

Chapter 7. Summary and discussion

This research project set out to determine whether the juror summoning process directly or indirectly discriminates against black and minority ethnic (BME) groups by not summoning a representative number of BME jurors for each Crown Court in England and Wales. It also set out to determine whether there was any evidence of an unwillingness to do jury service on the part of the BME community due to a lack of trust in the fairness of the jury system. More broadly, it also set out to determine whether jurors serving at Crown Courts reflect the wider socio-economic diversity of the local community, and the extent to which ethnic minorities are represented on juries in relation to their representation in the local community. Finally, the project set out to answer a more fundamental question about the fairness of the jury system: do juries discriminate against defendants based on the ethnicity of the defendant? This chapter summarises the main findings of the research project, and highlights a number of policy implications of these findings. The jury study is also the last research project commissioned by the Department under its Courts and Diversity Research Programme (CAD), and this chapter draws together some of the common findings from the CAD studies and explores what lessons have been learned about diversity and the fairness of the judicial system, after six years of research and eight years on from the Stephen Lawrence Inquiry.

Jury representation and decision-making

This report presented the findings of the first study of the jury system in England and Wales to look at juror representation on an individual court basis, covering almost all Crown Courts in England and Wales. It also presented the result of the first study to be undertaken of the impact of race on jury decision-making in this country. The project included large scale surveys of all summoned jurors in England and Wales over two one-week periods, in-depth surveys of serving jurors at three Crown Courts over a four-week period, case simulation research on race and jury decision-making with real jurors, as well as an exploratory analysis of jury verdicts in actual trials. Despite the scope of the project, none of the research required exemption from section 8 of the Contempt of Court Act 1981, and in this respect it demonstrates just how much jury research can be conducted in this country under existing restrictions. Prior to this study, there had been no substantive research on the representative nature of jury service in this country for over 15 years. This lack of research has led to widespread but unsubstantiated assumptions about the representative nature of jury service. Most of these assumptions present an unflattering picture of those who do jury service and hence those who decide the most serious criminal cases in this country. As a result of this research, a number of crucial questions about the jury system have been answered in this report for the first time:

Is the summoning process reaching a representative section of the population in each Crown Court catchment area?

Are those who do jury service in each court representative of the local population?

Is there any widespread avoidance of jury service?

To what extent does race affect jury decision-making?

Myths of jury service: summoning and serving

Each individual Crown Court in England and Wales has its own unique juror catchment area, and it is therefore crucial that juror representation be measured against the particular population dynamics of each court. However, most thinking about the representative nature of jury service in this country is based on the Crown Court Study from the early 1990s²⁹², an in-depth study of serving jurors where, in terms of representation, the researchers faced a particular obstacle when they were prevented from looking at juror representation on a court-by-court basis. In contrast, the juror summoning survey conducted in the current study was able to adopt an individual court-based approach to understanding the representative nature of summoning. It produced a number of key findings and, in particular, exposed numerous myths about jury service that have shaped both public perceptions and policy making in this country over a number of decades.

Jury Service Myth 1:

Black and minority ethnic (BME) groups are under-represented among those summoned for jury service in England and Wales.

Reality: There is no significant under-representation of BME groups among those summoned for jury service at virtually all Crown Courts in England and Wales.

The belief that BME groups are under-represented among those summoned for jury service has long coloured policy discussions about juries in this country, and has generated numerous proposals for altering the summoning system. However, the survey revealed that, in 83 out of 84 Crown Courts surveyed, there was no significant under-representation of ethnic minorities among those summoned for jury service.

Contrary to common assumption, the summoning process reached BME groups in remarkable consistency to BME representation in the local population for almost all Crown Courts in the country.

²⁹² See Zander and Henderson supra note 12.

Jury Service Myth 2:

Source lists for summoning jurors need to be changed to increase the proportion of ethnic minorities summoned.

Reality: Ethnic minorities are summoned in proportion to their representation in almost every court, and therefore juror source lists do not need to be changed.

The Auld Review recommended that juror source lists be supplemented with other publicly maintained lists (such as telephone directories and vehicle licensing lists) to ensure that more members of BME groups are summoned. However, this study has shown that ethnic minorities are not under-represented among summoned jurors. Random selection of jurors from electoral lists provided to the JCSB by local authorities is reaching a representative group of potential BME jurors in virtually every court in the country, and there is therefore no need to alter the juror source lists.

