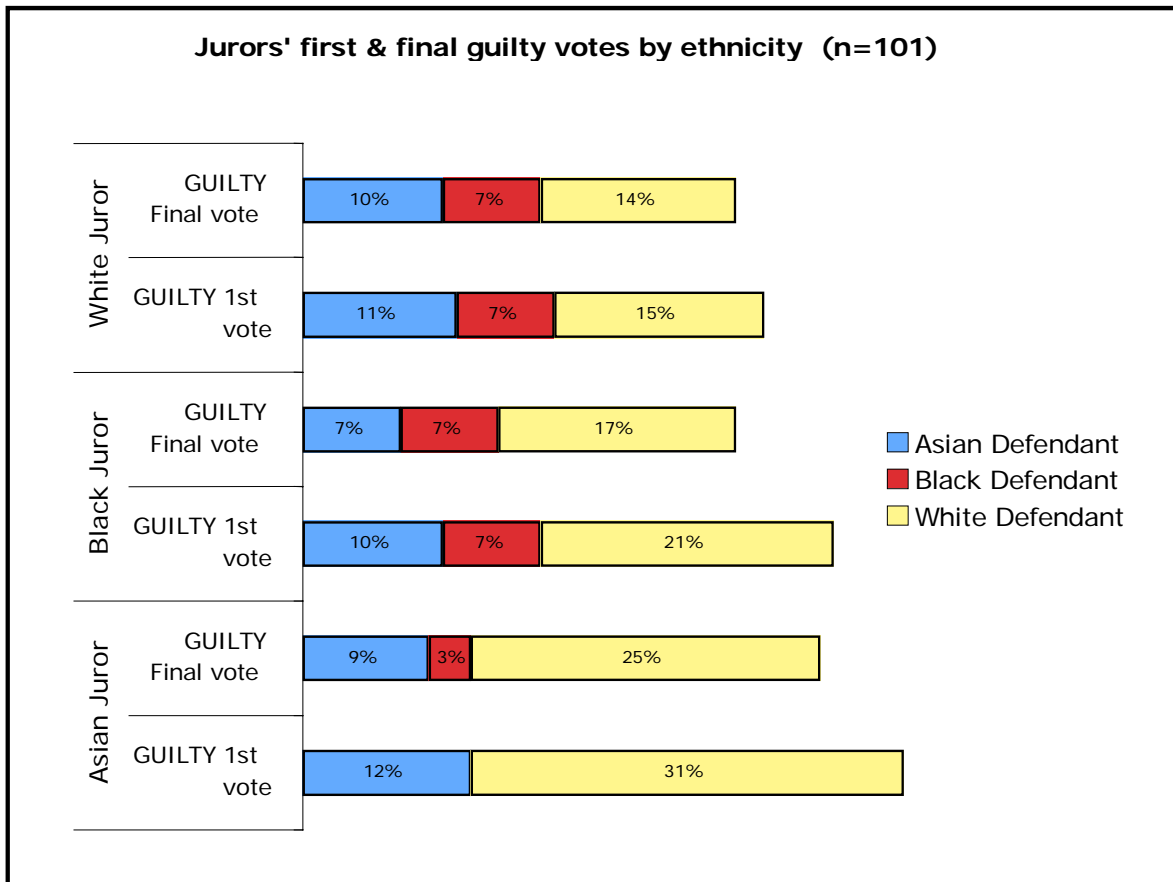
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<sup>283</sup> Such a study would be possible, using current data in the Juror and Crest datasets, and looking specifically at the relationship between court, verdicts and the race of the defendant. Any analysis of verdicts in relation to the racial composition of the jury would need to collect juror ethnicity data separately.