High Ethnicity and Low Ethnicity Courts

The ethnicity of summoned jurors has more relevance in some Crown Courts than others. One of the strengths of this study is that it provides a clearer picture of what are the realistic expectations of BME representation among serving jurors and on juries on a court-by-court basis. Only a minority of courts (20 of the 94 Crown Courts in England and Wales) can be considered High Ethnicity Courts, where ethnic minorities comprise over 10% of the local population in the juror catchment area, and there is therefore a valid expectation that ethnic minorities will be in the jury pool and on juries. The overwhelming majority of Crown Courts (74 of 94) are Low Ethnicity Courts, where the BME population level in the juror catchment area is below 10%, and this results in there being little likelihood of BME jurors serving on a jury in the vast majority of Crown Courts in this country. This is not because the summoning process fails to reach ethnic minorities. There simply are not sufficient BME population levels in most juror catchment areas to summon any significant number of BME jurors to serve on juries. This distinction between courts is crucially important to understanding the relationship between ethnicity and juror summoning in Crown Courts in England and Wales.

However, there are a number of Low Ethnicity Courts where jury ethnicity may be a particularly problematic issue. These Ethnicity Concentration Courts are where the overall BME population level in each court's juror catchment area is low (below 10%), but where there are sizeable BME populations concentrated in pockets throughout the catchment area. These high BME population areas are often in urban centres close to the Crown Court, and the presence of a visible ethnic population is likely to create a public expectation that BME jurors should be serving on juries at these courts. But, in reality, the geography of the juror catchment area

simply cannot produce this. Juror ethnicity is primarily a concern where either BME defendants in general or BME victims in racially-aggravated prosecutions perceive procedural unfairness in their cases as a result of a lack of BME representation on their juries. Government statistics show that some Low Ethnicity Courts can still have a high proportion of BME defendants or prosecute a substantial number of racially-aggravated crimes. Authorities may need to do more to ensure that the public understands why ethnic minorities rarely, if at all, serve on juries at these courts. The only way of ensuring greater BME representation among jurors in these courts would be to redraw the juror catchment areas to increase the overall proportion of BME residents in the catchment area. However, this would require a change to the current structure of catchment areas and might well present a number of logistical difficulties²⁹³.

Irrespective of the arguments for or against ethnically balanced juries, the results of the summoning survey have demonstrated that, in most Crown Courts in the England and Wales, it would be impossible to achieve ethnically balanced juries in the way proposed by either Runciman or Auld. Random selection of jurors will simply not produce enough BME jurors in most Crown Courts to empanel juries with 3 BME jurors. Again, this does not reflect any failing on the part of the summoning system; it merely reflects the population dynamics of juror catchment areas for most Crown Courts. However, the survey findings have clearly identified those Crown Courts (High Ethnicity Courts) where there is a high probability of racially mixed juries, and also determined the probability of one or more BME jurors serving on juries in each of these courts. If concerns remain about the need for racially mixed juries in certain exceptional cases, the most practical option in these cases would be to change the trial venue as a means of increasing the possibility of the case being tried by a racially mixed jury. In most cases, a change of trial venue would not necessitate moving the case to a completely different part of the country, as High Ethnicity Courts exist in most Crown Court regions (London, Midlands, Northern, North East and South East).

Jury Service Myth 3:

Ethnic minorities may be more likely not to respond to summonses than other jurors, reflecting a greater unwillingness to do jury service and a lack of belief in the fairness of the jury system.

Reality: Non-returns do not reflect any unwillingness on the part of ethnic minorities to do jury service. The main factor affecting non-return of summonses is high residential mobility, not ethnicity.

²⁹³ Changing juror catchment areas to increase BME population levels would in most cases require making a juror catchment area smaller. This would require shifting outlying areas to another court catchment area, and this might well leave some jurors with long distances to travel to court.

The non-return of summonses is most likely to occur in areas with high levels of rental accommodation. Even though these areas often overlap with areas of high BME population density, all this indicates is that ethnic minorities are more likely to change address than White people living in these areas, not that ethnic minorities are any less willing to do jury service than White people. The Mori survey conducted for the project also found that there were no significant differences in the willingness to do jury service or in support for the jury system between BME and White members of the public.

However, not everyone who is summoned will serve. Even after the changes to juror eligibility introduced in the Criminal Justice Act 2003, summoned jurors may still be ineligible, disqualified or excused from jury service, and the prevailing view is that this leads to juries being unrepresentative of their local communities. For several decades there have been claims that ethnic minorities are under-represented among those doing jury service; that the middle class manages to escape jury service; that those serving on juries are primarily the retired and unemployed; and that women, young people, the self-employed and those over 65 are all under-represented among those doing jury service. Based on several of these assumptions, the Auld Review concluded that juries in England and Wales do not reflect the broad range of skills and experience or ethnic diversity of the communities from which they are drawn²⁹⁴. The Review also maintained that excusals from jury service have created a widespread belief that jury service is only for those not important or clever enough to get out of it²⁹⁵. However, the systematic analysis of the representative nature of those doing jury service on a court-by-court basis carried out by this study revealed that most current thinking about the representative nature of jury service in this country is also based on myth, not reality.