<sup>284</sup> In the following analysis, those jurors belonging to other ethnic groups (ONS categories of "mixed" and "any other") are not included due to the small number of jurors in this group (15 of 319) and the fact that this analysis specifically examined whether any same race leniency existed between White, Black and Asian jurors and defendants.

guilty and not guilty votes for the Asian, Black and White defendants by juror ethnic group, in first votes and final votes after deliberation. **These results suggest that, if leniency exists among BME jurors, it is not same-race leniency for all ethnic minorities but leniency for the Black defendant in particular.** There is also some indication of same-race leniency for White defendants by White jurors, which reinforces the earlier findings based on juror attitudes towards the defendant.

**Figure 6.12. Asian, Black and White juror guilty votes by defendant ethnicity**

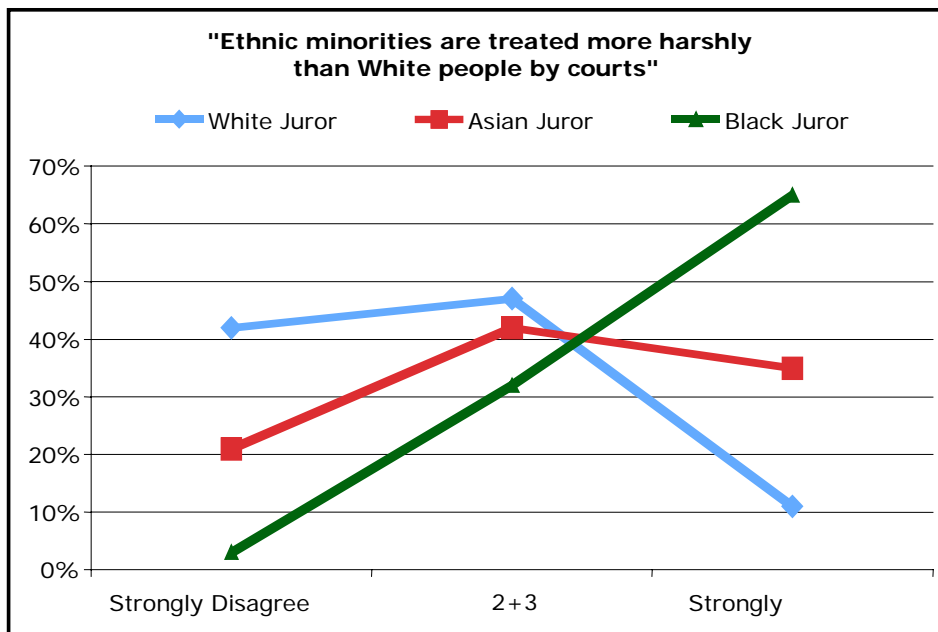


While Asian jurors had no guilty votes for the Black defendant on first votes, Asian jurors interestingly did not demonstrate same-race leniency for the Asian defendant on first votes, finding the Asian defendant guilty 12% of the time. Black jurors showed some limited same-race leniency for the Black defendant on first votes (guilty 7% of the time) compared to the Asian defendant (10%). White jurors also appeared to demonstrate some leniency towards the Black defendant in their first votes, finding the Black defendant guilty less often (7%) than the Asian defendant (11%) and White defendant (15%). However, if White jurors' first votes are compared for the White Defendant and non-White defendants, there is evidence of some same race leniency (White defendant guilty 15% of the time compared to 18% for non-White Defendants).

It is also interesting to note that both Asian jurors and Black jurors are more likely to vote to convict in general on first votes than White jurors. In their first votes, 43% of Asian jurors voted to convict the defendant, 38% Black jurors voted to convict but only 33% of White jurors voted to convict on first votes. Black jurors did not change their votes for the Black defendant after deliberation, but they were less likely to convict the Asian and White defendants. Asian jurors were the only jurors where deliberation increased guilty votes, but only for the Black defendant. In their final votes, Asian jurors had a slightly higher overall conviction rate (37%) than Black and White jurors (both 31%).

Interestingly, as Figure 6.13 below shows, Asian jurors and Black jurors do not necessarily hold exactly the same views about the court's treatment of ethnic minorities. **Black jurors were most firmly of the view that the courts treat ethnic minorities more harshly than White people, while Asian jurors were more moderate in their view of this.** Given the Asian jurors' leniency towards the Black, but not Asian, defendant, it would be interesting in future to explore whether Asian jurors felt Black people were treated more harshly by the courts than Asian (or White) people.

**Figure 6.13. Asian, Black and White juror attitudes to court treatment of ethnic minorities**



Other differences in attitudes between Black and Asian jurors were also found. For example, Black jurors had the lowest confidence levels in the courts and police generally, while Asian jurors had higher confidence levels in the police than either the Black or White jurors, and very similar levels of confidence in the courts as White jurors. These differences between Black and

Asian juror votes and attitudes suggest that juror decision-making is not necessarily the same for all BME jurors, and this reinforces earlier findings in this and other studies that important differences in the experiences of individual ethnic groups may be concealed when all ethnic minority groups are considered as a single “BME” group<sup>285</sup>.

### Victim ethnicity

The case simulation included a number of different versions where the ethnicity of the defendant and the ethnicity of the victim varied (see Table 6.6 below), and this was taken into account in analysing the extent to which the victim’s ethnicity may have affected jurors’ individual votes.

**Table 6.6. Number of cases where victim and defendant ethnicity varied**

Ethnicity factor	Variation	Number of cases
White Victim	White Defendant	5
	BME Defendant	7
BME Victim	White Defendant	5
	BME Defendant	10
<b>Total</b>		<b>27</b>

Regression analysis was carried out on the impact of juror ethnicity, defendant ethnicity and victim ethnicity on juror votes. The analysis again took into account the fact that jurors deliberated within juries, and did not find that victim ethnicity specifically affected juror votes to convict or acquit the defendant<sup>286</sup>. The regression analysis, however, could not break victim ethnicity down beyond the general BME and White categories even though there were two BME victims, one Black and one Asian. The number of individual juror votes would have been too small for the regression analysis once juror, defendant and victim ethnicity was broken down into these three ethnic groups. However, because the majority of jurors (242 of 319, or 76%) were White, there was a large enough sample to examine White juror votes and victim ethnicity in more detail.

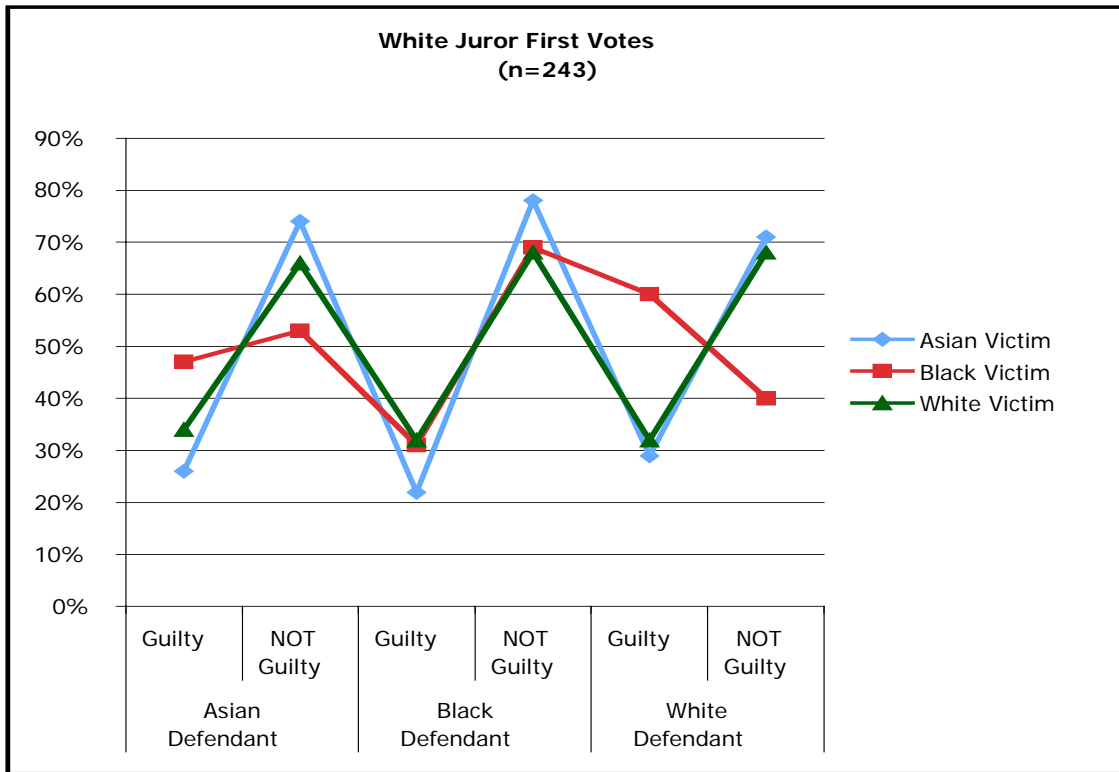
As Figure 6.14 below indicates, White jurors showed a consistent pattern of decision making in all cases involving Asian and White victims, but not in cases involving Black victims. Where the victim was Black and the defendant was White, White jurors at Blackfriars were more likely to find the White defendant guilty than not guilty. Where the defendant was Asian and the victim