Jury Service Myth 4:

Ethnic minorities are under-represented among those doing jury service.

Reality: In almost all Crown Courts, ethnic minorities are not under-represented among serving jurors.

In almost all Crown Courts in England and Wales (81 of 84 surveyed), BME groups are not significantly under-represented among those doing jury service. The only exceptions in the week of the survey were among serving jurors at Manchester Crown Square, Leeds and Birmingham Crown Courts. This clearly dispels the myth that BME groups are under-represented among serving jurors. Taken together with the finding that BME groups are not under-represented among those summoned for jury service at 83 of the 84 courts, it also demonstrates that the process of excusal and disqualification from jury service does not

²⁹⁴ Auld supra note 23, Chapter 5, paragraph 11.

²⁹⁵ Ibid, paragraph 13.

significantly affect the ethnic representation of serving jurors. This is one of the crucial findings of the research project.

Jury Service Myth 5:

There is widespread avoidance of jury service by the British public in general, and Londoners (and by implication, the BME community) in particular.

Reality: There is no mass avoidance of jury service by the British public. The vast majority of Londoners return their summonses and serve. Where ethnic minorities do not serve this is largely due to ineligibility and disqualification (language & residency).

Analysis of all excusals and disqualifications from jury service confirmed that there is no mass avoidance of jury service in this country among all those summoned, and no specific avoidance of jury service by Londoners or BME groups. Two-thirds of all those summoned for jury service actually do serve (either on the date summoned or at a later date). Among those who do not serve, 9% are disqualified. Among the quarter that are excused, the single largest group is excused for medical reasons that prevent them from serving. The claim made by Darbyshire in a report for the Auld Review that five-sixths of all Londoners avoid or evade jury service²⁹⁶ is also a myth; close to five-sixths of Londoners reply to their summonses, and three-fifths of these Londoners do in fact serve as jurors. There is also no evidence that members of BME communities avoid jury service. Among BME jurors summoned who did not serve, the single largest group were disqualified because they were not resident for the required period (24%), and the next largest group were excused for language reasons (21%). Residency and language proficiency are both basic requirements for jury service, and these findings show that in almost half of all cases where summoned BME jurors do not serve this is because they do not meet the qualifications for jury service.

It also cannot be assumed that all non-replies to summonses represent a wilful attempt to avoid jury service. A third of all non-replies were summonses returned to the JCSB as “undeliverable”, indicating a change of residency, and it is also likely that many summonses not returned are also due to changes in residency. Beyond this, the Mori survey conducted for the project revealed that the vast majority of the public are willing to do jury service and most, in fact, would look forward to doing jury service if they were summoned.

²⁹⁶ Darbyshire et al supra note 37.

Relative importance of juror ethnicity

A unique aspect of this study was that it was able to determine the extent to which other socio-economic factors such as age, gender, income, employment, religion and language were more likely than ethnicity to be related to whether those summoned do jury service. Diversity studies in other fields and in law in other jurisdictions have demonstrated that caution needs to be

exercised in defining diversity only in terms of ethnicity, and that a more complex picture often emerges when ethnicity is considered in relation to other socio-economic factors²⁹⁷. The two most significant factors related to whether those summoned did or did not serve were income and employment status, not ethnicity. Summoned jurors with the lowest household income and those who were economically inactive were the least likely to serve. Income was more likely to be related to whether a juror did jury service than ethnicity, which was illustrated by the fact that BME jurors with the highest household income had the highest level of jury service of all serving BME jurors.

Ethnicity was only relevant when it was combined with language, income or employment status. Only those BME jurors who had a language other than English as their first language more likely not to serve than serve, which is not surprising as those without a sufficient command of English are excused from jury service. There was also a higher rate of not serving among Black jurors summoned than any other BME groups. However, the analysis showed that most Black jurors summoned were in low income households or were economically inactive (and therefore less likely to serve) or were not qualified to do jury service (and therefore were not able to serve). This analysis of the relative importance of ethnicity to whether those summoned serve or not also exposed several more myths about jury service in this country.

Jury Service Myth 6:

The middle classes and the important & clever avoid jury service. Juries are mostly made up of the retired and unemployed.