<sup>285</sup> See discussion in Chapter 1 supra notes 96-98.

<sup>286</sup> See Appendix 6 for full results.

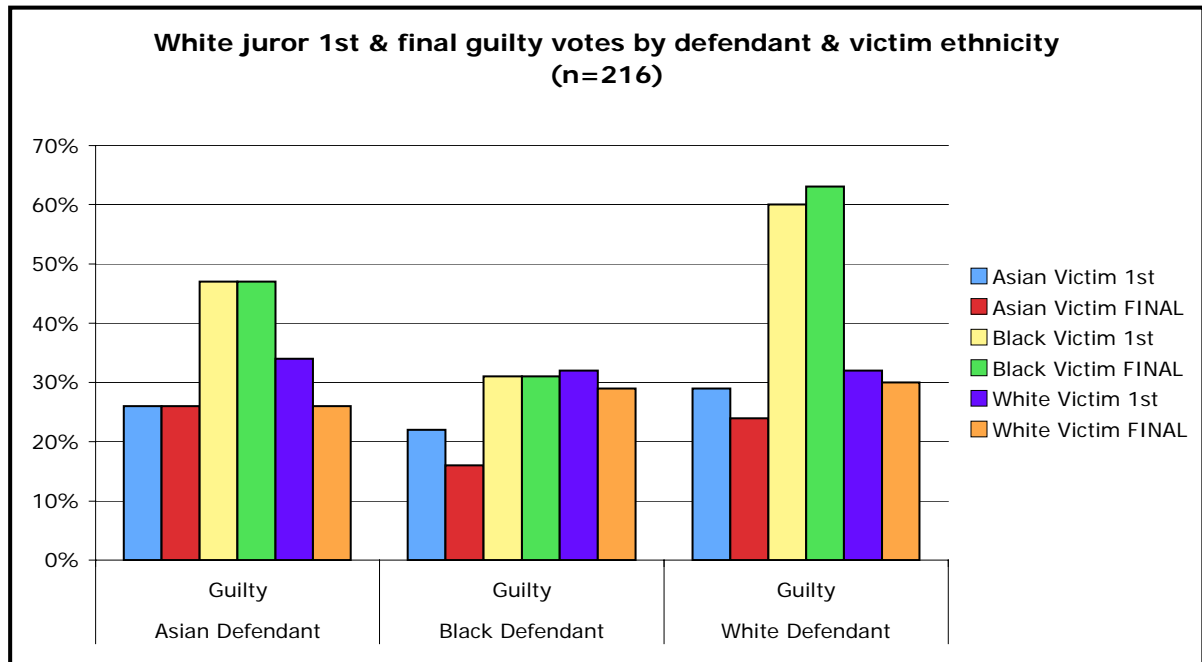
was Black, there was also some increase in the conviction rate, but the majority of White jurors still found the defendant not guilty. There were no differences in White juror decision-making where both the victim and the defendant were Black.

**Figure 6.14. Patterns of White juror first votes by ethnicity of victim**



In addition, as Figure 6.15 below illustrates, the only instance where White jurors' votes to convict increased from first to final votes was where the defendant was White and the victim was Black. White juror conviction rates overall were also highest where the victim was Black, and where the defendant was either White or Asian (but not Black). **This suggests that White jurors serving on racially mixed juries in a highly diverse community may be particularly sensitive to the plight of Black victims of violence perpetrated by a non-Black defendant.**

Figure 6.15. White jurors' first and final votes by ethnicity of victim and defendant



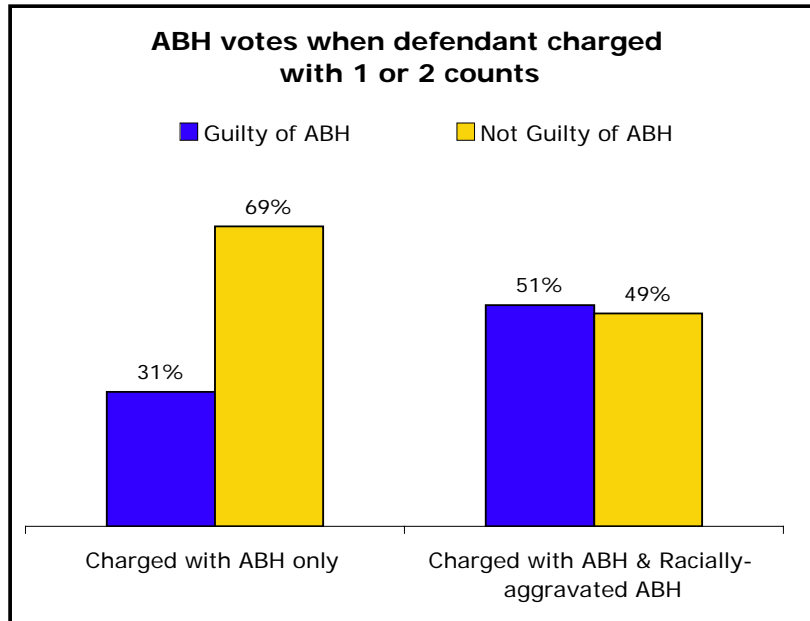
### Number and severity of charges

Because the simulation varied the charges against the defendant to include both ABH and Racially-Aggravated ABH, the analysis was also able to examine whether the number and severity of the charges affected conviction rates among jurors. As discussed earlier, there was an extremely low conviction rate among all jurors on the Racially-aggravated ABH charge (1% after deliberation). However, the existence of this additional charge did have an impact on juror conviction rates on the second charge of common ABH. As Figure 6.16 below shows, **when the defendant was charged with two counts (ABH and Racially-aggravated ABH) instead of one (ABH only) this made it significantly more likely that the defendant would be found guilty of the lesser ABH charge<sup>287</sup>**. This finding supports the belief of many courtroom professionals that jurors are more likely to find a defendant guilty when he or she is charged with more than one offence, and that in those cases jurors are likely to convict the defendant on the lesser charge<sup>288</sup>.

<sup>287</sup> See Appendix 6 for results of statistical analysis

<sup>288</sup> In the Crown Court, the maximum penalty for ABH is five years' imprisonment, an unlimited fine or both. If the offence is racially aggravated, the sanction goes up to seven years imprisonment, an unlimited fine or both.