Reality: The middle class and the important and clever do not avoid jury service, and the retired and unemployed are in fact under-represented among serving jurors.

It is a myth that the middle classes and what were referred to in the Auld Review as “the important & clever” manage to avoid jury service. The reality is that the highest rates of jury service for summoned jurors are among middle to high-income earners, and that those in higher status profession are fully represented among serving jurors. The retired and unemployed are,

²⁹⁷ For a discussion of these studies see Chapter 1 supra note 89.

in fact, under-represented among serving jurors, and in reality it is the employed that are over-represented among serving jurors in relation to their representation in the population.

Jury Service Myth 7:

Women, young people and the self-employed are under-represented among serving jurors, and the unemployed are virtually exempt from jury service.

Reality: Jury pools closely reflect the local population in terms of gender, age and the self-employed.

In reality, gender had no significant impact on whether those summoned served or did not serve; among those serving as jurors, the proportion of men and women was exactly the same (50%). In addition, those between the ages of 18 and 24 were represented among serving jurors almost exactly in proportion to their representation in the population. Similarly, the study found that the self-employed served in close proportion to their representation in the population, and this showed that the concerns expressed in the Auld Review that the self-employed were virtually exempt from jury service were unfounded.

Jury pools, panels and juries

The jury service study provides the most precise measure to date of juror representation at Crown Courts in England and Wales. By creating exact population profiles for three Crown Courts (Blackfriars, Manchester Minshull Street and Reading) based on a wide range of socio-economic factors and the 2001 census, and by carrying out a background survey of all jurors serving at each court over a number of consecutive weeks, it was possible to present a detailed picture of the representative nature of jury pools, jury panels and juries in these individual courts. The study reinforced the project's overall finding that the representative nature of jury service can only be understood on an individual court basis, and that the local population dynamics in individual court catchment areas need to be taken into consideration in assessing how representative jury pools, jury panels and juries are at Crown Courts. In all three courts, jury pools are remarkably representative of the local population in terms of ethnicity, gender, age, employment status, income and religion. This reinforces the finding of the juror summoning survey that there are widespread misconceptions about who does and who does not do jury service in this country.

The study in these three courts was conducted in 2003, prior to the introduction of the new juror eligibility rules in 2004, and illustrates that these misconceptions about jury service were not valid even before the government introduced rules restricting the grounds for disqualification and excusal from jury service. In 2004, new juror eligibility rules came into effect designed to

increase juror participation by removing ineligibility and the right of excusal for certain groups (65-69 year olds, MPs, those in the medical professions, the administration of justice and clergy). Summoning surveys were conducted both before and after the introduction of these new rules (in April 2003 and February 2005), and the results show that the change in the eligibility rules had an immediate effect on juror participation. After the new rules came into effect, there was an overall increase in the proportion of those summoned who served (from 54% to 64%), as well as an increase in those serving on the date for which they were summoned (from 35% to 47%). In addition, disqualifications fell by a third and excusals fell by a quarter. Despite this increase in overall participation in jury service, the new rules did not affect juror representation levels for any specific groups, with the exception of those 65 to 69 years of age. This group had been excused as of right and therefore under-represented under the old eligibility rules, but the removal of this exemption resulted in a doubling of the proportion of those serving from this age group (from 3% in 2003 to 6% in 2005).

In all three courts, BME representation in the jury pool fluctuated on a weekly basis, but overall there was no significant under-representation of BME jurors. However, when the ethnicity of serving jurors was disaggregated for each court, a clearer picture emerged of how unique the demographics of ethnicity are among jurors at each court. The study found, for instance, that while Pakistani jurors were under-represented among serving jurors at Manchester Minshull Street, they were over-represented at Blackfriars and represented exactly in proportion to their representation in the local population at Reading. These variations appeared to reflect the differences in language capabilities and residency status (and hence in eligibility to do jury service) in the Pakistani communities in these three different court areas. There is evidence, for instance, that English literacy levels are lower in the Pakistani community in Oldham (part of the Manchester Minshull Street juror catchment area) than in the Pakistani communities in the Reading and Blackfriars juror catchment areas.

The jury service study also examined BME representation on actual jury panels and on juries in the three courts. Despite the fact that all three courts in the study were High Ethnicity Courts, there was a substantial difference in the proportion of racially mixed jury panels and juries at each court, and this reflected the different BME population levels in the juror catchment areas for the three courts. At Blackfriars Crown Court, where the BME population level is high (33%), virtually all jury panels and juries were racially mixed (they contain at least one BME juror). But this does not necessarily translate into every jury being strictly representative of the BME population in the court catchment area; only 17% of juries at Blackfriars during the study period had at least 33% of BME jurors (i.e., 4 or more). At Reading and Manchester Minshull Street

Crown Courts, where the local BME population level is lower (10-11%), approximately half of all jury panels and juries were racially mixed. However, all the racially mixed juries at Reading and Manchester were (at a minimum) representative of the local population, as a single BME juror on a jury made the jury representative of the local population.

There was also some evidence that BME jurors on jury panels appeared to be selected to serve on the final juries less often than White jurors on jury panels. This final stage of jury selection (jury empanelling) is the only stage that does not involve computerised random selection of jurors, but in theory the procedure should not treat jurors differently. After panels of 13 or more jurors are randomly selected by computer for a specific trial and brought into court, court clerks simply shuffle a set of cards containing each juror's name and read out the first 12, who are then sworn as the jury. However, there is some concern that clerks may avoid reading out names that are difficult to pronounce, and this could be producing this disparity in selection rates found between White and BME jurors. There was no definitive evidence in the study that this was happening, but the possibility could easily be addressed by impressing upon court clerks the importance of strictly following juror selection procedures in court.

No major gender imbalances were found on juries in any of the three courts. In 88% of juries, the male to female ratio was either 6:6, 7:5 or 8:4, and no juries at any of the courts were all male or all female or had only one male or one female juror. The study did find, however, that the existing summoning process did not produce enough Welsh-Speaking jurors at Crown Courts in Wales to sustain bilingual jury trials. Only 17 Welsh-speakers served as jurors in all of Wales in the survey week, which strongly suggests that alternative summoning procedures would need to be introduced in Wales before bilingual jury trials could be instituted.

Auld rightly remarked that, as the embodiment of local lay justice, it is important that juries truly reflect the mix of the community from which they are drawn²⁹⁸. Most of the myths of jury service revealed by this research present a disparaging picture of jury service (mass avoidance of jury service and unrepresentative jurors), and there is clearly a need to convey the reality of jury service to the public (that jurors are, in fact, highly representative of their local community and willing to serve). It serves little purpose to allow those who do jury service in this country to believe that they are not representative of their local community and that they are not clever or important enough to get out of jury service. Conveying an accurate picture of jury service to the public would help to reinforce support for the jury system, and it is important not to underestimate the wider social and political benefits of jury service. Jury service is one of the rare

²⁹⁸ Auld supra note 23, Chapter 1, paragraph 27

opportunities for citizens, regardless of background or status, to participate in the institutions of state, and a positive experience of jury service could have much wider benefits for the democratic process in Britain. Recent research has suggested that jury service may have other democratic benefits far beyond the court system itself, specifically by increasing voter participation at subsequent elections among those who serve as jurors²⁹⁹.

Ethnicity and jury decision-making

The jury decision-making study carried out by this project is the first time empirical research on race and jury decision-making has been conducted in this country. Using case simulation with actual jurors, supplemented by a study of jury verdicts in actual cases, the research focused on the fundamental question underlying concerns about ethnicity and jury representation: does race actually influence jury decisions? The study was conducted with juries made up of dismissed jurors at Blackfriars Crown Court in London, a court with one of the most ethnically diverse juror catchment areas in the country and where almost all juries are racially mixed. All juries (and therefore jurors) saw exactly the same case, in which a young male defendant was charged with assaulting another young male by punching him after an altercation, but where the race of the defendant was seamlessly altered in different versions of the case. The main finding of the decision-making study is that, while ethnicity can have a significant effect on the votes of some jurors in some cases, the verdicts of racially mixed juries on which these jurors sat did not discriminate against defendants based on the defendant's race. The case was tried 27 times, and there were no significant differences in jury verdicts based on the ethnicity of the defendant. Where the jury reached a verdict, in almost all cases this was the same verdict (not guilty by a majority vote), regardless of whether the defendant was Black, White or Asian.

The key factor in whether race influenced individual juror votes (as opposed to jury verdicts) was whether race was an explicit factor in the case. When the case had an obvious racial aspect, resulting in the defendant being charged with both ABH and Racially-aggravated ABH, there was little difference between conviction rates between BME and White jurors for both the White and BME defendants. While hardly any jurors voted to convict the defendant (White or BME) on the Racially-aggravated ABH charge, White and BME jurors had high conviction rates for the White defendant on the lesser charge of ABH in these cases. They also had similar (but lower) conviction rates for the BME defendants in these cases. This indicates that when jurors are made aware of racial issues in a case, they are more likely to convict a defendant, and this may suggest that jurors in a highly diverse community such as central London are particularly critical of racist behaviour in the context of a criminal trial. This has some similarity to findings from American

²⁹⁹ See Gastil et al supra note 17.

research, which showed that a defendant's race did not influence White juror decision-making when racial issues were explicit in a case.