**Figure 6.16. Percentage of Juror votes according to number of charges against defendant**



**Table 6.7. Juror votes according to number of charges against defendant**

Charge	Initial ABH vote		Total
	Guilty	Not Guilty	
ABH + Racially-aggravated ABH	41	39	<b>80</b>
ABH	74	165	<b>239</b>
<b>Total</b>	<b>115</b>	<b>204</b>	<b>319</b>

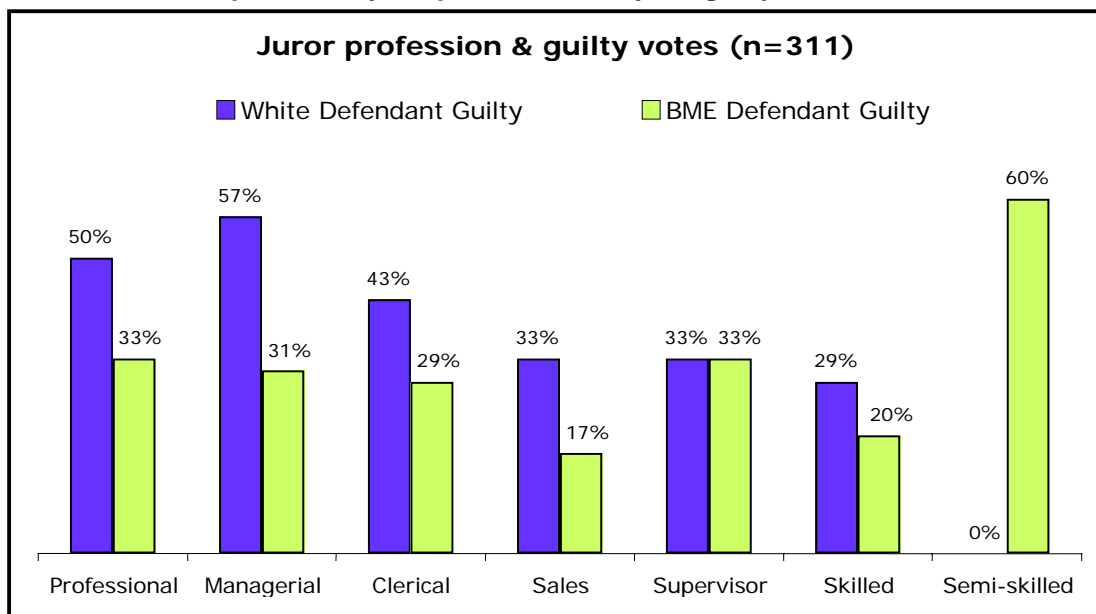
**Other juror characteristics**

Previous parts of this study have shown the need to consider diversity in a wider context than just ethnicity. In the juror summoning process, for instance, other socio-economic factors (specifically income and employment status) were more significant than ethnicity in predicting whether a summoned juror would serve or not. To explore whether similar effects occur in juror decision-making, the case simulation study collected data on from jurors on their gender, age, income, profession, employment status, religion and first language. The juror summoning survey and jury service study found that a close relationship exists between ethnicity, religion, first language and income among jurors. It would, therefore, be expected that some association would exist between these juror characteristics and juror votes, and this proved to be the case. For instance, what appeared to be a substantially higher proportion of guilty votes for the White defendant (89%) compared to the BME defendants (25%) by Muslim jurors, simply reflected the

fact that the Muslim jurors who took part in the study were overwhelmingly from a BME background (92%). Jurors whose first language was not English were much more likely to find the White defendant guilty (75%) compared to jurors with English as their first language (45%), but again the overwhelming majority of jurors with another first language who found the White defendant guilty were from a BME background (78%).<sup>289</sup> Juror conviction rates based on the income levels of jurors was also related to ethnicity. While the highest conviction rates for the White defendant were among those jurors in the lowest household income brackets, 72% of all BME jurors were in the two lowest income brackets. Conversely, jurors most likely to convict the BME defendant were in the highest income bracket, and 90% of these were White jurors.

Only one juror characteristic, occupation, showed any indication that it may have affected juror decision-making independently of juror ethnicity. Figure 6.17 below shows that the conviction rate was particularly high for the BME defendants (60%) among semi-skilled workers, and there were no guilty votes for the White defendant among this occupational group. However, given the small number of jurors in this occupational group (12 of 319 jurors), it is not possible at this stage to draw any clear connection between occupation and juror decision-making.

**Figure 6.17. Relationship between juror profession and juror guilty votes**



<sup>289</sup> Given the relatively small number of Muslim jurors in the study (25 out of 319) and jurors with another first language (36 out of 319), caution needs to be exercised in concluding that either of these factors on their own affected juror decision-making.

## Summary

This chapter presented the findings of the first empirical research on race and jury decision-making to be conducted in this country. Using case simulation with real jurors, the study focused on the fundamental question underlying concerns about ethnicity and jury representation: does ethnicity actually influence jury decisions? The study was conducted with dismissed jurors at Blackfriars Crown Court, where virtually all juries are racially mixed and jurors are summoned from among one of the most ethnically diverse communities in the country. The main finding of the study is that while ethnicity did have a significant impact on the votes of some jurors in certain types of cases, the verdicts of the racially mixed juries on which these jurors sat did not discriminate against defendants based on the defendant's ethnic background.

Significant differences were found in individual juror votes based on the ethnicity of the juror and the ethnicity of the defendant, but only in cases where race was not an explicit issue. When White and BME jurors were alerted to a possible racial motive in the case (where the defendant was charged not just with ABH but Racially-aggravated ABH as well), both White and BME jurors had high conviction rates (on the ABH charge) for both White and BME defendants. The highest conviction rates were for the White defendant (63-77%), but over 40% of both White and BME jurors voted to convict the BME defendant when he was also charged with racial aggravation. However, in the exact same case where no mention was made of any racial motive to the assault (and the defendant was therefore only charged with ABH), BME jurors showed same race leniency towards BME defendants and were significantly less likely to vote to convict a BME defendant than a White defendant. Evidence was also found that White jurors showed some same race leniency towards White defendants in these non-race related cases, although perhaps in more subtle ways: White jurors had very low conviction rates for the White defendant in the non-racial ABH case (33%) even though they consistently said they did not believe his evidence and felt he was dishonest.

Crucially, however, none of these tendencies towards same race leniency among BME or White jurors had any impact on the verdicts of the juries on which these jurors sat. The case was tried 27 times, and there were no significant differences in jury verdicts based on the race of the defendant. Where juries reached a verdict, virtually all the verdicts were the same (not guilty, majority verdicts). Even though BME jurors had high conviction rates for the White defendant in the non-racial ABH case, this case was tried eight times and the White defendant was not convicted by any of these juries. This finding highlights the benefits of having twelve members on a jury and majority verdicts. Jury verdicts are the result of the process of group consensus,

and it appears that the dynamics of these racially mixed juries helped to ensure that any individual juror biases were not allowed to dictate the verdicts of these juries. When unanimity could not be achieved, the possibility of reaching a majority consensus clearly produced more verdicts than would have otherwise been possible. If the jury size had been smaller, there would also have been a greater chance that individual juror bias could have affected the outcome. These findings on ethnicity and jury verdicts provide evidence for the first time of a widely held belief: that racially mixed juries do not discriminate against defendants based on their ethnic background. The assumption has always been that racially mixed juries would not discriminate against ethnic minority defendants, but the research also showed that racially mixed juries did not discriminate against White defendants either.

Racial attitude theories suggest that same race leniency among non-White jurors reflects ethnic minority perceptions that the court system is unfair to ethnic minority defendants. The theory is that such leniency is an effort (conscious or not) to level the playing field for ethnic minority defendants and to compensate for what they see as bias in the court system. This may provide some explanation for the findings of same race leniency by BME jurors at Blackfriars; an attitude survey of all jurors who took part in the study showed that the only issue where significant differences in attitudes existed between BME and White jurors was on the issue of whether courts treat ethnic minorities and White people equally. BME jurors were highly significantly more likely than White jurors to believe that the courts treat BME defendants more harshly than White defendants. In exploring same race leniency among BME jurors in more detail, it became clear that same race leniency did not occur among all BME jurors for all BME defendants. While both Black and Asian jurors showed leniency for the Black defendant, there was no evidence of leniency for the Asian defendant by either Asian or Black jurors. This suggests that BME jurors may be particularly sensitive to the position of a Black defendant in the criminal courts.