In contrast, when the case only involved a single charge of ABH and race was not mentioned as a factor in the case, both BME and White jurors showed evidence of same race leniency. In the non-race salient cases, BME jurors were significantly less likely to vote to convict a BME defendant (either Black or Asian) on the ABH charge than a White defendant. Evidence was also found that White jurors showed some same race leniency towards White defendants in these non-race related ABH cases, but in more subtle ways. White jurors had very low conviction rates for the White defendant in non-race salient cases, despite consistently stating that they did not believe the White defendant's evidence and felt he was dishonest. One explanation for the significant same race leniency among BME jurors in non-racial versions of the case is that it reflects ethnic minority perceptions that the court system treats ethnic minority defendants unfairly³⁰⁰, and this was supported by one highly significant difference in attitude found in the study between BME and White jurors. BME jurors who participated in the study felt strongly that BME defendants are treated more harshly by the courts than White defendants, while White jurors did not.

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. Both Black and Asian jurors showed leniency for the Black defendant, but there was no evidence of leniency for the Asian defendant by either Asian or Black jurors. In addition, while the ethnicity of the victim did not appear to be a significant factor in juror decision-making in general, there was evidence that White jurors who serve on racially mixed juries in a highly diverse community such as Blackfriars are particularly sensitive to the plight of a Black victim, so long as the perpetrator is also not Black. White jurors were most likely to convict a defendant when the victim was Black and the defendant was either White or Asian (but not Black). These two findings suggest that there may be some particular sensitivity among both BME and White jurors for the position of a Black defendant or victim in a criminal trial. While BME jurors may be particularly sensitive (and show leniency) to a Black defendant as long as he is not accused of having a racial motive to his actions, White jurors appear particularly sensitive to the plight of a Black victim (and are more likely to vote to convict the defendant) so long as the defendant is also not Black.

The case simulation study also explored whether other case factors may affect individual juror votes, and whether they may be more significant than ethnicity. In looking at the effect of

³⁰⁰ See Sellers and Shelton, and Jones *supra* note 275.

deliberation on jurors' individual votes, the study 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 States³⁰¹. However, the probability of a BME juror finding a White defendant guilty fell after jury deliberation, suggesting that the process of deliberation on racially mixed juries may help to 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 American study, which found that deliberating on a jury strengthens jurors' belief more generally in the power of public decision-making, making it more likely that they will vote at subsequent elections³⁰². Finally, the case simulation explored the extent to which other juror characteristics, such as age, religion, income, gender and occupation, affected juror votes more than juror ethnicity. While religion, first language and income initially appeared to affect juror votes, these were juror characteristics that were necessarily connected to ethnicity. None of the other juror characteristics clearly appeared to influence juror votes based on the defendant's race, although there was some limited indication that occupation may exert some influence on juror decision-making.

These were all differences in jurors' individual votes. Ultimately, however, the only decision that is relevant in a criminal trial is the verdict of the jury. The crucial finding of the study was that, even if there were tendencies towards same race leniency by BME or White jurors, they did not have an impact on the verdicts of the juries on which these jurors sat. Twenty-seven different juries tried the assault case, and when the jury was able to reach a verdict the result was the same for the Black, White and Asian defendant in virtually all cases. The findings 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. It is widely assumed that racially mixed juries do not discriminate against ethnic minority defendants, but this research showed clearly that they also do not discriminate against White defendants either. These findings also highlight the strength of the jury decision-making process, where 12 jurors must jointly try to reach a decision, as well as the benefit of majority verdicts. 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. 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.

³⁰¹ See discussion in Chapter 6 of Garvey et al (2004) supra note 118.

³⁰² See discussion of Gastil et al supra note 17 in Chapter 6.

As virtually all juries at Blackfriars are racially mixed juries, this decision-making study provides an insight into the impact of ethnicity on jury and juror decision-making in a highly diverse community and jury environment. The results of the study of actual verdicts at Blackfriars, Manchester Minshull Street and Reading Crown Courts indicated that there may well be court-based differences in verdicts that need to be taken into account in assessing the role of race in jury verdicts at other Crown Courts in England and Wales. In this study, all three courts were High Ethnicity Courts, where there is a valid expectation that BME jurors will be in the jury pool, but the BME population level for Blackfriars is one of the highest in the country (33%), while the levels at Reading and Manchester Minshull Street are more moderate (10% and 11% respectively). Juries in actual cases at Blackfriars (which were all racially mixed juries) had low conviction rates, but juries in actual cases at Manchester Minshull Street and Reading (which were both racially mixed and all-White juries) had higher conviction rates regardless of the racial composition of the juries. This suggests that the findings of the case simulation at Blackfriars may apply specifically to racially mixed juries in highly diverse communities such as London, but that there may be differences in jury decision-making (even with racially mixed juries) in other courts where the local population dynamic is different.

The handful of jury (as opposed to juror) decision-making studies that have been conducted in the United States over the last 25 years suggest that the jury's racial composition may affect deliberation by affecting how much information is considered by the jury in reaching a verdict³⁰³. This "information factor" is what underlies most thinking about the benefits of diversity in the legal process: that a group of diverse individuals brings a greater range of experiences to the process of group decision-making than a homogeneous group of individuals³⁰⁴. There are also indications that the racial composition of a jury may also affect jurors' behaviour during deliberations, for instance by encouraging jurors to think about and discuss more issues when they are on diverse juries. One recent study, for instance, found that compared to all-White juries, racially mixed juries deliberated longer, discussed more case facts and raised more questions about evidence³⁰⁵.

As a first attempt to explore how race may affect the decision-making of juries and individual jurors in this country, there are necessarily limitations to the findings of this study. The study explored the impact of ethnicity in a violent crime case, and it is not clear how ethnicity may affect jury decision-making for other types of crimes. It is also important to bear in mind that

³⁰³ Sommers and Ellsworth (2003) *supra* note 75.

³⁰⁴ This applies equally to the benefit of diversity among judges as well as juries. See Thomas (2005) *supra* note 78 for a review of studies on judicial diversity.

³⁰⁵ S. Sommers (2006) *supra* note 83.

these findings relate to racially mixed juries in a highly diverse community. Both the Runciman Commission and Auld Review assumed that the ethnic make-up of juries may affect the jury's fairness, especially towards members of ethnic minorities. The jury project explored the validity of these assumptions in relation to racially mixed juries in a London court where jurors are summoned from among one of the most diverse communities in the country. But as the summoning survey revealed, juries in most Crown Courts in England and Wales are likely to be all-White juries, due simply to the demographics of the juror catchment areas. What this first study was not able to do was to answer whether all-White juries also do not discriminate against defendants based on the defendant's ethnic background, and this is a crucial question in relation to the fairness of the jury system. In any empirical research of this kind, it is necessary to repeat the research to determine if these findings are systematically duplicated, and it is now important that the Blackfriars study be replicated in a different Crown Court outside London, where the local community and jurors are predominantly White. 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; do White jurors on all-White juries vote differently than the White jurors on racially mixed juries; and do jury deliberations with all-White juries differ from deliberations with racially mixed juries.

Diversity and fairness in the courts

This study of diversity and the jury system is the last of the eight research projects commissioned under the Department's Courts and Diversity Research Programme. In 2000, when the then-Lord Chancellor, Lord Irvine, established the CAD programme, it was in part a response to the damning conclusions of the Stephen Lawrence Inquiry. The CAD studies explored the experiences of defendants and witnesses in criminal proceedings³⁰⁶, parents in care proceedings³⁰⁷, tenants in housing repossession cases³⁰⁸ and tribunals users³⁰⁹, as well as legal decision makers such as magistrates³¹⁰ and jurors. Taken as a body of research, a number of common themes have emerged about the relationship between diversity and the judicial system, and the perceptions and reality of fairness in judicial proceedings for a wide variety of court users and decision-makers.

The first common theme to emerge is that diversity is more than ethnicity. What is clear from most of the CAD studies is that there is an important need to consider diversity in its wider sense and focusing only on ethnicity in the court system can be misleading. Other socio-economic

³⁰⁶ Hood et al supra note 4.

³⁰⁷ Brophy et al supra note 6 and 9.

³⁰⁸ Blandy et al supra note 5

³⁰⁹ Genn et al supra note 10.

³¹⁰ Vennard et al supra note 8.

factors beyond ethnicity can be equally if not more significant to court outcomes and the experiences of court users. The jury project was the only CAD study to specifically address how significant ethnicity was *in relation to* other socio-economic characteristics, and one of the main findings of the research is that income and employment status are far more predictive of whether someone does jury service or not than ethnicity. Although the other CAD research projects focussed on ethnicity, most also suggested that other background factors seem to influence BME groups' experience of the court system in this country³¹¹, and the most significant factors appear to be income, employment status and language.