This decision-making study provides some insight into the impact of ethnicity on jury decision-making in a highly diverse community and jury environment. This profile applies to most of the Crown Courts in the London region, where a quarter of all jurors in England and Wales serve. However, the separate results of the study of actual jury verdicts at Blackfriars, Reading and Manchester Minshull Street Crown Court suggested that jury decision-making may not be the same for all juries (including all racially mixed juries) in all parts of the country. The findings suggest that court-based differences in jury verdicts may exist and may need to be considered in understanding the role of ethnicity in jury verdicts more generally in other courts in England and Wales. In actual cases, juries at Blackfriars (where almost all juries are racially mixed) had low conviction rates, but juries at Reading and Manchester Minshull Street (regardless of

whether they were racially mixed or all-White juries) had high conviction rates. All three courts are High Ethnicity Courts, but Blackfriars' juror catchment area is one of the most ethnically diverse in the country where virtually all juries are racially mixed, usually with 3 or 4 BME jurors on each jury. There are fewer BME jurors serving at Reading and Manchester Minshull Street; only about half of all juries are racially mixed, and these usually only include 1 BME juror. These findings on verdicts by actual juries at three different courts suggest that different social dynamics in these three communities (and hence on juries) may affect jury decision-making, and that further study of jury decision-making in less diverse communities than London is necessary.

The case simulation study was also able to explore whether other factors might also affect individual juror votes, and whether any of these were more significant than ethnicity. The study explored the influence of the jury deliberation process, the ethnicity of the victim and other juror characteristics. It found that jurors' first votes were highly predictive of their final votes, and this mirrors the findings of previous research on juror votes in actual cases in the United States<sup>290</sup>. However, the probability of a BME juror finding a White defendant guilty fell following deliberation, suggesting that the process of deliberation on racially mixed juries may, in particular, shape the opinions of ethnic minority jurors. The main effect of deliberation was to increase the proportion of jurors who felt completely confident in their votes. This has some interesting implications in light of a recent US study, which found that deliberating on a jury strengthened jurors' beliefs more generally in the power of public decision-making, and specifically increased the probability that they would vote at subsequent elections<sup>291</sup>.

The ethnicity of the victim did not appear to be a significant factor in affecting juror decision-making in general. However, White jurors did appear to be affected by the victim's ethnicity in one particularly interesting way. White jurors were most likely to vote to convict a defendant when the victim was Black but the defendant was not Black. The highest conviction rates among White jurors were in cases where the victim was Black and the defendant was either White or Asian. This suggests that White jurors who serve on racially mixed juries in a highly diverse community such as central London may be particularly sensitive to the plight of a Black victim of crime, so long as the perpetrator is also not Black. Finally, the case simulation explored the extent to which other juror characteristics, such as age, religion, income, gender and occupation, were more influential in juror decision-making than juror ethnicity. While religion, first language and income initially appeared to affect juror votes, these were juror

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<sup>290</sup> See Garvey et al (2004) *supra* note 118.

<sup>291</sup> See Gastil et al *supra* note 17.

characteristics that were necessarily connected to ethnicity. None of the other juror characteristics were found to influence juror votes independently of juror ethnicity. There was some indication that juror occupation might be independently related to juror votes, but the sample size was not large enough to draw any substantive conclusions at this stage.

These are findings that relate to racially mixed juries in a highly diverse community. However, as the summoning survey revealed, most juries in most Crown Courts in England and Wales are likely to be all-White juries, due simply to the demographics of juror catchment areas. It is important that the Blackfriars' study is replicated in a different Crown Court outside London, where the local community is predominantly White and juries are all-White juries. Such a study is needed in order to answer the key questions that remain: do all-White juries discriminate against defendants based on their ethnicity; and do White jurors on all-White juries vote differently than the White jurors on racially mixed juries?