The second general conclusion is that, in terms of the justice system, ethnic minorities are not all the same. The CAD studies highlighted the need to disentangle the concept of "ethnic minorities". Most government and other official bodies have recently adopted the term "black and minority ethnic" (BME) group, which reflects the Commission for Racial Equality's guidelines for referring to non-white British ethnic minorities. While such terminology can be helpful in discussing ethnicity issues in general terms, viewing all ethnic minorities as a unified group can create a misleading picture of the nature of bias in the legal system³¹². Most of the CAD studies found that specific ethnic minority groups were more likely than others to perceive or experience unfairness in the court system, but that this varied by the specific type of court or tribunal³¹³. However, one of the difficulties in examining ethnicity among smaller ethnic groups is often the relatively small number of subjects on which to base reliable findings.

The third conclusion to emerge from CAD is that ethnic minorities' actual experience of the courts often contradicted their preconceptions of the courts. Many of the CAD studies found that ethnic minorities were more likely than White court users to believe *in general* that courts discriminated based on race, but that they personally experienced very low levels of discrimination when they interacted with courts and tribunals. For instance, ethnic minority defendants were most likely to believe that ethnic minority defendants did not always receive equal treatment by the courts, but they did not believe that any unfair treatment they received in court was due to their ethnic background³¹⁴. The study of housing repossessions found that users' feared prejudice at court due to their ethnicity but that this was based on anecdotal evidence and experience of discrimination in other areas of life, not in their actual experience of the court system³¹⁵. This general trend was also found in the jury study, with BME jurors

³¹¹ See for instance, Brophy et al supra note 9; Vennard supra note 8; and Blandy supra note 5.

³¹² Thomas (2005) supra note 78 reviews the literature on this issue.

³¹³ See for instance, Genn on tribunal users supra note 10; Brophy et al on parents in child protection litigation supra note 9; and Blandy et al on defendants in housing repossession cases supra note 5.

³¹⁴ See Hood et al supra note 4.

³¹⁵ See Blandy et al supra note 5.

strongly believing that ethnic minorities are treated more harshly by the courts than White people. However, it also found that not all BME jurors shared this view equally: Black jurors were more likely to believe this than Asian jurors. This tendency for Black users of the court system to have the lowest level of confidence in the courts' ability to treat ethnic minorities fairly was also found in other CAD projects³¹⁶, and reflects earlier findings of the British Crime Survey³¹⁷. While it is encouraging to see that most ethnic minorities who have contact with the court system do not actually experience unfair treatment, it must be a matter for concern that ethnic minorities who have not had contact with the system still believe that the system will not treat them fairly. Such misconceptions about the courts' treatment of ethnic minorities highlight another general conclusion of CAD: the need to demystify the court system and provide clear information about what to expect at court to all court users³¹⁸.

Eight years on from the Stephen Lawrence Inquiry and after six years of research covering eight separate studies of ethnicity and the court system in England and Wales, a clearer picture has emerged about whether, and to what extent, the court system deals fairly and justly with the needs of a diverse society. In terms of juries, this study has shown that the juror summoning process does not discriminate, directly or indirectly, against black and minority ethnic groups: a representative section of the local BME community are summoned and serve as jurors in virtually all Crown Courts in England and Wales. It has also exposed a number of widespread myths about jury service, which have clouded both public perceptions and policy discussions about the jury system for many years. There is no mass avoidance of jury service among the British public, and juries are not made up of people who are not important or clever enough to get out of jury service. Women, young people and the self-employed are not under-represented among serving jurors; and there is no evidence of any unwillingness to do jury service or any particular lack of trust in the fairness of the jury system among the BME community or the British public in general. Concerns about the under-representation of ethnic minorities on juries are based on the assumption that the racial composition of the jury can affect jury decision-making. On this fundamental issue, the research showed that racially mixed juries in a highly diverse community did not discriminate against defendants based on whether they were Black, White or Asian. This was despite the fact that in certain cases the decisions of some jurors who sat on these juries were affected by the race of the defendant. In their own individual ways, BME and White jurors serving on these racially mixed juries appeared to be particularly sensitive to the position of a Black person in a criminal court, either as a defendant or victim, and both groups of jurors appeared to be particularly critical of defendants when they were accused of a racial

³¹⁶ See Hood et al supra note 4.

³¹⁷ See British Crime Survey 2001 supra note 53.

³¹⁸ See Brophy et al supra note 9; Genn et al supra note 10.

motive to the crime. What remains to be answered is whether all-White juries, which decide a large proportion of jury cases in this country, also do not discriminate against defendants based on race.